



*I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.*

*Legislative Assembly Chamber,
Brisbane,*

M. Ries
The Clerk of the Parliament.
10 November 20 17

In the name and on behalf of the Queen, I assent to this Bill.

Paul de Jersey
*Government House,
Brisbane,*

10 November 20 17



Queensland

No. 44 of 2017
A BILL for

**An Act to amend the Adoption Act 2009, the Child Protection Act 1999, the
Director of Child Protection Litigation Act 2016 and the Public Guardian Act
2014 for particular purposes**



Queensland

Child Protection Reform Amendment Bill 2017

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2017

A Bill

for

An Act to amend the *Adoption Act 2009*, the *Child Protection Act 1999*, the *Director of Child Protection Litigation Act 2016* and the *Public Guardian Act 2014* for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Child Protection Reform Amendment Act 2017*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of the Child Protection Act 1999

3 Act amended

This part amends the *Child Protection Act 1999*.

4 Amendment of s 5A (Paramount principle)

- (1) Section 5A, after ‘of a child’—

insert—

, both through childhood and for the rest of the child’s life,

- (2) Section 5A, example, ‘best interests, and’—

omit, insert—

best interests (whether immediate or long-term in nature), and

5 Amendment of s 5B (Other general principles)

(1) Section 5B(k)—

omit.

(2) Section 5B(l) to (n)—

renumber as section 5B(k) to (m).

6 Insertion of new s 5BA

After section 5B—

insert—

5BA Principles for achieving permanency for a child

- (1) The principles stated in this section are relevant to making decisions about actions to be taken, or orders to be made, under this Act.
- (2) For ensuring the wellbeing and best interests of a child, the action or order that should be preferred, having regard to the principles mentioned in sections 5B and 5C, is the action or order that best ensures the child experiences or has—
 - (a) ongoing positive, trusting and nurturing relationships with persons of significance to the child, including the child's parents, siblings, extended family members and carers; and
 - (b) stable living arrangements, with connections to the child's community, that meet the child's developmental, educational, emotional, health, intellectual and physical needs; and

Example—

living arrangements that provide for a stable and continuous schooling environment

[s 7]

- (c) legal arrangements for the child's care that provide the child with a sense of permanence and long-term stability, including, for example, a long-term guardianship order, a permanent care order or an adoption order for the child.

Note—

See sections 62 and 64 about the restrictions on the duration or extension of child protection orders granting custody or short-term guardianship.

- (3) For this Act, ***permanency***, for a child, means the experience by the child of having the things mentioned in subsection (2)(a) to (c).
- (4) For deciding whether an action or order best achieves permanency for a child, the following principles also apply, in order of priority—
 - (a) the first preference is for the child to be cared for by the child's family;
 - (b) the second preference is for the child to be cared for under the guardianship of a person who is a member of the child's family, other than a parent of the child, or another suitable person;
 - (c) the third preference is for the child to be cared for under the guardianship of the chief executive.

7 Replacement of s 5C (Additional principles for Aboriginal or Torres Strait Islander children)

Section 5C—

omit, insert—

5C Additional principles for Aboriginal or Torres Strait Islander children

- (1) The following additional principles apply for

administering this Act in relation to Aboriginal or Torres Strait Islander children—

- (a) Aboriginal and Torres Strait Islander people have the right to self-determination;
 - (b) the long-term effect of a decision on the child's identity and connection with the child's family and community must be taken into account.
- (2) The following principles (the ***child placement principles***) also apply in relation to Aboriginal or Torres Strait Islander children—
- (a) the principle (the ***prevention principle***) that a child has the right to be brought up within the child's own family and community;
 - (b) the principle (the ***partnership principle***) that Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under this Act about Aboriginal or Torres Strait Islander children;
 - (c) the principle (the ***placement principle***) that, if a child is to be placed in care, the child has a right to be placed with a member of the child's family group;

Note—

See section 83 for provisions for placing Aboriginal and Torres Strait Islander children in care.

- (d) the principle (the ***participation principle***) that a child and the child's parents and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child;
- (e) the principle (the ***connection principle***) that a child has a right to be supported to develop

[s 8]

and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.

8 Replacement of s 6 (Recognised entities and decisions about Aboriginal and Torres Strait Islander children)

Section 6—

omit, insert—

6 Who is an *independent Aboriginal or Torres Strait Islander entity*

- (1) An entity is an *independent Aboriginal or Torres Strait Islander entity*, for an Aboriginal or Torres Strait Islander child, if—
- (a) the entity is—
 - (i) an individual who is an Aboriginal or Torres Strait Islander person; or
 - (ii) another entity whose members include individuals who are Aboriginal or Torres Strait Islander persons; and
 - (b) the chief executive is satisfied the entity—
 - (i) provides services to Aboriginal or Torres Strait Islander persons; or
 - (ii) is a representative of the child's community or language group; or
 - (iii) satisfies the requirements mentioned in subsection (2); and
 - (c) is a suitable person to be an independent Aboriginal or Torres Strait Islander entity for the child.

Examples of persons who may be independent Aboriginal or Torres Strait Islander entities for Aboriginal or Torres Strait Islander children—

- an Aboriginal or Torres Strait Islander elder
 - an entity funded by a State or the Commonwealth to provide cultural services, including cultural advice and support, to Aboriginal or Torres Strait Islander persons
- (2) For subsection (1)(b)(iii), the requirements are that the entity is an individual who—
- (a) is a person of significance to the child or child's family; and
 - (b) is a suitable person for associating on a daily basis with the child; and
 - (c) is a person with appropriate authority to speak about Aboriginal or Torres Strait Islander culture in relation to the child or the child's family; and
 - (d) is not an officer or employee of the department.

6AA Principles about Aboriginal and Torres Strait Islander children—chief executive, litigation director and authorised officers

- (1) This section applies to the following persons (each a *relevant authority*)—
- (a) the chief executive;
 - (b) the litigation director;
 - (c) an authorised officer.
- (2) When making a significant decision about an Aboriginal or Torres Strait Islander child, a relevant authority must—
- (a) have regard to the child placement principles in relation to the child; and

[s 8]

- (b) in consultation with the child and the child's family, arrange for an independent Aboriginal or Torres Strait Islander entity for the child to facilitate the participation of the child and the child's family in the decision-making process.
- (3) However, subsection (2)(b) does not apply if—
 - (a) complying with the subsection—
 - (i) is not practicable because an independent Aboriginal or Torres Strait Islander entity for the child is not available or urgent action is required to protect the child; or
 - (ii) is likely to have a significant adverse effect on the safety or psychological or emotional wellbeing of the child or any other person; or
 - (iii) is otherwise not in the child's best interests; or
 - (b) the child or the child's family does not consent to the ongoing involvement in the decision-making process of an independent Aboriginal or Torres Strait Islander entity for the child.
- (4) Also, subsection (2)(b) does not apply if—
 - (a) the relevant authority is the litigation director; and
 - (b) the litigation director is satisfied the chief executive or an authorised officer has already complied with the requirement in relation to the significant decision.
- (5) As far as reasonably practicable, a relevant authority must, in performing a function under this Act involving an Aboriginal or Torres Strait Islander person (whether a child or not), perform

the function—

- (a) in a way that allows the full participation of the person and the person's family group; and
- (b) in a place that is appropriate to Aboriginal tradition or Island custom.

6AB Principles about Aboriginal and Torres Strait Islander children—Childrens Court

- (1) This section applies to the Childrens Court.
- (2) When exercising a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to—
 - (a) Aboriginal tradition and Island custom relating to the child; and

Note—

The *Acts Interpretation Act 1954*, schedule 1, contains definitions of *Aboriginal tradition* and *Island custom*.

- (b) the child placement principles in relation to the child.
- (3) To inform itself about the matters mentioned in subsection (2)(a), the court may have regard to the views about those matters of—
 - (a) an independent Aboriginal or Torres Strait Islander entity for the child; or
 - (b) the child; or
 - (c) a member of the child's family.

9 Amendment of s 7 (Chief executive's functions)

Section 7(1)(o)—

omit, insert—

[s 10]

- (o) arranging for independent Aboriginal or Torres Strait Islander entities for Aboriginal or Torres Strait Islander children to facilitate the participation of the children and the children's families when making decisions in relation to the children; and

10 Amendment of s 13B (Action by relevant persons under other provisions)

Section 13B(3), 'section 159M'—

omit, insert—

section 159MD(1)

11 Amendment of s 21A (Unborn children)

(1) Section 21A(3)—

omit, insert—

- (3) If the child is an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must arrange for an independent Aboriginal or Torres Strait Islander entity for the child to—

- (a) facilitate the participation of the pregnant woman and the child's family in relation to a matter mentioned in subsection (2); and
- (b) offer help and support to the pregnant woman.

(2) Section 21A(4), 'consultation taking place'—

omit, insert—

involvement of an independent Aboriginal or Torres Strait Islander entity for the child

12 Amendment of s 23 (Meaning of *parent* in pt 2)

Section 23, definition *parent*—

insert—

- (e) a permanent guardian of the child.

13 Amendment of s 37 (Meaning of *parent* in pt 3)

Section 37, definition *parent*—

insert—

- (e) a permanent guardian of the child.

14 Amendment of s 51AA (Meaning of *parent* in pt 3AA)

Section 51AA, definition *parent*—

insert—

- (e) a permanent guardian of the child.

15 Amendment of s 51AB (Purpose)

Section 51AB(2)—

omit, insert—

- (2) The purpose of a temporary custody order is to authorise the action necessary to ensure the immediate safety of a child—
 - (a) if the chief executive has referred a child protection matter relating to the child to the litigation director under the *Director of Child Protection Litigation Act 2016*, section 15—while the chief executive works with the litigation director under section 53A; or
 - (b) otherwise—while the chief executive decides the most appropriate action to meet the child’s ongoing protection and care

[s 16]

needs (for example, applying for a child protection order).

16 Amendment of s 51AE (Making of temporary custody order)

Section 51AE(b)—

omit, insert—

- (b) the following person will be able, within the term of the temporary custody order, to decide the most appropriate action to meet the child's ongoing protection and care needs and start taking that action—
 - (i) if the chief executive has not referred a child protection matter relating to the child to the litigation director under the *Director of Child Protection Litigation Act 2016*, section 15—the chief executive;
 - (ii) otherwise—the litigation director.

17 Amendment of s 51B (What is a *case plan*)

(1) Section 51B—

insert—

(1A) A case plan must include the following matters—

- (a) the goal for best achieving permanency for the child and the actions to be taken to achieve the goal;
- (b) if returning the child to the care of a parent of the child is the goal for best achieving permanency for the child—an alternative goal in the event that the timely return of the child to the care of the parent is not possible;

- (c) for an Aboriginal or Torres Strait Islander child—details about how the case plan is consistent with the connection principle stated in section 5C(2)(e).

Note—

See section 6AA(5) for requirements about how the chief executive or an authorised officer must perform functions under this Act involving an Aboriginal or Torres Strait Islander person.

- (1B) Also, a case plan must include actions for helping the child transition to independence if—

- (a) the child is 15 years or more; and
- (b) the child does not have a long-term guardian.

- (2) Section 51B(2), ‘may include’—

omit, insert—

may also include

- (3) Section 51B(2)(a), ‘a goal or’—

omit, insert—

any other

- (4) Section 51B(1A) to (2)—

renumber as section 51B(2) to (4).

18 Amendment of s 51D (How case planning must be carried out)

- (1) Section 51D(1)(c)(iv), note—

omit, insert—

Note—

See section 6AA(5) for requirements about how the chief executive, the litigation director or an authorised officer must perform functions under this Act involving an Aboriginal or Torres Strait Islander person.

- (2) Section 51D(1)(e)—

[s 19]

omit.

- (3) Section 51D(1)(f), example, ‘paragraph (f)’—

omit, insert—

paragraph (e)

- (4) Section 51D(1)(f)—

renumber as section 51D(1)(e).

19 Omission of s 51E (Who is a child’s *family group*)

Section 51E—

omit.

20 Amendment of s 51F (Meaning of *parent* in pt 3A)

Section 51F, definition *parent*—

insert—

- (e) a permanent guardian of the child.

21 Amendment of s 51L (Who should be involved)

- (1) Section 51L(1)(f)—

omit, insert—

- (f) if the child is an Aboriginal or Torres Strait Islander child—an independent Aboriginal or Torres Strait Islander entity for the child;

- (2) Section 51L(3), ‘subsection (1) or (2)’—

omit, insert—

subsection (1)(a) to (e), (1)(g) to (j) or (2)

- (3) Section 51L(4), ‘subsection (1)(b) to (d) or (2)’—

omit, insert—

subsection (1)(b) to (d), (1)(f) or (2)

(4) Section 51L—

insert—

- (5) Also, the convenor is not required to allow an independent Aboriginal or Torres Strait Islander entity for the child to attend or participate in the meeting, under subsection (1)(f), if—
- (a) the entity's attendance or participation is likely to have a significant adverse effect on the child's or another person's safety or psychological or emotional wellbeing; or
 - (b) the child or the child's family does not consent to the entity's attendance or participation.

22 Amendment of s 51N (Obtaining the views of persons not attending)

Section 51N(d)—

omit, insert—

- (d) a relevant prescribed entity or service provider.

23 Amendment of s 51S (Preparing the plan if not developed at a meeting)

Section 51S(3)(a)(iv)—

omit, insert—

- (iv) a relevant prescribed entity or service provider; and

24 Amendment of s 51V (Review of plan—no long-term guardian)

(1) Section 51V—

insert—

[s 25]

- (4A) Subsection (6) applies to the review of a case plan for a child in care if—
 - (a) the case plan does not include actions for helping the child transition from care to independence; and
 - (b) the child has turned 15 since the making, or last review, of the case plan.
- (4B) The review must include developing appropriate actions for helping the child transition to independence.
- (2) Section 51V(4A) to (5)—
renumber as section 51V(5) to (7).

25 Insertion of new s 51VB

After section 51VA—

insert—

51VB Review of plan—permanent guardian

- (1) This section applies if the child has a permanent guardian.
- (2) The permanent guardian or the child may, at any time, ask the chief executive to review the child's case plan.
- (3) On a request under subsection (2)—
 - (a) the chief executive may decide not to review the plan if satisfied—
 - (i) the child's circumstances have not changed significantly since the plan was finalised or, if it has been reviewed, since the most recent review; or
 - (ii) for another reason, it would not be appropriate in all the circumstances; or

- (b) otherwise, the chief executive must review the plan and prepare—
 - (i) a report about the review under section 51X; and
 - (ii) a revised case plan.
- (4) If, on a request under subsection (2), the chief executive decides not to review the case plan, the chief executive must give written notice of the decision to—
 - (a) the person who made the request; and
 - (b) if it was the child who made the request—the permanent guardian.
- (5) The notice mentioned in subsection (4) must comply with section 157(2) of the QCAT Act.

26 Amendment of s 51W (Who may participate)

- (1) Section 51W(1)(f), ‘a recognised entity, or member of a recognised entity’—

omit, insert—

an independent Aboriginal or Torres Strait Islander entity, or member of an independent Aboriginal or Torres Strait Islander entity

- (2) Section 51W(1)(h)—

omit, insert—

(h) a relevant prescribed entity or service provider;

- (3) Section 51W(5), ‘subsection (1)(b) to (d) or (3)’—

omit, insert—

subsection (1)(b) to (d), (1)(f) or (3)

- (4) Section 51W—

insert—

[s 27]

- (6) Also, the convenor of a meeting under this section is not required to allow an independent Aboriginal or Torres Strait Islander entity for the child, or a member of the entity, to attend or participate in the meeting, under subsection (1)(f), if—
 - (a) the entity's or member's attendance or participation is likely to have a significant adverse effect on the child's or another person's safety or psychological or emotional wellbeing; or
 - (b) the child or the child's parents do not consent to the entity's or member's attendance or participation.

27 Amendment of s 51X (Report about the review)

- (1) Section 51X(1)(a) and (b), after 'goals'—

insert—

, including the goal for best achieving permanency for the child,

- (2) Section 51X(1)—

insert—

(da) if the case plan includes actions for helping the child transition to independence—the extent to which the actions continue to meet the child's needs;

- (3) Section 51X(1)(da) and (e)—

renumber as section 51X(1)(e) and (f).

- (4) Section 51X(2), 'the child's need for long-term stable care'—

omit, insert—

permanency for the child

- (5) Section 51X(3)(b), 'the child's need for long-term stable care will not be able to be met'—

omit, insert—

permanency for the child will not be best achieved

(6) Section 51X(3)(c)—

insert—

(ia) arrangements for the child to live with a member of the child's family or another suitable person under a permanent care order; or

(7) Section 51X(3)(c)(ia) to (iii)—

renumber as section 51X(3)(c)(ii) to (iv).

(8) Section 51X—

insert—

(4) For subsection (2), if the child is placed in the care of the chief executive under a child protection order granting long-term guardianship of the child, the report must state the progress made in planning for alternative long-term arrangements for the child, including, for example—

(a) arrangements for the child to live with a member of the child's family or another suitable person under a child protection order granting long-term guardianship of the child; or

(b) arrangements for the child to live with a member of the child's family or another suitable person under a permanent care order; or

(c) arrangements for the child's adoption under the *Adoption Act 2009*.

28 Amendment of s 51ZB (Considering intervention with agreement)

Section 51ZB—

[s 29]

insert—

- (2) However, subsection (1) does not apply if the chief executive reasonably believes it is likely that, if the child's parents withdraw their agreement to the intervention for the child, the child will be at immediate risk of harm.

29 Amendment of s 51ZC (Working with the child and parents)

Section 51ZC—

insert—

- (2) The case plan for the child must include details about what is expected of the child's parents and the chief executive to achieve the goals under the case plan.

30 Amendment of s 52 (Meaning of *parent* in pt 4)

Section 52, definition *parent*—

insert—

- (e) a permanent guardian of the child.

31 Amendment of s 59 (Making of child protection order)

- (1) Section 59(1)(b)(iii), 'an order granting long-term guardianship of the child'—

omit, insert—

a long-term guardianship order or a permanent care order for the child

- (2) Section 59(2)—

omit, insert—

- (2) Before making a child protection order, the court may have regard to the following matters—

- (a) any contravention of this Act or of an order made under this Act;
 - (b) a decision by the chief executive to end intervention under part 3B because the intervention was no longer appropriate to meet the child's protection and care needs.
- (3) Section 59(6), 'a child protection order granting long-term guardianship of a child'—

omit, insert—

a long-term guardianship order or a permanent care order for a child

- (4) Section 59—

insert—

- (7A) The court may make a permanent care order for a child only if, in addition to the other matters about which the court must be satisfied under this section, the court is satisfied—

- (a) the person to whom guardianship of the child is to be granted under the order (the ***proposed guardian***) is—

- (i) a suitable person for having guardianship of the child on a permanent basis; and

- (ii) willing and able to meet the child's ongoing protection and care needs on a permanent basis; and

- (iii) committed to preserving—

- (A) the child's identity; and

- (B) the child's connection to the child's culture of origin; and

- (C) the child's relationships with members of the child's family in

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accordance with the case plan for the child; and

- (b) the child has been in the care of the proposed guardian, under a child protection order granting custody or guardianship of the child to the chief executive or the proposed guardian, for a period of at least 12 months immediately before the making of the application.

- (7B) However, the court may make a permanent care order, despite not being satisfied of the matter mentioned in subsection (7A)(b), if the court is satisfied there are exceptional circumstances that, in the best interests of the child, justify the making of the order.

Example of exceptional circumstances—

The proposed guardian is caring for 1 or more of the child's siblings under a permanent care order.

32 Insertion of new s 59A

After section 59—

insert—

59A Additional matters about making permanent care orders for Aboriginal or Torres Strait Islander children

- (1) This section applies to an application for a permanent care order for an Aboriginal or Torres Strait Islander child.
- (2) In deciding whether to make the order, the Childrens Court must have proper regard to—
 - (a) Aboriginal tradition and Island custom relating to the child; and

Note—

The *Acts Interpretation Act 1954*, schedule 1, contains definitions of *Aboriginal tradition* and *Island custom*.

- (b) the child placement principles in relation to the child.
- (3) The court may make the order only if it is satisfied—
 - (a) the case plan for the child includes appropriate details about how the child's connection with his or her culture, and community or language group, will be developed or maintained; and
 - (b) the decision to apply for the order has been made in consultation with the child, if the court considers consultation is appropriate.
- (4) To inform itself about the matters mentioned in subsection (2)(a), the court may have regard to the views about those matters of—
 - (a) an independent Aboriginal or Torres Strait Islander entity for the child; or
 - (b) the child; or
 - (c) a member of the child's family.

33 Amendment of s 61 (Types of child protection orders)

Section 61(f)—

omit, insert—

- (f) an order (a ***long-term guardianship order***) granting long-term guardianship of the child to—
 - (i) a suitable person, other than a parent of the child, who is a member of the child's family; or

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- (ii) another suitable person, other than a member of the child's family, nominated by the chief executive; or
- (iii) the chief executive;

Note—

The parents of the child may apply to vary or revoke a long-term guardianship order—see section 65(1).

- (g) an order (a ***permanent care order***) granting long-term guardianship of the child to a suitable person, other than a parent of the child or the chief executive, nominated by the chief executive.

Note—

Only the litigation director may apply to vary or revoke a permanent care order—see section 65AA.

34 Amendment of s 62 (Duration of child protection orders)

- (1) Section 62(2)—

omit, insert—

- (2) The stated time for an order that does not grant custody or guardianship of the child must not be more than 1 year after the day it is made.
- (2A) If no previous child protection order has been made for the child and the order grants custody or short-term guardianship of the child, the stated time for the order must not be more than 2 years after the day it is made.
- (2B) If a previous child protection order has been made for the child and the order grants custody or short-term guardianship of the child, the stated time for the order must not be—
 - (a) if, immediately before the making of the order, the child has been in continuous care since the making of the earliest child

protection order for the child—later than 2 years after the day the earliest order was made; or

Example—

The court makes an order granting custody of a child to the chief executive. A previous child protection order granting custody of the child to the chief executive was in effect for 1 year. Since the making of the previous order, the child has been in care, including under interim orders, for a continuous period of 18 months. The stated time for the new order must not be more than 2 years after the previous child protection order was made. As a result, the maximum duration of the new order is 6 months.

- (b) otherwise—later than 2 years after the day the earliest child protection order for the child made during the relevant continuous care period was made.

Example—

The court makes an order granting custody of a child to the chief executive and there have been previous orders granting custody of the child to the chief executive. The first order was in effect for 1 year, after which the child was returned to the care of the child's parents for 1 year. Then another order was made granting custody of the child to the chief executive for 12 months. Since the making of the second order, the child has been in care, including under interim orders, for a continuous period of 18 months. The stated time for the new order must not be more than 2 years after the second order was made. As a result, the maximum duration of the new order is 6 months.

- (2C) However, despite subsection (4), the stated time for an order to which subsection (4) would otherwise apply must not be more than 2 years after the day it is made if—

- (a) it is in the best interests of the child to have a longer stated time for the order than the time provided for under subsection (4); and

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(b) the Childrens Court considers that reunification of the child with the child's family is reasonably achievable within the longer stated time.

(2D) The stated time for an order that grants long-term guardianship of the child must be the end of the day before the child turns 18 years.

(2) Section 62(4), '(3)'—

omit, insert—

(7)

(3) Section 62—

insert—

(5) In this section—

child protection order does not include an interim order under section 67.

relevant continuous care period means a period of continuous care that has not ended immediately before the making of the order.

(4) Section 62(2A) to (5)—

renumber as section 62(3) to (9).

35 Amendment of s 64 (Extension of certain child protection orders)

(1) Section 64—

insert—

(2A) If the application is an application to extend a child protection order granting custody or short-term guardianship of a child, the court must not extend the order for a period of time that would result in the child being in continuous care for a period of 2 years or more.

(2B) However, subsection (3) does not apply if the

court is satisfied—

- (a) it is in the best interests of the child for the order to be extended for a longer time than the time provided for under subsection (3); and
- (b) reunification of the child with the child's family is reasonably achievable within the longer time.

- (2) Section 64(3), 'This'—

omit, insert—

Subject to subsections (3) and (4), this

- (3) Section 64(2A) to (3)—

renumber as section 64(3) to (5).

36 Amendment of s 65 (Variation and revocation of child protection orders)

- (1) Section 65, heading, before 'child'—

insert—

particular

- (2) Section 65(1)(a), after 'order'—

insert—

, other than a permanent care order,

- (3) Section 65(1)(b)—

omit, insert—

- (b) revoke a child protection order, other than a permanent care order, for the child and make another child protection order in its place.

- (4) Section 65(2)—

insert—

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- (c) apply to vary a long-term guardianship order granting long-term guardianship of the child to the chief executive to grant long-term guardianship of the child to a suitable person mentioned in section 61(f)(i) or (ii).

- (5) Section 65(4), ‘subsection (5)’—

omit, insert—

subsections (5) to (5D)

- (6) Section 65—

insert—

- (5A) Subsection (5B) applies if the litigation director or the child applies to—

- (a) vary or revoke a long-term guardianship order for the child; or
- (b) revoke a long-term guardianship order for the child and make a permanent care order for the child in its place.

- (5B) Section 59(1)(a) and (e), (6)(a), (7) and (8) does not apply to the application.

- (5C) However, subsection (5B) does not apply in relation to the application if—

- (a) the application is an application by the litigation director or the child mentioned in subsection (5A)(b); and
- (b) the court orders, on its own initiative or on the application of the litigation director or the child, that the provisions of section 59 mentioned in subsection (5B) are to apply to the application.

- (5D) The court may make an order under subsection (5C)(b) only if it is satisfied that, because of exceptional circumstances, it is in the best interests of the child for the provisions of section

59 mentioned in subsection (5B) to apply to the application.

37 Amendment of s 65A (Court may make transition order)

Section 65A(1)(b), after ‘(f)’—

insert—

or (g)

38 Insertion of new s 65AA

Chapter 2, part 4, division 3—

insert—

65AA Variation and revocation of permanent care orders

- (1) The litigation director may apply to the Childrens Court for an order to—
 - (a) vary or revoke a permanent care order for a child; or
 - (b) revoke a permanent care order for a child and make another child protection order in its place.
- (2) However, the litigation director may apply to vary or revoke a permanent care order only if the litigation director is satisfied—
 - (a) that—
 - (i) the child has suffered significant harm, is suffering significant harm, or is at an unacceptable risk of suffering significant harm; and
 - (ii) the child’s permanent guardian is not able and willing to protect the child from harm; or

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- (b) the child's permanent guardian is not complying, in a significant way, with the guardian's obligations under section 79A(1).

Example—

The child's permanent guardian is not, despite it being in the best interests of the child, helping the child maintain the child's relationships with the child's parents or another person of significance to the child.

- (3) This part applies, with all necessary changes, to the application as if it were an application for a child protection order for the child.
- (4) The court may revoke a permanent care order for a child only if it is satisfied the revocation of the order—
 - (a) is in the best interests of the child; and
 - (b) will promote the child's ongoing protection and care needs.
- (5) Without limiting the matters to which the court may have regard in deciding an application under this section, the court—
 - (a) may have regard to a contravention of the permanent care order or this Act; and
 - (b) must have regard to the child's need for emotional security and stability.
- (6) Without limiting the court's powers, in deciding an application to revoke a permanent care order the court may—
 - (a) revoke the order; or
 - (b) revoke the order and make another child protection order in its place.

39 Amendment of s 70 (Attendance of parties)

Section 70(4)—

omit, insert—

- (4) If the child is an Aboriginal or Torres Strait Islander child, an independent Aboriginal or Torres Strait Islander entity for the child, or member of the entity, may attend the conference.

40 Insertion of new s 74A

After section 74—

insert—

74A Chief executive's obligations to children under particular child protection orders

- (1) This section applies if either of the following orders is made in relation to a child—
 - (a) a long-term guardianship order granting long-term guardianship of the child to a person other than the chief executive;
 - (b) a permanent care order.
- (2) The chief executive must ensure the child—
 - (a) is told about the charter of rights for a child in care in schedule 1 and its effect; and
 - (b) is given written information about the charter of rights unless, having regard to the child's age or ability to understand, the chief executive reasonably believes the child would not be able to understand the information; and
 - (c) is told about the obligations of the child's long-term guardian or permanent guardian under section 79A; and
 - (d) is told about the public guardian and other entities known to the chief executive who can help the child if the child considers that the child's long-term guardian or permanent guardian is not complying with the

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guardian's obligations in relation to the child; and

- (e) is told about the child's right to contact the chief executive if the child has any questions or concerns about the child's protection and care needs.

41 Replacement of s 75 (Transition from care)

Section 75—

omit, insert—

75 Transition to independence

- (1) This section applies to a person who is or has been a child in the custody or under the guardianship of the chief executive.
- (2) As far as practicable, the chief executive must—
 - (a) ensure help is available to assist the person in the transition from being a child in care to independence; and
 - (b) ensure the help is available to the person for the period starting when the person turns 15 and ending when the person turns 25.
- (3) Without limiting subsection (2)(a), the help may include the following—
 - (a) help to access entitlements, including, for example, social security allowances or payments;
 - (b) help to access appropriate accommodation;
 - (c) help to access education and training;
 - (d) help to obtain employment;
 - (e) help to obtain legal advice;

- (f) help to access health and community services, including, for example, specialist disability support services;
- (g) support in establishing or maintaining relationships with the person's family or carer;
- (h) help in accessing information, including information in the chief executive's possession or control, about the person and his or her time in care;

Note—

See section 188C about the information the chief executive may give the person.

- (i) counselling or other support to help the person in relation to information mentioned in paragraph (h);
- (j) other assistance, based on an assessment of the person's needs, provided by the chief executive.

Examples of assistance, based on a person's needs, that may be provided by the chief executive—

- financial assistance under section 159
- help given to ensure a young person with impaired capacity is given the opportunity to develop decision-making skills and exercise the rights mentioned in the *Guardianship and Administration Act 2000*, sections 5 and 6

(4) In this section—

information includes a document or copy of a document.

42 Amendment of s 79 (Obligations of family members to department under orders)

- (1) Section 79, heading, after 'family members'—
insert—

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and other persons

(2) Section 79—

insert—

- (3) A long-term guardian or permanent guardian of a child must keep the chief executive informed about where the child is living.

43 Insertion of new s 79A

After section 79—

insert—

79A Obligations of long-term guardians and permanent guardians to children under orders

- (1) A long-term guardian or permanent guardian of a child must—
- (a) as far as reasonably practicable, ensure the charter of rights for a child in care in schedule 1 is complied with in relation to the child as if—
 - (i) the guardian were the chief executive; and
 - (ii) the child were a child in need of protection in the custody or care of the chief executive; and
 - (b) ensure the child is provided with appropriate help in the transition from being a child in care to independence; and
 - (c) to the extent it is in the best interests of the child, preserve the child's identity and connection to the child's culture of origin; and
 - (d) to the extent it is in the best interests of the child, help maintain the child's relationships with the child's parents, family members

and other persons of significance to the child.

- (2) However, the Childrens Court may order that any of the requirements mentioned in subsection (1) do not apply, or apply with stated modifications or apply to a stated extent, if the court is satisfied compliance with the requirement would—
 - (a) constitute a significant risk to the safety of the child or anyone else with whom the child is living; or
 - (b) otherwise not be in the best interests of the child.

44 Replacement of s 80A (Obligations if child is no longer cared for by long-term guardian)

Section 80A—

omit, insert—

80A Obligations if child is no longer cared for by long-term guardian or permanent guardian

- (1) This section applies if—
 - (a) either of the following child protection orders are in force for a child—
 - (i) a long-term guardianship order granting long-term guardianship of the child to a person other than the chief executive;
 - (ii) a permanent care order; and
 - (b) either—
 - (i) the child's long-term guardian or permanent guardian reasonably believes the guardian's care of the child will end in the near future; or

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Example—

The guardian has a health condition that will result in the guardian not being able to care for the child in the near future.

- (ii) the child is no longer cared for by the child's long-term guardian or permanent guardian.

Examples—

- 1 The child is an older child transitioning to independent living.
 - 2 The relationship between the child and the guardian has broken down and the child is no longer able to live with the guardian.
- (2) The long-term guardian or permanent guardian must immediately give the chief executive written notice of—
 - (a) if the guardian reasonably believes the guardian's care of the child will end in the near future—that fact; or
 - (b) if the care has ended—that fact and, if the guardian knows where the child is living, that information.
 - (3) If the chief executive is given notice under subsection (2), the chief executive must—
 - (a) review the child's protection and care needs and wellbeing; and
 - (b) take any further action the chief executive considers appropriate.

45 Insertion of new ch 2, pt 6, div 3A

Chapter 2, part 6—

insert—

Division 3A Complaints about permanent guardians

80B Making a complaint

- (1) This section applies if a child or a member of the child's family honestly and reasonably believes a permanent guardian of the child is not complying with the guardian's obligations under section 79A.
- (2) The person may make a complaint about the non-compliance to the chief executive.
- (3) A complaint may be made for the person by another person acting with the first person's consent.

80C Chief executive may require further information

The chief executive may, by notice, ask the complainant to give the chief executive further information about the complaint within the reasonable time stated in the notice.

80D Refusal to deal with complaint

- (1) The chief executive may refuse to deal with the complaint if the chief executive reasonably believes—
 - (a) the complaint is trivial, unreasonable or without substance; or
 - (b) the complaint was made vexatiously; or
 - (c) the complainant refuses, without a reasonable excuse, to provide further information reasonably required by the chief

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executive to decide whether to deal with the complaint.

- (2) If the chief executive refuses to deal with a complaint, the chief executive must—
 - (a) as soon as practicable, give written notice of the decision to the complainant; and
 - (b) keep a record about the complaint and the chief executive's refusal to deal with the complaint.
- (3) The notice mentioned in subsection (2)(a) must comply with section 157(2) of the QCAT Act.

80E Dealing with complaint

- (1) If the chief executive does not refuse to deal with a complaint under section 80D, the chief executive must take all reasonable steps to resolve the complaint as soon as is reasonably practicable.
- (2) After taking the reasonable steps, the chief executive must give the complainant a response to the complaint stating—
 - (a) the steps taken to resolve the complaint; and
 - (b) the reason the chief executive considers the steps taken are reasonable in the circumstances; and
 - (c) any results of the steps taken that are known at the time of giving the response.

46 Amendment of s 83 (Additional provisions for placing Aboriginal and Torres Strait Islander children in care)

Section 83(2) to (6)—

omit, insert—

- (2) The chief executive must, in consultation with the child and the child's family, arrange for an

independent Aboriginal or Torres Strait Islander entity for the child to facilitate the participation of the child and the child's family in the process for making a decision about where or with whom the child will live.

- (3) However, the chief executive is not required to arrange for the involvement of an independent Aboriginal or Torres Strait Islander entity for the child under subsection (2) if—
 - (a) it is not practicable because an entity is not available or urgent action is required to protect the child; or
 - (b) the chief executive is satisfied that an entity's involvement—
 - (i) is likely to have a significant adverse effect on the safety or psychological or emotional wellbeing of the child or any other person; or
 - (i) is not otherwise in the child's best interests; or
 - (c) the child or the child's family does not consent to the entity's involvement.
- (4) In making a decision about the person in whose care the child should be placed, the chief executive must, if practicable, place the child with a member of the child's family group.
- (5) However, if it is not practicable to place the child with a member of the child's family group, in making a decision about the person in whose care the child should be placed, the chief executive must place the child with—
 - (a) a member of the child's community or language group; or
 - (b) if it is not practicable to place the child in the care of a person mentioned in paragraph

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- (a), an Aboriginal or Torres Strait Islander person who is compatible with the child's community or language group; or
- (c) if it is not practicable to place the child in the care of a person mentioned in paragraph (a) or (b), another Aboriginal or Torres Strait Islander person; or
- (d) if it is not practicable to place the child in the care of a person mentioned in paragraphs (a) to (c), a person who—
 - (i) lives near the child's family, community or language group; and
 - (ii) has a demonstrated capacity for ensuring the child's continuity of connection to kin, country and culture.
- (6) Also, the chief executive must give proper consideration to—
 - (a) the views of the child and the child's family; and
 - (b) ensuring the decision provides for the optimal retention of the child's relationships with parents, siblings and other people of significance to the child under Aboriginal tradition or Island custom.

47 Amendment of s 97 (Carrying out medical examinations or treatment)

Section 97—

insert—

- (8) In this section—
treatment includes vaccination.

48 Insertion of new ch 4, pt 2A

Chapter 4—

insert—

**Part 2A Prescribed delegates
for Aboriginal or Torres
Strait Islander children**

148BA Definitions for part

In this part—

appropriate Aboriginal or Torres Strait Islander entity means an entity—

- (a) that has a function of providing services to Aboriginal persons or Torres Strait Islanders; and
- (b) whose members include individuals who have appropriate knowledge of, or expertise in, child protection.

prescribed delegate, for an Aboriginal or Torres Strait Islander child, means a person to whom the chief executive has delegated, under section 148BB, a function or power in relation to the child.

148BB Chief executive may delegate functions or powers

- (1) The chief executive may delegate 1 or more of the chief executive's functions or powers under this Act in relation to an Aboriginal or Torres Strait Islander child who is—
 - (a) a child in need of protection; or
 - (b) likely to become a child in need of protection.

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- (2) The delegation must—
 - (a) despite the *Acts Interpretation Act 1954*, section 27A(1)(b), state the name of the person to whom the function or power is delegated; and
 - (b) state the child's name; and
 - (c) state each function or power the person may perform or exercise in relation to the child; and
 - (d) state any conditions of the delegation.
- (3) The chief executive may delegate a function or power to a person in relation to a child under subsection (1) only if—
 - (a) the person—
 - (i) is an Aboriginal or Torres Strait Islander person; and
 - (ii) is the chief executive officer, however named, of an appropriate Aboriginal or Torres Strait Islander entity; and
 - (iii) has a current positive prescribed notice or a current positive exemption notice; and
 - (b) the chief executive is reasonably satisfied the person—
 - (i) is appropriately qualified to perform the function or exercise the power in relation to the child; and
 - (ii) is a suitable person to perform the function or exercise the power in relation to the child.
- (4) Before delegating a function or power to a person under subsection (1), the chief executive must—

- (a) to the extent it is safe, possible and practical to do so, seek the views of the child and the parents of the child; and
 - (b) have regard to any views obtained under paragraph (a).
- (5) The delegation does not take effect until the person has given the chief executive written notice that the person accepts the delegation.

148BC Actions by chief executive prevail

- (1) This section applies if—
- (a) the chief executive performs a function or exercises a power under this Act in relation to a child; and
 - (b) a prescribed delegate for the child performs the function or exercises the power in relation to the child in a way that results in an outcome that is inconsistent with the outcome of the performance of the function or exercise of the power by the chief executive.
- (2) Despite the *Acts Interpretation Act 1954*, section 27A, the performance of the function or exercise of the power by the chief executive prevails to the extent of the inconsistency.

148BD Withdrawal by prescribed delegate

- (1) A prescribed delegate for an Aboriginal or Torres Strait Islander child may, at any time, withdraw the person's acceptance of the delegation by giving the chief executive written notice of the withdrawal.
- (2) If the prescribed delegate gives the chief executive notice under subsection (1), the delegation ends.

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- (3) The delegation ends under subsection (2) on the later of the following—
 - (a) the day the notice is given to the chief executive;
 - (b) a later day stated in the notice.
- (4) The chief executive must record—
 - (a) the notice given under subsection (1); and
 - (b) the day on which the delegation ends.

148BE Automatic ending of delegation

- (1) This section applies if a prescribed delegate for an Aboriginal or Torres Strait Islander child—
 - (a) stops being the chief executive officer, however named, of an appropriate Aboriginal or Torres Strait Islander entity; or
 - (b) stops having a current positive prescribed notice or a current positive exemption notice.
- (2) The person must, as soon as practicable, give the chief executive written notice of that fact and the day on which the person—
 - (a) stopped being the chief executive officer, however named, of the entity; or
 - (b) stopped having a current positive prescribed notice or a current positive exemption notice.
- (3) The delegation of a function or power to the person by the chief executive under section 148BB ends.

148BF Chief executive may require information about child

- (1) The chief executive may ask a person who is or was a prescribed delegate for an Aboriginal or Torres Strait Islander child, orally or in writing, to give the chief executive stated information about the child within a stated reasonable time.
- (2) The person must comply with the request.
- (3) A person who gives information requested under subsection (1) who would otherwise be required to maintain confidentiality about the information given under an Act, oath, rule of law or practice—
 - (a) does not contravene the Act, oath, rule of law or practice by giving the information; and
 - (b) is not liable to disciplinary action for giving the information.
- (4) Also, merely because the person gives the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.

148BG Chief executive may require information about delegate or proposed delegate

- (1) The chief executive may ask a person to whom the chief executive proposes to delegate, or has delegated, a function or power under section 148BB for stated information about a matter mentioned in 148BB(3)(a).
- (2) The person must comply with the request.
- (3) The chief executive must request information mentioned in subsection (1) by giving the person

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a notice stating—

- (a) the information the chief executive requires;
and
 - (b) the day by which the person must give the
information to the chief executive.
- (4) The day mentioned in subsection (3)(b) must be at
least 14 days after the notice is given.

148BH Obligation to notify chief executive of changed or new qualifying information

- (1) This section applies if there is a change in the
information mentioned in section 148BB(3)(a)
for—
- (a) a person who has given the information to
the chief executive under section 148BG(2);
or
 - (b) a prescribed delegate for an Aboriginal or
Torres Strait Islander child.
- (2) The person must, as soon as practicable, give the
chief executive a notice of the changed or new
information.

148BI Giving information to proposed prescribed delegate

Before delegating a function or power to a person
under section 148BB, the chief executive must
give the person any information the chief
executive has about the child that the person
reasonably requires to make an informed decision
about whether to accept the delegation.

49 Amendment of s 156 (Delegation by chief executive)

Section 156, after ‘Act’—

insert—

, other than a power under chapter 4, part 2A,

50 Amendment of s 159 (Payments for care and maintenance)

- (1) Section 159(1), ‘carer or long-term’—

omit, insert—

carer, long-term guardian or permanent

- (2) Section 159(5), ‘carers or long-term’—

omit, insert—

carers, long-term guardians or permanent

51 Amendment of ch 5A, hdg (Service delivery coordination and information exchange)

Chapter 5A, heading, ‘exchange’—

omit, insert—

sharing

52 Amendment of s 159A (Purpose)

- (1) Section 159A, ‘service providers’—

omit, insert—

the chief executive, authorised officers,
prescribed entities and service providers

- (2) Section 159A(b)—

omit, insert—

(b) sharing information, while protecting the
confidentiality of the information.

[s 53]

53 Amendment of s 159B (Principles for coordinating service delivery and exchanging information)

- (1) Section 159B, heading, ‘exchanging’—

omit, insert—

sharing

- (2) Section 159B(d), ‘each service provider should contribute, within the provider’s’—

omit, insert—

the chief executive, authorised officers, prescribed entities and service providers should contribute, within each entity’s

- (3) Section 159B(f) and (g)—

omit, insert—

- (f) the entities mentioned in paragraph (d) should work collaboratively and in a way that respects the functions and expertise of each of the entities;
- (g) whenever safe, possible and practical, consent should be obtained before—
 - (i) providing, or planning to provide, a service, help or support to a child or a child’s family to decrease the likelihood of the child becoming a child in need of protection; or
 - (ii) disclosing personal information about a person to someone else;
- (h) because a child’s safety, wellbeing and best interests are paramount, the child’s protection and care needs take precedence over the protection of an individual’s privacy and the principle mentioned in paragraph (g);

- (i) before disclosing information about a person to someone else, an entity should consider whether disclosing the information is likely to adversely affect the safety, wellbeing and best interests of a child or the safety of another person.

54 Replacement of ss 159C and 159D

Sections 159C and 159D—

omit, insert—

159C Chief executive must make guidelines

- (1) The chief executive must make guidelines, consistent with this Act, for sharing and dealing with information under parts 4 and 5.
- (2) The purposes of the guidelines are to ensure—
 - (a) information is shared under parts 4 and 5 only for proper purposes; and
 - (b) to the greatest extent possible, the privacy of individuals is respected when sharing information under parts 4 and 5, having regard to the principles stated in sections 5A and 159B; and
 - (c) information shared under parts 4 and 5 is properly used, stored, retained and disposed of.
- (3) The chief executive must publish the guidelines on the department's website.

55 Amendment of s 159F (Service providers' responsibilities)

- (1) Section 159F, heading—

omit, insert—

[s 56]

159F General responsibilities

- (2) Section 159F, ‘Service providers’—

omit, insert—

The chief executive, authorised officers,
prescribed entities and service providers

56 Amendment of s 159G (Chief executive’s responsibilities)

Section 159G(1)(a) and (b), ‘service providers’—

omit, insert—

the chief executive, authorised officers,
prescribed entities and service providers

57 Amendment of s 159H (Chief executive may ask particular prescribed entities to provide a service)

- (1) Section 159H, heading, ‘prescribed’—

omit.

- (2) Section 159H(1), (3) and (4), ‘prescribed’—

omit.

- (3) Section 159H(2), ‘a prescribed’—

omit, insert—

an

58 Amendment of s 159J (Purpose)

Section 159J(2)(a)—

omit, insert—

- (a) the sharing of information under part 4
between members of the system; and

59 Amendment of s 159K (Members)

(1) Section 159K(a)(v)—

omit.

(2) Section 159K(b), after ‘other’—

insert—

prescribed entities or

60 Amendment of s 159L (Responsibilities of the core members)

(1) Section 159L(b)(i), ‘relevant’—

omit.

(2) Section 159L(e), after ‘other’—

insert—

prescribed entities or

61 Replacement of ch 5A, pt 4, hdg (Information exchange)

Chapter 5A, part 4, heading—

omit, insert—

Part 4 Information sharing

62 Replacement of s 159M (Particular prescribed entities giving and receiving relevant information)

Section 159M—

omit, insert—

159M Definitions for part

In this part—

prescribed entity means each of the following entities—

[s 62]

- (a) the chief executive of a department that is mainly responsible for any of the following matters—
 - (i) adult corrective services;
 - (ii) community services;
 - (iii) disability services;
 - (iv) education;
 - (v) housing services;
 - (vi) public health;
- (b) the police commissioner;
- (c) the chief executive officer of Mater Misericordiae Ltd (ACN 096 708 922);
- (d) a health service chief executive within the meaning of the *Hospital and Health Boards Act 2011*;
- (e) the principal of an accredited school under the *Education (Accreditation of Non-State Schools) Act 2001*;
- (f) a specialist service provider;
- (g) the chief executive of another entity that—
 - (i) provides a service to children or families; and
 - (ii) is prescribed by regulation.

service provider means—

- (a) a person providing a service to children or families; or
- (b) a licensee; or
- (c) an independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child.

specialist service provider means a

non-government entity, other than a licensee or an independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child, funded by the State or the Commonwealth to provide a service to—

- (a) a relevant child; or
- (b) the family of a relevant child.

159MA Sharing information—reporting suspicion to chief executive

A prescribed entity or service provider (each a **holder**) may give a prescribed entity or service provider (each a **recipient**) information if the holder reasonably believes the information may help the recipient—

- (a) decide whether information about suspected harm or risk of harm to a child should be given to the chief executive; or
- (b) decide whether information about an unborn child who may need protection after birth should be given to the chief executive.

159MB Sharing information—assessment or investigation

- (1) A prescribed entity or service provider (each a **holder**) may give the chief executive or an authorised officer (each a **recipient**) information if the holder reasonably believes the information may help the recipient—

- (a) investigate an allegation of harm or risk of harm to a child or assess a child's need for protection; or
- (b) take action, or decide whether the recipient reasonably suspects a child is in need of protection, under section 14; or

[s 62]

- (c) investigate or assess, before the birth of a child, the likelihood that the child will need protection after the child is born.
- (2) The chief executive or an authorised officer (each also a ***holder***) may give a prescribed entity or a service provider information (each also a ***recipient***) if the holder reasonably believes giving the information may help the recipient decide whether to give the holder information under subsection (1).

159MC Sharing information—assessing care needs and planning services

- (1) A prescribed entity or service provider (each a ***holder***) may give the chief executive or an authorised officer information if the holder reasonably believes the information may help the chief executive or authorised officer—
 - (a) develop, or assess the effectiveness of, a child’s case plan; or
 - (b) assess or respond to the health, educational or care needs of a relevant child; or
 - (c) otherwise make plans or decisions relating to, or provide services to, a relevant child or the child’s family; or
 - (d) offer help and support to a pregnant woman under section 21A.
- (2) The chief executive, an authorised officer or a prescribed entity (each also a ***holder***) may give a prescribed entity or a service provider (each a ***recipient***) information if the holder reasonably believes the information may help the recipient—
 - (a) participate in case planning; or

- (b) assess or respond to the health, educational or care needs of a child in need of protection; or
 - (c) otherwise make plans or decisions relating to, or provide services to, a child in need of protection or the child's family; or
 - (d) help the chief executive offer help and support to a pregnant woman under section 21A.
- (3) A service provider may give a prescribed entity information if the service provider reasonably believes the information may help the prescribed entity do a thing mentioned in subsection (2)(a) to (d).

159MD Sharing information—decreasing likelihood of child becoming in need of protection

- (1) The chief executive, an authorised officer or a prescribed entity (each a *holder*) may give a prescribed entity or a service provider (each a *recipient*) information if the holder reasonably believes the information may help the recipient—
- (a) assess or respond to the health, educational or care needs of a child to decrease the likelihood of the child becoming a child in need of protection; or
 - (b) otherwise make plans or decisions relating to, or provide or offer to provide services to, a child or the child's family to decrease the likelihood of the child becoming a child in need of protection.
- (2) A service provider may give a prescribed entity information if the service provider reasonably believes the information may help the prescribed entity do a thing mentioned in subsection (1)(a) or (b).

[s 63]

159ME Sharing information—facilitating participation of child or child’s family

- (1) The chief executive or an authorised officer (each a ***holder***) may give an independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child information if the holder reasonably believes the information may help the independent Aboriginal or Torres Strait Islander entity—
 - (a) facilitate the participation of the child or the child’s family in making plans or decisions relating to the child or the child’s family; or
 - (b) provide, or offer to provide, services to the child or the child’s family.
- (2) An independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child may give the chief executive or an authorised officer (each a ***recipient***) information about the child if the independent Aboriginal or Torres Strait Islander entity reasonably believes the information may help—
 - (a) the child or the child’s family participate in making plans or decisions relating to the child or the child’s family; or
 - (b) the chief executive provide, or offer to provide, services to the child or the child’s family.

159MF Facts or opinions may be shared

Information that may be given to an entity under this part may be comprised of facts or opinions.

63 Amendment of s 159N (Information requirement made by chief executive or authorised officer)

- (1) Section 159N(1) and (2)—

omit, insert—

- (1) The chief executive or an authorised officer may ask any of the following entities for stated information, about a child or another person or an unborn child, in the entity's possession or control—
 - (a) the public guardian;
 - (b) a prescribed entity;
 - (c) a licensee;
 - (d) the person in charge of a student hostel.
- (1A) For subsection (1), the stated information must be information the chief executive or authorised officer reasonably considers relevant for the performance of a function or exercise of a power under this Act.
- (2) The entity must comply with the request to the extent it relates to information in the entity's possession or control.
- (2A) For subsection (2), information is not taken to be in the entity's control merely because of an agreement between the entity and another entity under which the other entity must give the information to the entity.
- (2) Section 159N(3), 'relevant information if the prescribed'—

omit, insert—

information if the
- (3) Section 159N(4), 'subsection (1)'—

omit, insert—

subsection (2)

64 Insertion of new s 159NA

Chapter 5A, part 4—

[s 65]

insert—

159NA Limits on information that may be shared

- (1) Despite sections 159MA to 159N, information may not be shared under this part to the extent it relates to—
 - (a) a conviction included in a person’s criminal history—
 - (i) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
 - (ii) that is not revived as prescribed by section 11 of that Act; or
 - (b) an expunged conviction or expunged charge.
- (2) In this section—

expunged charge see the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*, schedule 1.

expunged conviction see the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*, schedule 1.

65 Amendment of s 159O (Release of information by a health services designated person)

Section 159O(3), ‘relevant’—
omit.

66 Amendment of s 159R (Interaction with other laws)

- (1) Section 159R(1), ‘relevant’—
omit.
- (2) Section 159R—

insert—

- (3) However, disclosure of information under this chapter does not waive, or otherwise affect, a privilege a person may claim in relation to the information under another Act or law.

67 Amendment of s 182 (Evidentiary provisions)

Section 182(4)(h)—

omit, insert—

- (h) a stated entity is an independent Aboriginal or Torres Strait Islander entity for a particular Aboriginal or Torres Strait Islander child;

68 Amendment of s 187 (Confidentiality of information obtained by persons involved in administration of Act)

(1) Section 187(1)(a)(xi)—

omit, insert—

- (xi) an independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child, or a member of the entity; or
 - (xii) a service provider, or person engaged by a service provider, performing functions under or in relation to chapter 5A, part 4; or
 - (xiii) a prescribed delegate for an Aboriginal or Torres Strait Islander child; or
 - (xiv) a person given information about a child by the chief executive under section 148BI; or
 - (xv) a person allowed to view a document or information under section 113; and
- (2) Section 187(3)(c)(iii), ‘section 159M’—

[s 69]

omit, insert—

chapter 5A, part 4

(3) Section 187(4)—

insert—

Note—

For the disclosure of information that is about the person and a third party, see section 188C.

(4) Section 187(6)—

insert—

recognised entity means a recognised entity under this Act before the commencement of the *Child Protection Reform Amendment Act 2017*, section 78.

69 Amendment of s 188 (Confidentiality of information given by persons involved in administration of Act to other persons)

(1) Section 188(1), ‘another prescribed’—

omit, insert—

a prescribed

(2) Section 188(3)(a), ‘section 189B’—

omit, insert—

section 188C, 188D or 189B

70 Amendment of s 188B (Disclosure of information to a child’s family group)

Section 188B(4)—

omit.

71 Insertion of new ss 188C–188E

After section 188B—

insert—

188C Chief executive may give information about third parties

- (1) This section applies to information, in the chief executive’s possession or control, that is—
 - (a) about a relevant person; and
 - (b) also about someone else.
- (2) Subject to section 186, the chief executive may disclose the information to the relevant person.

Note—

For the disclosure of information that is only about the relevant person, see section 187(4).

- (3) However, the chief executive must not disclose the information to the relevant person if—
 - (a) the chief executive reasonably believes the disclosure of the information is likely to adversely affect the safety or psychological or emotional wellbeing of any person; or
 - (b) the information—
 - (i) is the subject of legal professional privilege; or
 - (ii) identifies, or is likely to identify, its source and the identification of the source is likely to prejudice the achievement of the purpose of this Act; or
 - (iii) is a record of confidential therapeutic counselling, and the person to whom it relates does not consent to its disclosure; or

[s 71]

- (c) the disclosure of the information could reasonably be expected to—
 - (i) prejudice the investigation of a contravention or possible contravention of a law in a particular case; or
 - (ii) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law; or
 - (iii) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained.
- (4) The chief executive may authorise the relevant person to use or disclose the information, or give access to the information, to someone else.

Note—

Under section 188, the person must not use, disclose or give access to the information unless it is authorised by the chief executive under this section.

- (5) The chief executive may disclose the information subject to any other conditions the chief executive considers appropriate.
- (6) In this section—

relevant person means—

- (a) a child in care; or
- (b) a person who was in care under this Act or the repealed *Children's Services Act 1965*; or
- (c) a person who was a State child under the repealed *State Children Act 1911*.

188D Chief executive may give information about deceased child

- (1) This section applies to information about a child who has died while under a child protection order.
- (2) Subject to section 186, the chief executive may disclose the information to a parent of the child or another person acting on behalf of the child.
- (3) However, the chief executive must not disclose the information if—
 - (a) the chief executive reasonably believes the disclosure of the information is likely to adversely affect the safety or psychological or emotional wellbeing of any person; or
 - (b) the information—
 - (i) is the subject of legal professional privilege; or
 - (ii) identifies, or is likely to identify, its source and the identification of the source is likely to prejudice the achievement of the purpose of this Act; or
 - (iii) is a record of confidential therapeutic counselling, and the person to whom it relates does not consent to its disclosure; or
 - (c) the disclosure of the information could reasonably be expected to—
 - (i) prejudice the investigation of a contravention or possible contravention of a law in a particular case; or
 - (ii) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law; or

[s 71]

- (iii) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained.
- (4) The chief executive may authorise the person to use or disclose the information, or give access to the information, to someone else.

Note—

Under section 188, the person must not use, disclose or give access to the information unless it is authorised by the chief executive under this section.

- (5) The chief executive may disclose the information subject to any other conditions the chief executive considers appropriate.

188E Chief executive must give police commissioner information about deceased child

- (1) This section applies if—
 - (a) an investigation in relation to the death of a child is being carried out by a police officer; and
 - (b) the police commissioner, by written notice, asks the chief executive to give the police commissioner stated information about the child.
- (2) The chief executive must comply with the request.
- (3) The chief executive's obligation to comply with the request applies only to information in the chief executive's possession.
- (4) The giving of the information is authorised despite any Act or law, including a law imposing an obligation to maintain confidentiality about the

information.

- (5) However, if the information includes notifier details the chief executive must notify the police commissioner of that fact when complying with the request.

- (6) In this section—

notifier details means information about the identity of a person mentioned in section 186(1) who notifies the chief executive, an authorised officer or a police officer that the person suspects a matter mentioned in section 186(1)(a) or (b).

72 Insertion of new s 189AB

After section 189AA—

insert—

189AB Giving information to corresponding child welfare authorities

- (1) The chief executive may, under arrangements made with a corresponding chief executive of another State or New Zealand, give the corresponding chief executive relevant information if the chief executive reasonably believes the corresponding chief executive requires the information for the purposes of performing a function under a child welfare law of the other State or New Zealand.
- (2) However, subsection (1) does not apply to information about the identity of a person mentioned in section 186(1) who notifies the chief executive, an authorised officer or a police officer that the person suspects a matter mentioned in section 186(1)(a) or (b).
- (3) Section 188 does not apply to information given under subsection (1).
- (4) In this section—

[s 73]

corresponding chief executive, of another State or New Zealand, means the chief executive of the department of the State or New Zealand administering a child welfare law of the State or New Zealand.

relevant information means information about a person or an unborn child acquired in the administration of this Act.

73 Replacement of s 189B (Research)

Section 189B—

omit, insert—

189B Access to information for prescribed research

- (1) For the purpose of allowing a person to carry out prescribed research, the chief executive may authorise the person to have access to information relating to, or acquired in, the administration of this Act, including information from an officer of the department or a client.
- (2) The chief executive may authorise the person to have access to the information only if the chief executive is satisfied—
 - (a) the information is reasonably necessary for the prescribed research; and
 - (b) the information will not be published in a way that could reasonably be expected to result in the identification of any of the individuals it relates to.

Example of details that could reasonably be expected to identify individuals—

Publishing the name of a small town or community in which a high profile case occurred could reasonably be expected to lead to identification of the individuals involved, even if the individuals' names are not published.

- (3) The chief executive may contact, or authorise the person to contact, a client to ask if they would like to participate in the research being carried out by the person.
- (4) The chief executive may authorise the person to use or disclose the information, or give access to the information, to someone else.

Note—

Under section 188, the person must not use, disclose or give access to the information unless it is authorised by the chief executive under this section.

- (5) The chief executive may impose any other conditions on the authorisation the chief executive considers appropriate.
- (6) The person must comply with any condition imposed by the chief executive unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (7) In this section—

client means any of the following persons—

- (a) a child to whom this Act applies;
- (b) a person who was a child to whom this Act applied;
- (c) a member of the family of a person mentioned in paragraph (a) or (b);
- (d) an approved carer;
- (e) a person who was an approved carer.

prescribed research means research carried out for any of the following purposes—

- (a) a purpose the chief executive is satisfied is consistent with a function of the chief executive under section 7;

[s 74]

- (b) evaluating interventions and services, or designing or projecting current and future interventions and services, in relation to children who are, or who have been, in need of protection or who may become in need of protection;
- (c) deciding whether a department should make a payment under a funding arrangement that requires outcomes to be monitored, verified or evaluated.

74 Amendment of s 193 (Restrictions on reporting certain court proceedings)

(1) Section 193(1) to (3)—

omit, insert—

- (1) If a child is, or is reasonably likely to be, a witness in a proceeding before a court or justice for an offence of a sexual nature or an offence of a violent nature, a person must not, in a report of the proceeding or a related proceeding, knowingly disclose identifying information about the child unless a court or justice orders that the person may disclose the information.
- (2) If a child is, or is reasonably likely to be, a witness in a proceeding before a court or justice for an offence other than an offence of a sexual nature or an offence of a violent nature, the court or justice may order that a report of the proceeding or a related proceeding must not disclose identifying information about the child other than information stated in the order.
- (3) A report of a proceeding for an offence of a sexual nature to which subsection (1) relates, or a related proceeding, must not disclose the name of an authorised officer or police officer involved in the proceeding unless the court or justice orders the

officer's name to be included in the report.

(3A) A court or justice may order that a report of any of the following proceedings must not disclose the name of an authorised officer or police officer involved in the proceeding—

- (a) a proceeding for an offence of a violent nature to which subsection (1) relates;
- (b) a proceeding to which subsection (2) relates;
- (c) a related proceeding for a proceeding mentioned in paragraph (a) or (b).

(3B) For subsection (1), a person knowingly discloses identifying information about the child in a report of the proceeding if, when the person discloses the identifying information about the child, the person knows, or ought reasonably to know, that the child is, or is likely to be, a witness in the proceeding.

(2) Section 193(4), after 'offence'—

insert—

, unless the person has a reasonable excuse

(3) Section 193—

insert—

(5A) A court or justice may make an order under subsection (1), (3) or (3A)—

- (a) on its own initiative; or
- (b) on application of a person.

(4) Section 193(6), definition *proceeding*—

omit.

(5) Section 193(6)—

insert—

offence of a sexual nature means an offence

[s 75]

defined in the Criminal Code, chapter 22, 22A or 32.

offence of a violent nature means an offence against any of the following provisions of the Criminal Code—

- (a) a provision of chapter 28 or 28A;
- (b) a provision of chapter 29, other than section 317A, 318, 319, 321, 321A, 327, 329, 330, 333 or 334;
- (c) section 335, 339, 340, 354, 354A or 355;
- (d) a provision of chapter 33A;
- (e) section 363, 363A or 364.

related proceeding, for a proceeding on a charge of an offence, includes the following proceedings related to the charge of the offence, whether or not the child is, or is likely to be, a witness in the related proceeding—

- (a) a bail proceeding;
- (b) a committal proceeding.

- (6) Section 193(6), definition *identifying information*, paragraph (b)(i), after ‘name,’—

insert—

age,

75 Amendment of s 194 (Publication of information identifying child victim)

Section 194(2)(d)—

insert—

Note—

Also, see section 188A about the use of confidential information by police.

76 Amendment of s 205 (Meaning of *parent* for ch 7)

Section 205, definition *parent*—

insert—

- (e) a permanent guardian of the child.

77 Amendment of s 206 (Orders that may be transferred)

Section 206(b)—

omit, insert—

- (b) a long-term guardianship order granting long-term guardianship of a child to someone other than the chief executive; or
- (c) a permanent care order.

78 Amendment of s 246DA (Review panel may obtain further information)

- (1) Section 246DA(4)—

omit, insert—

- (4) If the chief executive asks the public guardian, a prescribed entity, a licensee or the person in charge of a student hostel for information, section 159N applies to the request as if the requested information were information requested under that section.

- (2) Section 246DA(5)—

omit.

79 Omission of s 246I (Recognised entities)

Section 246I—

omit.

[s 80]

80 Insertion of new ch 9, pt 11

Chapter 9—

insert—

**Part 11 Transitional provisions
for Child Protection
Reform Amendment
Act 2017**

274 Applications for temporary custody orders

- (1) This section applies to an application for a temporary custody order made, but not decided, before the commencement.
- (2) For deciding the application, previous sections 51AB and 51AE apply in relation to the application.
- (3) In this section—

previous, in relation to a section, means the section as in force from time to time before the commencement.

275 Existing case plans and reviews

- (1) This section applies to a case plan for a child that is in effect immediately before the commencement.
- (2) Section 51B(2) and (3) does not apply to the case plan until the first review of the plan under section 51V that starts after the commencement.

81 Amendment of sch 2 (Reviewable decisions and aggrieved persons)

- (1) Schedule 2, entry for refusing a request to review a case plan under section 51VA, after ‘section 51VA’—

insert—

or 51VB

- (2) Schedule 2, after entry for directing a parent in relation to a supervision matter stated in a child protection order (section 78)—

insert—

refusing to deal with a complaint the person making the complaint
about a permanent guardian (section
80D(1))

82 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definitions *family group*, *prescribed entity*, *recognised entity*, *relevant information*, *service provider* and *student hostel*—

omit.

- (2) Schedule 3—

insert—

appropriate Aboriginal or Torres Strait Islander entity, for chapter 4, part 2A, see section 148BA.

child placement principles, in relation to an Aboriginal or Torres Strait Islander child, see section 5C(2).

family group, of a child, includes—

- (a) members of the child's extended family; and
- (b) if the child belongs to a clan, tribe or similar group—members of that group; and
- (c) anyone else recognised by persons mentioned in paragraph (a) or (b) as belonging to the child's family.

independent Aboriginal or Torres Strait Islander entity, for an Aboriginal or Torres Strait

[s 82]

Islander child, see section 6(1).

long-term guardianship order see section 61(f).

permanency, for a child, see section 5BA(3).

permanent care order see section 61(g).

permanent guardian, of a child, means a person who is granted long-term guardianship of the child under a permanent care order.

Note—

See section 61(g).

prescribed delegate, for an Aboriginal or Torres Strait Islander child, for chapter 4, part 2A, see section 148BA.

prescribed entity see section 159M.

service provider see section 159M.

significant decision, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child's life.

Examples of decisions relating to an Aboriginal or Torres Strait Islander child that may be significant decisions—

- a decision made in the course of investigating an allegation of harm to the child
- a decision about placing the child in care
- a decision by the litigation director about whether or not to apply for a child protection order for the child

specialist service provider, for chapter 5A, part 4, see section 159M.

student hostel means—

- (a) a student hostel established under the *Education (General Provisions) Act 2006*, section 15(b); or

- (b) a student hostel operated with an allowance paid under the *Education (General Provisions) Act 2006*, section 368(1)(e).
- (3) Schedule 3, definition *long-term guardian*, ‘child protection order’—
omit, insert—
long-term guardianship order
- (4) Schedule 3, definition *member*, paragraph 2, ‘a recognised entity’—
omit, insert—
an independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child
- (5) Schedule 3, definition *suitable person*—
insert—
(k) for being an independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child—a person who is a suitable person under a regulation.

Part 3 Amendment of Director of Child Protection Litigation Act 2016

83 Act amended

This part amends the *Director of Child Protection Litigation Act 2016*.

84 Amendment of s 5 (Paramount principle)

Section 5, after ‘of a child’—
insert—

[s 85]

, both through childhood and for the rest of his or her life,

85 Amendment of s 6 (Other general principles)

(1) Section 6(1)—

insert—

(da) each principle stated in the *Child Protection Act 1999*, section 5BA for achieving permanency for a child, to the extent the principle is capable of being applied to a person performing a function or exercising a power under this Act;

(2) Section 6(1)(da) and (e)—

renumber as section 6(1)(e) and (f).

(3) Section 6—

insert—

(4) In this section—

permanency, for a child, see the *Child Protection Act 1999*, section 5BA(3).

86 Amendment of s 15 (When chief executive (child safety) must refer child protection matter)

(1) Section 15(1)—

insert—

(c) if—

(i) a permanent care order is in force for the child; and

(ii) the chief executive (child safety) is satisfied—

(A) the child's permanent guardian under the order is not complying,

in a significant way, with the permanent guardian's obligations under the *Child Protection Act 1999*, section 79A; and

- (B) the order is no longer appropriate and desirable for promoting the child's safety, wellbeing and best interests.

- (2) Section 15(3)—

insert—

permanent care order see the *Child Protection Act 1999*, section 61(g).

permanent guardian, of a child, see the *Child Protection Act 1999*, schedule 3.

87 Amendment of s 16 (Requirements for referral of child protection matter)

- (1) Section 16(1)—

insert—

- (ba) for a matter mentioned in section 15(1)(c), a brief of evidence about the child that includes the reasons why the chief executive (child safety) is satisfied—

- (i) the child's permanent guardian is not complying, in a significant way, with the permanent guardian's obligations under the *Child Protection Act 1999*, section 79A; and
- (ii) the order is no longer appropriate and desirable for promoting the child's safety, wellbeing and best interests;

- (2) Section 16(1)(c), '(a) or (b)'—

omit, insert—

[s 88]

(a), (b) or (c)

- (3) Section 16(1)(ba) to (d)—
renumber as section 16(1)(c) to (e).

Part 4 Amendment of other Acts

Division 1 Amendment of Adoption Act 2009

88 Act amended

This division amends the *Adoption Act 2009*.

89 Amendment of s 312 (Evidentiary provisions for proceedings under this Act)

Section 312(3)(g), from ‘a recognised entity’ to ‘adoption of’—

omit, insert—

an independent Aboriginal or Torres Strait
Islander entity for

90 Amendment of s 314 (Confidentiality of information obtained by persons involved in administration of Act)

Section 314(1)(a)(v)—

omit, insert—

- (v) an independent Aboriginal or Torres Strait
Islander entity, or member of an
independent Aboriginal or Torres Strait
Islander entity, for an Aboriginal or Torres
Strait Islander child;

91 Amendment of s 318 (Meaning of *appropriate Aboriginal or Torres Strait Islander person*)

Section 318(2)(b)—

omit, insert—

- (b) an independent Aboriginal or Torres Strait Islander entity for the child; or

92 Amendment of s 321 (Protection from liability)

Section 321(3)(d)—

omit, insert—

- (d) an independent Aboriginal or Torres Strait Islander entity, or member of an independent Aboriginal or Torres Strait Islander entity, for an Aboriginal or Torres Strait Islander child.

93 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definition *recognised entity*—

omit.

- (2) Schedule 3—

insert—

independent Aboriginal or Torres Strait Islander entity, for an Aboriginal or Torres Strait Islander child, means an entity that—

- (a) is an independent Aboriginal or Torres Strait Islander entity for the child under the *Child Protection Act 1999*, section 6(1); and
- (b) the chief executive is satisfied is an appropriate entity to consult about a matter relating to the child's adoption.

[s 94]

Division 2 Amendment of Public Guardian Act 2014

94 Act amended

This division amends the *Public Guardian Act 2014*.

95 Amendment of s 13 (Functions—relevant child, etc.)

Section 13(1)(k), ‘a recognised entity’—

omit, insert—

an independent Aboriginal or Torres Strait
Islander entity for the child

96 Amendment of s 86 (Prescribed entities)

Section 86(p)—

omit, insert—

(p) an independent Aboriginal or Torres Strait
Islander entity for an Aboriginal or Torres
Strait Islander child;

97 Amendment of sch 1 (Dictionary)

(1) Schedule 1, definition *recognised entity*—

omit.

(2) Schedule 1—

insert—

***independent Aboriginal or Torres Strait
Islander entity***, for an Aboriginal or Torres Strait
Islander child, see the *Child Protection Act 1999*,
schedule 3.