



Government of **Western Australia**
Department for **Child Protection**

Amendments to the *Children and Community Services Act 2004*

KEY FEATURES

Background

Amendments to the *Children and Community Services Act 2004* (the Act) came into effect on 31 January 2011. The Department for Child Protection (the Department) administers the Act.

This information sheet provides a brief overview of the key features of the amendments.

Protection Orders (Special Guardianship)

A new guiding principle ensures planning occurs as soon as possible to promote long-term stability for children who have been removed from their families [*new section 9(ha)*].

This principle emphasises the need for timely consideration as to whether a child can be reunified with their birth family or whether long-term out-of-home care options need to be considered.

The amendments introduce new protection orders (special guardianship) to replace existing protection orders (enduring parental responsibility). Protection orders (special guardianship) provide a long term care option for children under the parental responsibility of the Chief Executive Officer (CEO) of the Department who are unable to return to the care of their parents [*amended sections 60-66*].

A protection order (special guardianship) transfers parental responsibility to the child's carer, to the exclusion of any other person including the CEO, until the child reaches 18 years. The order may include conditions about contact between the child and the child's parent(s) or other significant persons.

Significantly, the amendments allow carers to apply directly to the Children's Court for a protection order (special guardianship). Carers are eligible to apply if a child has been in their care and the subject of a protection order (until 18) or protection order (time limited) for at least two years before the application is made.

Secure care

New provisions will become operational for the secure care of children and young people in Western Australia [*new sections 88A - 88J*]. The aim of secure care is to provide safe, short term crisis stabilisation for children and young people in the care of the CEO who meet strict admission criteria.

Children and young people aged 12 years or over may be admitted to the secure care centre if they are:

- at immediate and substantial risk of causing significant harm to themselves or others, and
- there is no other suitable way to manage that risk and ensure they receive the care they need.

The two admission pathways for a child to enter the secure care centre are:

- an “administrative admission”, made by the CEO of the Department, for children who are under the CEO’s parental responsibility through a protection order (until 18) or protection order (time limited); or
- a judicial order, made by the Children’s Court on application by the CEO, for children who are under the provisional protection and care of the CEO. If necessary, the CEO may admit a child prior to seeking a judicial order, but such admissions must be followed up within two working days by application for a judicial order and for a protection order if one is not already underway.

The CEO or Children’s Court must be satisfied that the above admission criteria are met.

The Act, as amended, includes requirements on admission criteria for secure care, care planning and periods of admission. The amendments also provide capacity for children and relevant parties to apply for ‘reconsideration’ or ‘review’ of secure care decisions.

An information pack on secure care will be made available on the Department’s website prior to the opening of the secure care centre.

Placement of Aboriginal and Torres Strait Islander children

The principle regarding placement of Aboriginal and Torres Strait Islander children is being reinforced to ensure that the best interests of the child remain paramount when the principle is applied [s.12].

This amendment ensures that Aboriginal or Torres Strait Islander children are placed in the best possible placement arrangement. Placement decisions will continue to have regard to the order of priority to be considered in placing the child and the need to maintain the child’s cultural identity and connections.

The Aboriginal and Torres Strait Islander placement consultation provisions have been amended [s.81]. This ensures consultation regarding placement decisions occurs with an officer from the Department who is an

Aboriginal person or Torres Strait Islander, or with an Aboriginal person or Torres Strait Islander or an agency with relevant knowledge of the child, the child’s family or the child’s community.

Children in the care of the CEO – day to day care

An amendment has been made to the Act to clarify that, in respect of children under the provisional protection and care of the CEO, the CEO has responsibility for the day to day care, welfare and development of the child to the exclusion of any other person [s.29].

Authorised officer may request the hand over of a child under placement arrangement

The Act, as amended, extends the powers of an authorised officer to be able to request the hand over of a child under a placement arrangement from a parent or any other person, not just from a carer as previously provided [s.84].

The penalty for failing to comply with this requirement is a fine of \$12,000 and imprisonment for one year.

CEO’s powers to consent

The Act enables officers from the Department (as delegated by the CEO) to provide written consents in relation to a child in care, where parental consent is required or customarily sought [s.127].

The amendments clarify the ability of officers from the Department to provide consents which incorporate a waiver of legal liability. For example, a waiver of the liability of a sporting organisation in respect of a child’s sporting activity.

Parentage testing orders

New provisions introduced enable the Children’s Court to make orders for determination of parentage, similar to those used under family law legislation. This may be necessary in circumstances where the parentage of child, who is the subject of protection proceedings, is in question [new sections 136A – 136].

Delegation

Under new provisions, the CEO will be able to delegate a power or duty of the CEO to a service provider as well as to “an officer of the Department for Child Protection or another individual” [s.24]. This will support streamlined case management by service providers with particular delegated functions in respect of a specific child.

Cooperation between agencies

The Act requires the Department to endeavour to work in cooperation with public authorities, non-government agencies and service providers [s.22]. The amendments strengthen this cooperation to ensure that a child's needs are met in a timely manner to improve services for children and young people in care.

If the Department considers a public authority or service provider can assist in the performance of functions under the Act, the Department may request the assistance of the public authority or service provider, specifying the assistance that is sought. Public authorities or service providers must endeavour to comply with a request for assistance from the Department promptly.

Assistance includes the provision of advice, facilities and services.

Exchange of information with Commonwealth agencies

An amendment to the Act confirms the ability for the Department to exchange information with Commonwealth agencies [s.23]. This is consistent with Commonwealth/State Government initiatives, such as the income management scheme currently in operation in Western Australia.

Exchange of information between prescribed public authorities

Currently the Act provides for the exchange of relevant information relating to the wellbeing of a child or class or group of children between the Department and a public authority, service provider or an interested person [s.23].

The amendments allow for the exchange of relevant information between prescribed public authorities, provided the information is relevant to the wellbeing of a child or a class or group of children [*new section 24A*]. Persons disclosing information in good faith under these new provisions are protected from liability as are those who share information with the Department under section 23 of the Act.

These provisions facilitate effective cooperation between key state government agencies on child protection matters, including joint case planning and decision-making.

The following agencies are prescribed public authorities:

- WA Health (Department of Health, Metropolitan Health Services, WA Country Health Service, Peel Health Service)
- Drug and Alcohol Office
- Mental Health Commission
- WA Police Service
- Department of Education
- Department of Housing
- Department for Communities
- Department of Corrective Services
- Department of Education Services
- Department of the Attorney General
- Disability Services Commission
- Department of Indigenous Affairs

Concerns about the wellbeing of a child before the child is born

New provisions strengthen the Department's capacity to respond to concerns about the wellbeing of a child before the child is born [*new sections 33A and 33B*].

The Department may make inquiries to determine whether action should be taken to safeguard and promote the child's wellbeing after the child is born. Where the Department determines that action is required, it must do one or more of the following:

- provide, or arrange for the provision of, social services to the pregnant woman;
- work in collaboration with the woman and/or other

agencies to develop a plan to address the child's needs once it is born; and

- ensure that an authorised officer from the Department carries out an investigation to assess the likelihood of the child being in need of protection after being born.

The provisions do not give the Department the power to direct the woman as to her pregnancy or any aspect of it.

Body piercing

Under new provisions of the Act, intimate body piercing is prohibited for people less than 18 years of age, irrespective of parental consent [*new section 104A*].

Other forms of body piercing are prohibited for people less than 18 years of age, unless written parental consent is provided. The only exclusion is for children aged 16 years or over, who are able to have their ears pierced without their parent(s)' consent.

Employment of children

The amendments to the Act provide the Department with more power to protect children in the workplace [*new section 194A and amended s.195*].

The Department may issue a notice to an employer or prospective employer prohibiting or imposing limitations on the employment of children in a particular business or place, where the Department is of the opinion that the wellbeing of the children is likely to be jeopardised because of the nature of the business or place or the nature of the work carried out there.

Previously, a notice could be issued only in relation to a particular child.

Contents of a mandatory report of child sexual abuse

Provisions regarding the contents of a mandatory report of child sexual abuse are being transferred from regulation 9A of the *Children and Community Services Regulations 2006* into the Act [s.124C].

This amendment does not alter the requirement that a mandatory report include, if or to the extent that it is

known to the reporter, certain information about any person alleged to be responsible for the sexual abuse being reported, specifically the person's name, contact details and relationship to the child.

Review of the Act

The legislative review of the Act has been extended and will now commence in January 2012 and coincide with a required review of the mandatory reporting of sexual abuse legislation [s.249].

Further information

The following information sheets will be made available on the Department's website www.dcp.wa.gov.au:

- Amendments to the *Children and Community Services Act 2004* - Key Features
- Secure care
- Protection Orders (Special Guardianship)
- Employment of children
- Body piercing (legislative provisions; frequently asked questions for businesses and parents; sample consent form)

A copy of the Act can be accessed on the Department's website or the State Law Publisher's website at www.slp.wa.gov.au.