



Queensland

# Child Protection Act 1999

Reprinted as in force on 17 January 2005  
(includes commenced amendments up to 2004 Act No. 49)

Reprint No. 3D

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# **Child Protection Act 1999**

[as amended by all amendments that commenced on or before 17 January 2005]

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

## **Chapter 1      Preliminary**

### **Part 1            Introduction**

#### **1            Short title**

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

#### **2            Commencement**

- (1) Section 260<sup>1</sup> commences on the date of assent.
- (2) The remaining provisions commence on a day to be fixed by proclamation.

#### **3            Definitions**

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

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<sup>1</sup> Section 260 (Exemption from expiry of Children's Services Regulation 1966)

## **Part 2**                      **Purpose and administration of Act**

### **4**            **Purpose of Act**

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

### **5**            **Principles for administration of Act**

- (1) This Act is to be administered under the principle that the welfare and best interests of a child are paramount.

*Example—*

The chief executive is making a decision under this Act, concerning a child, in circumstances where there is a conflict between the child's welfare and best interests and the interests of an adult caring for the child. The conflict must be resolved in favour of the child's welfare and best interests.

- (2) Subject to subsection (1), this Act is also to be administered under the following principles—
- (a) every child has a right to protection from harm;
  - (b) families have the primary responsibility for the upbringing, protection and development of their children;
  - (c) the preferred way of ensuring a child's wellbeing is through the support of the child's family;
  - (d) 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



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- (iii) the child and the child's parents have the opportunity to take part in making decisions affecting their lives;
- (e) 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;
- (f) 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;
- (g) a child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand;
- (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.

## **6 Provisions about Aboriginal and Torres Strait Islander children**

- (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;<sup>2</sup> 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.
- (4) As far as is reasonably practicable, an authorised officer 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.

## **6A Provision about the Child Protection (International Measures) Act 2003**

The *Child Protection (International Measures) Act 2003* includes provisions about the exercise of jurisdiction under this Act.

## **7 Chief executive’s functions**

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

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<sup>2</sup> The *Acts Interpretation Act 1954*, section 36, contains definitions of Aboriginal tradition and Island custom.

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- (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) ensuring access by children in licensed residential facilities to advocacy services and cooperating with the

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- services to help ensure that the children's concerns are dealt with; and
- (n) 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
  - (o) 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
  - (p) reviewing, under chapter 7A, the department's involvement with certain children who have since died—
    - (i) to facilitate ongoing learning and improvement in the provision of services by the department; and
    - (ii) to promote the accountability of the department; and
  - (q) 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
  - (r) collecting and publishing, or helping collect and publish, information and statistics about harm to children; and
  - (s) promoting research into the causes and effect of harm to children; and
  - (t) encouraging tertiary institutions to provide instruction about harm to children and its prevention and treatment.

## Part 3                      **Basic concepts**

### Division 1                **Key terms**

#### **8            Who is a *child***

A *child* is an individual under 18 years.

#### **9            What is *harm***

- (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.

#### **10        Who is a *child in need of protection***

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.

#### **11        Who is a *parent***

- (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.<sup>3</sup>

## **Division 2                      Custody and guardianship**

### **12        What is effect of custody**

- (1) This section applies if—
  - (a) an authorised officer or police officer takes a child into the chief executive’s custody;<sup>4</sup> 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.

### **13        What is effect of guardianship**

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

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3 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 37) and chapter 2, part 4 (see section 52).

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

- (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.

## **Chapter 2      Protection of children**

### **Part 1            Children at risk of harm**

#### **14      Chief executive may investigate alleged harm**

- (1) If the chief executive becomes aware (whether because of notification given to the chief executive<sup>5</sup> 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.

#### **15      Child’s parents to be told about allegation of harm and outcome of investigation**

- (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

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<sup>5</sup> Section 22 provides for protection from civil liability for persons, who, acting honestly, notify or give information about suspected harm to a child.

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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.
- (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.

## **16 Contact with child at immediate risk of harm**

- (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.

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

- (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 has lawfully entered, and is lawfully remaining at, the school or place.
- (2) The officer may have contact with the child 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.

## **18 Child at immediate risk may be taken into custody**

- (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.<sup>6</sup>
- (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.

## **19 Effect of taking child into custody on existing order**

- (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.

## **20 Officer's obligations on taking child into custody**

- (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—

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<sup>6</sup> Section 97 (Carrying out medical examinations or treatment) applies to the medical examination or treatment.

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- (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;<sup>7</sup> 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 jeopardise an investigation into the offence; or
  - (b) compliance with the subparagraph may expose the child to harm.

**21 Moving child to safe place**

- (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.

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<sup>7</sup> Section 195 deals with compliance with provisions about giving information.

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- (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.

**21A Unborn children**

- (1) This section applies if, before the birth of a child, the chief executive reasonably suspects the child may be in need of protection after he or she is born.
- (2) The chief executive must take the action the chief executive considers appropriate including, for example—
  - (a) having an authorised officer investigate the circumstances and assess the likelihood that the child will need protection after he or she is born; or
  - (b) offering help and support to the pregnant woman.
- (3) The purpose of this section is to reduce the likelihood that the child will need protection after he or she is born (as opposed to interfering with the pregnant woman's rights or liberties).

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

- (1) This section applies if a person, acting honestly—
  - (a) notifies the chief executive or another officer of the department that the person suspects—
    - (i) a child has been, is being or is likely to be, harmed; or
    - (ii) an unborn child may be at risk of harm after he or she is born; or
  - (b) gives the chief executive, an authorised officer or a police officer—
    - (i) information about alleged harm or alleged risk of harm to a child; or
    - (ii) information, relating to an unborn child, about a suspected risk of harm to the child after he or she is born.
- (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****23 Meaning of *parent* in pt 2**

In this part—

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

- (a) the child's mother or father;
- (b) a person in whose favour a residence order or contact order for the child is in operation under the *Family Law Act 1975* (Cwlth);
- (c) a person, other than the chief executive, having custody or guardianship of the child under a law of the State or another State;
- (d) if the child is in a person's custody or guardianship under this Act—
  - (i) the child's mother or father; and
  - (ii) anyone else who would be the child's parent under paragraph (b) or (c) if the child were not in the person's custody or guardianship under this Act.

## **24 Purpose of pt 2**

- (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**

### **25 Making of application for order**

- (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.

## **26 Deciding application**

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.

## **27 Making of temporary assessment order**

- (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.

## **28 Provisions of temporary assessment order**

- (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



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- (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;<sup>8</sup>
  - (c) directing a parent not to have contact (direct or indirect)—
    - (i) with the child; or
    - (ii) with the child other than when a stated person or a person of a stated category is present.
- (2) In addition, the order may 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
  - (b) the entry is necessary for the effective enforcement of the order.
- (3) On entering a place, an authorised officer or police officer may remain in the place for as long as the officer reasonably considers necessary for exercising the officer’s powers under this section.
- (4) An authorised officer or police officer may exercise powers under the order with the help, and using the force, that is reasonable in the circumstances.

**29 Duration of temporary assessment orders**

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

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<sup>8</sup> Section 97 (Carrying out medical examinations or treatment) applies to the medical examination or treatment.

- (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.

### **30 Special orders**

- (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.

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- (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.

**31 Order—procedure before entry**

- (1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under a temporary 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—
    - (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.<sup>9</sup>
- (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**

#### **32            Explanation of temporary assessment orders**

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
  - (ii) that, because of the duration of the order, if the parent wishes to appeal against the order, an appeal should be started immediately;<sup>10</sup> and
  - (iii) how to appeal; and
- (d) tell the child about the order.<sup>11</sup>

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<sup>9</sup> For a police officer, see the *Police Powers and Responsibilities Act 2000*, section 394 (Supplying police officer's details).

<sup>10</sup> Under section 29, the duration of a temporary assessment order must be not more than 3 days.

<sup>11</sup> Section 195 deals with compliance with provisions about giving information.

**33 Police officers to notify chief executive of certain orders**

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.

**34 Extension of temporary assessment orders**

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

**35 Variation of temporary assessment orders**

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

**36 Effect of temporary assessment order on existing child protection orders**

If a temporary assessment order is made for a child for whom a child 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****37 Meaning of *parent* in pt 3**

In this part—

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

- (a) the child's mother or father;
- (b) a person in whose favour a residence order or contact order for the child is in operation under the *Family Law Act 1975* (Cwlth);
- (c) a person, other than the chief executive, having custody or guardianship of the child under a law of the State or another State;
- (d) if the child is in a person's custody or guardianship under this Act—
  - (i) the child's mother or father; and
  - (ii) anyone else who would be the child's parent under paragraph (b) or (c) if the child were not in the person's custody or guardianship under this Act.

**38 Purpose of pt 3**

- (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.<sup>12</sup>

**Division 2 Application for, and making and effect of, court assessment orders****39 Application for court assessment order**

- (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.

**40 Registrar to fix time and place for hearing**

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.

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<sup>12</sup> Under part 2, a temporary assessment order may be obtained for not more than 3 days.

**41 Notice of application**

- (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.<sup>13</sup>
- (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) Also, if the applicant is a police officer, the applicant must immediately give a copy of the application to the chief executive.
- (4) A copy of the application served under this section must state—
  - (a) when and where the application is to be heard; and
  - (b) for a copy served on a parent—that the application may be heard and decided even though the parent does not appear in court.

**42 Respondents to application**

The child's parents are respondents to the application.

**43 Hearing of application in absence of parents**

- (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.

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<sup>13</sup> Section 195 deals with compliance with provisions about giving information.



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

#### **44 Making of court assessment order**

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.

#### **45 Provisions of court assessment order**

- (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—
    - (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) In addition, the order may also authorise an authorised officer or police officer to enter and search any place the officer

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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.
- (3) On entering a place, an authorised officer or police officer may remain in the place for as long as the officer considers necessary for exercising the officer's powers under this section.
  - (4) An authorised officer or police officer may exercise the officer's powers under the order with the help, and using the force, that is reasonable in the circumstances.

**46 Order—procedure before entry**

- (1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under a 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.<sup>14</sup>

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<sup>14</sup> For a police officer, see the *Police Powers and Responsibilities Act 2000*, section 394 (Supplying police officer's details).

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

#### **47 Duration of court assessment orders**

- (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.<sup>15</sup>
- (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.

### **Division 3 Other provisions about court assessment orders**

#### **48 Chief executive's obligations after making of court assessment order**

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.

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<sup>15</sup> Under section 40, the registrar fixes the time and place for hearing the application.

**49 Extension of court assessment orders**

- (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) This part applies, with all necessary changes, to the application as if it were an application for a court assessment order.
- (3) The court may extend the term of the order only if the court is satisfied—
  - (a) the order has not ended; and
  - (b) the extension is in the child's best interests.
- (4) A court assessment order may not be extended more than once.

**50 Variation and revocation of court assessment orders**

- (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.

**51 Effect of court assessment order on existing child protection orders**

If a court assessment order is made for a child for whom a child protection order is already in force, the court assessment order prevails to the extent of any inconsistency between the orders.

## **Part 4**                      **Child protection orders**

### **Division 1**                **Preliminary**

#### **52**        **Meaning of *parent* in pt 4**

In this part—

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

- (a) the child’s mother or father;
- (b) a person in whose favour a residence order or contact order for the child is in operation under the *Family Law Act 1975* (Cwlth);
- (c) a person, other than the chief executive, having custody or guardianship of the child under a law of the State or another State;
- (d) if the child is in a person’s custody or guardianship under this Act—
  - (i) the child’s mother or father; and
  - (ii) anyone else who would be the child’s parent under paragraph (b) or (c) if the child were not in the person’s custody or guardianship under this Act.

#### **53**        **Purpose of pt 4**

- (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.<sup>16</sup>

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<sup>16</sup> See section 10 (Who is a *child in need of protection*).

**Division 2****Applications for, and making and effect of, child protection orders****54 Application for child protection order**

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

**55 Registrar to fix time and place for hearing**

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.

**56 Notice of application**

- (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.<sup>17</sup>
- (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—

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<sup>17</sup> Section 195 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.

## **57 Respondents to hearing**

The child's parents are respondents to the application.

## **58 Hearing of application in absence of parents**

- (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.

## **59 Making of child protection order**

- (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 protection sought to be achieved by the order is unlikely to be achieved 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.<sup>18</sup>
- (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
  - (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 under section 67.<sup>19</sup>

## **60 Extraterritoriality**

To remove doubt, it is declared the Childrens Court may make a child protection order even if the events causing the child to be a child in need of protection happened outside Queensland, or partly in Queensland and partly outside Queensland.

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18 Section 95 deals with reports about the person's criminal history, domestic violence history and traffic history.

19 Section 67 (Court's powers to make interim orders on adjournment)



**61 Types of child protection orders**

The Childrens Court may make any of the following child protection orders it considers to be appropriate in the circumstances—

- (a) an order directing a parent of the child to do or refrain from doing something directly related to the child's protection;
- (b) an order 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) an order requiring the chief executive to supervise the child's protection in relation to the matters stated in the order;
- (d) an order 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) an order granting short-term guardianship of the child to the chief executive;
- (f) an order 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.

**62 Duration of child protection orders**

- (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**

#### **63            Chief executive's obligations after making of child protection order**

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.

#### **64            Extension of certain child protection orders**

- (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.

## **65 Variation and revocation of child protection orders**

- (1) An authorised officer, a child's parent or the child may apply to the Childrens Court for an order to—
- (a) vary or revoke a child protection order for the child; or
  - (b) revoke a child protection order for the child and make another child protection order in its place.
- (2) However, a child's parent can not—
- (a) apply for an order to revoke a child protection order for the child and make another child protection order in its place that grants guardianship of the child; or
  - (b) without the leave of the court, apply for an order to vary or revoke a child protection order for the child if another application for an order by a parent of the child to vary or revoke the child protection order has been decided by the court.
- (3) For subsection (2)(b), the court may grant leave only if it is satisfied the child's parent 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 for the child.
- (5) If the application is made by the child or a parent of the child—
- (a) other parents of the child 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



- (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.

## **67 Court's powers to make interim orders on adjournment**

- (1) On the adjournment of a proceeding for a court assessment order or child protection order, the Childrens Court may make all or any of the following orders—
- (a) an interim order 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;
- (b) an interim order directing a parent of the child 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.
- (3) In this section—

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

- (a) the child's mother or father;
- (b) a person in whose favour a residence order or contact order for the child is in operation under the *Family Law Act 1975* (Cwlth);
- (c) a person, other than the chief executive, having custody or guardianship of the child under a law of the State or another State;

- (d) if the child is in a person's custody or guardianship under this Act—
  - (i) the child's mother or father; and
  - (ii) anyone else who would be the child's parent under paragraph (b) or (c) if the child were not in the person's custody or guardianship under this Act.

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

- (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;<sup>23</sup>
  - (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 the child's contact with the child's family or provide for how the contact is to happen.

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<sup>23</sup> Section 97 (Carrying out medical examinations or treatment) applies to the medical examination or treatment.

- (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**

### **69           Registrar to appoint chairperson and convene conference**

- (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*.

### **70           Attendance of parties**

- (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.

### **71           Communications inadmissible in evidence without consent**

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

**72 Report of conference**

- (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****73 Chief executive's obligations about meeting child's protection needs under certain orders**

- (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.



**74 Charter of rights for a child in care**

- (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; and
  - (c) is told about the Commission for Children and Young People and Child Guardian and other entities known to the chief executive that can help the child if the child considers that the charter of rights is not being complied with in relation to the child.

**75 Transition from care**

- (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 159.<sup>24</sup>

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24 Section 159 (Payments for care and maintenance)

## **Division 2                      Orders for supervision**

### **76            Application of div 2**

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.

### **77            Obligations of child's parents and powers of authorised officers**

- (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.

### **78            Chief executive's powers**

- (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.
- (2) The notice must state the following—
  - (a) the reasons for the decision;
  - (b) that the parent may apply to the tribunal to have the decision reviewed only on the ground mentioned in subsection (3);

- (c) the application must be made within 28 days after the person receives the notice;
  - (d) how to apply to have the decision reviewed.
- (3) The parent may apply to have the decision to give the direction reviewed only on the ground that the direction does not specifically relate to the supervision matters.
- (4) Despite the *Children Services Tribunal Act 2000*, section 70<sup>25</sup> the 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**

#### **79            Obligations of family members to department under orders**

- (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.

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

- (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—

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<sup>25</sup> *Children Services Tribunal Act 2000*, section 70 (Stay of reviewable decision's operation)

- (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**

### **81            Application of div 4**

This division applies if the chief executive has custody or guardianship of a child under this Act.

### **82            Placing child in care**

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.<sup>26</sup>

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

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

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<sup>26</sup> See also schedule 1, paragraph (b) (Charter of rights for a child in care).

- (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.

#### **84 Agreements to provide care for children**

- (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.

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

- (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.

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

- (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 the child's parents may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed;
  - (d) how to apply to have the decision reviewed.
- (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—

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- (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 the child's parents may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed;
  - (d) how to apply to have the decision reviewed.
- (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.

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

- (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, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
- (d) state how to apply to have the decision reviewed.

## **88 Chief executive to regularly review arrangements for child's protection**

- (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.

## **89 Removal from carer's care**

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.

## **90 Notice of removal from care**

- (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 84 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 91, the carer is entitled to apply to have the decision reviewed—
    - (i) the carer may apply to the tribunal to have the decision reviewed; and
    - (ii) the application must be made within 28 days after the carer receives the notice; and
    - (iii) how to apply to have the decision reviewed.
- (4) The notice to the child must state—
- (a) the reasons for the decision; and
  - (b) that the child may apply to the tribunal to have the decision reviewed; and
  - (c) the application must be made within 28 days after the child receives the notice; and
  - (d) how to apply to have the decision reviewed.

## **91 Review of decision to remove child from carer's care**

The child's carer is entitled to have the decision to remove the child from the carer's care reviewed by the tribunal 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**

### **92            Application of div 5**

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

### **93            Management of child's property by public trustee**

- (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,<sup>27</sup> as if the child were an incapacitated person.

### **94            Audit of trust by public trustee**

- (1) This section applies if the child is a beneficiary under a trust.
- (2) For the *Public Trustee Act 1978*, section 60,<sup>28</sup> the chief executive is a person interested in the trust.

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<sup>27</sup> *Public Trustee Act 1978*, part 6 (Management of estates of incapacitated persons)

<sup>28</sup> *Public Trustee Act 1978*, section 60 (Public trustee may direct audit of trusts)

## Part 7                      General

### 95      Report about person's criminal history etc.

- (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 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 *Transport Operations (Road Use Management) Act 1995*, section 77.<sup>29</sup>
- (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—
    - (i) a personal offence against anyone;
    - (ii) an offence against the *Drugs Misuse Act 1986*;
    - (iii) an offence against section 162, 164, 166, 167 or 168;<sup>30</sup> or
  - (b) an application for a protection order under the *Domestic and Family Violence Protection Act 1989* in which the person is an aggrieved or respondent under that Act.

## 96 Family meetings

- (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—

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<sup>29</sup> *Transport Operations (Road Use Management) Act 1995*, section 77 (Restricted release of Queensland driver licence and traffic history information)

<sup>30</sup> Section 162 (Offence to remove child from carer), 164 (Offence to remove child from custody or guardianship), 166 (Offence to refuse contact with child in custody or guardianship), 167 (Offence for person to take child out of State) or 168 (Offence not to comply with certain orders)

- (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.<sup>31</sup>
- (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 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.

## **97 Carrying out medical examinations or treatment**

- (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;<sup>32</sup> or
  - (b) an order for a child authorises the child's medical examination or treatment.<sup>33</sup>

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31 Section 195 deals with compliance with provisions about giving information.

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

33 Under section 28(1)(b) a temporary assessment order may authorise the medical examination or treatment of the child. Also, under section 45(1)(b) a court assessment order may authorise the medical examination or treatment of the child.

- (2) A health practitioner 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 health practitioner may only carry out medical treatment that is reasonable in the circumstances.
- (6) If this section applies because of subsection (1)(a) or because of an order mentioned in subsection (1)(b) that is an assessment order, the health practitioner 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 of the examination or treatment, the health practitioner is taken to have the consent of the child's parents to the examination or treatment.

## **98 Carrying out social assessments**

- (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.<sup>34</sup>
- (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.

## **99 Custody or guardianship of child continues pending decision on application for order**

- (1) This section applies if—
  - (a) a child is in the chief executive's custody or guardianship, or the custody of a member of the child's family, under an order; and

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34 See section 68(1)(a) (Court's other powers on adjournment of proceedings for child protection orders).

- (b) before the order ends, an application is made for the extension 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.

## **Chapter 3      Court proceedings**

### **Part 1              Preliminary**

#### **100      Application of ch 3**

This chapter applies to a proceeding under this Act.

#### **101      Definition for ch 3**

In this chapter—

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

### **Part 2              Jurisdiction**

#### **102      Court's jurisdiction and constitution**

- (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.<sup>35</sup>
- (4) Subsection (3) has effect despite the *Justices of the Peace and Commissioners for Declaration Act 1991*, section 29(4).<sup>36</sup>

### **103 Court's jurisdiction unaffected by pending criminal proceeding**

- (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.

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35 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.

36 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.



## **Part 3                      Procedural provisions**

### **Division 1                      Court's procedures**

#### **104      Court's paramount consideration**

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

#### **105      Evidence**

- (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.

#### **106      Court to ensure parties understand proceeding**

- (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.

#### **107      Expert help**

- (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**

### **108      Right of appearance and representation**

- (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.

### **109      Legal representation of child's parents**

- (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.<sup>37</sup>

### **110      Separate legal representation of child**

- (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

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<sup>37</sup> Chapter 2 (Protection of children), part 5 (Adjournments of proceedings and court ordered conferences), division 1 (Adjournments of proceedings)

- (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.

### **111 Legal representation of more than 1 child**

- (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.

### **112 Child can not be compelled to give evidence**

- (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.

**113 Court may hear submissions from non-parties to proceeding**

- (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****114 Transfer of proceedings**

- (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.

**115 Hearing of applications together**

- (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.

**116 Costs**

The parties to a proceeding in the Childrens Court for an order must pay their own costs of the proceeding.

## Part 4                      Court appeals

### 117      Who may appeal

(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.

(3) In this section—

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

- (a) the child's mother or father;
- (b) a person in whose favour a residence order or contact order for the child is in operation under the *Family Law Act 1975* (Cwlth);
- (c) a person, other than the chief executive, having custody or guardianship of the child under a law of the State or another State;
- (d) if the child is in a person's custody or guardianship under this Act—
  - (i) the child's mother or father; and
  - (ii) anyone else who would be the child's parent under paragraph (b) or (c) if the child were not in the person's custody or guardianship under this Act.

**118 How to start appeal**

- (1) The appeal is started by filing a written notice of appeal with the registrar of the appellate court.
- (2) The appellant must serve a copy of the notice on the other persons entitled to appeal against the decision.
- (3) The notice of appeal must be filed within 28 days after the decision is made.
- (4) The court may at any time extend the period for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

**119 Stay of operation of decisions**

- (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.

**120 Hearing procedures**

- (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.

**121 Powers of appellate court**

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; or
- (d) set aside the decision appealed against and remit the matter to the magistrate or Childrens Court that made the decision.

**Chapter 4 Regulation of care****Part 1 Standards of care****122 Statement of standards**

- (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*)—
  - (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;

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- (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**

#### **123     Purpose of pt 2**

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**

#### **124     Individuals can not hold licences**

An individual is not eligible to hold a licence.

#### **125     Application for, or renewal of, licence**

- (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 142 applies.<sup>38</sup>

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38 Section 142 (Inquiries about certain persons' suitability)

**126 Restrictions on granting application**

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 following persons are suitable persons—
  - (i) the directors of the applicant;
  - (ii) the nominee for the licence;
  - (iii) the persons who will be responsible for directly managing the care service the subject of the application;
  - (iv) the persons who will be engaged in relation to the provision of care services by the service; 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.

**127 Grant of application**

- (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 may be issued subject to the reasonable conditions the chief executive considers appropriate.
- (3) The licence must be in the approved form.
- (4) The approved form must provide for the inclusion of the following—
  - (a) the licensee's name;
  - (b) the name of the nominee for the licence;
  - (c) the address of the licensed premises;
  - (d) any conditions of the licence.

**128 Duration of licence**

The licence or its renewal has effect for 3 years.

**129 Refusal of application**

- (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
  - (b) state the reasons for the decision; and
  - (c) state that the person may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
  - (d) state how to apply to have the decision reviewed.

**130 Nominees**

- (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 relation to the provision of care services by the service are suitable persons.
- (2) An adult may be a nominee for more than 1 licence.

**Division 3 Approval of foster carers****131 Only individuals may hold certificates of approval**

- (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 his or her spouse may only hold a certificate jointly with the spouse.

**132 Application for approval or renewal of approval**

- (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 142 applies.<sup>39</sup>

**133 Restrictions on granting application**

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.

**134 Grant of application**

- (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 may be issued subject to the reasonable conditions the chief executive considers appropriate.
- (3) The certificate must be in the approved form.
- (4) The approved form must provide for the inclusion of the following—

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<sup>39</sup> Section 142 (Inquiries about certain persons' suitability)



- (3A) If the amendment is about changing the nominee for a licence, in deciding whether the amendment is necessary or desirable, the chief executive must consider whether the proposed nominee is a suitable person.
- (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, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
  - (d) state how to apply to have the decision reviewed.

### **138 Amendment of authority by the chief executive**

- (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, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
  - (d) state how to apply to have the decision reviewed.
- (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.

### **139 Authority may be suspended or cancelled**

- (1) The chief executive may suspend or cancel an authority on the following grounds—
  - (a) if the authority is a licence—a relevant person, for the licence, is not a suitable person;

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- (b) if the authority is a certificate of approval—
    - (i) the holder of the certificate is not a suitable person to be an approved foster carer; or
    - (ii) a member of the holder's household is not a suitable person to associate on a daily basis with children;
  - (c) the holder is not meeting the standards required under the authority or another condition of the authority;
  - (d) the holder has contravened a provision of this Act;
  - (e) the authority was issued because of a materially false or misleading representation or declaration (made either orally or in writing);
  - (f) it is inappropriate for the holder to continue to hold the authority because of a circumstance prescribed under a regulation.
- (2) In this section—
- relevant person***, for a licence, means—
- (a) a director of the licensee; or
  - (b) the nominee for the licence; or
  - (c) a person responsible for directly managing the care service the subject of the licence; or
  - (d) a person who is engaged in relation to the provision of care services by the service.

**140 Procedure for suspension or cancellation**

- (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;



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- (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, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
  - (c) how to apply to have the decision reviewed.
- (6) The chief executive must record particulars of the suspension or cancellation on the authority.

**140A Chief executive may notify Commissioner for Children and Young People and Child Guardian about particular information**

- (1) This section applies if, in relation to an approved foster carer, the chief executive amends, suspends or cancel the person's authority under section 138 or 140 (a *disciplinary action*).

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- (2) If the chief executive reasonably believes the disciplinary action may be relevant to the functions or powers of the children's commissioner under the commissioner's Act, the chief executive may give written notice about the disciplinary action to the children's commissioner.
- (3) A notice under subsection (2) must state the following—
  - (a) the person's name and address and date of birth;
  - (b) the form of disciplinary action and the reasons for it;
  - (c) when the conduct happened that was a ground for the disciplinary action;
  - (d) the nature of the conduct.
- (4) However, the notice must not contain information that identifies, or is likely to identify, a particular child.
- (5) In this section—

*children's commissioner* means the Commissioner for Children and Young People and Child Guardian under the commissioner's Act.

*commissioner's Act* means the *Commission for Children and Young People and Child Guardian Act 2000*.

## **141 Amendment, suspension and cancellation of authorities**

- (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—
  - (a) the day on which the notice is given; or

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- (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.

**141A Surrender of authorities**

- (1) The holder of an authority may surrender the authority by written notice given to the chief executive.
- (2) The surrender takes effect—
  - (a) on the day that is 21 days after the notice is given to the chief executive; or
  - (b) if a later day of effect is stated in the notice—on the later day.
- (3) The holder must return the authority to the chief executive within 7 days after the day the surrender takes effect.

## **Division 5                      General**

### **142    Inquiries about certain persons' suitability**

- (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 the directors of an applicant for the licence or the licensee; and
    - (iii) to the nominee for the licence; and
    - (iv) to the persons who will be, or are, engaged in relation to the provision of care services by the service; or
  - (b) for a certificate of approval—
    - (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 *Transport Operations (Road Use Management) Act 1995*, section 77.<sup>40</sup>

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

- (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 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.

**144 Offence to contravene condition of licence**

A licensee must not contravene a condition of the licence.

Maximum penalty—50 penalty units.

**145 Authorised officer may require production of licence, approval etc.**

- (1) An authorised officer may—

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<sup>40</sup> *Transport Operations (Road Use Management) Act 1995*, section 77 (Restricted release of Queensland driver licence and traffic history information)

- (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.

**146 Authorised officer may enter and inspect licensed premises**

- (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.

**147 Regular inspections of licensed residential facilities**

The chief executive must regularly inspect each licensed residential facility to assess whether the care provided to children in the facility meets the standards of care in the statement of standards.

**148 Obligation to report harm to children in residential care**

- (1) If a responsible person becomes aware, or reasonably suspects, that harm has been caused to a child in residential care, the person must, unless the person has a reasonable excuse, report the harm, or suspected harm, to the chief executive—
  - (a) immediately; and

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- (b) if a regulation is in force under subsection (2), in accordance with the regulation.

Maximum penalty—20 penalty units.

- (2) A regulation may prescribe the way the report must be given or the particulars that the report must include.
- (3) It is a reasonable excuse for the person not to report a matter that reporting the matter might tend to incriminate the person.
- (4) Subsection (1) does not apply if the person knows, or reasonably supposes, that the chief executive is aware of the harm or suspected harm.
- (5) As soon as practicable after receiving a report under this section, the chief executive must give a copy to the Commissioner for Children and Young People and Child Guardian, to help the commissioner to perform the commissioner's monitoring functions under the *Commission for Children and Young People and Child Guardian Act 2000*.
- (6) In this section—

***child in residential care*** means a child who is—

- (a) in the care of a departmental care service; or  
(b) residing in a licensed residential facility.

***responsible person*** means—

- (a) an authorised officer; or  
(b) an officer or employee of the department involved in administering this Act; or  
(c) a person employed in a licensed care service.

## **Chapter 5 Administration**

### **Part 1 Authorised officers**

#### **149 Appointment**

- (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.

#### **150 Limitation of powers**

- (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.

#### **151 Conditions of appointment**

- (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.

## **152 Identity card**

- (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.

## **153 Production of identity card**

- (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.

**154 Authorised officer to give notice of damage**

- (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 officer'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.

**155 Compensation**

- (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**

### **156      Delegation by chief executive**

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

### **157      Approved forms**

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

### **158      Coordination**

- (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.

### **159      Payments for care and maintenance**

- (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 6      Enforcement and legal proceedings**

### **Part 1              Offences**

#### **160      Obstruction of authorised officer etc.**

- (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.

#### **161      Impersonation of authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—40 penalty units.

#### **162      Offence to remove child from carer**

- (1) This section applies if a child is in the chief executive's custody or guardianship under an assessment order or child protection order.

- (2) A person must not—
- (a) unlawfully remove the child from the care of the child's carer; or
  - (b) if the child has been unlawfully removed from the care of the child's carer—keep the child; or
  - (c) if the child has been lawfully removed from the care of the child's carer—keep the child beyond the period allowed for the removal.

Maximum penalty—150 penalty units or 18 months imprisonment.

- (3) Subsection (2) applies whether the removal or keeping of the child is carried out within or outside Queensland.

### **163 Offence to remove child from carer—order made in another State**

- (1) This section applies if an interstate officer for another State has responsibility for the custody or guardianship of a child, however that responsibility is described, under an order made under a child welfare law or interstate law of that State.
- (2) A person must not, in Queensland—
- (a) unlawfully remove the child from the care of the child's carer; or
  - (b) if the child has been unlawfully removed from the care of the child's carer—keep the child; or
  - (c) if the child has been lawfully removed from the care of the child's carer—keep the child beyond the period allowed for the removal.

Maximum penalty—150 penalty units or 18 months imprisonment.

### **164 Offence to remove child from custody or guardianship**

- (1) This section applies if a child is in the custody or guardianship of a person (the *first person*) under this Act.

- (2) A person must not—
- (a) unlawfully remove the child from the first person's custody or guardianship; or
  - (b) if the child has been unlawfully removed from the first person's custody or guardianship—keep the child; or
  - (c) if the child has been lawfully removed from the first person's custody or guardianship—keep the child beyond the period allowed for the removal.

Maximum penalty—150 penalty units or 18 months imprisonment.

- (3) Subsection (2) applies whether the removal or keeping of the child is carried out within or outside Queensland.

**165 Offence to remove child from custody or guardianship—order made in another State**

- (1) This section applies if a person (the *first person*) has responsibility for the custody or guardianship of a child, however that responsibility is described, under an order made under a child welfare law or interstate law of another State.

- (2) A person must not, in Queensland—
- (a) unlawfully remove the child from the first person's custody or guardianship; or
  - (b) if the child has been unlawfully removed from the first person's custody or guardianship—keep the child; or
  - (c) if the child has been lawfully removed from the first person's custody or guardianship—keep the child beyond the period allowed for the removal.

Maximum penalty—150 penalty units or 18 months imprisonment.

**166 Offence to refuse contact with child in custody or guardianship**

(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.

**167 Offence for person to take child out of State**

A person who has the care of a child in the chief executive's custody or guardianship must not take or keep 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.

**168 Offence not to comply with certain orders**

(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**

# **Prosecution of certain interstate offences**

### **169 Consultation with chief executive before prosecution**

- (1) This section applies to—
  - (a) an offence against section 162 or 164<sup>41</sup> relating to the unlawful removal or keeping of a child in another State; or
  - (b) an offence against section 163 or 165.<sup>42</sup>
- (2) A person must consult with the chief executive before starting proceedings against a person for the offence.
- (3) However, subsection (2) does not apply to a police officer starting proceedings against a person for the offence by arresting the person if the police officer believes, in the circumstances, it is reasonably necessary to arrest the person without first consulting with the chief executive.
- (4) If a police officer starts proceedings under subsection (3) by arresting a person without first consulting with the chief executive, the officer must notify the chief executive as soon as practicable after the arrest.
- (5) Failure to comply with subsection (2) or (4) in relation to proceedings does not affect the validity of the proceedings.

### **170 Person not to be prosecuted twice**

If a person has been convicted, found guilty or acquitted of an offence against a child welfare law or interstate law of another State for an act or omission of the person, the person may not be prosecuted for an offence against this Act for the same act or omission.

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41 Section 162 (Offence to remove child from carer) or 164 (Offence to remove child from custody or guardianship)

42 Section 163 (Offence to remove child from carer—order made in another State) or 165 (Offence to remove child from custody or guardianship—order made in another State)



## **Part 3**

# **Warrant for apprehension of child**

### **171 Application for warrant for apprehension of child**

- (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.

### **172 Issue of warrant**

- (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.

### **173 Special warrants**

- (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
  - (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—

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- (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.

**174 Warrants—procedure before entry**

- (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 173(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.<sup>43</sup>
- (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.

### **175 Interstate warrants—arrangements for apprehended child until magistrate is available**

- (1) This section applies if a police officer apprehends a child under a warrant issued in another State under a child welfare law of that State.
- (2) The officer may arrange for the child's safe care until it is practicable to take the child before a magistrate and, in making the arrangements, may use any help provided by the chief executive.

*Example—*

With the chief executive's help, the officer may arrange for the child to be cared for by an approved foster carer until it is practicable to take the child before a magistrate.

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<sup>43</sup> For a police officer, see the *Police Powers and Responsibilities Act 2000*, section 394 (Supplying police officer's details).

## **Part 4                      General powers of authorised officers and police officers**

### **Division 1                      Preliminary**

#### **176      Application of pt 4**

This part applies if an authorised officer or police 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 18<sup>44</sup> 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 164,<sup>45</sup> has been unlawfully removed from a person's custody or guardianship.<sup>46</sup>

### **Division 2                      Power of seizure**

#### **177      Power of seizure**

The 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

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

45 Section 164 (Offence to remove child from custody or guardianship)

46 A warrant for apprehension of a child may be issued under part 3.

- (ii) is evidence of an offence in relation to the child or the child's unlawful removal from custody or guardianship; and
- (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.

### **178 Procedure after seizure of thing**

- (1) As soon as practicable after seizing the thing, the 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.

**179 Forfeiture of seized thing on conviction**

- (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.

**180 Dealing with forfeited things etc.**

- (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 on entry****181 Power to photograph**

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

**Part 5 Evidence and legal proceedings****182 Evidentiary provisions**

- (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

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- (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.



- (5) A document purporting to be the consent of an interstate officer or a delegate of an interstate officer, or purporting to be a copy of the consent of an interstate officer or a delegate of an interstate officer, is evidence of the consent.

### **183 Proceeding for offences**

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

### **184 When proceeding may start**

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 6 Confidentiality**

### **Division 1 Preliminary**

#### **185 Definitions for pt 6**

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*.<sup>47</sup>

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<sup>47</sup> See section 250 (Repeal of Children's Services Act 1965).

**Division 2****Confidentiality in relation to  
administration of Act****186 Confidentiality of notifiers of harm or risk of harm**

- (1) This section applies if a person (the *notifier*) notifies the chief executive, an authorised officer or a police officer that the notifier suspects—
  - (a) a child has been, is being or is likely to be, harmed; or
  - (b) an unborn child may be at risk of harm after he or she is born.
- (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 or a child welfare law or interstate law of another State to another person performing functions under this Act or a child welfare law or interstate law of another State; or
  - (b) under the *Child Protection (International Measures) Act 2003*, part 6;<sup>48</sup> or
  - (c) to the ombudsman conducting an investigation under the *Ombudsman Act 2001*; or
  - (d) to the commissioner under the *Commission for Children and Young People and Child Guardian Act 2000*, in compliance with a notice given by the commissioner under that Act requiring the disclosure; or
  - (e) 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

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48 *Child Protection (International Measures) Act 2003*, part 6 (Co-operation and other matters)

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- given in a proceeding before a court or tribunal without leave of the court or tribunal; 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.

**187 Confidentiality of information obtained by persons involved in administration of Act**

- (1) This section applies to a person who—
  - (a) is or has been—

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- 
- (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 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 186, 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.

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

- (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 186, 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 is for purposes directly related to obtaining information requested by the chief executive under section 246C;<sup>49</sup> or
- (c) if the disclosure or giving of access is otherwise required or permitted by law.

**189 Prohibition of publication of information leading to identity of children**

- (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

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<sup>49</sup> Section 246C (Chief executive may seek information from entities)

(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**

### **190      Production of department's records**

(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 187.

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- (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) by stating 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.

**191 Refusal of disclosure of certain information during proceeding**

- (1) A person who is, or was, 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

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- (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.

## **192 Prohibition of publication of certain information for proceedings**

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.

### **193 Restrictions on reporting certain court proceedings**

- (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

### 194      Release of information by health service employees

- (1) A health service employee may, for this Act, give a relevant person or the Childrens Court confidential information if—
  - (a) for a relevant person or the Children's Court—the information is relevant to the protection or welfare of a child; or
  - (b) for a relevant person who is the chief executive and without limiting paragraph (a)—the information is relevant to the chief executive's review, or the preparation of a supplementary report, under chapter 7A.<sup>50</sup>
- (2) Subsection (1)(a) includes the giving of information, before a child is born, that is relevant to the protection or welfare of the child after he or she is born.
- (3) In this section—

**confidential information** means information mentioned in the *Health Services Act 1991*, section 63(1).

**health service employee** means an officer, employee or agent of the department in which the *Health Services Act 1991* is administered.

**relevant person** means—

- (a) the chief executive; or
- (b) an authorised officer; or
- (c) a police officer.

## Part 7                      General

### 195      **Compliance with provisions about explaining and giving documents**

- (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) Also, this section applies if, under a provision of chapter 7, the chief executive is required to obtain the consent of a parent.
- (3) The chief executive or officer need only comply with the provision to the extent that is reasonably practicable in the circumstances.
- (4) Without limiting subsection (3), 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.
- (5) 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.

- (6) 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.

## **196 Exercise of powers and compliance with obligations by others**

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.

## **197 Protection from liability**

- (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 7      Interstate transfers of child protection orders and proceedings**

### **Part 1            Preliminary**

#### **Division 1        Explanation, purpose and guiding principles**

##### **198      Explanation and purpose**

- (1) Chapter 2 provides for the making of child protection orders and the conduct of child protection proceedings in the Childrens Court.
- (2) Laws of other States and New Zealand provide for similar orders and proceedings.
- (3) The purpose of this chapter is to provide for the transfer of the orders and proceedings between Queensland and other States, and between Queensland and New Zealand—
  - (a) so that children in need of protection may be protected if they move from one jurisdiction to another; and
  - (b) so that proceedings relating to the protection of a child may be decided, in a timely and expeditious way, in a court in the most appropriate jurisdiction.
- (4) The transfer of an order from one jurisdiction to another enables the law of the receiving jurisdiction to provide for the administration and enforcement of the order as if it were made in the receiving jurisdiction.
- (5) Similarly, the transfer of a proceeding from one jurisdiction to another enables the law of the receiving jurisdiction to provide for the proceeding to be heard and decided as if it had been started there.

**199 Further guiding principle**

- (1) This chapter must be administered under the principle that it is desirable for an order relating to the protection of a child to have effect, and to be enforced, in the State in which the child resides.
- (2) In exercising its jurisdiction or powers under this chapter, the Childrens Court must observe the principle mentioned in subsection (1).
- (3) This section does not limit section 5 or 104.<sup>51</sup>

**Division 2 Interpretation provisions about child protection orders****200 References to Queensland orders**

If a child protection order is in force under this Act—

- (a) the order as in force in Queensland is referred to in this chapter as the *home order*; and
- (b) the order in the form in which it is proposed to be transferred to another State under this chapter is referred to in this chapter as the *proposed interstate order*.

**201 Reference to *child protection order* includes certain orders of other States**

- (1) This chapter uses the term ‘child protection order’ to refer not only to orders made under this Act, but also to certain orders made under the laws of other States.
- (2) Specifically, an order made under a child welfare law, or interstate law, of a participating State is a *child protection order* for this chapter if—
  - (a) the order provides—
    - (i) for the guardianship, custody or supervision of a child; or

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<sup>51</sup> Section 5 (Principles for administration of Act) or 104 (Court’s paramount consideration)

- (ii) for contact with a child; or
    - (iii) that a parent of the child must do or refrain from doing something directly related to the child's protection; and
  - (b) the order is made in favour of, or gives responsibility to, any of the following entities of the participating State—
    - (i) a government department or statutory authority;
    - (ii) a person who is head of, is employed in, or otherwise holds an office or other position in, a government department or statutory authority;
    - (iii) an organisation or the chief executive of an organisation, whether or not the person's position is given the name of chief executive;
    - (iv) a Minister; and
  - (c) the order is not made on an interim basis or for the purpose of assessing a child's protective needs.
- (3) A reference in this chapter to a child protection order, if the order is made under a law of another State—
- (a) is a reference to the order in the form in which it is transferred, or proposed to be transferred, to Queensland; and
  - (b) includes a reference to a document, prepared under the law of the other State, stating the conditions applying to the order on its transfer to Queensland.

## **Division 3                      Corresponding laws of other States**

### **202      Meaning of *law* for div 3**

- (1) In this division—
- law* includes part of a law.

- (2) Also, for the application of the *Acts Interpretation Act 1954*, section 14H<sup>52</sup> to a regulation made under this division, the definition *law* for that section includes a law of New Zealand.

### **203 Child welfare laws**

A regulation may declare a law of another State about the protection of children to be a child welfare law of that State.

### **204 Interstate laws**

- (1) If the Minister is satisfied a law of another State substantially corresponds to this chapter, the Minister may recommend that the Governor in Council—
- (a) declare the law to be an interstate law of that State; and
  - (b) declare that State to be a participating State; and
  - (c) declare the holder (from time to time) of a stated office to be the interstate officer for that State.
- (2) The Governor in Council may make the declaration by regulation.

## **Division 4 Meaning of *parent***

### **205 Meaning of *parent* for ch 7**

In this chapter—

*parent*, of a child, means—

- (a) other than in part 7, each of the following persons—
  - (i) the child's mother or father;
  - (ii) a person in whose favour a residence order or contact order for the child is in operation under the *Family Law Act 1975* (Cwlth);

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<sup>52</sup> *Acts Interpretation Act 1954*, section 14H (References taken to be included in reference to law)



- (iii) a person, other than the chief executive, having custody or guardianship of the child under a law of the State or another State;
- (iv) if the child is in a person's custody or guardianship under this Act—
  - (A) the child's mother or father; and
  - (B) anyone else who would be the child's parent under subparagraph (ii) or (iii) if the child were not in the person's custody or guardianship under this Act; or
- (b) in part 7, a parent as defined in section 242.<sup>53</sup>

## **Part 2                      Transfer of an order to another State**

### **Division 1                Orders that may be transferred**

#### **206    Orders that may be transferred**

A child protection order in force under this Act may be transferred to a participating State under this part, unless the order is—

- (a) an interim order under section 67;<sup>54</sup> or
- (b) an order granting long term guardianship of a child to someone other than the chief executive.

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53 Section 242 (Definitions for pt 7)

54 Section 67 (Court's powers to make interim orders on adjournment)

## **Division 2                      Administrative transfers**

### **207      Chief executive may transfer order**

- (1) The chief executive may transfer a child protection order to a participating State if—
  - (a) the chief executive is satisfied an order to the same or a similar effect as the home order could be made under a child welfare law of that State; and
  - (b) the home order is not the subject of an appeal under chapter 3, part 4<sup>55</sup> and, if no appeal has been started, the time for starting an appeal has expired; and
  - (c) the home order is not the subject of an application under section 65;<sup>56</sup> and
  - (d) the interstate officer for that State has given written consent to the transfer and to the provisions of the proposed interstate order; and
  - (e) each person whose consent to the transfer is required under section 209 has consented; and
  - (f) the chief executive has given the notices required under section 210.
- (2) For subsection (1)(a), in deciding whether an order to the same or a similar effect as the home order could be made under a child welfare law of the participating State, the chief executive must not take into account the period for which an order of that type could have been made in that State.

### **208      Provisions of proposed interstate order**

- (1) The provisions of the proposed interstate order are the provisions decided by the chief executive under this section.
- (2) Before transferring the child protection order, the chief executive may vary the home order in a way that the chief

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55 Chapter 3 (Court proceedings), part 4 (Court appeals)

56 Section 65 (Variation and revocation of child protection orders)

*Child Protection Act 1999*

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executive is satisfied is reasonably necessary because of the transfer.

*Example—*

A child protection order is made under chapter 2, part 4, granting short-term guardianship of a child to the chief executive.

The child moves to Victoria. The chief executive decides to transfer the order to Victoria. In deciding the provisions of the proposed interstate order, the chief executive varies the home order so that it grants short-term guardianship of the child to the interstate officer for Victoria.

- (3) The proposed interstate order—
  - (a) must be of the same or a similar effect as the home order; and
  - (b) may only include provisions that could be included in an order of that type under a child welfare law of the participating State.
- (4) The chief executive must state in the proposed interstate order the time for which it is to have effect in the participating State.
- (5) The stated time must be the lesser of—
  - (a) the time for which the home order would have effect if it were not transferred to that State; and
  - (b) the maximum time for which an order of that type, made under a child welfare law of that State, could be given effect.

## **209 Persons whose consent is required**

- (1) The order may not be transferred unless all the following persons give written consent to the transfer and to the provisions of the proposed interstate order—
  - (a) the child's parents;
  - (b) if the child is at least 12 years, the child;
  - (c) if the child is in the care of a carer who has moved, or is moving, with the child to the participating State, the carer.
- (2) Before obtaining a person's consent under subsection (1), the chief executive must—

- (a) tell the person why the chief executive considers it is appropriate to transfer the order; and
- (b) explain to the person the terms and effect of the proposed interstate order.

## **210 Notice of decision**

- (1) If the chief executive decides to transfer the order, the chief executive must give a written notice of the decision and a copy of the proposed interstate order to each of the following persons—
  - (a) the child;
  - (b) each person whose consent to the transfer is required;
  - (c) anyone else who the chief executive considers ought to be notified of the decision.
- (2) The notice must be given within 3 days after the day the decision is made (the *decision day*).
- (3) The notice must—
  - (a) state the decision day; and
  - (b) state that anyone who wishes to make a judicial review application in relation to the decision must make the application, and give notice of the application to the chief executive, within 28 days after the decision day.

## **211 Limited time for applying for judicial review**

- (1) Despite the *Judicial Review Act 1991*, sections 26 and 46,<sup>57</sup> a person may only make a judicial review application in relation to the decision to transfer the order within 28 days after the decision day.
- (2) The Supreme Court may not extend the time stated in this section for making the application.

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<sup>57</sup> *Judicial Review Act 1991*, sections 26 (Period within which application must be made) and 46 (Time of making application)

- (3) The application is taken not to have been made until notice of the application is given to the chief executive.
- (4) The application stays the operation of the chief executive's decision.

## **Division 3                      Judicial transfers**

### **212      Application for transfer**

The chief executive may apply to the Childrens Court for an order transferring a child protection order to a participating State.

### **213      Procedural matters**

The following provisions apply to the application as if any reference in the provisions to a child protection order were a reference to an order transferring a child protection order to a participating State—

- section 54(2)
- sections 55 to 58
- chapter 2, part 5
- chapter 3, parts 1 to 3.

### **214      Court may transfer order**

On receiving the application, the Childrens Court may order the transfer of the child protection order to the participating State if—

- (a) the home order is not the subject of an appeal under chapter 3, part 4<sup>58</sup> and, if no appeal has been started, the time for starting an appeal has expired; and
- (b) the interstate officer for that State has given written consent to the transfer and to the provisions of the proposed interstate order; and

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58 Chapter 3 (Court proceedings), part 4 (Court appeals)

- (c) a family meeting has been held or reasonable attempts to hold a family meeting have been made; and
- (d) if the application is contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made; and
- (e) the child's wishes or views, if able to be ascertained, have been made known to the court.

### **215 Provisions of proposed interstate order**

- (1) If the Childrens Court decides to order the transfer of the child protection order to the participating State, it must decide the provisions of the proposed interstate order.
- (2) The court must be satisfied—
  - (a) the proposed interstate order is an order that could be made under a child welfare law of that State; and
  - (b) the protection sought to be achieved by the proposed interstate order is unlikely to be achieved by an order on less intrusive terms; and
  - (c) the proposed interstate order—
    - (i) is of the same or a similar effect as the home order; or
    - (ii) is otherwise in the child's best interests.
- (3) In deciding the provisions of the proposed interstate order, the court must—
  - (a) decide the time for which it would be appropriate for the proposed interstate order to have effect in the participating State; and
  - (b) state the time in the proposed interstate order.
- (4) The stated time must not be more than the maximum time for which an order of that type, made under a child welfare law of that State, could be given effect in that State.
- (5) In deciding whether the proposed interstate order is of the same or a similar effect as the home order, the court must not take into account the time for which the proposed interstate order is to have effect in the participating State.

**216 Notice of decision**

- (1) This section applies if the court decides the application by ordering the transfer of the child protection order.
- (2) As soon as practicable after the court makes the decision, the chief executive must give to each party to the proceeding for the application—
  - (a) a copy of the court's order; and
  - (b) a written notice—
    - (i) explaining the terms and effect of the court's order; and
    - (ii) stating that the party may appeal against the decision within 10 business days after the party receives the notice; and
    - (iii) stating how to appeal.

**Division 4 Effect of transfer and registration****217 Application of div 4**

This division applies if a child protection order is transferred to a participating State under this part and registered under an interstate law of that State.

**218 Order ceases to have effect under this Act**

The order ceases to have effect under this Act.

**219 Order may be revived under this Act**

- (1) If the registration of the order is revoked under an interstate law of the participating State before its original expiry day, the home order resumes having effect under this Act until its original expiry day.
- (2) The home order does not resume having effect under this Act if—





- (a) the chief executive gives written consent to the transfer and to the provisions of the order; and
- (b) the chief executive is satisfied that, under the interstate law—
  - (i) the period for appealing, or applying for review of, the interstate transfer decision relating to the transfer has expired; and
  - (ii) the decision is not the subject of an appeal or application for review; and
  - (iii) the decision is not stayed.
- (2) As soon as practicable after receiving a copy of the order, the chief executive must file the copy in the Childrens Court.
- (3) On the filing of the copy, the registrar of the court must register the order.
- (4) Immediately after registering the order, the registrar must notify the interstate officer for the participating State and the registrar of the Childrens Court in that State.

### **223 Effect of registration**

- (1) The order is taken to be a child protection order of the Childrens Court in Queensland made on the day of its registration, except for the purposes of an appeal against the order.
- (2) Without limiting subsection (1), the order may be enforced, varied, revoked, or extended in operation, as if it had been made under chapter 2, part 4.<sup>60</sup>

### **224 Revocation of registration**

- (1) Any of the following persons may apply to the Childrens Court to revoke the registration of the order—
  - (a) the chief executive;
  - (b) the child the subject of the order;

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60 Chapter 2 (Protection of children), part 4 (Child protection orders)

- (c) a parent of the child;
  - (d) a party to a proceeding in which the interstate transfer decision was made.
- (2) The registrar must immediately give a copy of the application to—
- (a) the interstate officer for the participating State; and
  - (b) each person mentioned in subsection (1).
- (3) The court may grant the application and revoke the registration only if it is satisfied that, when the order was registered—
- (a) the period for appealing, or applying for review of, the interstate transfer decision had not expired; or
  - (b) the decision was the subject of an appeal or application for review; or
  - (c) the decision was stayed.
- (4) Immediately after the registration of the order is revoked, the registrar must—
- (a) notify the interstate officer for the participating State and the registrar of the Childrens Court in that State; and
  - (b) return the copy of the order that was filed in the court under section 222.
- (5) Revocation of the registration of the order does not prevent a re-registration of the order.

## **Part 4                      Transfer of proceedings to another State**

### **225      Application for transfer**

- (1) If there is a child protection proceeding pending in the Childrens Court, an authorised officer may apply to the court for an order transferring the proceeding to the Childrens Court in a participating State.

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

## **226 Registrar to fix time and place for hearing**

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.

## **227 Notice of application**

- (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.<sup>61</sup>
- (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) that the application may be heard and decided even though the parent does not appear in court.

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61 Section 195 deals with compliance with provisions about giving information.

**228 Court may transfer proceeding**

On receiving the application, the court may order the transfer of the proceeding to the participating State if the interstate officer for that State has given written consent to the transfer.

**229 Considerations for Childrens Court**

- (1) In deciding whether to order the transfer, the court must have regard to the following matters—
  - (a) whether there are any child protection orders for the child in force in the participating State;
  - (b) whether any other proceedings relating to the child are pending, or have been heard and decided, under a child welfare law in the participating State;
  - (c) where the matters giving rise to the proceedings happened;
  - (d) the place of residence, and likely future place of residence, of the child, the child's parents and other persons significant to the child.
- (2) This section does not limit sections 104 and 199.<sup>62</sup>

**230 Court may make interim order**

- (1) If the Childrens Court orders the transfer of the proceeding to the participating State, it may also make an interim order—
  - (a) granting custody of the child to any person; or
  - (b) giving responsibility for the child's supervision to the interstate officer for that State or another person in that State to whom the responsibility may be given under a child welfare law of that State.
- (2) The interim order must state the time, not more than 30 days, for which it has effect.

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62 Sections 104 (Court's paramount consideration) and 199 (Further guiding principle)



**234 Chief executive's consent to transfer**

- (1) The proceeding may not be transferred to Queensland unless the chief executive gives written consent to the transfer.
- (2) The chief executive must give the consent, if asked by the interstate officer for the participating State, unless the chief executive is satisfied the transfer would not be in the child's best interests.

**235 Filing and registration of interstate transfer decision**

- (1) This section applies if—
  - (a) the chief executive gives written consent to the transfer; and
  - (b) the chief executive is satisfied—
    - (i) the period for appealing, or applying for review of, the interstate transfer decision relating to the transfer has expired; and
    - (ii) the decision is not the subject of an appeal or application for review; and
    - (iii) the decision is not stayed.
- (2) As soon as practicable after receiving a copy of the decision, the chief executive must file the copy in the Childrens Court.
- (3) Also, if an interstate government officer of the participating State is a party to the proceeding, the chief executive must—
  - (a) nominate an authorised officer to become a party to the proceeding in place of the interstate government officer; and
  - (b) file in the Childrens Court a notice stating the name of the nominated officer.
- (4) If there is an associated interim order in force, the chief executive must also file a copy of the associated interim order in the Childrens Court as soon as practicable after receiving the copy.
- (5) On the filing of a copy of an interstate transfer decision or associated interim order under this section, the registrar of the court must register the decision or order.

- (6) Immediately after registering the decision or order, the registrar must notify the interstate officer for the participating State and the registrar of the Childrens Court in that State.
- (7) In this section—  
*interstate government officer*, of a participating State, means the interstate officer for that State or another officer of a department of government of that State.

### **236 Effect of registration of interstate transfer decision**

- (1) The transferred proceeding is taken to be a proceeding started in the Childrens Court in Queensland on the day of registration of the interstate transfer decision and may be continued in the court.
- (2) The authorised officer nominated under section 235(3) is a party to the proceeding in place of the interstate government officer for the participating State.
- (3) The court—
  - (a) is not bound by any finding of fact made by the Childrens Court in the participating State; and
  - (b) may inform itself on a matter using a transcript of the proceeding in that court or evidence tendered in the proceeding.

### **237 Effect of registration of associated interim order**

- (1) An associated interim order filed in the Childrens Court in Queensland is taken to be an order of the court made on the day of its registration, except for the purposes of an appeal against the order.
- (2) The order may be enforced as if it had been made by the court under section 67,<sup>63</sup> even if it includes provisions that could not otherwise be included in an order under that section.
- (3) However, the court may not extend the operation of the order or vary the order in any other way.

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63 Section 67 (Court's powers to make interim orders on adjournment)

- (4) This section does not limit the court's powers to revoke the order or make another order under section 67.

### **238 Revocation of registration**

- (1) Any of the following persons may apply to the Childrens Court to revoke the registration of an interstate transfer decision or associated interim order under this part—
- (a) the chief executive;
  - (b) the child the subject of the proceeding;
  - (c) a parent of the child;
  - (d) a party to the proceeding;
  - (e) a person entitled under the interstate law of the participating State to receive notice of the proceeding.
- (2) The registrar must immediately give a copy of the application to—
- (a) the interstate officer for the participating State; and
  - (b) each person mentioned in subsection (1).
- (3) The court may grant the application and revoke the registration only if it is satisfied that, when the interstate transfer decision or associated interim order was registered—
- (a) the period for appealing, or applying for review of, the decision or order had not expired; or
  - (b) the decision or order was the subject of an appeal or application for review; or
  - (c) the decision or order was stayed.
- (4) Immediately after the registration of the decision or order is revoked, the registrar must—
- (a) notify the interstate officer for the participating State and the registrar of the Childrens Court in that State; and
  - (b) return the documents relating to the decision or order that were filed in the court under section 235.



- (5) To remove doubt, it is declared that revocation of the registration of the interstate transfer decision or associated interim order does not prevent a re-registration of the decision or order.

## **Part 6                      Miscellaneous**

### **Division 1                Appeals**

#### **239    Appeal against decision of Childrens Court**

- (1) This section applies to a decision of the Childrens Court (the *original decision*) on an application for an order transferring a child protection order or child protection proceeding to a participating State.
- (2) A party to the proceeding for the application may appeal to the appellate court against the decision.
- (3) The appeal is started by filing a written notice of appeal with the registrar of the appellate court.
- (4) The appellant must file the notice of appeal, and serve a copy of the notice on the other persons entitled to appeal against the decision, within the following times—
  - (a) if the original decision is to order the transfer of a child protection order—within 10 business days after receiving the notice under section 216;
  - (b) if the original decision is to order the transfer of a child protection proceeding—within 10 business days after receiving the notice under section 231;
  - (c) otherwise—within 10 business days after the decision.
- (5) The appellate court may not extend the period for filing and serving the notice of appeal.
- (6) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

- (7) The original decision is stayed until the appellate court decides the appeal.
- (8) The appeal must be decided on the evidence and proceedings before the Childrens Court.
- (9) However, the appellate court may order that the appeal be heard afresh, in whole or part.
- (10) The appellate court must hear and decide the appeal as soon as possible.
- (11) In deciding the appeal, the appellate court may—
  - (a) confirm the original decision; or
  - (b) vary the original decision; or
  - (c) set aside the original decision and substitute another decision.

## **240 Interim orders**

- (1) This section applies if a person appeals against an order transferring a child protection proceeding to a participating State.
- (2) If an interim order is in force under section 230—
  - (a) the interim order is not affected merely because of the appeal; but
  - (b) the appellate court may—
    - (i) stay the operation of the interim order; or
    - (ii) vary or revoke the interim order; or
    - (iii) extend the time for which the interim order has effect.
- (3) Also, the appellate court may make any interim order that could be made by the Childrens Court under section 230.

## Division 2                      Court files

### 241      Transfer of court file

- (1) This section applies if—
  - (a) a court has made an order transferring a child protection order or proceeding to a participating State; and
  - (b) the time, if any, for an appeal against the court's order has expired; and
  - (c) the court's order is not subject to a stay.
- (2) The registrar of the court must give the court file for the child protection order or proceeding to the registrar of the Childrens Court of the participating State.

## Part 7                              Interstate transfers for non-participating States

### 242      Definitions for pt 7

In this part—

*interstate order*, for a child, means an order made by a court in another State for the child.

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

- (a) the child's mother or father;
- (b) if a child protection order or interstate order was not in force for the child—
  - (i) a person in whose favour a residence order or contact order for the child would be in operation under the *Family Law Act 1975* (Cwlth); and
  - (ii) a person who would have custody or guardianship of the child under a law of the State or another State.

**243 Transfer from a non-participating State**

- (1) This section applies if—
  - (a) an interstate welfare authority in a non-participating State has responsibility for the custody or guardianship of a child, however that responsibility is described, 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 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.

**244 Notice of declaration**

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.

## **245 Transfer to a non-participating State**

- (1) The chief executive may arrange for an interstate welfare authority in a non-participating State to assume responsibility for the custody or guardianship, however that responsibility is described, 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 the following persons—
  - (a) the child;
  - (b) the child's parents;
  - (c) if the child is in the care of a carer who has moved, or is moving, with the child to the non-participating State—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 person given the notice 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 apply to have the decision to make the arrangement reviewed by the tribunal; or
  - (b) if an application is made to have the decision reviewed by the tribunal—the review is decided or otherwise disposed of.

- (6) The chief executive must give written notice of the chief executive's decision to each person entitled to be given a notice under subsection (2).
- (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 person given the notice may, within 28 days after receiving the notice, apply to the tribunal to have the decision to make the arrangement reviewed.

#### **246 Effect of State becoming a participating State**

A child protection order made by declaration under section 243 is not affected if the State in which the relevant interstate order was made becomes a participating State.

## **Chapter 7A Child Deaths**

#### **246A Chief executive to review department's involvement with particular children**

- (1) This section applies if—
  - (a) a child dies; and
  - (b) within 3 years before the child's death—
    - (i) the chief executive—
      - (A) became aware of alleged harm or alleged risk of harm to the child; or
      - (B) took action under this Act in relation to the child; or
    - (ii) the child was born and, before the child was born, the chief executive reasonably suspected that the child might be in need of protection after he or she was born.

- (2) The chief executive must carry out a review about the department's involvement with the child.

### **246B Terms of reference and extent of review**

- (1) The chief executive must decide—
  - (a) the extent of the review; and
  - (b) the terms of reference for the review.
- (2) Without limiting subsection (1)(b), the terms of reference may include any of the following—
  - (a) finding out whether the department's involvement with the child and the child's family complied with legislative requirements and the department's policies;
  - (b) considering the adequacy and appropriateness of the department's involvement with the child and the child's family;
  - (c) commenting on the sufficiency of the department's involvement with other entities in the delivery of services to the child and the child's family;
  - (d) commenting on the adequacy of legislative requirements and the department's policies relating to the child;
  - (e) making recommendations relating to matters mentioned in paragraphs (a) to (d) and suggesting strategies to put into effect the recommendations.
- (3) In this section—

*policies* includes guidelines, procedures, protocols, standards and systems.

### **246C Chief executive may seek information from entities**

For the review, the chief executive may ask another entity who the chief executive reasonably considers has information about the child for information about the child that was relevant to the child's protection or welfare while the child was alive.

**246D Report to be prepared and given to CDCRC**

- (1) The chief executive must complete the review, and a report about the review, as soon as practicable and, in any case, so that the chief executive can comply with subsection (2).
- (2) The chief executive must give a copy of the report, and of any documents obtained by the chief executive and used for the review, to the CDCRC within 6 months after the chief executive becomes aware of the child's death.

**246E Protection from liability for giving information to chief executive**

- (1) This section applies if a person, acting honestly, gives the chief executive information for the review.
- (2) The person does not incur liability for giving the information.
- (3) Also, merely because the person gives the 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.
- (4) To remove doubt, it is declared that this section applies despite any other Act.

**246F No liability for defamation if report made in good faith**

It is a lawful excuse for the publication of a defamatory statement made in a report under this part, including a supplementary report, that the publication is made in good faith and is, or purports to be, made for this Act.

**246G Preparation of supplementary report**

- (1) This section applies if the chief executive is given a notice under the *Commission for Children and Young People and Child Guardian Act 2000*, section 89T(3), requiring the chief executive to give the CDCRC a supplementary report about a review.



- (2) The chief executive must comply with the requirement as soon as practicable but, in any case, so that the CDCRC can comply with the *Commission for Children and Young People and Child Guardian Act 2000*, section 89U(1).
- (3) Sections 246C and 246E apply for the preparation of the supplementary report in the same way that they apply to the carrying out of the review.

### **246H Chief executive to give reports to State Coroner**

- (1) This section applies if—
  - (a) the chief executive—
    - (i) completes a report under section 246D; or
    - (ii) gives the CDCRC a supplementary report under section 246G; or
    - (iii) is given, under the *Commission for Children and Young People and Child Guardian Act 2000*, section 89U, a copy of a report by the CDCRC; and
  - (b) the report concerns the department's involvement with a child whose death is a reportable death under the *Coroners Act 2003*.
- (2) The chief executive must, as soon as practicable, give a copy of the report to the State Coroner for use by a coroner to help in an investigation under the *Coroners Act 2003*.
- (3) If the report does not identify the child to whom it relates, the copy given to the State Coroner must be accompanied by a document that states—
  - (a) the child's name; and
  - (b) the child's date of birth; and
  - (c) the child's date of death.

## Chapter 8      Miscellaneous

### 247      Reviews of reviewable decisions

An aggrieved person for a reviewable decision may apply to the tribunal to have the decision reviewed.<sup>64</sup>

### 248      Annual reporting about child protection matters

- (1) By 31 October in each year, the chief executive of a prescribed entity must give to the chief executive a report about the matters, relating to the entity's operations during the previous financial year, that are relevant to child protection.
- (2) A regulation may prescribe the matters that must be included in a prescribed entity's report.
- (3) As soon as practicable after receiving the reports from all the prescribed entities, the chief executive must consolidate them into a single report and give the consolidated report to the Minister.
- (4) Within 14 sitting days after receiving the consolidated report, the Minister must table it in the Legislative Assembly.
- (5) In this section—

***prescribed entity*** means—

- (a) a department that is mainly responsible for any of the following matters—
  - (i) Aboriginal and Torres Strait Islander policy;
  - (ii) administration of justice;
  - (iii) adult corrective services;
  - (iv) community services;
  - (v) disability services;
  - (vi) education;

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<sup>64</sup> Aggrieved persons and reviewable decisions are in schedule 2. Reviews are dealt with in the *Children Services Tribunal Act 2000*, part 4 (Organisation, jurisdiction and operation of tribunal).

- (vii) housing services;
- (viii) public health;
- (ix) the State budget;
- (x) youth justice; or
- (b) the Queensland Police Service.

### **248A Acting in support of the Commissioner for Children and Young People and Child Guardian**

- (1) A power under a prescribed provision may be exercised, and information or a document obtained under a prescribed provision may be given to the commissioner, for the purpose of supporting the commissioner in the performance of the commissioner's monitoring functions.

- (2) In this section—

*commissioner* means the Commissioner for Children and Young People and Child Guardian.

*monitoring functions* means the monitoring functions under the *Commissioner for Children and Young People and Child Guardian Act 2000*.

*prescribed provision* means any of the following provisions—

- (a) sections 145 and 146;<sup>65</sup>
- (b) a regulation under section 249(2)(c).

### **249 Regulation-making powers**

- (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, providing care services;
  - (b) fees;

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<sup>65</sup> Sections 145 (Authorised officer may require production of licence, approval etc.) and 146 (Authorised officer may enter and inspect licensed premises)

- (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**

#### **250      Repeal of Children’s Services Act 1965**

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

#### **251      References to repealed Act**

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 for Act No. 10 of 1999**

#### **252      Definitions for pt 2**

In this part—

*commencing day* means the day this chapter 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 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.

***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.

***repealed Act*** means the *Children's Services Act 1965*.

## **253 Existing section 47 declarations and care and protection orders**

- (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—

*Child Protection Act 1999*

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- (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
  - (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.

**254 Existing supervision orders**

- (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.

**255 Existing section 134 declarations**

- (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—

*Child Protection Act 1999*

- 
- (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 243;<sup>66</sup> and
    - (b) to have had effect from the commencing day.
  - (7) In this section—

*interstate order*, for a child, means an order made by a court in another State for the child.

**256 Licensed institutions under repealed Act**

- (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.

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66 Section 243 (Transfer from a non-participating State)

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

### **257 Approved foster parents**

- (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.

### **258 Existing applications and proceedings for care and protection orders and care and control orders**

- (1) This section applies to—
- (a) an application under the repealed Act for an order that a child be—
    - (i) admitted to the chief executive's care and protection; or
    - (ii) committed to the chief executive's care and control; and
  - (b) a proceeding in the Childrens Court for an application mentioned in paragraph (a).
- (2) If the application or proceeding is not finally dealt with at the commencement of this section, it may be continued and dealt with under this Act as if it were an application, or a proceeding for an application, for a child protection order granting short-term guardianship of the child to the chief executive.



**259 Applications to revoke or substitute certain orders under repealed Act**

(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.

**259A Appointment of guardian by deed under s 90 of repealed Act**

- (1) This section applies to a deed, made under section 90 of the repealed Act,<sup>67</sup> appointing a person as guardian of a child, if the deed was in force immediately before the commencing day.
- (2) The deed has effect to the same extent as if the repealed Act had not been repealed.
- (3) Subsection (2) does not limit the *Acts Interpretation Act 1954*, section 20.<sup>68</sup>
- (4) This section has effect from 23 March 2000.

**260 Exemption from expiry of Children's Services Regulation 1966**

Despite the *Statutory Instruments Act 1992*, part 7, the *Children's Services Regulation 1966* does not expire at the

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67 *Children's Services Act 1965*, section 90 (Power of father and mother of an infant to appoint guardians)

68 *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

end of 30 June 1999<sup>69</sup> but remains in force until the earliest of the following, when it ceases to have effect—

- (a) the commencement of section 250;<sup>70</sup>
- (b) the end of 31 December 1999;
- (c) the repeal or expiry of the regulation, other than under the part or as mentioned in paragraph (a) or (b).<sup>71</sup>

## **Part 3**

# **Savings and transitional provision for Child Safety Legislation Amendment Act 2004**

### **261 First reports under s 248(1)**

The first reports prepared under section 248(1)<sup>72</sup> are due by 31 October 2005 and must relate to the period starting on the day section 248 commences and ending on 30 June 2005.

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69 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.

70 Section 250 (Repeal of Children's Services Act 1965)

71 The *Children's Services Regulation 1966* has expired—see section 260(b).

72 Section 248 (Annual reporting about child protection matters)

## **Schedule 1      Charter of rights for a child in care**

section 74

### **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;
- (j) to have access to job training opportunities and help in finding appropriate employment;

**Schedule 1 (continued)**

- (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      Reviewable decisions and aggrieved persons

section 247 and schedule 3, definitions *aggrieved person* and *reviewable decision*

<b>Reviewable decision</b>	<b>Aggrieved person</b>
Directing a parent in relation to a supervision matter stated in a child protection order (section 78)	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 86(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 86(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 87(2))	A person affected by the decision
Removing child from carer's care (section 89)	A carer entitled to apply to have a decision reviewed under section 91 or the child
Refusing application for, or renewal of, a licence (section 129)	The applicant or licensee
Refusing application for, or renewal of, a certificate of approval (section 136)	The applicant or certificate holder
Refusing an application for an amendment of authority (section 137)	The authority holder
Amending an authority (section 138)	The authority holder

## Schedule 2 (continued)

**Reviewable decision**

Suspending or cancelling an authority (section 140)

Arranging for an interstate welfare authority to assume custody or guardianship of a child (section 245)

**Aggrieved person**

The authority holder

A person to whom notice of the decision must be given under section 245(6)

## Schedule 3      Dictionary

### section 3

***aggrieved person***, for a reviewable decision, means a person stated opposite the decision in schedule 2.

***appellate court*** means—

- (a) for a decision on an application for a court assessment order or child protection order, or for an order transferring a child protection order or child protection proceeding to a participating State—
  - (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 157.

***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.

***associated interim order***, in relation to a proceeding transferred to Queensland by a court under an interstate law, means an interim order made by the court when ordering the transfer of the proceeding.

## Schedule 3 (continued)

**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.

**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.

**CDCRC** means the Child Death Case Review Committee established under the *Commission for Children and Young People and Child Guardian Act 2000*, part 4A, division 1.

**certificate of approval** means a certificate of approval granted under section 134.

**chief executive for transport** means the chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered.

**child** see section 8.

**child in need of protection** see section 10.

**child protection order**—

- (a) means a child protection order under chapter 2, part 4, including—
  - (i) an order extending, varying or revoking a child protection order; and
  - (ii) an interim order under section 67 in relation to a proceeding for a child protection order; and
- (b) for chapter 7, includes an order mentioned in section 201.<sup>73</sup>

**child protection proceeding** means—

- (a) a proceeding under this Act for the making, extension, amendment or revocation of a child protection order; or
- (b) a proceeding under a child welfare law of a participating State for—

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<sup>73</sup> Section 201 (Reference to *child protection order* includes certain orders of other States)



## Schedule 3 (continued)

- (i) the making, extension, amendment or revocation of a child protection order or interim order; or
- (ii) if, under that law, the making of a particular finding is a prerequisite to the making of a child protection order—the making of the finding.

**Childrens Court**, of another State, means the court in that State that may hear and decide a child protection proceeding at first instance.

**child welfare law**, of another State, means a law declared under section 203 to be a child welfare law of that State.

**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 under section 67 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.<sup>74</sup>

**departmental care service** means a care service established by the chief executive to accommodate children in the chief

<sup>74</sup> See the *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 5 (Matter excluded from criminal history), 6 (Non-disclosure of convictions upon expiration of rehabilitation period), 8 (Lawful to deny certain convictions) and 9 (Duty to disregard certain convictions).

## Schedule 3 (continued)

executive's custody or guardianship or other children in need of protection.

**director**, of an applicant for a licence or a licensee, means—

- (a) if the applicant or licensee is a company under the Corporations Act—a person appointed as a director of the applicant or licensee; or
- (b) otherwise—a person who is, or is a member of, the executive or management entity, by whatever name called, of the applicant or licensee.

**domestic violence history**, of a person, means the history of domestic violence orders made against the person under the *Domestic and Family Violence 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 96.

**government entity** see *Public Service Act 1996*, section 21.<sup>75</sup>

**harm** see section 9.

**health practitioner** means—

- (a) a nurse under the *Nursing Act 1992*; or
- (b) a person registered under any of the following Acts—
  - *Dental Practitioners Registration Act 2001*
  - *Medical Practitioners Registration Act 2001*
  - *Occupational Therapists Registration Act 2001*
  - *Optometrists Registration Act 2001*
  - *Physiotherapists Registration Act 2001*
  - *Psychologists Registration Act 2001*
  - *Speech Pathologists Registration Act 2001*; or

<sup>75</sup> *Public Service Act 1996*, section 21 (What is a government entity)

## Schedule 3 (continued)

- (c) a person who is eligible for membership of the Australian Association of Social Workers.

**holder**, of an authority, means—

- (a) for a licence—the licensee; or  
(b) for a certificate of approval—the holder of the certificate.

**home order** see section 200(a).

**interstate government officer** see section 235(7).

**interstate law**, of another State, means a law declared under section 204 to be an interstate law of that State.

**interstate officer**, for another State, means the officer declared to be the interstate officer for that State under section 204.

**interstate order**, for chapter 7, part 7, see section 242.

**interstate transfer decision** means—

- (a) an order of a court in a participating State, made under an interstate law of that State, transferring a child protection order or child protection proceeding from that State to Queensland; or  
(b) a decision of the interstate officer of a participating State, made under an interstate law of that State, to transfer a child protection order from that State to Queensland.

**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 have responsibility for the custody or guardianship of a child, however that responsibility is described.

**judge** means a Childrens Court judge.

**judicial review application** means an application for a statutory order of review, or an application for review, under the *Judicial Review Act 1991*.

**licence** means a licence to provide care services.

## Schedule 3 (continued)

**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.

**licensed residential facility** means licensed premises in which children reside.

**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 normally carried out by a health practitioner.

**non-participating State** means a State other than a participating State.

**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 37;
- (c) chapter 2, part 4—see section 52;
- (d) chapter 7, parts 2 to 6—see section 205;
- (e) chapter 7, part 7—see section 242;
- (f) other provisions—see section 11.<sup>76</sup>

**participating State** means a State declared to be a participating State under section 204.

**party**, to a proceeding on an application for an order for a child, means the child, the applicant or a respondent to the

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<sup>76</sup> In chapter 2, parts 2 to 4, and chapter 7, parts 2 to 6, *parent* has a narrower meaning. The meaning given the term in the provisions is the same.

## Schedule 3 (continued)

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
- (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.

**proposed interstate order** see section 200(b).

**protection**, of a child, includes care of the child.

**publish**, for chapter 6, part 6, see section 185.

**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.<sup>77</sup>

**registrar**, of the Childrens Court held at a place, includes the clerk of the Magistrates Court at the place.

**reviewable decision** means a decision stated in schedule 2.

**short-term guardianship**, of a child under a child protection order, means guardianship of the child for not more than 2 years.

**State** includes New Zealand.

**statement of standards** see section 122.

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<sup>77</sup> Under the *Acts Interpretation Act 1954*, section 36, *entity* can be an individual, a corporation or an unincorporated body.

## Schedule 3 (continued)

***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; or
- (d) for a director of an applicant for a licence or a licensee—a person who is a suitable person under a regulation; or
- (e) for a nominee for a licence—a person who is a suitable person under a regulation; or
- (f) for a person who will be, or is, engaged in relation to the provision of care services by a licensed care service—a person who is a suitable person under a regulation.

***temporary assessment order*** means an order under chapter 2, part 2, and includes an order extending a temporary assessment order.

***this Act***, for chapter 6, part 6, see section 185.

***traffic history***, of a person, means the history of the person's contraventions of section 16 of the *Traffic Act 1949*, section 79 of the *Transport Operations (Road Use Management) Act 1995* or section 328A of the Criminal Code, for which the person has been dealt with.<sup>78</sup>

***tribunal*** means the Children Services Tribunal established under the *Children Services Tribunal Act 2000*.

***woman*** includes any female.

<sup>78</sup> *Traffic Act 1949*, section 16 (Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood), *Transport Operations (Road Use Management) Act 1995*, section 79 (Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood or breath) or 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). Accordingly, this reprint includes all amendments that commenced operation on or before 17 January 2005. 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

Key	Explanation	Key	Explanation
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	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Reprint date
0A	none	23 March 2000	23 March 2000
1	to 2000 Act No. 7	20 April 2000	28 April 2000
1A	to 2000 Act No. 46	25 October 2000	3 November 2000
1B	to 2000 Act No. 55	17 November 2000	1 December 2000
1C	to 2000 Act No. 60	2 February 2001	2 February 2001
2	to 2000 Act No. 60	2 February 2001	6 April 2001
2A	to 2001 Act No. 73	3 December 2001	10 December 2001
2B	to 2002 Act No. 21	17 May 2002	28 May 2002
			(Column discontinued)
			Notes
2C	to 2002 Act No. 74	10 March 2003	
2D	to 2002 Act No. 74	1 April 2003	
2E	to 2003 Act No. 57	18 September 2003	
2F	to 2003 Act No. 57	21 November 2003	R2F withdrawn, see R3
3	to 2003 Act No. 57	21 November 2003	
3A	to 2003 Act No. 92	1 April 2004	
3B	to 2004 Act No. 13	1 August 2004	



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Reprint No.	Amendments included	Effective	Notes
3C	to 2004 Act No. 13	1 September 2004	
3D	to 2004 Act No. 49	17 January 2005	

## 5 Tables in reprints

Name of table	Reprint No.
Corrected minor errors	2, 3
Renumbered provisions	1

## 6 List of legislation

### **Child Protection Act 1999 No. 10**

date of assent 30 March 1999

ss 1–2, 260 commenced on date of assent

ss 8–9, 11, ch 6 pt 5, ch 6 pt 6 div 1, s 189 (other than s (1)(c)), ch 10 and prev 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)

amending legislation—

### **Child Protection Amendment Act 2000 No. 7 (this Act is amended, see amending legislation below)**

date of assent 20 April 2000

sch not yet proclaimed into force (see s 2(1))

remaining provisions commenced on date of assent

Note—AIA s 15DA does not apply to the schedule (see s 2(2))

amending legislation—

### **Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch (amends 2000 No. 7 above)**

date of assent 25 October 2000

commenced on date of assent

### **Child Protection (International Measures) Act 2003 No. 57 ss 1–2, 39(1)–(2) sch 3 (amends 2000 No. 7 above)**

date of assent 18 September 2003

ss 1–2, 39(1)–(2) commenced on date of assent

remaining provisions commenced 21 November 2003 (2003 SL No. 288)

### **Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

### **Succession and Other Acts Amendment Act 2000 No. 55 pts 1, 4**

date of assent 17 November 2000

commenced on date of assent

**Children Services Tribunal Act 2000 No. 59 ss 1–2, 151 sch 1**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 2 February 2001 (2001 SL No. 2)

**Commission for Children and Young People Act 2000 No. 60 ss 1–2, 175 sch 3**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 2 February 2001 (2001 SL No. 1)

**Ombudsman Act 2001 No. 73 ss 1–2, 96 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2001 (2001 SL No. 224)

**Domestic Violence Legislation Amendment Act 2002 No. 6 ss 1–2, 53 sch 2**

date of assent 13 March 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 10 March 2003 (2003 SL No. 17)

**Adoption of Children Amendment Act 2002 No. 21 ss 1, 21 sch 2**

date of assent 17 May 2002

commenced on date of assent

**Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch**

date of assent 13 December 2002

ss 1–2 commenced on date of assent

s 90 commenced 31 March 2003 (2003 SL No. 51)

remaining provisions commenced 1 April 2003 (2003 SL No. 51)

**Child Protection (International Measures) Act 2003 No. 57 ss 1–2, 39(1)–(2) schs 2–3**

date of assent 18 September 2003

ss 1–2, 39(1)–(2) sch 2 commenced on date of assent

remaining provisions commenced 21 November 2003 (2003 SL No. 288)

**Police Powers and Responsibilities and Other Legislation Amendment Act 2003 No. 92 ss 1–2(1), pt 4**

date of assent 3 December 2003

pt 4 commenced 1 April 2004 (see s 2(1))

remaining provisions commenced on date of assent

**Child Safety Legislation Amendment Act 2004 No. 13 ss 1–2(1), pt 3, s 102 sch 2 pt 1**

date of assent 24 June 2004

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remaining provisions commenced 1 August 2004 (2004 SL No. 141)

**Child Safety Legislation Amendment Act (No. 2) 2004 No. 36 pts 1, 4**

date of assent 27 October 2004

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2(2))

**Commission for Children and Young People and Child Guardian Amendment Act  
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date of assent 29 November 2004

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remaining provisions commenced 17 January 2005 (2004 SL No. 282)

**7 List of annotations****This reprint has been renumbered—see table of renumbered provisions in endnote 9.****Principles for administration of Act**

s 5 amd 2004 No. 13 s 7

**Chief executive’s functions**

s 7 amd 2004 No. 13 s 8

**Provisions about Aboriginal and Torres Strait Islander children**

s 6 amd 2003 No. 57 s 39(1) sch 3

**Provision about the Child Protection (International Measures) Act 2003**

s 6A ins 2003 No. 57 s 39(1) sch 2

**Chief executive’s functions**

s 7 amd 2000 No. 7 s 4

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

s 17 amd 2000 No. 7 s 5

**Unborn children**

s 21A ins 2004 No. 13 s 9

**Protection from liability for notification of, or information given about, alleged harm  
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s 22 amd 2004 No. 13 s 10(2)

**Meaning of “parent” in pt 2**

s 23 sub 2000 No. 7 s 6; 2003 No. 57 s 39(1) sch 3

**Provisions of temporary assessment order**

s 28 amd 2000 No. 7 s 7

**Extension of temporary assessment orders**

s 34 sub 2000 No. 7 s 8

**Variation of temporary assessment orders**

s 35 ins 2000 No. 7 s 9

**Meaning of “parent” in pt 3**

s 37 sub 2000 No. 7 s 10; 2003 No. 57 s 39(1) sch 3

**Notice of application**

s 41 amd 2000 No. 7 s 11

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s 45 amd 2000 No. 7 s 12

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s 49 amd 2000 No. 7 s 13

**Effect of court assessment order on existing child protection orders**

s 51 ins 2000 No. 7 s 14

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**Making of child protection order**

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s 60 ins 2000 No. 7 s 17

**Types of child protection orders**

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**Variation and revocation of child protection orders**

s 65 amd 2000 No. 7 s 19

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**Court may adjourn proceedings**

s 66 amd 2003 No. 57 s 39(1) sch 3

**Court’s powers to make interim orders on adjournment**

s 67 amd 2003 No. 57 s 39(1) sch 3

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

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

s 86 amd 2000 No. 59 s 151 sch 1

**Chief executive to provide contact between child and child’s parents**

s 87 amd 2000 No. 59 s 151 sch 1

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## **8 List of forms notified or published in the gazette**

**Form 2 Version 2—Application to extend and/or vary a temporary assessment order**  
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**Form 3 Version 2—Temporary assessment order**  
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**Form 4 Version 2—Temporary assessment order – extension/variation**  
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**Form 7 Version 2—Court assessment order**  
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**Form 9 Version 2—Adjournment of proceeding for a court assessment order**  
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**Form 11 Version 2—Application to extend and/vary/revoke a child protection order**  
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**Form 12 Version 2—Application to revoke a child protection order and make another child protection order**  
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**Form 13 Version 2—Child protection order**  
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**Form 14 Version 2—Child protection order – extension/variation/revocation**  
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**Form 15 Version 2—Child protection order made in place of revoked order**  
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**Form 16 Version 2—Adjournment of proceeding for a child protection order**  
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**Form 18 Version 2—Report of a family meeting**  
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**Form 19 Version 2—Notice of court ordered conference**  
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**Form 20 Version 2—Report of court ordered conference**  
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**Form 21 Version 2—Notice to parties (following court ordered conference)**  
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**Form 27 Version 2—Application for warrant for apprehension of a child**  
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**Form 28 Version 2—Warrant for apprehension of a child**  
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**Form 30 Version 1—Application for order to transfer a child protection order interstate**

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**Form 31 Version 2—Order for the interstate transfer of child protection order/s**

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**Form 32 Version 1—Application for order to transfer a child protection proceeding interstate**

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**Form 33 Version 2—Adjournment of proceeding for an order to transfer a child protection order interstate**

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**Form 34 Version 2—Order for the interstate transfer of child protection proceedings**

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**Form 35 Version 1—Application to revoke the registration of a transferred child protection \*order/proceeding**

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**Form 36 Version 2—Revocation of registration of transferred child protection order/proceeding**

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**Form 37 Version 1—Filing of order to transfer an interstate child protection order to Queensland for registration**

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**Form 38 Version 1—Filing of order to transfer an interstate child protection proceeding to Queensland for registration**

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Previous	Renumbered as
44	.45
44(3)	.45(2)
44(4)	.45(3)
44(5)	.45(4)
45	.46
46	.47
47	.48
48	.49
48(3)	.49(2)
48(4)	.49(3)
48(5)	.49(4)
49	.50
49A	.51
50	.52
51	.53
52	.54
53	.55
54	.56
55	.57
56	.58
57	.59
57A	.60
58	.61
59	.62
60	.63
61	.64
62	.65
62(2)(c)	.65(2)(b)
63	.66
64	.67
65	.68
66	.69
67	.70
68	.71
69	.72
70	.73
71	.74
72	.75
73	.76
74	.77
75	.78
76	.79
77	.80
78	.81
79	.82
80	.83
81	.84
82	.85

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Previous	Renumbered as
83.....	86
84.....	87
85.....	88
86.....	89
87.....	90
88.....	91
89.....	92
90.....	93
91.....	94
92.....	95
93.....	96
94.....	97
95.....	98
96.....	99
97.....	100
98.....	101
99.....	102
100.....	103
101.....	104
102.....	105
103.....	106
104.....	107
105.....	108
106.....	109
107.....	110
108.....	111
109.....	112
110.....	113
111.....	114
112.....	115
113.....	116
114.....	117
115.....	118
115(3).....	118(2)
115(4).....	118(3)
115(5).....	118(4)
115(6).....	118(5)
116.....	119
117.....	120
118.....	121
ch 5.....	ch 4
123.....	122
124.....	123
125.....	124
126.....	125
127.....	126
128.....	127
129.....	128

Previous	Renumbered as
130.....	129
131.....	130
132.....	131
133.....	132