

# Child Protection Regulation 2023

Explanatory notes for SL 2023 No. 105

made under the

*Child Protection Act 1999*

## General Outline

### Short title

*Child Protection Regulation 2023*

### Authorising law

Sections 204 and 249 of the *Child Protection Act 1999*

### Policy objectives and the reasons for them

The *Child Protection Act 1999* (the Act) provides for the protection of children in Queensland. The purposes of the Act are:

- to provide for the protection of children;
- to promote the safety of children; and
- to the extent that it is appropriate, to support families caring for children.

The Act is administered under a set of principles, with the paramount principle being that that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount. The Act also provides general principles for making decisions relating to the safety, wellbeing and best interests of children. Further, the Act provides additional principles for Aboriginal and Torres Strait Islander children, including the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle.

The *Child Protection Regulation 2023* (the Regulation) is being made to replace the *Child Protection Regulation 2011* (the 2011 Regulation) pursuant to the *Statutory Instruments Act 1992* (SI Act). The 2011 Regulation was notified, and commenced upon notification, on 25 November 2011. The 2011 Regulation was due to expire on 1 September 2022; however, was extended for one year under section 56A of the *Statutory Instruments Act 1992*, as approved by the Governor in Council on 25 August 2022.

Before a regulation is remade, the administering department is required to undertake a sunset review. The outcome of the sunset review undertaken by the Department of Child Safety, Seniors and Disability Services (the department) was that there is an ongoing

need for the Regulation; it is operating efficiently and effectively; and amendments were required to improve clarity and consistency with the Act.

The sunset review also provided an opportunity to make improvements to the Regulation to better align with recent reforms to embed the Aboriginal and Torres Strait Islander Child Placement Principle in the Act. The *Child Protection Reform and Other Legislation Amendment Act 2022* (CPROLA Act) strengthened the rights recognised by the Aboriginal and Torres Strait Islander Child Placement Principle and supported more transparent and accountable processes. The Act now requires that active efforts be made to apply the Aboriginal and Torres Strait Islander Child Placement Principle when the chief executive, litigation officer or an authorised officer is making a significant decision about an Aboriginal or Torres Strait Islander child.

The policy intention is to remake the Regulation with amendments which aim to continue to support and improve the administration of the Act by:

- improving clarity and consistency with the Act;
- supporting the implementation of the CPROLA Act, particularly with respect to embedding the Aboriginal and Torres Strait Islander Child Placement Principle;
- modernising definitions of 'violence' to align with the *Domestic and Family Violence Protection Act 2012*; and
- modernising language relating to gender identity and diversity to align with the recently passed *Births, Deaths and Marriages Registration Act 2023*.

## **Achievement of policy objectives**

The Regulation continues to provide for various administrative decision making and operational processes under the Act including:

- information to be included in mandatory reports;
- information to be included in placement agreements for children in care;
- matters to be considered before telling or notifying a child's parents where and with whom a child has been placed;
- matters about the licensing of care services, including independent evaluations, procedures for reporting standards of care concerns and record keeping;
- prescribed entities for information sharing;
- matters for consideration when deciding whether to give approval for information about a child to be published;
- child welfare laws of other States and interstate laws;
- particular records that must be kept by licensees;
- matters for consideration when deciding if a person is a 'suitable person' to: have custody or guardianship of a child; be a foster, kinship or provisionally approved carer; associate on a daily basis with a child; or perform a particular role (director, nominee, or risk-assessed role) in relation to a licensed care service.

The Regulation includes further amendments to: improve effectiveness and efficiency for implementation; modernise concepts and drafting; and remove provisions that are no longer required.

The Regulation will achieve the policy objectives described above by:

- clarifying who must report concerns about standards of care not being met in licenced care services, to clarify that 'staff members' includes volunteers. These

amendments are to ensure that licensees make volunteers aware of the procedure to report standards of care concerns.

- removing the requirement for the chief executive to prepare and provide a report for the Office of the Public Guardian regarding matters related to the standards of care not being met as the department considers the Act (section 189AA) appropriately facilitates information sharing for these matters.
- requiring placement agreements must include arrangements for ensuring the child's connection with their culture of origin, as well as actions to be undertaken to maintain an Aboriginal or Torres Strait Islander child's connection with family, community, language and tradition (for an Aboriginal child) or custom (for a Torres Strait Islander child).
- expanding the term 'violence' in matters to consider before notifying parents about where their child has been placed, to ensure 'violence' aligns with the *Domestic and Family Violence Protection Act 2012*.
- amending the language used to reflect gender identity and diversity (currently uses 'sex'), consistent with the *Births, Deaths and Marriages Registration Act 2023* in the requirements about information to be kept by licensees and provided to the chief executive and what's required in a mandatory report.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the purposes of the Act (above), and with section 249 which enables the Governor in Council to make regulations under the Act. Such regulations may include provisions about the suitability of persons and premises for providing care services, fees, the records to be kept and returns to be made by persons, the inspection of records, the conduct of family group meetings, and the SCAN (suspected child abuse and neglect) system. It is also consistent with sections of the Act which provide that a regulation may prescribe matters for compliance.

## **Inconsistency with policy objectives of other legislation**

The Regulation is consistent with the policy objectives of other legislation.

The Regulation provides for recognition of gender diversity in line with the *Births, Deaths and Marriages Registration Act 2023* by including the term 'sex descriptor'. The Regulation provides for considerations of 'violence' as defined in line with the *Domestic and Family Violence Protection Act 2012*.

## **Alternative ways of achieving policy objectives**

During the sunset review, the department considered a number of alternative ways of achieving the policy objectives. This included:

- allowing the 2011 Regulation to expire without replacement;
- remaking the 2011 Regulation 'as is' with only minor technical amendments to modernise drafting;
- remaking the 2011 Regulation with minor amendments to existing provisions;
- other non-regulatory options.

It was determined that there were no alternative and reasonable ways to achieve the policy objectives other than remaking the 2011 Regulation, with minor amendments to

ensure contemporary wording and concepts and to align with other recent legislative and proposed amendments including:

- CPROLA Act amendments to the Act, including further embedding the Aboriginal and Torres Strait Islander Child Placement Principle;
- updating definitions of 'violence', to include physical and non-physical forms of violence, to align with the *Domestic and Family Violence Protection Act 2012*; and
- updating language used to reflect gender identity and diversity in line with the *Births, Deaths and Marriages Registration Act 2023*.

Allowing the 2011 Regulation to expire without replacement was not considered a reasonable alternative because the Regulation provides a framework that supports the operation and administration of particular sections of the Act, including the assessment of suitability of carers and mandatory reporting requirements. Particular decisions under the Act require consideration of matters prescribed in the Regulation. This includes:

- the matters to be included in an agreement with an approved carer (section 84(2) of the Act);
- the information to be included in a mandatory report to the chief executive (section 13G of the Act);
- who is a 'suitable person', including a suitable person to have custody or guardianship of a child (Schedule 3 of the Act).

During the sunset review, consideration was given to practical operational solutions and measures to respond to matters raised during consultation. However, as the Act requires particular matters be prescribed under a regulation, non-regulatory options were not considered a feasible alternative.

Similarly, remaking the Regulation 'as is' with only technical drafting amendments was not considered a feasible alternative. The sunset review identified more substantial amendments were required to align the Regulation with recent amendments to the Act resulting from CPROLA Act and other contemporary legislation.

## **Benefits and costs of implementation**

The Regulation will facilitate the operation of certain provisions of the Act for the safety, wellbeing and best interests of children. It will not incur any additional implementation costs to Government.

The Regulation also:

- assists with the administration of the Act by retaining provisions that prescribe matters necessary for efficiently and effectively administering the Act;
- provides clear requirements for clients and stakeholders relating to matters prescribed in the Regulation;
- brings provisions in line with related legislation (e.g. by modernising language related to sex, gender and violence), thereby increasing clarity and improving consistency for frontline staff and stakeholders.
- further embeds in legislation the *connection principle* within the Aboriginal and Torres Strait Islander Child Placement Principle.

As the Regulation continues existing regulatory provisions from the 2011 Regulation with modernising amendments, there are no additional implementation costs anticipated to arise for implementation.

## Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles provided under section 4 of the *Legislative Standards Act 1992*.

## Consultation

Non-government stakeholders, including peak bodies and the department's four Strategic Implementation Groups (SIG) have been consulted through the sunset review. Generally, non-government stakeholders supported retaining all sections of the 2011 Regulation and suggested minor amendments with the Regulation to align provisions with the contemporary child protection environment, including by further embedding the Aboriginal and Torres Strait Islander Child Placement Principle within placement agreements.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* states that the Regulation may be cited as the *Child Protection Regulation 2023*.

*Clause 2* states that the commencement date for the Regulation is 1 September 2023.

*Clause 3* refers to the Dictionary in Schedule 3, which defines particular words used in the Regulation.

### Part 2 Protection of children – mandatory reporting

Section 13G(2)(b) of the Act states that a mandatory report must include information prescribed by regulation (to the extent of the person's knowledge). *Clause 4* prescribes this information to be a child's name, age, sex descriptor (as defined in Schedule 3), details of how to contact the child, details of the harm reported and the person suspected of causing harm to the child, and the identity of any other person who may be able to give information about the harm to which the report relates. The language of 'sex descriptor' seeks to recognise gender identity and diversity and is in line with the *Births, Deaths and Marriages Registration Act 2023*. Sex descriptor is defined to mean 'male', 'female', or any other descriptor of sex (e.g. 'agender', 'genderqueer', 'non-binary'). This definition will also enable 'no sex descriptor' to be recorded in circumstances where the child does not have a sex descriptor.

## Part 3 Placing child in care

*Clause 5* prescribes the terms that must be included in an agreement between the chief executive and an approved carer (entered into under section 84 of the Act) for the care of a child in the chief executive's custody or guardianship. Agreements must include arrangements for ensuring a child's connection with their culture of origin. For Aboriginal and Torres Strait Islander children, agreements must also include arrangements for ensuring the development and maintenance of a connection to the child's family, community, language, and tradition (for an Aboriginal child) or custom (for a Torres Strait Islander child). This is intended to further embed the *connection principle* within the Aboriginal and Torres Strait Islander Child Placement Principle (section 5C(2)(e) of the Act) in placement agreements.

*Clause 6* prescribes the matters the chief executive must consider (under sections 85 and 86 of the Act) before telling the parents of a child in the chief executive's custody or guardianship, in whose care their child has been placed and where the child is living. The purpose of the chief executive considering these matters is to assess any risk that might be posed to the child, or anyone with whom the child is living, by providing the information to the parents. One of the matters includes whether a relevant person has a history of 'violence' relevant to the safety of a child or anyone else with whom the child is living, which is defined to include physical or non-physical forms of violence including, for example, emotional and psychological abuse and coercion, to better align with the *Domestic and Family Violence Protection Act 2012*. In this context, a relevant person includes a parent of the child, a spouse of a parent of the child (including a de facto partner or civil partner under the *Acts Interpretation Act 1954*), or another person closely associated with a parent of the child (for example, a boyfriend or girlfriend).

## Part 4 Regulation of Care

*Clause 7* requires the chief executive, before granting an application to provide a care service under the Act, to obtain a written evaluation of the service from a person who is independent of the applicant and the department. The chief executive must give a copy of the evaluation to the applicant and give the applicant at least 14 days to make a submission about the contents of the evaluation. If a submission is provided within the required timeframe, the chief executive must have regard to the submission before granting an application for, or renewal of, a licence.

Section 126(f) of the Act prohibits the chief executive from granting a licence to provide care services unless satisfied (among other things) of the suitability of the entity's methods for selecting, training and managing people engaged by the entity to provide care services. *Clause 8* requires the chief executive, when considering this matter, to have regard to the department's published standards for the management of a licensed care service.

Section 148F of the Act requires the chief executive to keep a register of applicants for authorities, holders of authorities and former holders of authorities, and states that the register must contain particulars prescribed by regulation that are available to the chief executive. *Clauses 9-12* prescribe the particulars required to be kept on the register.

## **Part 5 Information sharing**

*Clause 13* prescribes the department in which the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* are administered as a prescribed entity for the purposes of information sharing under Chapter 5A, Part 4 of the Act.

## **Part 6 Confidentiality in relation to administration of the Act**

Section 189 of the Act prohibits the publication of information that identifies or is likely to lead to the identification of a child as a child who has been the subject of an investigation of an allegation of harm, or a child in the chief executive's custody or guardianship under the Act, or a child for whom an order is in force. The section also prohibits the publication of information that identifies, or is likely to lead to the identification of, a child living in Queensland as a child who has been harmed or allegedly harmed or is at risk or allegedly at risk of being harmed by a parent, a step-parent or other member of the child's family, without the chief executive's written approval. *Clause 14* sets out the matters which the chief executive may have regard to in deciding whether to approve a publication under section 189 of the Act.

## **Part 7 Corresponding laws of other states**

Section 203 of the Act provides that a regulation may declare a law of another State about the protection of children to be a child welfare law of that State. *Clause 15* declares that a law mentioned in Schedule 1 of the Regulation is a child welfare law of the State mentioned in the column opposite the law.

Section 204 of the Act provides that if the Minister is satisfied that a law of another State substantially corresponds to Chapter 7 of the Act, the Minister may recommend that the Governor in Council declare the law to be an interstate law of that State, the State to be a participating State and the holder of a stated office to be the interstate officer for that State. The Governor in Council may make the declaration by regulation. *Clause 16* provides the declaration of the information as set out in Schedule 2 of the Regulation.

## **Part 8 Suitable persons**

*Clause 17* defines 'relevant principles' to mean those stated in Chapter 1, Part 2, Division 1 of the Act, being the Paramount principle, Other general principles, Principles for achieving permanency for a child, Additional principles for Aboriginal and Torres Strait Islander children, Principles about exercising powers and making decisions, Principles for participation of children, Principles about Aboriginal and Torres Strait Islander children – chief executive, litigation director and authorised officers, Principles about Aboriginal and Torres Strait Islander children – Childrens Court and Principle about Aboriginal and Torres Strait Islander children – consent to involvement of independent Aboriginal or Torres Strait Islander entities.

*Clause 18* provides the criteria for suitability for a person to have custody or guardianship of a child. The criteria will be applied, for example, when a court is deciding whether to grant an order for a person to have custody or guardianship of a child.

Section 126 of the Act provides that the chief executive must not grant an entity a licence to provide care services unless satisfied that the directors of the applicant, nominee for the licence and people who will be, or are, responsible for directly managing a care service or performing risk assessed roles for a care service are suitable persons. *Clauses 19, 20, 21 and 22* provide the criteria for deciding whether directors, nominees, people directly managing a care service and people performing risk assessed roles for a care service are suitable persons.

*Clauses 23 and 24* provide the criteria for suitability of a person to be a foster carer or kinship carer. The criteria will be applied when deciding an application for a person to be an approved carer or to have their approval as a carer renewed. Under section 135 of the Act, subject to the chief executive being satisfied of specified matters, a person may be approved to be a foster carer for children in the custody or guardianship of the chief executive generally, or a kinship carer for particular children to whom the applicant is kin.

Under section 136C of the Act, the chief executive may issue a certificate of approval to a person to be a provisionally approved carer under specified circumstances, including that the chief executive proposes to place a child in care under the Act and the person has applied to be an approved foster carer or to be an approved kinship carer for the child. *Clause 25* provides the criteria for suitability of a person to be a provisionally approved carer of a child.

*Clause 26* provides criteria for suitability of a person to associate on a daily basis with children. Under sections 135(1)(a)(ii), 135(1)(b)(iii) and 136C(e)(ii) of the Act, the chief executive must not grant a certificate of approval to a person to be a carer unless satisfied that all members of the person's household are suitable persons to associate on a daily basis with a child or children. Under sections 139(1)(b)(ii), 139(1)(c)(ii) and 139(1)(d)(ii) of the Act, the chief executive may suspend or cancel a certificate of approval if a member of the carer's household is not a suitable person to associate on a daily basis with a child or children.

*Clause 27* provides for a court or the chief executive, when deciding if a person is suitable, to consider a person's employment history, physical or mental health and any other relevant matter.

## **Part 9 Provisions about procedures, records and returns**

*Clause 28* requires a licensee to prepare a procedure for staff of a licensed care service to report to the chief executive harm to a child in the care of the licensed care service that they are aware of or suspect, or a concern they have about the standards of care services provided under the licence. *Clause 28* specifies that the licensee must keep the procedure, which facilitates reporting by staff members of standards of care concerns, up to date and ensure staff members are aware of the procedure.

The phrase 'matters of concern' previously used in the expired 2011 Regulation is no longer used in the Act or in practice and has been updated to wording consistent with meeting and not meeting the standards of care under section 122 of the Act.



Amendments made to clarify that 'staff members' includes volunteers will ensure that licensees make volunteers aware of the procedure to report standards of care concerns. Volunteers is intended to include students on placement. However, it is not intended to apply to foster carers associated with a licensee.

*Clause 29* requires a licensee to keep certain records, specified in the clause, for each child receiving a care service under the licensee's licence. Included in the list of what is required to be contained in these records is the child's culture of origin and sex descriptor. Inclusion of the child's culture of origin further embeds in legislation the *connection* principle of the Aboriginal and Torres Strait Islander Child Placement Principle (see also *Clause 36* regarding delayed commencement date of this requirement to 1 March 2024). Updating language from 'sex' to 'sex descriptor' recognises gender identity and diversity in line with the *Births, Deaths and Marriages Registration Act 2023*.

*Clause 30* enables the chief executive to ask a licensee to provide a return about the information listed in *Clause 29*. The request must be made by written notification to the licensee stating the time within which the return must be provided to the chief executive. The time must be not less than 30 days after the chief executive gives the licensee notice. The licensee must comply with the notice, which must be in the approved form, within the specified time.

*Clause 31* provides for the chief executive to inspect the records kept by the licensee under *Clause 29* and the licensee is obliged to allow the inspection.

*Clause 32* requires the chief executive to keep records of any report of harm caused or suspected to have been caused to a child, or about standards of care not being met in relation to a child. This applies to reports received from licensees or from anyone else. The clause also specifies that the records must be kept in a way that enables the chief executive to collect or access information about a particular carer or care service or analyse trends from the information required to be recorded.

## **Part 10 Transitional provisions**

*Clause 33* provides definitions for the purposes of the Part.

If an application has been made for, or renewal of, a licence to provide care services, *Clause 34* states that processes commenced under the expired 2011 Regulation in relation to the obtaining of a written evaluation remain valid.

*Clause 35* provides that a procedure prepared about a matter of concern under section 6 of the expired 2011 Regulation is taken to be a procedure about the reporting of a standards of care concern under section 28 of this regulation.

*Clause 36* provides that records kept by licensees under section 7 of the expired 2011 Regulation are taken to be records kept under section 29 of this regulation. This clause also provides for a delayed commencement date (1 March 2024) for when licensees' records must include information about the culture of origin of children.

*Clause 37* provides that a notice given by the chief executive under the expired 2011 Regulation requiring the licensee to make a return, remains valid.

Clause 38 states that if the context permits, a reference to the expired 2011 Regulation may be taken to be a reference to this Regulation.

## **Schedule 1 Child welfare laws**

Schedule 1 lists the laws declared to be child welfare laws of other Australian States, Territories and New Zealand (participating States) as provided for under section 203 of the Act. It has been updated to reflect legislative changes in other jurisdictions.

## **Schedule 2 Participating States, interstate laws and interstate officers**

Schedule 2 lists participating States and the interstate laws and interstate officers for participating States declared pursuant to section 204 of the Act for the purpose of decision making about transfers of court orders and court proceedings under the Act between Queensland and participating States. The Schedule has been updated to reflect legislative and machinery of government changes in other jurisdictions.

## **Schedule 3 Dictionary**

The dictionary defines terms for the Regulation.