

Children and Community Services Act 2004

- Summary of amendments at 1 January 2016 -

Background

- On 29 November 2012 the *Report of the Legislative Review of the Children and Community Services Act 2004* (the Review) was tabled in the Legislative Council. The Review found the *Children and Community Services Act 2004* (the Act) to be generally operating effectively for the protection of children. However, a number of areas were identified where provisions could be strengthened, clarified or introduced to further promote the wellbeing of vulnerable children, individuals and families.
- As a result, the *Children and Community Services Legislation Amendment and Repeal Act 2015* (the amending Act) implemented the majority of legislative recommendations of the Review. The amendments came into operation on 1 January 2016.
- The changes provide a more effective legislative approach to support responsible parenting: the *Parental Support and Responsibility Act 2008* (PSR Act) and associated subsidiary legislation has been repealed in favour of an expanded form of responsible parenting agreements provided for in the Act.
- Other significant amendments include enabling the sharing of relevant information between prescribed public authorities and the non-government sector; and introducing a new category of persons mandated to report child sexual abuse - boarding supervisors of school boarding facilities in the government and non-government schools sector.

Amendments relating to responsible parenting agreements

- The PSR Act and associated legislation has been repealed and the power to enter into responsible parenting agreements (agreements) now forms a new Part 5A of the Act.
- There is a new object in section 6 of the Act regarding parental responsibility and, under section 32, the CEO of the Department (CEO) may enter into an agreement in respect of a child if it is determined that action should be taken to safeguard or promote the wellbeing of the child.
- The circumstances in which agreements may be made has been expanded and they may now entered into:
 - in respect of a child of any age (rather than being restricted to children under 15 years);
 - by one or more of the authorised CEOs of the Department, Department for Education or Department for Corrective Services, if a joint-agency response is required;
 - with a 'responsible person', being a parent of the child, or another person with whom the child usually resides and who provides day-to-day care for the child (rather than with parents only).
- An agreement may be made if a child is engaging in criminal or antisocial behaviour, or persistently failing to attend school, and the behaviour is having, or is likely to have, a detrimental effect on the child's wellbeing; that parenting may be a contributing factor in the behaviour; and if an agreement may assist the responsible person to exercise appropriate control over the child's behaviour.

- The content of an agreement must be limited to particular matters including the responsible person engaging in counselling or support services or taking reasonable steps to ensure the child attends school or avoids certain places or people. Agreements may also relate to any other matters relevant to the effective parenting of the child.
- Public authorities will be required to work cooperatively to support responsible persons to exercise appropriate parental control and to comply with their agreement.

Enhanced information sharing

The information sharing provisions in the Act have been significantly expanded.

Children leaving care

- The definitions of ‘relevant information’ and ‘interested person’ in section 23 now also allow the release of information relevant to the wellbeing of a young person under 25 years who was previously in the care of the CEO and is eligible for leaving care assistance under section 96 of the Act.

Prescribed authorities and the non-government sector

- Increasingly, providers in the non-government sector are being engaged to deliver services to the community on Government’s behalf. The information sharing amendments now enable greater collaboration between government and the non-government sector in the interests of promoting the wellbeing of children, other individuals, families and communities, consistent with objects of the Act under section 6.
- Information sharing powers previously section 24A of the Act enabled public authorities prescribed in regulation 20A of the *Children and Community Services Regulations 2006* (prescribed authorities) to exchange information that is, or is likely to be, relevant to the wellbeing of a child, or a class or group of children, without using the Department as an intermediary.
- These powers have been broadened and placed into section 28B of the Act. They now enable prescribed authorities to also exchange relevant information with non-government schools and certain non-government services.
- If relevant information is shared in good faith, persons using these new provisions will be protected from civil and criminal liability and breaches of a duty of confidentiality or secrecy imposed by law professional codes or of professional standards.
- The non-government services included in the new section 28B information sharing powers are those providing social services under a contract or agreement with a prescribed authority or the Department for Child Protection and Family Support¹ (referred to as ‘non-government providers’). However, only certain persons from these services and non-government schools have the authority to exchange information (referred to as ‘authorised entities’). They are:
 - (a) the CEO or principal officer (however described) of a non-government provider; and
 - (b) the governing body of an independent or Catholic school (defined by reference to registered schools or schools systems under Part 4 of the *School Education Act 1999*).
- ‘Social services’ are broadly defined in section 3 of the Act to include a wide range of services to assist children, other individuals, families and communities. They include preventative services, therapeutic and counselling services, education and training services and family and domestic violence services provided to victims as well as perpetrators.

¹ Under an agreement with the *Children and Community Services Ministerial Body*

- Social services operating on grants funding only (i.e. with no other funding contract or agreement with a prescribed authority) cannot use the information sharing powers under section 28B of the Act.
- In exercising these powers in relation to a child, the best interests of the child must always be regarded as the paramount consideration.

Family and domestic violence

- The definition of ‘relevant information’ has been broadened to also enable the exchange of information relevant to the safety of a person who has been subjected or exposed to one or more ‘acts of family and domestic violence’ as defined in the *Restraining Orders Act 1997*. This applies to both:
 - the exchange of information with the Department (under s.23); and
 - relevant information exchanged between prescribed authorities, or between a prescribed authority and a non-government provider or non-government school under new section 28B of the Act.

Offender information relevant the wellbeing of a child or class or group of children

Section 24A now contains new provisions regarding offender reports held by the Department of Corrective Services. The amendments will facilitate the Department’s access to information that is relevant to assessing risk to children posed by known offenders, including adult or juvenile sex offenders or those who have committed family and domestic violence related offences.

New regulation making power

- There is a new regulation-making power enabling other information to be prescribed as ‘relevant information’ for the purposes of information sharing under section 23 and new section 28B of the Act.

Mandatory reporting provisions

- Consistent with the Premier’s commitment to implement Recommendation 3 of the St Andrew’s Hostel Katanning Inquiry, conducted by the Hon Peter Blaxell and tabled in Parliament on 19 September 2012, boarding supervisors of Country High School Hostels are now required to report child sexual abuse to relevant authorities. These requirements have also been extended to boarding supervisors working in other school boarding facilities including government agricultural colleges and boarding facilities servicing non-government and catholic schools.
- ‘Boarding supervisors’ working at these facilities include boarding house managers and supervisors whose duties include the supervision of the children living at the facility rather than ancillary staff such as gardeners and kitchen staff.

Other amendments to enhance and strengthen existing provisions

Greater focus on children’s education

- The importance of children’s education development has been emphasised by:
 - expressly referring to a child’s educational development within the inclusive definition of ‘wellbeing’ in relation to a child; and
 - separately identifying ‘educational needs’ as one of the matters to be taken into account when determining what is in a child’s best interests.

Recognising the needs of children with disability

- A new principle to be observed in the administration of the Act has been included in section 9 in recognition of the particular needs of children with disability - Decisions about a child with disability should be made giving special consideration to any difficulties or discrimination the child may encounter because of the child's disability, and should support the child's full and effective participation in society.

Grounds for protection and care

- Section 28 of the Act provides a number of grounds for a child being found to be in need of protection. The amendments have removed harm caused by 'psychological abuse' as a separate ground, instead providing a definition of 'emotional abuse' which includes:
 - (a) psychological abuse; and
 - (b) exposing a child to an act of family and domestic violence as defined in the *Restraining Orders Act 1997*.
- This amendment maintains the Act's recognition of psychological abuse as a potential cause of harm to a child, but removes it as a *separate* ground for protection given the difficulties in practice, at times, in distinguishing an act of psychological abuse from an act of emotional abuse.
- The amendment also acknowledges the emotional harm caused by those who perpetrate family and domestic violence. It is not intended or expected to result in an increase in the number of children taken into the care of the CEO of the Department as a consequence of family and domestic violence.
- Integral to the grounds for protection of a child, the inclusive definition of 'wellbeing' in section 3 of the Act is being amended to refer to a child's physical, emotional and psychological development and health. This expressly recognises the distinction between emotional and psychological *harm* (as distinct from the acts of abuse which may cause harm of a significant nature).
- Amendments to the definition of 'harm' in section 28 emphasise the impact of cumulative patterns of harm on a child's wellbeing, as recommended by the Western Australia Ombudsman in the report: *The Investigation into ways that State government departments and authorities can prevent or reduce suicide by young people*.

Withholding a copy of a child's care plan for safety reasons

- Section 89 of the Act enables the CEO to withhold a copy of a child's care plan from a person (the child, the child's parent, carer or other interested person). This can only occur in circumstances where the CEO considers that to provide a copy would pose a risk to the safety of the child or another person.
- Persons denied a copy of a care plan must receive written notice and reasons, and under section 93 have a right to request a CEO review of that decision (via the renamed Care Plan Review Panel).
- If a person is aggrieved by the CEO's review decision, he or she has a further right of review by the State Administrative Tribunal (SAT).

Minimum age for tattooing and branding

- The Act prohibits a person from tattooing or branding a child without written parental consent, but previously imposed no minimum age at which a child could be tattooed or branded. Following consultation with young people, parents and carers, the industry sector and government and non-government stakeholders, the new offence of prohibiting a person from tattooing or branding a child who is under the age of 16 years has been introduced into section 103 of the Act.

- It is still an offence for a person to tattoo or brand a child aged 16 years or older over without written parental consent.

Promoting cooperation and consensus in protection proceedings

- Section 145 now requires child protection proceedings to be conducted, as far as possible, in a way that promotes cooperation and consensus.

Other amendments to rectify gaps or clarify existing provisions

Warrant seeking provisional protection and care

- An amendment to section 35 of the Act enables a warrant (provisional protection and care) to be issued in circumstances where a child is in need of protection, even if temporarily in a safe place, for example a ward of a hospital. This power applies if an authorised officer believes that when the child leaves that place, he or she is likely to be living in circumstances that pose an unacceptable risk to the child's wellbeing.

Apprehending a child in care without warrant

- Under section 87, an authorised officer of the Department or police officer (an officer) can now apprehend a child in care, without a warrant, in situations where a parent, carer or other person with the care of or control of the child fails to hand over the child after being required to under section 84. This power may be used only when an officer suspects there is an immediate or substantial risk to the child's wellbeing.

State Administrative Tribunal care plan decision to remain in force

- A person aggrieved by a decision in a child's care plan following a CEO review of the decision via the Case Review Panel may apply to the State Administrative Tribunal (SAT) for a review of that decision. Amendments to section 94 require that, if a SAT review results in the modification of a child's care plan, that 'relevant modification' must be reflected in the child's care plan for 12 months, unless there has been a significant change in facts or circumstances or new facts or circumstances have arisen since the SAT decision was made.