

EXPLANATORY MEMORANDUM

CHILDREN AND COMMUNITY SERVICES LEGISLATION AMENDMENT AND REPEAL BILL 2014

The Children and Community Services Legislation Amendment and Repeal Bill 2014 (the Bill) amends the *Children and Community Services Act 2004* (the Act) to implement the majority of legislative recommendations of the 2012 *Report of the Legislative Review of the Children and Community Services Act 2004*. The Bill repeals the *Parental Support and Responsibility Act 2008* (the PSR Act), *Parental Support and Responsibility Regulations 2009* (the PSR Regulations) and *Parental Support and Responsibility (Disclosure of Information) Guidelines 2009* (the PSR Guidelines) and consequentially amends the *Children's Court of Western Australia Act 1988* and the *Young Offenders Act 1994*.

PART 1 — PRELIMINARY

Part 1 of the Bill contains the short title of the Act and the commencement provisions.

Clause 1. Short title

The short title is the *Children and Community Services Legislation Amendment and Repeal Act 2014* (referred to in this document as the Amendment Act).

Clause 2. Commencement

Clause 2 provides that Part 1 is to come into operation on the day on which the Amendment Act receives Royal Assent, with the remaining sections to come into effect on a date or dates to be fixed by proclamation. Different dates may be fixed for different provisions.

PART 2 — AMENDMENTS AND REPEALS RELATING TO RESPONSIBLE PARENTING AGREEMENTS

Part 2 contains amendments for the repeal of the PSR Act, PSR Regulations and PSR Guidelines, and the insertion of new Part 5A into the Act to provide for the making of responsible parenting agreements.

Division 1 – *Children and Community Services Act 2004* amended

Clause 3. Act amended

Clause 3 states that Division 1 amends the Act.

Clause 4. Section 3 amended

Clause 4 inserts a definition of responsible parenting agreement into section 3 of the Act. This term is to have the meaning given under clause 7 of the Bill, in proposed section 131C.

Clause 5. Section 6 amended

Clause 5 inserts a new object into the Act, subsection 6(da), which is “to support and reinforce the role and responsibility of parents in exercising appropriate control over the behaviour of their children”.

Clause 6. Section 32 amended

Clause 6 inserts subsection 32(1)(ca) into the Act. Section 32 requires the CEO of the Department responsible for administration of the Act (the CEO), currently the Department for Child Protection and Family Support, to take one or more of the actions set out in the section if the CEO determines action should be taken to safeguard or promote a child’s wellbeing. The new subsection allows the CEO to enter into a responsible parenting agreement in respect of a child as one of those actions.

Clause 7. Part 5A inserted

Clause 7 inserts Part 5A into the Act to provide for responsible parenting agreements:

Part 5A – Responsible parenting agreements

Section 131A Terms used

Section 131A defines the following terms relevant to responsible parenting agreements:

“authorised CEO” means the CEO, the CEO (Corrective Services) or the CEO (Education).

“CEO (Corrective Services)” means the CEO of the Department principally assisting in the administration of the *Young Offenders Act 1994* (currently the Department for Corrective Services).

“CEO (Education)” means the CEO of the Department referred to in *School Education Act 1999* section 228 (currently the Department of Education).

“corrective services officer” means a person employed or engaged in the Department principally assisting in the administration of the *Young Offenders Act 1994* (currently the Department for Corrective Services).

“education officer” means a person employed or engaged by the Department referred to in section 228 of *School Education Act 1999*, whether in a category described in section 235(1) of that Act (which includes school principals) or under a contract for services or otherwise.

“official” means an officer as defined in section 3 of the Act, a corrective services officer, education officer or another person employed or engaged by a public authority. This captures persons employed by the Department for Child Protection and Family Support or by other “public authorities”, as defined in section 3 of the Act.

“parenting” includes the provision of day-to-day care for a child by a responsible person.

“responsible person” for a child means a parent of the child, or another adult with whom the child usually lives and who provides day-to-day care for the child. This definition, in combination with the definition of parenting in section 131A, broadens the scope of persons with whom a responsible parenting agreement may be made.

Section 131B Principle to be observed in administration of this Part

Section 131B requires public authorities, in the administration of the Part, to observe the principle of working cooperatively and effectively together to give responsible persons the best chance of safeguarding and promoting the child’s wellbeing; exercising appropriate control over the child’s behaviour; and complying with a responsible parenting agreement. These public authorities must also still observe the principles in Part 2 Division 3.

Section 131C Responsible parenting agreements

This section defines a responsible parenting agreement as an agreement in respect of one or more children between any or all of the authorised CEOs (currently the CEOs of the Department for Child Protection and Family Support, Department of Education and Department of Corrective Services), and one or more responsible persons for the child or children. Unlike under the PSR Act, agreements may be made in respect of a child who is under 18 years of age. Agreements made under the PSR Act were only able to be made in respect of a child under 15 years of age.

Section 131D Entering into responsible parenting agreement

This section enables an authorised CEO to enter into a responsible parenting agreement if satisfied of the following: that the child engages in any of the “relevant behaviour”, defined as criminal or antisocial behaviour or persistent failure to attend school; that the behaviour is having or is likely to have a detrimental effect on the child’s wellbeing; that the parenting of the child may be contributing to the behaviour; and that the responsible parenting agreement may assist the responsible person/s to exercise appropriate control over the child’s behaviour.

Section 131E Content of responsible parenting agreement

Under section 131E, a responsible parenting agreement must be about the responsible person/s doing one or more of the following: engaging with a counselling or support service, or any other relevant social services (as defined in section 3 of the Act); taking all reasonable steps to ensure the child attends school, avoids contact with particular persons, or avoids a particular place or places; other matters relating to effective parenting of the child; or the assistance a public authority is to give the responsible person or the child to assist the responsible person to comply with the agreement.

Section 131F Formal requirements

Section 131F requires that a responsible parenting agreement is to be in writing; to specify the period covered by the agreement; and to be signed by each authorised CEO and each responsible person entering into the agreement.

Section 131G Effects of responsible parenting agreement

Section 131G provides that a responsible parenting agreement does not create enforceable obligations, and that an action in tort does not lie against the State, a Minister of the State, a public authority or an official for any failure of a person to comply with a responsible parenting agreement.

Section 131H Delegation by CEO (Corrective Services) and CEO (Education)

Section 131H enables the CEO (Corrective Services) to delegate to a corrective services officer any power or duty he or she is provided with in relation to responsible parenting agreements under new Part 5A and proposed subsection 237(3) and (4) of the Act. The CEO (Education) is also enabled to delegate his or her powers or duties under those same provisions to an education officer.

Delegations under this section must be in writing signed by the relevant authorised CEO. Subsection 131H enables a delegation under this section to expressly authorise the delegate to further delegate the power or duty. Section 131H(6) clarifies that the relevant CEOs may still perform functions through an officer or agent, and that the delegation provisions contained in section 131H do not limit their abilities in this respect.

Clause 8. Section 237 amended

Clause 8 amends section 237, which places restrictions on the publication of certain information or material in the absence of written authorisation from persons referred to in subsection 237(3) and (4).

Subclause 8(1) inserts provisions to prohibit, without written authorisation, the publication of material or information that identifies, or is likely to lead to the identification of, a person as a “responsible person” under a current or former responsible parenting agreement, or as a person who is or was a child the subject of such an agreement, referred to as the “identified person”. Amendments under subclause 8(2) enable each relevant authorised CEO who entered into the responsible parenting agreement to provide written authorisation for such publication if the identified person is under 18 years of age. In respect of identified persons 18 years or older, the amendments under subclause 8(3) enable the written authorisation for publication to be given by the identified person or, if the identified person is deceased or cannot be found after reasonable inquiries, by each relevant authorised CEO.

Clause 9. Schedule 1 Division 7 inserted

Clause 9 inserts Division 7 into Schedule 1 of the Act. Division 7 contains transitional provisions for the Amendment Act relating to responsible parenting agreements and inserts the following sections:

Division 7 – Provisions for *Children and Community Services Legislation Amendment and Repeal Act 2014*

Section 29 Terms used

This section defines terms including “authorised officer (Child Protection)”, “authorised officer (Education)”, “CEO (Education)”, “commencement day”, “departmental parenting agreement” and “PSR Act parenting agreement”.

“departmental parenting agreement” means an agreement entered into by an officer of the Department for Child Protection and Family Support which is: not a PSR Act parenting agreement; is about one or more of the matters referred to in section 131E; was entered into before commencement of the Amendment Act (“commencement day”) and was current immediately beforehand; and to which either or both of the following apply:

- (i) the agreement is about a child aged 15, 16 or 17 years;
- (ii) the agreement was made with an adult (other than the child’s parent) with whom the child usually lives and who provides day-to-day care for the child.

“PSR Act parenting agreement” means a responsible parenting agreement entered into under the PSR Act which is current immediately before commencement day.

These terms are defined in the transitional arrangements to distinguish between a responsible parenting agreement made under the PSR Act (a “PSR Act parenting agreement”) and a parenting agreement made by an officer of the Department for Child Protection and Family Support (a “departmental parenting agreement”), independently of the PSR Act.

Section 30 PSR Act parenting agreements

On and after commencement of the Amendment Act:

- subsections 30(1)(a) and (b) enable a PSR Act parenting agreement to become a responsible parenting agreement entered into by the CEO under section 131D; and
- subsections 30(2)(a) and (b) enable a PSR Act parenting agreement entered into by an authorised officer (Education) to be taken to be a responsible parenting agreement entered into by the CEO (Education) under section 131D.

Section 31 Departmental parenting agreements

On and after commencement of the Amendment Act, section 31 provides for a “departmental parenting agreement” to be taken to be a responsible parenting agreement entered into by the CEO under section 131D.

Division 2 - Repeals

Clause 10. Parental Support and Responsibility Act 2008 repealed

Clause 10 repeals the PSR Act.

Clause 11. Parental Support and Responsibility Regulations 2009 repealed

Clause 11 repeals the PSR Regulations.

Clause 12. Parental Support and Responsibility (Disclosure of Information) Guidelines 2009 repealed

Clause 12 repeals the PSR Guidelines.

Division 3 - Other Acts amended

Subdivision 1 - *Children's Court of Western Australia Act 1988* amended

Clause 13. Act amended

Clause 13 states that Subdivision 1 amends the *Children's Court of Western Australia Act 1988*.

Clause 14. Section 20 amended

Clause 14 deletes paragraph 20(1)(e), which gives the Children's Court of Western Australia jurisdiction to hear applications under section 14 or section 15 of the PSR Act.

Clause 15. Section 24 deleted

Clause 15 deletes section 24 of the *Children's Court of Western Australia Act 1988*, which gives the Court exclusive jurisdiction to hear and determine offences by an adult committed under the PSR Act.

Clause 16. Section 36 amended

Clause 16 deletes paragraph 36(1)(ab) of the *Children's Court of Western Australia Act 1988*, which restricts the disclosure of certain information in respect of a responsible parenting order.

Clause 17. Section 40 amended

Clause 17 deletes "person" and inserts "child" wherever it appears in section 40. Further, it removes reference to a child in subsection 40(2)(b). These amendments are consistent with the removal of the Children's Court's jurisdiction under section 24 of the *Children's Court of Western Australia Act 1988* to hear and determine offences committed by an adult under the PSR Act.

Subdivision 2 - *Young Offenders Act 1997* amended

Clause 18. Act Amended

Clause 18 states that Subdivision 2 amends the *Young Offenders Act 1994*.

Clause 19. Section 15A amended

Clause 19 deletes subsections 15A(3a), (3b) and (3c) of the *Young Offenders Act 1994*, which enable the disclosure of personal information related to a young offender for the purposes of proceedings for or in respect of a responsible parenting order.

Clause 20. Section 46 amended

Clause 20 inserts new subsection 46(2)(da) into section 46 of the *Young Offenders Act 1994*. Subsection 46(2) requires the court to consider any information about an offender or the offence that may assist the court to decide how to dispose of the matter, and specifies particular information the court is to consider. Under subsection 46(2)(da) the court must consider any responsible parenting agreement entered into under section 131D of the Act in respect of the offender.

PART 3 — OTHER AMENDMENTS TO CHILDREN AND COMMUNITY SERVICES ACT 2004

Part 3 of the Bill amends the Act to implement certain legislative recommendations of the *Report of the Legislative Review of the Children and Community Services Act 2004, October 2012* [Tabled Paper No. 5434], and other matters.

Clause 21. Act amended

Clause 21 states that Part 3 amends the Act.

Clause 22. Section 3 amended

Clause 22 amends section 3 which defines terms used in the Act. Subclause 22(1) deletes the definition of “police officer” in reliance on the definition of “police officer” provided in the *Interpretation Act 1994*, and the definition of “wellbeing” is deleted and replaced with a new definition (below).

Subclause 22(2) inserts the following definitions into section 3:

“act of family and domestic violence” has the meaning given in section 6(1) of the *Restraining Orders Act 1997*.

“exposed”, in relation to an act of family and domestic violence, includes to see or hear the act of family and domestic violence, or to witness physical injuries resulting from the act of family and domestic violence.

“wellbeing” of a child includes the care of the child; the physical, emotional, psychological and educational development of the child; the physical, emotional and psychological health of the child; and the safety of the child. This inclusive definition recognises more comprehensively the differing components to a child’s wellbeing, including psychological and educational components. The definition of wellbeing provides, amongst other things, the basis for deciding whether a child has suffered, or is likely to suffer, “harm” as defined under section 28 of the Act. In section 28, “harm”, in relation to a child, means any detrimental effect of a significant nature on the child’s wellbeing.

Clause 23. Section 8 amended

Clause 23 amends section 8, which lists the matters that must be taken into account in determining what is in a child’s best interests for the purposes of the Act. Consideration of a child’s educational needs is inserted under new paragraph (la), to highlight the significance of education in considering what is in a child’s best interests.

Clause 24. Section 9 amended

Clause 24 inserts subsection 9(ia) to provide a new guiding principal to be observed in the administration of the Act. The CEO must have regard to the principle that decisions about a child with disability should be made giving special consideration to any difficulties or discrimination that may be encountered by the child because of his or her disability and should support the child's full and effective participation in society.

Clause 25. Section 23 amended

Clause 25 amends section 23. Section 23 enables the CEO to exchange relevant information with specified persons including a public authority, Commonwealth agency, corresponding authority or an interested person. Relevant information is defined to mean information that, in the opinion of the CEO, is or is likely to be relevant to the wellbeing of a child or a class or group of children, or the performance of a function under the Act.

Subclauses 25(1) and (2) replace the definition of "relevant information" in section 23 to add two new categories of information that may be shared under this section, being information relevant to:

- the wellbeing of a person who qualifies for leaving care assistance under section 96 of the Act (proposed paragraph (a)(ii)); or
- the safety of a person who has been subjected to, or exposed to, one or more acts of family and domestic (proposed paragraph (a)(iii)).

A regulation-making power to prescribe other information for the purposes of section 23 is also provided.

Subclause 25(3) amends the definition of "*interested person*" to enable the exchange of relevant information with a person who has a direct interest in the wellbeing of a person who qualifies for leaving care assistance, consistent with the amendments under subclause 25(2). These amendments are made to enable the sharing of relevant information with agencies such as the Public Advocate and the Public Trustee, which may have obligations towards persons previously in the care of the CEO who are now adults.

Subclause 25(4) amends subsections 23(2) and (3). These subsections currently enable the CEO to exchange relevant information with "service providers" defined under section 3 of the Act, among others. The amendments replace the term "service provider" with "non-government provider", which is a newly defined term under clause 27 of this Bill. The term "non-government provider" means a service provider or other person who provides "social services" (defined under section 3 of the Act) under a contract or other agreement (excluding a monetary grant agreement) with a public authority prescribed under proposed section 28A of the Act. The effect of this amendment is to provide greater consistency between the powers that are available to the CEO under section 23 and to prescribed authorities under clause 27, in respect of the persons with whom information may be shared.

Subclause 25(5) amends section 23(4), to enable the disclosure of information under section 23, despite any "enactment that prohibits disclosure of the information." The amendment replaces "despite any written law relating to secrecy or confidentiality".

This amendment clarifies the intent of the provision to override express legislative prohibitions or restrictions on information sharing.

Clause 26. Section 24A replaced

Clause 26 deletes and replaces section 24A of the Act with a new provision relating to the CEO's power to obtain certain reports from the CEO (Corrective Services). In clause 27, the powers under section 24A are transferred into new Division 6 of Part 3 of the Act and are expanded to include non-government providers.

Section 24A Power of CEO to obtain copies of certain reports from CEO (Corrective Services)

New subsection 24A(1) defines terms used in the new section:

“CEO (Corrective Services)” means the CEO of the Department principally assisting in the administration of the *Sentence Administration Act 2003* Part 8.

“prescribed report” means a number of reports under specified provisions of the *Sentencing Act 1995*, the *Sentence Administration Act 2003* and the *Young Offenders Act 1994*, and reports prepared for the purposes of those Acts and the *Bail Act 1982*, the *Dangerous Sexual Offenders Act 2006* and the *Prisons Act 1981* which may be prescribed in regulations.

Section 24A enables the CEO to request a copy of a prescribed report from the CEO (Corrective Services) if the CEO considers that the report is, or likely to be, relevant to the wellbeing of a child or a class or group of children. The CEO (Corrective Services) is to provide the report despite any enactment that prohibits or restricts disclosure of the report or its contents. These provisions ensure Department for Child Protection and Family Support access to information relevant to assessing risk to children posed by offenders such as adult or juvenile sex offenders, or those who have committed family and domestic violence related offences. A memorandum of understanding will be developed between the Department for Child Protection and Family Support and the Department of Corrective Services to assist the two departments to operationalise these provisions in the best interests of children.

This section does not limit the operation of section 23 which, as amended under proposed clause 25, will enable the CEO to request a broader range of relevant information. The CEO may request other relevant information from the CEO (Corrective Services) and section 23 enables the CEO (Corrective Services) to comply with the request by disclosing the information to the CEO.

Clause 27. Part 3 Division 6 inserted

Clause 27 inserts “Division 6 - Information sharing” into Part 3 of the Act. Division 6 inserts new sections 28A, 28B and 28C, which contain information sharing powers for prescribed authorities. These provisions enable the exchange of information relevant to the wellbeing of a child or a class or group of children, currently provided under section 24A of the Act. The new provisions extend information sharing powers to “non-government providers” and the non-government school sector (“authorised entities”).

Division 6 - Information sharing

Section 28A Terms used

Section 28A defines the following terms:

“authorised entity” means:

- (a) the CEO of a non-government provider;
- (b) the governing body of a registered school or school system under the *School Education Act 1999* Part 4.

“CEO” means -

- (a) in relation to a prescribed authority -
 - (i) the principal officer, however described, of a department of the Public Service, a State agency or instrumentality, or a local government or regional local government (referred to in paragraphs (a), (b) or (c) of the definition of “public authority” in section 3 of the Act).
 - (ii) the principal officer, however described, of a corporate or unincorporate body established or continued for a public purpose under a written law (referred to in paragraph (d) of the definition of public authority in section 3 of the Act); or
 - (iii) the holder of an office, post or position established or continued for a public purpose under a written law (referred to in paragraph (d) of the definition of public authority in section 3 of the Act);
- (b) in relation to a non-government provider -
 - (i) the individual, if the non-government provider is an individual; or
 - (ii) otherwise, the principal officer, however described, of the non-government provider.

“non-government provider” means -

- (a) a service provider (as defined under section 3 of the Act); or
- (b) a person who provides social services under a contract or other agreement (excluding an agreement for a monetary grant) entered into between the person and a prescribed authority or officer or employee of a prescribed authority.

This definition captures non-government providers who provide “social services” as defined under section 3 of the Act. “Social services” is broadly defined to include services to assist children, other individuals, families and communities. Amongst other things, it specifically captures family and domestic violence services (including services for child and adult victims and services for perpetrators), and counselling, therapeutic, and education and training services, which may be provided in a variety of settings, including custodial settings such as those where mentally impaired persons may be held.

“prescribed authority” means a public authority, other than the Department, prescribed for the purposes of this definition. The Department is not a prescribed authority under this section, as it exchanges a broader range of relevant information with a broader range of persons under section 23 of the Act (as amended).

“relevant information” means -

- (a) information that is, or is likely to be, relevant to:
 - (i) the wellbeing of a child or class or group of children; or
 - (ii) the safety of a person who has been subjected to, or exposed to, one or more acts of family and domestic violence (as defined in section 6 of the *Restraining Orders Act 1997*;
- or
- (b) other information of a kind prescribed by the regulations.

In relation to paragraph (a)(ii), this could include information about a perpetrator of family and domestic violence.

Section 28B Disclosure of information by prescribed authority or authorised entity

Section 28B enables the CEO of a prescribed authority to exchange relevant information with the CEO of another prescribed authority or an authorised entity, if the CEO is of the opinion that the information is relevant to the wellbeing of a child or class or group of children, or to the safety of a person who has been subjected or exposed to one or more acts of family and domestic violence.

This section also enables an authorised entity (the CEO of a non-government provider, or the governing body of a registered school or school system under the *School Education Act 1999*) to disclose or request such information to or from the CEO of a prescribed authority. The section does not enable such information exchange to occur between authorised entities alone.

Information may be exchanged under this section despite any enactment that prohibits or restricts its disclosure. Persons disclosing such information in good faith are protected from criminal or civil liability in respect of the disclosure, and the disclosure is not to be regarded as a breach of duty or confidentiality or secrecy imposed by law, or a breach of professional ethics or standards or of any principles of conduct applicable to a person's employment, or to be regarded as unprofessional conduct.

Section 28C Delegation of powers under s.28B

Section 28C enables the CEO of a prescribed authority to delegate the powers conferred by subsections 28B(1) or (2) to an officer or employee of the prescribed authority. The section also enables an authorised entity to delegate the relevant powers conferred by sections 28B(3) or (4) to the following persons:

- (a) in the case of a non-government provider - to an officer or employee; or
- (b) in the case of the governing body of a registered school or school system - to an officer or employee of the governing body; or, in the case of the governing body of a school system, to the principal of a school that is a member of the school system.

In relation to school systems, it is intended that, if appropriately delegated, both the principal of a school within a school system, and officers or employees of a governing body, be conferred with the powers under section 28B.

Delegations under this section must be in writing, signed by the CEO of the prescribed authority, or signed or executed by the authorised entity as the case requires. Delegations made under this section may not be further delegated by

delegates. Section 28C(7) clarifies that the relevant CEOs may still exercise powers through an officer or agent, and that the delegation provisions in section 28C do not limit their abilities in this respect.

Clause 28. Section 28 amended

Clause 28 amends section 28, which deals with when a child is in need of protection. Subclause 28(1) inserts a definition of “emotional abuse” into subsection 28(1), 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 is made in conjunction with the amendment under subclause 28(3), which deletes harm caused by “psychological abuse” as a separate ground for finding a child in need of protection. These amendments are consistent with Recommendation 5 of the Review. Psychological abuse is to be included as a form of emotional abuse to avoid the need to distinguish between harm caused by acts of emotional abuse and harm caused by acts of psychological abuse for the purposes of protection proceedings.

Subclause 28(2) amends the section 28(1) definition of “*harm*” in relation to a child, to mean “any detrimental effect of a significant nature on the child’s wellbeing, whether caused by -

- (a) a single act, omission or circumstance; or
- (b) a series or combination of acts, omissions or circumstances;”.

This amendment recognises the cumulative effects of harm caused by multiple types of abuse, or abuse over a period of time, and is made in response to Recommendation 9 of the Ombudsman Western Australia report *Investigation into ways that State government departments and authorities can prevent or reduce suicide by young people*, April 2014.

Clause 29. Section 35 amended

Clause 29 amends section 35 of the Act. Section 35 enables an officer to apply for a warrant (provisional protection and care) in certain circumstances when it is believed a child is in need of protection. The effect of the amendment, by inserting new subsection 35(1)(ca), is to enable an authorised officer of the Department to apply for a warrant (provisional protection and care) in circumstances where a child is temporarily in a safe place, for example a hospital or other safe place, and the 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.

Clause 30. Section 41 amended

Clause 30 makes minor amendments to section 41 of the Act. The term “responsible person” is replaced with the term “appropriate person”. This amendment is required as a consequence of the term “responsible person” being defined in the new responsible parenting agreements proposed under clause 7 of the Bill.

Clause 31. Section 62 replaced

Clause 31 deletes and replaces section 62. This amendment has the effect of providing that a protection order (special guardianship) ceases, not only upon a child reaching 18 years of age or where the protection order (special guardianship) is

revoked, but also upon the making of an adoption order in relation to the child under the *Adoption Act 1994*. This amendment means it will no longer be necessary for an application to be made to the Children's Court for the cessation of a protection order (special guardianship) in these circumstances.

Clause 32. Section 65 amended

Clause 31 amends section 65 by inserting new subsection (4A). This amendment provides that an order under subsection 65(1) – which is an order to pay a special guardian prescribed amounts - ceases to be in force if the protection order (special guardianship) ceases to be in force. This amendment introduces a further efficiency in relation to the administration of protection orders (special guardianship).

Clause 33. Section 87 amended

Clause 33 amends section 87 by inserting new subsection 87(3A). Section 87 enables an “officer” (an “authorised officer” of the Department or a police officer) to enter and search premises and apprehend a child, without a warrant, in circumstances where the officer suspects on reasonable grounds the child is absent or has been taken from a placement arrangement unlawfully, and that there is an immediate or substantial risk to the child's wellbeing. New subsection 87(3A) provides an officer with these powers in circumstances where certain persons have failed to comply with a requirement under section 84 to hand over a child who is in a placement arrangement, and the officer suspects there is an immediate or substantial risk to the wellbeing of the child.

Clause 34. Section 89 amended

Clause 34 amends section 89, which requires the preparation of a care plan for a child in the CEO's care. Subsection 89(6) requires a copy of a child's care plan or modified care plan to be provided to the child, the child's parent, the child's carer and other persons the CEO considers to have a significant interest in the child's wellbeing. Subsection 89(7) is inserted into section 89 to enable the CEO to withhold a copy of a care plan or modification from a person, if the CEO considers that providing a copy would pose an unacceptable risk to the safety of the child or another person. New subsection 89(8) requires the CEO to give the person written notice of that decision and the reasons for it.

The amendments to section 89 also clarify that the CEO's power under subsection 89(4) to modify a care plan at any time considered appropriate is subject to new subsection 94(3), which relates to care plan modifications resulting from the State Administrative Tribunal's review of a care plan decision.

Clause 35. Part 4 Division 5 Subdivision 4 heading amended

A minor amendment to the title of Part 4 Division 5 Subdivision 4 is made.

Clause 36. Section 91 amended

Clause 36 makes minor amendments to section 91, which defines the terms used in Subdivision 4. The name of the “case review panel” is changed to “care plan review panel” to reflect more accurately the functions of the panel, and cross-references to amendments made under clause 38 are included (in the definition of “applicant”).

Clause 37. Section 92 amended

Consistent with clause 36, clause 37 changes the term “case review panel” to “care plan review panel” in section 92 and the title of the section is also changed accordingly.

Clause 38. Section 93 amended

Clause 38 amends section 93, which enables certain persons to apply to the CEO for the review of a decision in a child’s care plan (a “care planning decision”). The CEO refers such reviews to the case review panel (now to be known as the “care plan review panel”) for its consideration and recommendations. Upon review the CEO is able to (a) confirm, vary or reverse a care planning decision; (b) substitute another decision; or (c) refer the decision back to the case review panel for further consideration.

Subsection (2A) is inserted into this section to enable a person notified of a decision that he or she will not be given a copy of a care plan or modification (under the proposed amendments in clause 34) to apply to the CEO for a review of that decision. New subsection (4A) places conditions on the timing of such an application which are consistent with time limitations on an application for review of a care planning decision.

Importantly, the amendments made under clause 38(7) have the effect of enabling a person denied a copy of a care plan or modification under new subsection 89(7) to apply to the State Administrative Tribunal (SAT) for a review of that decision.

Clause 39. Section 94 amended

Clause 39 amends section 94. Section 94 enables a person aggrieved by a decision of the CEO, following a review of a care planning decision under subsection 93(6)(a) or (b), to apply to SAT for a review of the decision.

New subclauses 94(2) and 94(3) are inserted into this section. Together, these subclauses require that if a decision is made by SAT to modify a child’s care plan, that decision should be reflected in the child’s care plan for a 12 month period, unless the CEO is satisfied that there has been a significant change in facts or circumstances, or that new facts or circumstances have arisen since the SAT decision was made. These amendments are intended to ensure that where a person aggrieved by a care planning decision of the CEO successfully appeals that decision in the SAT, the CEO’s power in section 89(4) to modify a care plan cannot be used to circumvent SAT’s review decision.

Clause 40. Section 95 amended

Clause 40 replaces the term “case review panel” with “care plan review panel”, consistent with clauses 36 and 37.

Clause 41. Section 101 amended

Clause 41 amends section 101, which provides the offence of failing to protect a child from harm. Further to the proposed amendments in clause 28 to the grounds under section 28 for a child being in need of protection, the amendments to

section 101 remove “psychological abuse” as a separate cause of harm to a child, and clarify that “emotional abuse” is defined by reference to the new definition proposed in the clause 28 amendments.

Clause 28 proposes that “emotional abuse” be defined to include (a) psychological abuse and (b) exposure to an act of family and domestic violence as defined in the *Restraining Orders Act 1997*. This definition importantly recognises the harm which exposure to family and domestic violence may cause to children. However, it is not intended that the definition of emotional abuse, when incorporated in section 101, will result in prosecutions against a person who is a victim of family and domestic violence and due to this, may not be able to protect a child from exposure to family and domestic violence. The principle underpinning a decision about whether to prosecute a person for an offence under this section is that the perpetrator is the person who should be held accountable for the harm caused to a child by exposing that child to family or domestic violence.

Clause 42. Section 103 replaced

Clause 42 deletes section 103, which creates an offence for a person to tattoo or brand any part of the body of a child unless the person has first obtained written consent from a parent of the child. The amendments replace section 103 with a new section that places a complete prohibition on a person tattooing or branding a child who is under the age of 16 years. The tattooing or branding of a child 16 years of age or older will continue to be prohibited without the written consent of a parent of the child. It will not be an offence where the tattooing or branding of a child has been carried out for a medical or therapeutic purpose.

Clause 43. Section 124A amended

Clause 43 amends section 124A, which defines terms relevant to the mandatory reporting of child sexual abuse provided for under Part 4 Division 9A of the Act. Definitions of the terms “boarding facility” and “boarding supervisor” are inserted, in support of amendments under clause 44 which extend the relevant reporting requirements to certain staff of a “boarding facility” which means a place used to provide residential accommodation for children while the children attend a school as defined in the *School Education Act 1999* section 4.

The term “boarding facility” is intended to capture government school boarding facilities, including Country High School Hostels and similar facilities located at agricultural colleges. It is also intended to capture boarding facilities provided in the non-government school sector. The term “facility” indicates the intention to capture institutions like hostels or boarding schools established for the accommodation of children attending a school, as opposed to private arrangements for a child to board in someone’s home.

The term “boarding supervisor” means a person who holds an office or position at a boarding facility, the duties of which include the supervision of children living at the facility. This includes boarding house supervisors and managers of various position titles, but is not intended to include ancillary or casual staff such as cleaners, gardeners, or kitchen staff, or other staff whose formal duties do not involve student supervision.

Clause 44. Section 124B amended

Clause 44 amends section 124B, which imposes a duty on certain persons to report the sexual abuse of children. The amendment extends the requirement to boarding supervisors by inserting the term into subsections 124B(1)(a) and (1)(c)(i).

Clause 45. Section 124C amended

Clause 45 amends subsection 124C(3)(c)(iii) to replace the term “responsible person” with “appropriate person”. This minor amendment is necessary due to the introduction of the term “responsible person” under new Part 5A, which introduces responsible parenting agreements into the Act.

Clause 46. Section 145 amended

Clause 46 inserts a new requirement in relation to the conduct of protection proceedings, dealt with generally under section 145. New subsection 145(4) requires that protection proceedings are to be conducted, as far as possible, in a way that promotes cooperation and consensus.