

**Children, Youth and Families Amendment
(Permanent Care and Other Matters) Act 2014
No. 61 of 2014**

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Victoria

Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014[†]

No. 61 of 2014

[Assented to 9 September 2014]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The main purposes of this Act are—

- (a) to amend the **Children, Youth and Families Act 2005**—
 - (i) to make further provision for the protection and permanent care of children; and

-
- (ii) to abolish the Youth Residential Board and transfer its functions to the Youth Parole Board; and
 - (iii) to provide for group conferences where the Children's Court is considering making certain youth justice orders; and
 - (iv) to further improve the operation of that Act; and
- (b) to amend the **Commission for Children and Young People Act 2012** in relation to inquiries by the Commission; and
 - (c) to make consequential amendments to other Acts.

2 Commencement

- (1) This Part, Part 9 and Division 4 of Part 10 and Part 11 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 March 2016, it comes into operation on that day.

3 Principal Act

In this Act, the **Children, Youth and Families Act 2005** is called the Principal Act.

See:
Act No.
96/2005,
Reprint No. 4
as at
27 March
2013
and
amending
Act Nos
96/2005,
9/2013,
30/2013,
52/2013,
63/2013,
67/2013,
74/2013,
17/2014,
19/2014,
26/2014,
29/2014,
36/2014,
37/2014,
42/2014 and
47/2014.
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vic.gov.au

**PART 2—ORDERS FOR THE PROTECTION AND
PERMANENT CARE OF CHILDREN**

Division 1—Preliminary

4 Definitions

- (1) In section 3(1) of the Principal Act, the definitions of *custody*, *custody to Secretary order*, *custody to third party order*, *guardianship*, *guardianship to Secretary order*, *interim protection order*, *long-term guardianship to Secretary order*, *supervised custody order* and *supervision order* are repealed.
- (2) In section 3(1) of the Principal Act, insert the following definitions—
- care by Secretary order* means an order referred to in section 275(1)(d);
- family preservation order* means an order referred to in section 275(1)(b);
- family reunification order* means an order referred to in section 275(1)(c);
- long-term care order* means an order referred to in section 275(1)(e);
- parental responsibility*, in relation to a child, means all the duties, powers, responsibilities and authority which, by law or custom, parents have in relation to children;"
- (3) In section 3(1) of the Principal Act—
- (a) in the definition of *care*, for "custody of" substitute "parental responsibility for";
- (b) in the definition of *contact*, for "custody of" substitute "care of".
-

- (4) In section 3(1) of the Principal Act, for paragraph (d) of the definition of *parent substitute*—

"(d) any person who has parental responsibility for the child, other than the Secretary; and".

5 Repeal of sections 4 and 5

Sections 4 and 5 of the Principal Act are **repealed**.

6 Best interest principles

- (1) In section 10(3)(f) of the Principal Act, for "stability" **substitute** "permanency".

- (2) After section 10(3)(f) of the Principal Act **insert**—

"(fa) the desirability of making decisions as expeditiously as possible and the possible harmful effect of delay in making a decision or taking an action;".

- (3) Section 10(3)(p) of the Principal Act is **repealed**.

7 Responsibilities of the Secretary

For section 16(1)(g) of the Principal Act **substitute**—

"(g) to provide or arrange the provision of services to assist in supporting a person under the age of 21 years to gain the capacity to make the transition to independent living where—

- (i) the Secretary has had parental responsibility for the person; and
- (ii) on the Secretary's parental responsibility ending, the person is of an age, or intends, to live independently;".

8 Secretary may authorise person in charge of community service to act

In section 19(1)(c) of the Principal Act, for "custody and guardianship of" **substitute** "parental responsibility for".

Division 2—Responsibilities of Secretary

9 Responsibilities of Secretary

For the heading to Division 2 of Part 4.3 of the Principal Act **substitute—**

"Division 2—Responsibilities of Secretary for a child for whom Secretary has parental responsibility".

10 Powers of Secretary

- (1) In the heading to section 172 of the Principal Act, for "**as guardian or custodian**" **substitute** "**when Secretary has parental responsibility**".
 - (2) In section 172(1) of the Principal Act, for "who is under his or her guardianship" **substitute** "for whom the Secretary has sole parental responsibility".
 - (3) In section 172(2) of the Principal Act—
 - (a) for "who is in the custody or under the guardianship of the Secretary" **substitute** "for whom the Secretary has parental responsibility"; and
 - (b) for paragraph (a) **substitute—**

"(a) has the sole right to care of the child; and".
-

- (4) For section 172(3) of the Principal Act
substitute—

"(3) The Secretary may detain without warrant any child for whom the Secretary has parental responsibility as a result of a protection order."

11 Placement of children

- (1) For section 173(1)(a) of the Principal Act
substitute—

"(a) for whom the Secretary has parental responsibility under this Act; or"

- (2) In section 173(2)(c) of the Principal Act for "if he or she is under the guardianship of the Secretary and available for adoption" **substitute** "if the Secretary has sole parental responsibility for the child and the child is available for adoption".

12 Decisions in relation to a child

- (1) In section 175A(1) of the Principal Act after "relating to a child" **insert** "for whom the Secretary has parental responsibility".
- (2) In section 175A(2) of the Principal Act for "an interim accommodation order, interim protection order, supervised custody order or custody to Secretary order" **substitute** "an interim accommodation order, a family reunification order or a therapeutic treatment (placement) order".
- (3) In section 175B(1)(b) of the Principal Act after "protection order" **insert** "that confers parental responsibility for the child on the Secretary".

(4) After section 175B of the Principal Act, **insert**—

175C When Secretary must consult with parent of child

- (1) This section applies if—
 - (a) a child who is subject to an interim accommodation order has been placed in out of home care; or
 - (b) the Secretary has parental responsibility for a child under a family reunification order or a therapeutic treatment (placement) order.
 - (2) The Secretary must, to the fullest extent possible, work with and engage any parent with whom the child is intended to be reunified in making case planning decisions for the child.
 - (3) The Secretary must not make a decision about a major long-term issue in relation to the child if a parent who has parental responsibility for the child disagrees with the decision.
 - (4) Subsection (3) does not apply to a decision about a major long-term issue that the Secretary is expressly authorised to make under this Act.
 - (5) The Secretary may make a decision on an issue in relation to the child that is not a major long-term issue without the agreement of a parent of the child."
-

Division 3—Interim accommodation orders

13 Interim accommodation order

(1) After section 262(5) of the Principal Act **insert**—

"(5A) Despite anything to the contrary in this section, an interim accommodation order must not be made in respect of a child if the Court is satisfied that—

- (a) a protection order could be made in respect of the child under Part 4.9; or
- (b) a permanent care order could be made in respect of the child under section 319."

(2) In section 262(6) of the Principal Act, for "custody to Secretary order, a guardianship to Secretary order or a long-term guardianship to Secretary order" **substitute** "family reunification order, a care by Secretary order or a long-term care order".

(3) In section 262(7) of the Principal Act—

- (a) for "supervision order or a supervised custody order" **substitute** "family preservation order";
- (b) for "supervision order or supervised custody order" (where twice occurring) **substitute** "family preservation order".

14 Conditions of interim accommodation order

After section 263(1)(f) of the Principal Act **insert**—

"(fa) the placement of the child with a disability service provider within the meaning of the **Disability Act 2006** if the child is the recipient of disability services under that Act; or".

Division 4—Protection Orders

15 When Court may make order under this Part

In section 274(b) of the Principal Act, for "custody of" **substitute** "care of".

16 Types of protection order

In section 275(1) of the Principal Act, for paragraphs (b) to (h) **substitute**—

- "(b) a family preservation order;
- (c) a family reunification order;
- (d) a care by Secretary order;
- (e) a long-term care order."

17 Restrictions on the making of protection orders

- (1) For section 276(1)(b) of the Principal Act **substitute**—

"(b) it is satisfied that the child cannot be sufficiently protected without a protection order."

- (2) For section 276(2) of the Principal Act **substitute**—

"(2) The Court must not make a protection order that has the effect of removing the child from the care of the child's parent unless the Court—

- (a) has considered an order allowing the child to remain in the care of the child's parent; and
- (b) has rejected such an order as being contrary to the best interests of the child."

18 New section 276A inserted

After section 276 of the Principal Act **insert—**

"276A Court to have regard to certain matters

- (1) In determining whether to make a protection order, the Court must have regard to advice from the Secretary as to—
 - (a) if a case plan has been prepared in relation to the child, the objectives of the case plan; and
 - (b) if the child has one or more siblings under the age of 18 years, the arrangements in place for the care of those siblings; and
 - (c) the age of the child and the period of time that the child has spent in out of home care during the child's lifetime (whether or not as a consequence of a court order).
 - (2) In determining whether to make a protection order that has the effect of conferring parental responsibility for a child on the Secretary, the Court must have regard to advice from the Secretary as to—
 - (a) the likelihood of a parent of the child permanently resuming care of the child during the term of the protection order; and
 - (b) the outcome of any previous attempts to reunify any child with the parent of the child; and
 - (c) if a parent of the child has previously had another child permanently removed from the parent's care, the desirability of making an early decision about the future permanent care arrangements for
-

the child the subject of the proposed order; and

- (d) the benefits to the child of making a care by Secretary order to facilitate alternate arrangements for the permanent care of the child if—
 - (i) the child is in out of home care as a result of an order under this Part and has been in out of home care under such an order for a cumulative period of 12 months; and
 - (ii) there appears to be no realistic prospect of the child being able to safely return permanently to the care of the child's parent within a further period of 12 months; and
 - (iii) there are no permanent care arrangements already available for the child; and
 - (e) the desirability of making a permanent care order, if the child is placed with a person who is intended to have permanent care of the child.
- (3) Section 287A(4) applies to the determination of a cumulative period under this section (except subsection (1)(c))."

19 New section 277 substituted

For section 277 of the Principal Act **substitute**—

"277 Service of applications

- (1) The applicant must as soon as possible cause a copy of an application for the following to be given or sent in accordance with subsection (2)—
-

-
- (a) the variation of an undertaking under this Part or of any conditions of an undertaking or for the revocation of an undertaking; or
 - (b) the variation or revocation of a family preservation order; or
 - (c) the extension of the period of a family preservation order; or
 - (d) the extension of the period of a family reunification order or a care by Secretary order; or
 - (e) the variation or revocation of a family reunification order; or
 - (f) the revocation of a care by Secretary order or a long-term care order; or
 - (g) an order in respect of a failure to comply with a family preservation order or an interim accommodation order.
- (2) The application must be given or sent by post—
- (a) to any person by or on behalf of whom such an application could have been made; and
 - (b) in the case of an application referred to in paragraph (c) or (d), to the child and the parent of the child."

20 Heading to Division 3 of Part 4.9

For the heading to Division 3 of Part 4.9 of the Principal Act **substitute**—

"Division 3—Family preservation order".

21 Family preservation order

(1) For the heading to section 280 of the Principal Act **substitute**—

"Family preservation order".

(2) In section 280(1) of the Principal Act—

(a) for "supervision order" **substitute** "family preservation order";

(b) for paragraph (b) **substitute**—

"(b) does not affect a person's parental responsibility for the child; and".

(3) In section 280(2) of the Principal Act, for "supervision order" **substitute** "family preservation order".

(4) For section 280(3) and (4) of the Principal Act **substitute**—

"(3) If, under subsection (2)(b), the Court specifies a period exceeding 12 months for a family preservation order to remain in force, it must direct the Secretary to review the operation of the order before the end of the period of 12 months after the making of the order.

(4) Following a review under subsection (3), the Secretary, may, with the agreement of the child (if the child is aged 10 years or older) and the child's parent, determine that the family preservation order should end.

(5) The Secretary must notify the Court of a determination under subsection (4).

(6) If a notice is given under subsection (5), the family preservation order ends at the end of 12 months after the order is made or on the date that notice is given, whichever is the later.

- (7) The Secretary must notify the child (if the child is aged 10 years or older), the child's parent and any other persons that the Court directs if the family preservation order ends in accordance with subsection (6)."

22 Family preservation order may impose conditions

- (1) In the heading to section 281 of the Principal Act, for "**Supervision order**" substitute "**Family preservation order**".

- (2) For section 281(1) of the Principal Act substitute—

"(1) A family preservation order may include conditions to be observed by—

- (a) the child in respect of whom it is made;
or
(b) a parent of the child.

- (1A) Conditions that may be included under subsection (1) are conditions that the Court considers—

- (a) to be in the best interests of the child;
and
(b) are reasonably capable of being carried out by each person who will be subject to the condition; and
(c) promote the continuing care of the child by a parent of the child."

- (3) In section 281(2) of the Principal Act, for "supervision order" substitute "family preservation order".

23 Powers of Secretary under family preservation order

- (1) In the heading to section 282 of the Principal Act, for "**supervision order**" substitute "**family preservation order**".
- (2) In section 282(1) and (2) of the Principal Act, for "supervision order" substitute "family preservation order".

24 Repeal of Divisions 4 and 5 of Part 4.9

Divisions 4 and 5 of Part 4.9 of the Principal Act are **repealed**.

25 Heading to Division 6 of Part 4.9

For the heading to Division 6 of Part 4.9 of the Principal Act **substitute**—

"Division 6—Family reunification order".

26 New section 287 substituted

For section 287 of the Principal Act **substitute**—

"287 Family reunification order

- (1) A family reunification order—
 - (a) confers parental responsibility for the child on the Secretary; and
 - (b) confers responsibility for the sole care of the child on the Secretary; and
 - (c) subject to this Division, remains in force for the period (not exceeding 12 months) specified in the order; and
 - (d) may include any conditions that the Court considers—
 - (i) to be in the best interests of the child; and

- (ii) are reasonably capable of being carried out by each person who will be subject to the condition; and
 - (iii) promote the reunification of the child with a parent of the child; and
- (e) must provide that if, while the order is in force, the Secretary is satisfied that it is in the child's best interests, the Secretary may in writing direct that a parent of the child is to resume parental responsibility for the child to the exclusion of the Secretary.
- (2) The conferral of parental responsibility on the Secretary does not affect the parental responsibility of any other person for the child in relation to making decisions about major long term issues except as provided for under this Act or by an order of the Court.
- (3) The conditions that may be included in accordance with subsection (1)(d) may include a condition concerning contact between the child and a parent of the child or another person of significance to the child."

27 New section 287A inserted

After section 287 of the Principal Act **insert**—

"287A Determining the period of a family reunification order

- (1) This section applies to the determination of the period of a family reunification order for a child who is or has been in out of home care as a result of any of the following orders—

- (a) an interim accommodation order;
 - (b) a family reunification order;
 - (c) a care by Secretary order;
 - (d) a long-term care order;
 - (e) a therapeutic treatment (placement) order.
- (2) If the child has been in out of home care for less than 12 months under one or more orders specified in subsection (1), the period specified in a family reunification order must not have the effect that the child will be placed in out of home care for a cumulative period that exceeds 12 months commencing on the date that the child is first placed in out of home care under the first of those orders.
- (3) If the child has been in out of home care for 12 months or more but less than 24 months under one or more orders specified in subsection (1), the period specified in a family reunification order must not have the effect that the child will be placed in out of home care for a cumulative period that exceeds 24 months commencing on the date that the child is first placed in out of home care under the first of those orders.
- (4) For the purposes of determining a cumulative period under this section—
- (a) any period that the child is in out of home care under a child care agreement under Part 3 or under a private arrangement made by a parent is to be disregarded; and
-

- (b) any period that the child is being cared for by a parent under an interim accommodation order, an undertaking or a family preservation order under this Part must be disregarded; and
- (c) any period that the child was in out of home care under an order must be disregarded if the child was subsequently returned to the care of a parent without the child being subject to any order under this Part."

28 Lapsing of family reunification order

- (1) In the heading to section 288 of the Principal Act, for "**custody to Secretary order**" substitute "**family reunification order**".
- (2) In section 288(1) and (2) of the Principal Act, for "custody to Secretary order" substitute "family reunification order".
- (3) In section 288(1)(a) of the Principal Act, for "the custody or the guardianship and custody of" substitute "parental responsibility for".

29 New section 288A inserted

After section 288 of the Principal Act **insert**—

"288A Change to nature of order

- (1) If under a family reunification order the Secretary directs that a parent or parents of a child are to resume parental responsibility for the child to the exclusion of the Secretary, then on and from the date of the direction—
 - (a) the Secretary ceases to have parental responsibility for the child; and

- (b) the parent resumes parental responsibility for the child as specified in the direction; and
 - (c) the family reunification order is taken to be a family preservation order giving the Secretary responsibility for the supervision of the child and placing the child in the day to day care of the parent or parents who have parental responsibility for the child; and
 - (d) the conditions of the family reunification order continue to apply as conditions of the family preservation order; and
 - (e) Division 3 applies to the order; and
 - (f) the order ceases to be a family reunification order for the purposes of this Act.
- (2) The Secretary must give a copy of a direction under this section to—
- (a) the Court; and
 - (b) the child; and
 - (c) the parent of the child.
- (3) The Secretary may apply to the Court to determine that the order is to include conditions.
- (4) The Court may determine that the order is to include conditions of a kind referred to in section 281, without requiring the parties to attend, or be represented at, the proceeding.
- (5) If the Court makes a determination under subsection (4), the order is taken to include those conditions as if they were included in the order under section 281."
-

30 New Division 7 of Part 4.9 substituted

For Division 7 of Part 4.9 of the Principal Act
substitute—

"Division 7—Care by Secretary order

289 Care by Secretary order

- (1) A care by Secretary order—
 - (a) confers parental responsibility for the child on the Secretary to the exclusion of all other persons; and
 - (b) subject to this Division, remains in force for a period of 2 years; and
 - (c) ceases to be in force when the child attains the age of 18 years or when the child marries, whichever happens first; and
 - (d) must provide that if, while the order is in force, the Secretary is satisfied that it is in the child's best interests, the Secretary may in writing direct that a parent of the child is to resume parental responsibility for the child.
 - (2) The Court must direct the Secretary to review the operation of the order before the end of the period of 12 months after the making of the order.
 - (3) Following a review under subsection (2), the Secretary, with the agreement of the child (if the child is aged 10 years or older) and the child's parent, may determine that the order should end.
 - (4) The Secretary must notify the Court of a determination under subsection (3).
-

- (5) If a notice is given under subsection (4), the order ends at the end of 12 months after the order is made or on the date that notice is given, whichever is the later.
- (6) The Secretary must notify the child (if the child is aged 10 years or older), the child's parent and any other persons that the Court directs if the order ends in accordance with subsection (5).
- (7) Section 288 applies to a care by Secretary order as if any reference to a family reunification order were a reference to a care by Secretary order.

289A Change to nature of order

- (1) If under a care by Secretary order the Secretary directs that a parent or parents of the child are to resume parental responsibility for the child, then on and from the date of the direction—
 - (a) the Secretary ceases to have parental responsibility for the child; and
 - (b) the parent resumes parental responsibility for the child as specified in the direction; and
 - (c) the care by Secretary order is taken to be a family preservation order giving the Secretary responsibility for the supervision of the child and placing the child in the day to day care of the parent or parents who have parental responsibility for the child; and
 - (d) Division 3 applies to the order; and
 - (e) the order ceases to be a care by Secretary order for the purposes of this Act.
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- (2) The Secretary must give a copy of a direction under this section to—
 - (a) the Court; and
 - (b) the child; and
 - (c) the parent of the child.
 - (3) The Secretary may apply to the Court to determine that the order is to include conditions.
 - (4) The Court may determine that the order is to include conditions of a kind referred to in section 281, without requiring the parties to attend, or be represented at, the proceeding.
 - (5) If the Court makes a determination under subsection (4), the order is taken to include those conditions as if they were included in the order under section 281."

31 New Division 8 of Part 4.9 substituted

For Division 8 of Part 4.9 of the Principal Act
substitute—

"Division 8—Long-term care order

290 Long-term care order

- (1) A long-term care order—
 - (a) confers parental responsibility for the child on the Secretary to the exclusion of all other persons; and
 - (b) subject to this Division, remains in force until the child attains the age of 18 years or marries, whichever happens first; and
 - (c) despite anything to the contrary in Division 7 or 10, may be made instead of extending a care by Secretary order.
-

- (2) The Court must not make a long-term care order unless the Court is satisfied that—
 - (a) there is a person or persons available with whom the child will continue to live for the duration of the order; and
 - (b) the person or persons referred to in paragraph (a) will not consent to the making of a permanent care order; and
 - (c) the Secretary consents to the making of the order; and
 - (d) if the child is of or over the age of 10 years, the child does not oppose the making of the order; and
 - (e) the making of the order is in the best interests of the child.
 - (3) The Court must direct the Secretary to review the operation of the order before the end of each period of 12 months after the making of the order.
 - (4) Following a review under subsection (3), the Secretary, with the agreement of the child (if the child is aged 10 years or older) and the child's parent, may determine that order should end.
 - (5) The Secretary must notify the Court of a determination under subsection (4).
 - (6) If a notice is given under subsection (5), the order ends at the end of 12 months after the order is made or on the date that notice is given, whichever is the later.
 - (7) The Secretary must notify the child (if the child is aged 10 years or older), the child's parent and any other persons that the Court directs if the order ends in accordance with subsection (6).
-

- (8) Section 288 applies to a long-term care order as if any reference to a family reunification order were a reference to a long-term care order."

32 Repeal of Division 9 of Part 4.9

Division 9 of Part 4.9 of the Principal Act is **repealed**.

33 Application for extension of protection order

- (1) In section 293(1) of the Principal Act, for paragraphs (a) to (d) **substitute**—

- "(a) a family preservation order;
(b) a family reunification order;
(c) a care by Secretary order."

- (2) Section 293(4) of the Principal Act is **repealed**.

34 New section 294A inserted

After section 294 of the Principal Act **insert**—

"294A Restrictions on the extension of protection orders

- (1) The Court must not extend a family reunification order unless it is satisfied that—
- (a) there is compelling evidence that it is likely that a parent of the child will permanently resume care of the child during the period of the extension; and
- (b) the extension will not have the effect that a child will be placed in out of home care for a cumulative period that exceeds 24 months, calculated in accordance with section 287A.

- (2) The Court must not extend a care by Secretary order unless the Court is satisfied that—
 - (a) firstly, a permanent care order is not appropriate in the circumstances; and
 - (b) secondly, a long-term care order is not appropriate in the circumstances.
- (3) Despite subsection (2), the Court may extend a care by Secretary order if the Court is satisfied that there are exceptional circumstances which justify the making of a further care by Secretary order."

35 Repeal of section 295

Section 295 of the Principal Act is **repealed**.

36 Duration of extension

- (1) In section 296(1) of the Principal Act, for "supervision order or supervised custody order" **substitute** "family preservation order".
- (2) For section 296(2) of the Principal Act **substitute**—
 - "(2) If an extension application is made in relation to a family reunification order the duration of an extension or additional extension is to be determined in accordance with subsection (3) or (4), as applicable.
 - (3) If the child has been in out of home care for a cumulative period of less than 12 months under one or more orders specified in section 287A(1), an extension or additional extension of the family reunification order must not have the effect that the child will be placed in out of home care for a cumulative period that exceeds 12 months commencing on the date that the child is first placed in out

- of home care under the first of the orders specified in section 287A(1).
- (4) If the child has been in out of home care for a cumulative period of 12 months or more but less than 24 months under one or more orders specified in section 287A(1), an extension or additional extension of the family reunification order must not have the effect that the child will be placed in out of home care for a cumulative period that exceeds 24 months commencing on the date that the child is first placed in out of home care under the first of the orders specified in section 287A(1).
 - (5) Section 287A(4) applies to the determination of a cumulative period under this section.
 - (6) On an extension application relating to a care by Secretary order, the Court may extend the order for a period of 2 years."

37 Repeal of section 297

Section 297 of the Principal Act is **repealed**.

38 New section 298 substituted

For section 298 of the Principal Act **substitute**—

"298 Review of extended orders

- (1) If under this Division the Court specifies a period exceeding 12 months for an extension of a protection order, it must direct the Secretary to review the operation of the order before the end of the period of 12 months after the making of the order.
- (2) Following a review under subsection (1), the Secretary, with the agreement of the child (if the child is aged 10 years or older) and the child's parent, may determine that the order should end.

- (3) The Secretary must notify the Court of a determination under subsection (2).
- (4) If a notice is given under subsection (3), the order ends at the end of 12 months after the order is made or on the date that notice is given, whichever is the later,
- (5) The Secretary must notify the child (if the child is aged 10 years or older), the child's parent and any other persons that the Court directs if the order ends in accordance with subsection (4)."

39 Application of Division 11

In section 299 of the Principal Act, for paragraphs (a) to (e) **substitute**—

- "(a) a family preservation order;
- (b) a family reunification order."

40 Application for variation of order

In section 300 of the Principal Act—

- (a) for "the conditions of a protection order to which this Division applies" **substitute** "a protection order to which this Division applies or the conditions of such an order";
- (b) for paragraphs (c) to (e) **substitute**—
"(c) the Secretary."

41 New section 300A inserted

After section 300 of the Principal Act **insert**—

"300A Secretary may apply for variation of order without notice

The Secretary may apply to the Court for a variation of the conditions of a family reunification order without serving notice

under section 277 if the Secretary is satisfied on reasonable grounds that—

- (a) there has been an unexpected change in circumstances; and
- (b) the application is necessary for the safety and wellbeing of the child."

42 Decision of Court on application for variation

In section 301 of the Principal Act—

- (a) after "vary" **insert** "the order or";
- (b) for paragraph (b) **substitute**—

"(b) in the case of a family reunification order, make any change to the conferral of parental responsibility for the child."

43 Interim variation of family reunification order

- (1) In the heading to section 302 of the Principal Act, for "**custody to Secretary order**" **substitute** "**family reunification order**".
- (2) In section 302(1) of the Principal Act—
 - (a) after "section 300" **insert** "or 300A";
 - (b) for "custody to Secretary order" **substitute** "family reunification order";
 - (c) **omit** "in exceptional circumstances".
- (3) In section 302(2) of the Principal Act, for "in the custody of" **substitute** "to the conferral of parental responsibility for".

44 New section 303 substituted

For section 303 of the Principal Act **substitute**—

"303 Application of Division

This Division applies to the following protection orders—

- (a) family preservation order;

- (b) family reunification order;
- (c) care by Secretary order;
- (d) long-term care order."

45 Application for revocation of order—general

- (1) In section 304(1) of the Principal Act, for paragraphs (c) to (e) **substitute**—

"(c) the Secretary."

- (2) For section 304(2) of the Principal Act **substitute**—

"(2) This section does not apply to a care by Secretary order or a long-term care order."

46 Application for revocation of care by Secretary order

- (1) In the heading to section 305 of the Principal Act, for "**guardianship to Secretary order**" **substitute** "**care by Secretary order**".

- (2) In section 305(1) and (2) of the Principal Act, for "**guardianship to Secretary order**" **substitute** "**care by Secretary order**".

47 Application for revocation of long-term care order

- (1) In the heading to section 306 of the Principal Act, for "**long-term guardianship to Secretary order**" **substitute** "**long-term care order**".

- (2) In section 306(1) and (3) of the Principal Act, for "**long-term guardianship to Secretary order**" **substitute** "**long-term care order**".

48 Decision of Court on application for revocation

In section 307(2) of the Principal Act, for "**custody to Secretary order**" **substitute** "**family reunification order**".

49 Revocation of family reunification order or care by Secretary order

(1) For the heading to section 308 of the Principal Act **substitute**—

"Revocation of family reunification order or care by Secretary order".

(2) In section 308 of the Principal Act, for "custody to Secretary order" **substitute** "family reunification order".

50 Revocation of long-term care order

For the heading to section 309 of the Principal Act **substitute**—

"Revocation of long-term care order".

51 Court may make further orders on revocation

(1) In section 310 of the Principal Act, subsections (1) and (2) are **repealed**.

(2) In section 310(3) of the Principal Act—

(a) for "custody to Secretary order" **substitute** "family reunification order";

(b) for "supervision order" **substitute** "family preservation order";

(c) for "guardianship to Secretary order or long-term guardianship to Secretary order" **substitute** "care by Secretary order or long-term care order".

(3) In section 310(5) of the Principal Act—

(a) for "guardianship to Secretary order" **substitute** "care by Secretary order";

(b) for "supervision order" **substitute** "family preservation order".

- (4) In section 310(6) of the Principal Act—
- (a) for "long-term guardianship to Secretary order" **substitute** "long-term care order";
 - (b) for "supervision order" **substitute** "family preservation order";
 - (c) for paragraph (c) **substitute**—
"(c) a care by Secretary order."
- (5) In section 310(7) of the Principal Act—
- (a) for "a guardianship to Secretary order" (wherever occurring) **substitute** "a care by Secretary order";
 - (b) for "long-term guardianship to Secretary order" **substitute** "long-term care order";
 - (c) for "subsection (1)" **substitute** "that subsection".

52 New section 311 substituted

For section 311 of the Principal Act **substitute**—

"311 Application of Division

This Division applies to a family preservation order."

53 Breach of protection order—notice of application

- (1) In section 312(1)(b) of the Principal Act **omit** "in the case of a supervision order,".
 - (2) Section 312(1)(c) of the Principal Act is **repealed**.
 - (3) For section 312(3) of the Principal Act **substitute**—
"(3) In this section, *relevant person* means the parent of the child."
-

54 Placing child in emergency care without notice

In section 314(1)(b) of the Principal Act—

- (a) in paragraph (i), for "supervision order" **substitute** "family preservation order";
- (b) in paragraph (ii) **omit** "in the case of a supervision order,";
- (c) paragraph (iii) is **repealed**.

55 Order to continue

In section 316 of the Principal Act, for "Subject to section 317, if the Secretary" **substitute** "If the Secretary".

56 Section 317 repealed

Section 317 of the Principal Act is **repealed**.

57 Decision of Court

- (1) For section 318(1) of the Principal Act **substitute**—

"(1) On an application for an order under subsection (2), the Court may make an order under that subsection if satisfied that—

- (a) there has been a failure to comply with any condition of the order; or
 - (b) there has been a failure to comply with any direction given by the Secretary under section 282(2); or
 - (c) the child is living in conditions which are unsatisfactory in terms of the safety and wellbeing of the child."
- (2) Section 318(2)(b)(ii) of the Principal Act is **repealed**.
- (3) In section 318(3) of the Principal Act **omit** "but, if the revoked order was an interim protection order, must not make a further interim protection order".

Division 5—Permanent Care Orders

58 When Court may make permanent care order

In section 319 of the Principal Act, for "custody and guardianship of" (wherever occurring) **substitute** "parental responsibility for".

59 Application for permanent care order

- (1) In section 320(1) of the Principal Act, for "custody and guardianship of" **substitute** "parental responsibility for".
- (2) After section 320(1) of the Principal Act **insert**—

"(1A) The Secretary must not approve a person as suitable to have parental responsibility for a child under a permanent care order unless the Secretary is satisfied that the person will comply with the condition to be included in the permanent care order under section 321(1)(ca)."
- (3) In section 320(2) and (4)(c) of the Principal Act, for "custody and guardianship of" **substitute** "parental responsibility for".

60 Permanent care order

- (1) In section 321(1) of the Principal Act—
 - (a) in paragraph (a), for "grants custody and guardianship of the child to" **substitute** "confers parental responsibility for the child on";
 - (b) in paragraph (b)—
 - (i) for "vest guardianship of the child jointly in" **substitute** "confer parental responsibility for the child jointly on";
 - (ii) for "guardians" **substitute** "the persons having parental responsibility for the child";
-

(c) after paragraph (c) **insert**—

"(ca) must include a condition that the person caring for the child must, in the best interests of the child and unless the Court otherwise provides, preserve—

- (i) the child's identity and connection to the child's culture of origin; and
- (ii) the child's relationships with the child's birth family; and";

(d) for paragraph (d) **substitute**—

"(d) may include conditions that the Court considers in the best interests of the child concerning contact with the child's parent which may provide for contact up to 4 times a year; and".

(2) **Insert** the following note to section 321(1) of the Principal Act—

"Note

A person who has parental responsibility for a child under a permanent care order is a *parent* within the meaning of section 3(1) of this Act and has, in relation to the child, all the duties, powers, responsibilities and authority which, by law or custom, parents have in relation to children, to the exclusion of all others."

(3) After section 321(1) of the Principal Act **insert**—

"(1A) A condition referred to in subsection (1)(d) or (e) does not prevent additional contact being arranged from time to time by agreement in the child's best interests.

(1B) Before including a condition referred to in subsection (1)(d), (e) or (f), the Court must have regard to the primacy of the child's relationship with the child's permanent care family and whether the condition—

- (a) is necessary to protect the child or support the permanence of the placement; and
- (b) is necessary to promote the child's continuing connection to the child's parents, siblings or culture; and
- (c) is sufficiently flexible to accommodate the child's changing developmental needs over time; and
- (d) is reasonable in the context of the child's permanent care family's life; and
- (e) is necessary given the capacity of the person caring for the child to meet the condition referred to in subsection (1)(ca).

(1C) A permanent care order may include a condition that a child must not have contact with a parent, sibling or other person."

61 Restrictions on the making of permanent care orders

- (1) Section 322(2) of the Principal Act is **repealed**.
- (2) In section 322(4) of the Principal Act, for "custody and guardianship of" **substitute** "parental responsibility for".

62 New section 323 substituted

For section 323 of the Principal Act **substitute**—

"323 Restrictions on the making of permanent care order in respect of an Aboriginal child

- (1) The Court must not make a permanent care order to place an Aboriginal child solely with a non-Aboriginal person or persons unless the disposition report states that—

- (a) no suitable placement can be found with an Aboriginal person or persons; and
 - (b) the decision to seek the order has been made in consultation with the child, where appropriate; and
 - (c) the Secretary is satisfied that the order sought will accord with the Aboriginal Child Placement Principle.
- (2) The Court must not make a permanent care order in respect of an Aboriginal child unless—
- (a) the Court has received a report from an Aboriginal agency that recommends the making of the order; and
 - (b) a cultural plan has been prepared for the child."

63 Disputes between persons jointly granted parental responsibility

- (1) For the heading to section 325 of the Principal Act **substitute**—

"Disputes between persons jointly granted parental responsibility".

- (2) In section 325 of the Principal Act—
- (a) for "granted joint custody or guardianship of" **substitute** "conferred joint parental responsibility for";
 - (b) for "custodian or guardian of the child" **substitute** "persons who have parental responsibility for the child".

64 New section 325A inserted

After section 325 of the Principal Act **insert**—

"325A Change to nature of order

- (1) The Secretary must notify the Court if the Secretary is informed that each person conferred parental responsibility for the child under a permanent care order has died.
- (2) On and from the date that notice is given by the Secretary to the Court under subsection (1)—
 - (a) the Secretary is taken to have sole parental responsibility for the child; and
 - (b) the permanent care order is taken to be a care by Secretary order; and
 - (c) Division 7 of Part 4.9 applies to the order; and
 - (d) the order ceases to be a permanent care order for the purposes of this Act.
- (3) The Secretary must notify the following of the change of order under this section—
 - (a) the person who has the care of the child;
 - (b) if the child is aged 10 years or over, the child;
 - (c) the parent of the child."

65 Variation or revocation of permanent care order

- (1) For section 326(1) of the Principal Act **substitute**—

"(1) An application for the variation of a permanent care order or for the revocation (in whole or in part) of a permanent care order may be made to the Court by—

-
- (a) the child in respect of whom the order is made; or
 - (b) a person who has parental responsibility for the child under the order (the *permanent care parent*); or
 - (c) a person who is a parent of the child (other than a person referred to in paragraph (b)), with leave of the Court; or
 - (d) the Secretary.
- (1A) A sibling of the child may make an application to the Court for the variation of a permanent care order.
- (1B) An application by a person under subsection (1)(c) to vary a permanent care order made before the end of the period of 12 months after the order is made may only be made on the basis that a contact condition in the order has not been complied with.
- (1C) In determining whether to grant leave to a person under subsection (1)(c), the best interests of the child are the paramount consideration and the Court must—
- (a) first have regard to the current circumstances of the child; and
 - (b) have regard to the matters specified in section 321(1B); and
 - (c) have regard to potential disruption to the child's permanent care placement and the child's relationship with the permanent care family; and
-

- (d) in the case of an application to vary an order, have regard to whether—
 - (i) it appears that a party has not complied with any condition or the order; or
 - (ii) there has been a significant change in the circumstances of the parent or the child since the original order was made; and
 - (e) in the case of an application to revoke an order, have regard to whether the circumstances of the parent have changed significantly to the extent that the parent can demonstrate that the parent would be able to permanently fulfil the responsibilities and duties of parenthood, including the capacity to provide adequately for the emotional, intellectual, educational and other needs of the child.
 - (1D) To assist the Court in determining whether to grant leave to a person under subsection (1)(c), the Court may request a report from the Secretary about the current circumstances of the child.
 - (1E) To assist the Court in determining whether to vary a permanent care order in relation to a contact condition, the Court may request a report from the Secretary about the contact needs of the child.
 - (1F) To assist the Court in determining whether to revoke a permanent care order, the Court may request a report from the Secretary to assist the Court in determining whether revocation would be in the child's best interests."
-

(2) For section 326(2)(b) and (c) of the Principal Act **substitute**—

"(b) each person who has parental responsibility for the child under the order; and

(c) each person who is a parent of the child (other than a person referred to in paragraph (b)); and".

(3) After section 326(2) of the Principal Act **insert**—

"(2A) If a parent requires leave of the Court to bring an application to vary or revoke a permanent care order, notice of the application under subsection (2) must not be served on—

(a) the child who is the subject of the application; or

(b) each person who has parental responsibility for the child under the order—

unless that leave is granted.".

66 Decision on application for variation or revocation

(1) In section 327(a) of the Principal Act for "in the custody or guardianship of" **substitute** "to the parental responsibility for".

(2) At the end of section 327 of the Principal Act **insert**—

"(2) The limit on contacts that applies to a condition imposed under section 321(1)(d) does not apply to a variation of a contact condition of a permanent care order if the variation is made more than 12 months after the making of the order.".

Division 6—Consequential amendments

67 State Guardianship Fund

In section 177 of the Principal Act—

- (a) in subsection (5), for "On the child ceasing to be under the guardianship of the Secretary" **substitute** "On the Secretary ceasing to have sole parental responsibility for the child"; and
- (b) in subsection (6), for "on a child ceasing to be under the guardianship of the Secretary" **substitute** "on ceasing to have sole parental responsibility for a child".

68 Power of Family Division to make certain orders by consent in absence of parties

In section 216 of the Principal Act, for "custody to Secretary order or a guardianship to Secretary order" **substitute** "family reunification order or a care by Secretary order".

69 Application if there is an irreconcilable difference

In section 259(1) of the Principal Act, for "custody" **substitute** "parental responsibility".

70 Conciliation counselling

In section 260(2)(a) of the Principal Act, for "custody of" **substitute** "parental responsibility for".

71 Proceeding on application if party does not appear

In section 261(3) of the Principal Act, for "custody of" **substitute** "parental responsibility for".

72 When Court may make order under this Part

In section 274(b) of the Principal Act, for "custody of" **substitute** "parental responsibility for".

73 Lapsing of permanent care order

In section 324(1)(a) of the Principal Act, for "custody and guardianship of" **substitute** "parental responsibility for".

74 Appeal to County Court or Supreme Court

(1) In section 328(1) of the Principal Act, for paragraphs (i) to (l) **substitute**—

"(i) an order varying or revoking—

(i) a family preservation order; or

(ii) a family reunification order; or

(iii) a permanent care order; or

(j) an order extending—

(i) a family preservation order; or

(ii) a family reunification order; or

(iii) a care by Secretary order; or

(k) an order revoking—

(i) a care by Secretary order; or

(ii) a long-term care order; or

(l) an order made under section 318 (breach of family preservation order); or".

(2) In section 328(2)(d) of the Principal Act, for "custody and guardianship" **substitute** "parental responsibility".

75 Appeal to Supreme Court on a question of law

In section 329(2) of the Principal Act, for "custody and guardianship of" **substitute** "parental responsibility for".

76 Interstate movement of children

- (1) In section 335(1) of the Principal Act, for "guardianship" (where second occurring) **substitute** "parental responsibility".
- (2) In section 335(2), (3) and (4) of the Principal Act, for "guardianship to Secretary order" **substitute** "care by Secretary order".

77 Financial or other arrangements

In section 336(a) and (b) of the Principal Act, for "guardianship" **substitute** "parental responsibility".

78 Transfer agreements

- (1) In section 337(1) of the Principal Act, for "in the custody or under the" **substitute** "under the parental responsibility or".
- (2) In section 337(2)(b) of the Principal Act, for "in the custody" **substitute** "under the parental responsibility".

79 Time limits for filing a charge-sheet

In section 344A of the Principal Act—

- (a) in subsection (4)(b), for "guardian of the child" **substitute** "person with parental responsibility for the child"; and
 - (b) in subsection (5)(b), for "guardian of the child" **substitute** "person with parental responsibility for the child"; and
 - (c) in subsection (7), for "guardian of the child" **substitute** "person with parental responsibility for the child".
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80 Child in custody to be brought before Court or bail justice

In section 346(7) of the Principal Act, for "guardian of the child" **substitute** "person with parental responsibility for the child".

81 Offence to harbour or conceal child

In section 495 of the Principal Act **omit** ", a custody to third party order or a supervised custody order".

82 Offence to counsel or induce child to be absent without lawful authority etc.

In section 496(1) of the Principal Act—

- (a) in paragraph (a), **omit** ", a custody to third party order or a supervised custody order";
- (b) in paragraph (c)—
 - (i) for "custody or guardianship" (where first occurring) **substitute** "parental responsibility";
 - (ii) for "custody or guardianship of" **substitute** "parental responsibility for".

83 Offences in relation to community service etc.

In section 497(a) of the Principal Act **omit** ", a custody to third party order or a supervised custody order".

84 Jurisdiction of Family Division

- (1) In section 515(1)(c) of the Principal Act, for "custody of" **substitute** "parental responsibility for".
- (2) In section 515(1) of the Principal Act, for paragraphs (j) to (m) **substitute**—
 - "(j) the variation or revocation of—
 - (i) a family preservation order; or

- (ii) a family reunification order; or
- (iii) a permanent care order; or
- (k) the extension of—
 - (i) a family preservation order; or
 - (ii) a family reunification order; or
 - (iii) a care by Secretary order; or
- (l) the revocation of—
 - (i) a care by Secretary order; or
 - (ii) a long-term care order; or
- (m) an order in respect of a failure to comply with an interim accommodation order; or".
- (3) In section 515(1)(n) of the Principal Act, for "joint custodian or guardian of a child" **substitute** "a person with joint parental responsibility for a child".

85 Legal representation

In section 524(1)(d) of the Principal Act, for "custody and guardianship of" (where twice occurring) **substitute** "parental responsibility for".

86 Proceedings in which child is required to be legally represented

- (1) In section 525(1) of the Principal Act, for paragraphs (h) to (k) **substitute**—
 - "(h) application for the variation or revocation of—
 - (i) a temporary assessment order; or
 - (ii) a therapeutic treatment order; or
 - (iii) a therapeutic treatment (placement) order; or
 - (iv) a family preservation order; or

- (v) family reunification order; or
 - (vi) a permanent care order;
 - (i) application in respect of a failure to comply with—
 - (i) an interim accommodation order; or
 - (ii) a family preservation order;
 - (j) application for the extension of—
 - (i) a family preservation order; or
 - (ii) a family reunification order; or
 - (iii) a care by Secretary order;
 - (k) application for the revocation of—
 - (i) a care by Secretary order; or
 - (ii) a long-term care order;".
- (2) In section 525(1)(l) of the Principal Act, for "as joint custodian or guardian of a child" **substitute** "with joint parental responsibility for a child".

87 Explanation of and reasons for orders

- (1) In section 527(3)(e) of the Principal Act, for "custody and guardianship" **substitute** "parental responsibility".
- (2) In section 527(4) of the Principal Act, for paragraphs (e) to (i) **substitute**—
 - "(e) an order varying or revoking a family preservation order;
 - (f) an order varying or revoking—
 - (i) a temporary assessment order; or
 - (ii) a therapeutic treatment order; or
 - (iii) a therapeutic treatment (placement) order;

- (g) an order varying a family reunification order;
- (h) an order extending—
 - (i) a family preservation order; or
 - (ii) a family reunification order; or
 - (iii) a care by Secretary order;
- (i) an order revoking—
 - (i) a family reunification order; or
 - (ii) a care by Secretary order; or
 - (iii) a long-term care order;".

88 Restriction on publication of proceedings

In section 534(3) of the Principal Act, for "custody to Secretary order, a guardianship to Secretary order or a long-term guardianship order" **substitute** "family reunification order, care by Secretary order or long-term care order".

89 Disposition reports

For section 557(1) of the Principal Act **substitute**—

- "(1) The Secretary must prepare and submit to the Family Division a disposition report if—
- (a) the Court becomes satisfied that—
 - (i) a child is in need of protection; or
 - (ii) there is a substantial and presently irreconcilable difference between the person who has parental responsibility for a child and the child to such an extent that the care and control of the child are likely to be seriously disrupted; or
 - (iii) there has been a failure to comply with a family preservation order;
or
-

- (b) the Secretary applies for a permanent care order; or
- (c) the Secretary applies, or is notified that a person has applied—
 - (i) for the variation or revocation of a family preservation order, a family reunification order or a permanent care order; or
 - (ii) for the extension of a family preservation order, a family reunification order or a care by Secretary order; or
 - (iii) for the revocation of a care by Secretary order or a long-term care order; or
- (d) the Court orders the Secretary to do so."

90 Content of disposition report

- (1) In section 558(a) of the Principal Act **omit** "draft".
- (2) For section 558(b) and (c) of the Principal Act **substitute**—
 - "(b) recommendations, where appropriate, concerning the order which the Secretary believes the Court ought to make; and
 - (c) if the report recommends that the child be removed from the care of the child's parent, a statement setting out the steps taken by the Secretary to provide the services necessary to enable the child to remain in the care of the parent; and
 - (ca) the advice of the Secretary on the matters set out in section 276A, where they are applicable to the circumstances of the child; and"

91 Powers of Secretary in relation to medical services and operations

- (1) In section 597(1)(a) of the Principal Act, for "in the care or custody of the Secretary" **substitute** "for whom the Secretary has parental responsibility".
- (2) For section 597(1)(a)(iii) of the Principal Act **substitute**—
"(iii) a care by Secretary order; or".
- (3) For section 597(1)(a)(iv) of the Principal Act **substitute**—
"(iv) a long-term care order; or".

92 Circumstances in which child may be placed in emergency care

In section 598(1)(b) of the Principal Act **omit** ", a custody to third party order or a supervised custody order".

93 Regulations

In section 600(1) of the Principal Act—

- (a) for paragraph (h)(i) **substitute**—
"(i) for the protection, care or accommodation of persons placed in the care of the Secretary or under the control or supervision of the Secretary or for whom the Secretary has parental responsibility; and";
 - (b) for paragraph (j) **substitute**—
"(j) the care, control and management of persons placed in out of home care services or for whom the Secretary has parental responsibility; and".
-

PART 3—CASE PLANNING

94 Definitions

In section 3(1) of the Principal Act the definition of *stability plan* is **repealed**.

95 Case planning

In the heading to Division 1 of Part 4.3 of the Principal Act **omit "and stability planning"**.

96 What is a case plan?

For section 166(3) of the Principal Act **substitute—**

- "(3) A case plan for a child includes—
- (a) a permanency objective for a child as required by section 167; and
 - (b) in the case of an Aboriginal child in out of home care under an interim accommodation order, a protection order or a therapeutic treatment (placement) order, any planning for cultural support that is required for the child under section 176."

97 New sections 167, 168 and 169 substituted and sections 170 and 171 repealed

For sections 167, 168, 169, 170 and 171 of the Principal Act **substitute—**

"167 Permanency objective

- (1) A case plan must include one of the following objectives (a *permanency objective*) to be considered in the following order of preference as determined to be appropriate in the best interests of the child—

-
- (a) family preservation—the objective of ensuring a child who is in the care of a parent of the child remains in the care of a parent;
 - (b) family reunification—the objective of ensuring that a child who has been removed from the care of a parent of the child is returned to the care of a parent;
 - (c) adoption—the objective of placing the child for adoption under the **Adoption Act 1984**;
 - (d) permanent care—the objective of arranging a permanent placement of the child with a permanent carer or carers;
 - (e) long-term out of home care—the objective of placing the child in—
 - (i) a stable, long-term care arrangement with a specified carer or carers; or
 - (ii) if an arrangement under subparagraph (i) is not possible, another suitable long-term care arrangement.
- (2) For the purposes of subsection (1)(c) to (e), it is to be preferred that a child is placed—
- (a) with a suitable family member of the child or other person of significance to the child; or
 - (b) if a placement under paragraph (a) is not possible, with another suitable carer or carers.
- (3) For the purposes of this section, a permanency objective of family reunification would be appropriate if the child has been in
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out of home care for less than 12 months and the safe reunification of the child with a parent is likely to be achieved.

- (4) For the purposes of this section, a permanency objective set out in subsection (1)(c) to (e) would be appropriate if—
- (a) the child has been in out of home care for 12 months and there is no real likelihood for the safe reunification of the child with a parent in the next 12 months; or
 - (b) except in exceptional circumstances, the child has been in out of home care for a total of 24 months.

168 Preparation of case plan

- (1) The Secretary must ensure that a case plan is prepared in respect of a child if a protective intervener is satisfied on reasonable grounds that the child is in need of protection.
 - (2) The Secretary must ensure that a copy of the case plan is given to the child and the child's parent—
 - (a) within 14 days of the preparation of the case plan; and
 - (b) within 8 weeks after the making by the Court of a protection order, if the case plan is prepared after the making of the order or is amended as a consequence of the making of the order; and
 - (c) within 8 weeks after the extension by the Court of a protection order, if the case plan is amended as a consequence of the extension of the order; and
 - (d) within 14 days after any other amendment to the case plan.
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169 Review of case plan

- (1) A case plan must include a date for the review of the case plan not more than 12 months after the date that the case plan is made and, once reviewed, not more than 12 months after the date of the review.
 - (2) The Secretary must review a case plan—
 - (a) on or before the review date specified in the case plan; and
 - (b) after the making by the Court of a protection order, if the protection order made in respect of a child is different to the protection order anticipated by the case plan; and
 - (c) when a child has been living in out of home care for a cumulative period of 12 months, if—
 - (i) the child is the subject of an interim accommodation order or a protection order; and
 - (ii) the permanency objective for the child is family reunification; and
 - (d) from time to time as otherwise appears necessary.
 - (3) A review of a case plan must include a review of—
 - (a) the progress being made to achieve the permanency objective in the case plan; and
 - (b) in the case of an Aboriginal child in out of home care under an interim accommodation order, a protection order or therapeutic treatment
-

(placement) order, the cultural support
needs of the child."

98 New section 176 substituted

For section 176 of the Principal Act **substitute—**

"176 Cultural support for Aboriginal child

- (1) The case plan for an Aboriginal child placed in out of home care must address the cultural support needs of the child.
- (2) The Secretary must provide a cultural plan to each Aboriginal child in out of home care that is aligned with the case plan for the child.
- (3) The case plan must reflect and be consistent with the child's cultural support needs, having regard to the child's circumstances, so as to—
 - (a) maintain and develop the child's Aboriginal identity; and
 - (b) encourage the child's connection to the child's Aboriginal community and culture.
- (4) For the purposes of subsection (3), the child's cultural support needs may vary depending on—
 - (a) the length of time that the child has spent in out of home care; and
 - (b) the age of the child; and
 - (c) the length of time that the child is expected to remain in out of home care; and
 - (d) the extent of the child's contact with the child's Aboriginal family members; and

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- (e) whether the child is placed within the child's own Aboriginal community, another Aboriginal community or with non-Aboriginal carers.
- (5) For the purposes of subsection (4), a child's Aboriginal community is—
- (a) the Aboriginal community to which the child has a sense of belonging, if this can be ascertained by the Secretary; or
 - (b) if paragraph (a) does not apply, the Aboriginal community in which the child has primarily lived; or
 - (c) if paragraphs (a) and (b) do not apply, the Aboriginal community of the child's parent or grandparent."

99 Therapeutic treatment (placement) order

- (1) In section 253(a) of the Principal Act, for "sole custody of" **substitute** "parental responsibility for".
 - (2) For section 253(b) of the Principal Act, **substitute**—
 - "(b) subject to paragraph (a), does not otherwise affect parental responsibility for the child; and".
 - (3) For section 253(c) of the Principal Act, **substitute**—
 - "(c) may include any conditions that the Court considers to be in the best interests of the child, including a condition concerning contact with a parent or other person."
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PART 4—GROUP CONFERENCES

100 Court may make youth residential centre order

In section 410(1) of the Principal Act—

- (a) in paragraph (e), for "report—" **substitute** "report; and";
- (b) after paragraph (e) **insert**—
 - "(f) if the child has participated in a group conference under section 415, the Court has received and considered the group conference report prepared under section 415(8)—".

101 Court may make youth justice centre order

In section 412(1) of the Principal Act—

- (a) in paragraph (e), for "report—" **substitute** "report; and";
- (b) after paragraph (e) **insert**—
 - "(f) if the child has participated in a group conference under section 415, the Court has received and considered the group conference report prepared under section 415(8)—".

102 Deferral of sentencing

- (1) In section 414(1) of the Principal Act, for "for a period not exceeding 4 months" **substitute** "in accordance with this section".
 - (2) In section 414(2) of the Principal Act—
 - (a) in paragraph (a), before "must adjourn" **insert** "subject to paragraph (ab),";
 - (b) after paragraph (a) **insert**—
 - "(ab) if the Court is considering convicting the child and ordering that the child be detained in a youth residential centre or
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a youth justice centre and the deferral of sentencing is for the purpose of the child's participation in a group conference, must adjourn the case to a fixed date for sentence and—

- (i) release the child unconditionally;
or
- (ii) release the child on bail; or
- (iii) remand the child in custody for a period not exceeding 21 clear days; and".

(3) After section 414(2) of the Principal Act **insert**—

"(3) The period for which sentencing may be deferred is—

- (a) subject to paragraph (b), a period not exceeding 4 months; or
 - (b) if the child is remanded in custody under subsection (2)(ab)(iii), a period not exceeding 2 months.
- (4) When a child is brought before the Court on the expiry of a period of remand in custody ordered under subsection (2)(ab)(iii), the Court must not remand the child in custody for a further period exceeding 21 clear days.
- (5) Bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation."

103 Group conference

For section 415(1) of the Principal Act **substitute**—

"(1) The Court may consider deferral of sentencing for the purpose of a child's participation in a group conference if the Court is considering—

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- (a) placing the child on probation under section 380; or
 - (b) releasing the child on a youth supervision order under section 387; or
 - (c) convicting the child and making a youth attendance order under section 397; or
 - (d) convicting the child and ordering that the child be detained in a youth residential centre under section 410; or
 - (e) convicting the child and ordering that the child be detained in a youth justice centre under section 412."
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PART 5—YOUTH PAROLE BOARD

104 Definitions

In section 3(1) of the Principal Act the definition of *Youth Residential Board* is **repealed**.

105 Division 1 of Part 5.5 repealed

Division 1 of Part 5.5 of the Principal Act is **repealed**.

106 Establishment of Youth Parole Board

Section 442(3) of the Principal Act is **repealed**.

107 Meetings of the Youth Parole Board

For section 445(5) of the Principal Act **substitute—**

- "(5) A quorum at any meeting of the Youth Parole Board consists of the chairperson and two other persons if consideration is being given to—
- (a) the transfer to a prison of a person detained in a youth justice centre; or
 - (b) the transfer to a youth justice centre of a person detained in a youth residential centre."

108 Reports by Youth Parole Board

After section 452(1)(a) of the Principal Act **insert—**

- "(ab) the number of persons returned during the period to which the report relates to youth residential centres on cancellation of parole; and"

109 Youth parole officers

For section 453(4) of the Principal Act
substitute—

"(4) A youth parole officer is, in relation to a parole order made by the Youth Parole Board, subject to the direction of the Youth Parole Board but is otherwise subject to the direction and control of the Secretary."

110 Division 4 of Part 5.5 repealed

Division 4 of Part 5.5 of the Principal Act is
repealed.

111 Heading to Division 5 of Part 5.5 substituted

For the heading to Division 5 of Part 5.5 of the Principal Act **substitute—**

"Division 5—Release on parole from youth residential centre or youth justice centre".

112 Release on parole from youth justice centre

(1) For the heading to section 458 of the Principal Act
substitute—

"Release on parole from youth residential centre or youth justice centre".

(2) In section 458(1) of the Principal Act, after "detained in" **insert** "a youth residential centre,".

113 Cancellation of parole

(1) In section 460(4) of the Principal Act **omit** "further".

(2) For section 460(5)(a) and (b) of the Principal Act
substitute—

"(a) authorise any police officer or other officer by warrant signed by the secretary or a member of the Board—

- (i) to search for and apprehend the person and for that purpose to—
 - (A) enter any premises where the person is believed to be located; and
 - (B) in the case of a police officer, use reasonable force to enter those premises; and
 - (ii) to return the person to the following place to serve the unexpired portion of the person's sentence of detention or to be otherwise dealt with by the Youth Parole Board—
 - (A) in the case of a person released from a youth justice centre, a youth justice centre; and
 - (B) in the case of a person released from a youth residential centre, a youth residential centre; or
 - (b) whether or not a warrant has been issued under paragraph (a), apply to a magistrate for a warrant authorising any police officer or other officer to do the things described in paragraph (a)(i) and (ii)."
- (3) For section 460(6) of the Principal Act **substitute**—
- "(6) A warrant issued under subsection (5)(a) is sufficient authority for doing the things described in subsection (5)(a)(i) and (ii)."
- (4) After section 460(6) of the Principal Act **insert**—
- "(6A) A police officer or other officer who, in executing a warrant issued under subsection (5)(a) or (b), intends to enter any premises where the person whose parole is cancelled is believed to be located must announce that
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the police officer or other officer is authorised by the warrant to enter the place.

- (6B) If a police officer complies with subsection (6A) and is unable to obtain unforced entry to the premises, the police officer must give any person at the premises an opportunity to allow entry to the premises.
- (6C) A police officer need not comply with subsection (6B) if the police officer believes on reasonable grounds that immediate entry to the place is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the warrant is not frustrated."

114 Persons detained in youth residential centre subject to Youth Parole Board

- (1) In the heading to section 462 of the Principal Act, for "**Youth Residential Board**" substitute "**Youth Parole Board**".
- (2) In section 462 of the Principal Act—
- (a) for "child" substitute "person"; and
 - (b) for "Youth Residential Board" substitute "Youth Parole Board".

115 Power of Youth Parole Board to transfer person to a youth justice centre

- (1) In the heading to section 464 of the Principal Act, for "**Youth Residential Board**" substitute "**Youth Parole Board**".
- (2) In section 464 of the Principal Act, for "Youth Residential Board" substitute "Youth Parole Board".

116 Restriction of transfer of under 14 year olds

In section 465 of the Principal Act, for "Youth Residential Board" **substitute** "Youth Parole Board".

117 Transfer to youth justice centre

- (1) In section 466(1) and (2) of the Principal Act, for "Youth Residential Board" **substitute** "Youth Parole Board".
- (2) Section 466(4) of the Principal Act is **repealed**.

118 Persons in youth justice centre may be transferred to youth residential centre

- (1) For section 470(5) of the Principal Act **substitute**—
 - "(5) The sentence of a person transferred from a youth justice centre to a youth residential centre under subsection (1) is to be treated for all purposes, on transfer, as a sentence of detention in a youth residential centre."
 - (2) In section 470(6) of the Principal Act—
 - (a) for "section 454" **substitute** "section 458";
and
 - (b) for "Youth Residential Board" **substitute** "Youth Parole Board".
 - (3) In section 470(7) of the Principal Act—
 - (a) for "section 454" **substitute** "section 458";
and
 - (b) for "Youth Residential Board" **substitute** "Youth Parole Board".
 - (4) In section 470(8) of the Principal Act, for "Youth Residential Board" **substitute** "Youth Parole Board".
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119 Person in prison may be transferred to youth residential centre

- (1) In section 472(7) of the Principal Act, for "Youth Residential Board" **substitute** "Youth Parole Board".
- (2) In section 472(8) of the Principal Act—
 - (a) for "section 454" **substitute** "section 458";
and
 - (b) for "Youth Residential Board" **substitute** "Youth Parole Board".
- (3) In section 472(9) of the Principal Act—
 - (a) for "section 454" **substitute** "section 458";
and
 - (b) for "Youth Residential Board" **substitute** "Youth Parole Board".
- (4) In section 472(10) of the Principal Act, for "Youth Residential Board" **substitute** "Youth Parole Board".

120 Person in youth residential centre sentenced to detention in youth justice centre or imprisonment

In section 474(1) of the Principal Act, for "Youth Residential Board" **substitute** "Youth Parole Board".

121 Person in youth justice centre sentenced to detention in youth residential centre

- (1) In section 476(2) of the Principal Act, for "Youth Residential Board" **substitute** "Youth Parole Board".
- (2) In section 476(3) of the Principal Act **omit** "the person is, in respect of that detention in a youth justice centre, subject to the jurisdiction of the Youth Parole Board and".

PART 6—COURT REPORTS

122 Pre-sentence report to be filed with court

In section 430K of the Principal Act, for "at least 4 working days before the return date and in any event not later than 21 days after the report was ordered by the appellate court" **substitute** "at least 3 working days before the return date".

123 Group conference report to be filed with court

In section 430O of the Principal Act, for "at least 4 working days before the return date and in any event not later than the date fixed by the appellate court" **substitute** "at least 3 working days before the return date".

124 Secretary to forward report to Court—section 554

In section 554 of the Principal Act **omit** "within 21 days and".

125 Access to additional report

In section 561(1) of the Principal Act **omit** "within 21 days and".

126 Access to additional reports prepared by Secretary to Department of Justice

In section 562(1) of the Principal Act **omit** "within 21 days and".

127 Secretary to forward report to Court—section 565

In section 565 of the Principal Act **omit** "within 21 days and".

128 Secretary to forward report to Court—section 569

In section 569 of the Principal Act **omit** "within 21 days and".

129 Section 574 substituted

For section 574 of the Principal Act **substitute**—

"574 Pre-sentence report to be filed with registrar

A pre-sentence report must be filed with the appropriate registrar at least 3 working days before the return date."

130 Access to pre-sentence reports

In section 575(1) of the Principal Act, for "within the period" **substitute** "at least 3 working days before the return date".

131 Section 579 substituted

For section 579 of the Principal Act **substitute**—

"579 Group conference report to be filed with registrar

A group conference report must be filed with the appropriate registrar at least 3 working days before the return date."

132 Access to group conference report

In section 580 of the Principal Act, for "within the period" **substitute** "at least 3 working days before the return date".

PART 7—MISCELLANEOUS AMENDMENTS

Division 1—Community services

133 New section 49 substituted

For section 49 of the Principal Act **substitute—**

"49 Period of registration

Unless revoked, registration of a body as a community service has effect for a period of 3 years or a longer period as determined by the Secretary in each case."

134 Renewal of registration

For section 50(3) of the Principal Act **substitute—**

"(3) Unless revoked, the renewal of registration as a community service has effect for a period of 3 years or a longer period as determined by the Secretary in each case."

135 New section 51 substituted

For section 51 of the Principal Act **substitute—**

"51 Revocation of registration

- (1) The Secretary may revoke the registration of a body as a community service if the Secretary considers it appropriate to do so.
- (2) For the purposes of subsection (1), the Secretary may have regard to the following—
 - (a) a report from an authorised assessor under Division 5; or
 - (b) an inquiry under Division 5; or
 - (c) a recommendation of an administrator under Division 6; or

- (d) the Secretary has ceased providing funding to the body; or
- (e) the Secretary has terminated a contract with the body for the provision of services under the Act; or
- (f) any other circumstances that the Secretary considers relevant."

Division 2—Disclosure of information

136 Disclosure of information by Secretary

At the end of section 129 of the Principal Act
insert—

- "(2) The Secretary may disclose a record or information referred to in subsection (1) to a person for the purpose of protecting a child."

137 Repeal of section 203

Section 203 of the Principal Act is **repealed**.

Division 3—Therapeutic treatment orders

138 Definitions

In section 3(1) of the Principal Act, for the definition of *therapeutic treatment (placement) order report* substitute—

"therapeutic treatment (placement) report
means a report referred to in Division 5 of Part 7.8;"

139 Statements of child not admissible in criminal proceedings

In section 251 of the Principal Act, after "therapeutic treatment order" **insert**
"or voluntarily in an appropriate therapeutic treatment program".

140 Hearing of adjourned case

After section 354(4) of the Principal Act **insert**—

"(4A) For the purposes of subsection (4), the Court must have regard to the following—

- (a) the child's attendance record;
- (b) the nature and extent of the child's participation;
- (c) whether or not the child's participation was to the satisfaction of the therapeutic treatment provider;
- (d) the opinion of the therapeutic treatment provider as to the effectiveness of the treatment."

141 New section 354A inserted

After section 354 of the Principal Act **insert**—

"354A Powers of Court in criminal proceedings if child accused voluntarily participates in therapeutic treatment program

- (1) This section applies if—
 - (a) a child of or above the age of 10 years and under the age of 15 years appears as an accused in a criminal proceeding in the Court; and
 - (b) the Court has not yet made a finding in the criminal proceeding; and
 - (c) the Court is satisfied that the child has exhibited sexually abusive behaviours that would justify referring the matter to the Secretary under section 349(2); and
 - (d) the Court is satisfied that the child has attended and participated, is attending and participating or will attend and

participate voluntarily in an appropriate
therapeutic treatment program.

- (2) The Court may—
- (a) adjourn the criminal proceeding for a period not less than the period of the therapeutic treatment program; and
 - (b) re-list the adjourned case at short notice.
- (3) On the adjourned hearing date, if the Court is satisfied that the child has voluntarily attended and participated in an appropriate therapeutic treatment program, it must discharge the child without any further hearing of the criminal proceeding.
- (4) For the purposes of subsection (3), the Court must have regard to the following—
- (a) the child's attendance record;
 - (b) the nature and extent of the child's participation;
 - (c) whether or not the child's participation was to the satisfaction of the therapeutic treatment provider;
 - (d) the opinion of the therapeutic treatment provider as to the effectiveness of the treatment.
- (5) If the child is not discharged under subsection (3), the Court may determine what (if any) further proceedings in the Criminal Division in respect of the child are appropriate."

142 Content of therapeutic (placement) report

In section 568 of the Principal Act, after "(placement)" **omit** "order".

Division 4—Central Register

143 Definitions

In section 3(1) of the Principal Act, the definition of *central register* is **repealed**.

144 Repeal of section 165

Section 165 of the Principal Act is **repealed**.

145 Record of investigation and confidentiality

In sections 206(2)(e), 209(1), 211(2)(e) and 213 of the Principal Act **omit** "or a panel appointed under section 332 of decisions relating to the recording of information in the central register".

146 Action by protective intervener

Section 240(2) of the Principal Act is **repealed**.

147 Repeal of section 332

Section 332 of the Principal Act is **repealed**.

148 Review by Victorian Civil and Administrative Tribunal

(1) In section 333(1) of the Principal Act—

(a) in paragraph (a), for "child; or" **substitute** "child.";

(b) paragraph (b) is **repealed**.

(2) In section 333(3) of the Principal Act **omit** "or 332".

149 Regulations

Section 600(1)(x) of the Principal Act is **repealed**.

**Division 5—Penalties for offences relating to the protection
of children**

150 Offences relating to the protection of children

For the penalty at the foot of sections 494(1), 495,
496(1) and (3) and 497 of the Principal Act

substitute—

"Penalty: 25 penalty units or imprisonment for
6 months or both."

Division 6—General

151 Time for application

In section 372(b) of the Principal Act, for
"14 working days" **substitute** "3 months".

152 Temporary leave from legal custody

For section 485(7) of the Principal Act
substitute—

"(7) The cancellation of a permit takes effect at
the earlier of the following times—

- (a) the end of the day on which the person
permitted temporary leave is informed
of the cancellation of the permit; or
 - (b) the time at which the person returns to
the place of custody from which the
person was released on leave."
-

PART 8—TRANSITIONAL PROVISIONS

153 New section 627 inserted

At the end of Part 8.6 of the Principal Act
insert—

"627 Transitional provisions—Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014

Schedule 5 has effect."

154 New Schedule 5 inserted

After Schedule 4 to the Principal Act **insert—**

"

SCHEDULE 5

Section 627

**TRANSITIONAL PROVISIONS RELATING TO
THE CHILDREN, YOUTH AND FAMILIES
AMENDMENT (PERMANENT CARE AND
OTHER MATTERS) ACT 2014**

PART 1—PRELIMINARY

1 Definitions

(1) In this Schedule—

amending Act means the **Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014**;

new provision means a provision of this Act as in force on or after the relevant commencement day;

old provision means a provision of this Act as in force before the relevant commencement day;

relevant commencement day means—

- (a) in relation to Part 2 of this Schedule, the day on which the provisions of Part 2 of the amending Act come into operation; and
- (b) in relation to Part 3 of this Schedule, the day on which the provisions of Part 3 of the amending Act come into operation; and
- (c) in relation to Part 4 of this Schedule, the day on which the provisions of Part 5 of the amending Act come into operation.

2 General transitional provisions

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If this Schedule provides that an old provision continues to apply to any matter or thing, then any regulation or other instrument having effect for the purposes of that provision also continues to apply to that matter or thing.

PART 2—PROTECTION ORDERS

3 Protection orders—renaming

An order specified in column 1 of the Table that was in force immediately before the relevant commencement day under the old provisions is taken on and after the relevant commencement day to be the corresponding order specified in column 2 of the Table.

Column 1	Column 2
supervision order	family preservation order
supervised custody order	family reunification order
guardianship to Secretary order	care by Secretary order
long-term guardianship to Secretary order	long-term care order

4 Custody to Secretary orders

A custody to Secretary order in force immediately before the relevant commencement day is taken on and after the commencement day to be—

- (a) in the case of a child who has been under a custody to Secretary order for less than 24 months at the relevant commencement day, a family reunification order; or
- (b) in the case of a child who has been under a custody to Secretary order for 24 months or more at the relevant commencement day, a care by Secretary order and any conditions on that order lapse on that day.

5 Custody to third party orders

A custody to third party order in force immediately before the relevant commencement day continues in force for all purposes until its expiry as if the amendments made by Part 2 of the amending Act had not been enacted.

6 Interim protection orders

An interim protection order in force immediately before the relevant commencement day continues in force for all purposes until the hearing date specified in the notice as if the amendments made by Part 2 of the amending Act had not been enacted.

7 References

On and after the relevant commencement day, in any Act (other than this Act), or in any instrument made under any Act or in any other document of any kind—

- (a) a reference to a supervision order under the old provisions is taken to be a reference to a family preservation order; and
- (b) a reference to a supervised custody order under the old provisions is taken to be a reference to a family preservation order; and
- (c) a reference to a guardianship to Secretary order under the old provisions is taken to be a reference to a care by Secretary order; and
- (d) a reference to a long-term guardianship to Secretary order under the old provisions is taken to be a reference to a long-term care order; and
- (e) a reference to a custody to Secretary order under the old provisions is taken to be—
 - (i) if the reference relates to a child who has been under the order for less than 24 months at the relevant

commencement day, a reference
to a family reunification order; or

- (ii) if the reference relates to a child
who has been under the order for
24 months or more at the relevant
commencement day, a reference
to a care by Secretary order.

PART 3—CASE PLANNING

8 Case plans

- (1) Subject to subclause (2), a case plan existing
under the old provisions immediately before
the relevant commencement day continues to
apply to a child despite the amendments
made by Part 3 of the amending Act.
- (2) The case plan must be reviewed under the
new provisions on the date specified in the
plan for review or 12 months after the
relevant commencement day, whichever
happens first.

PART 4—ABOLITION OF YOUTH RESIDENTIAL BOARD

9 Abolition of Youth Residential Board

On the relevant commencement day, the
Youth Residential Board is abolished and its
members and alternate members go out of
office.

10 Saving of acts and decisions—general

Any act or decision of the Youth Residential
Board is taken for all purposes in relation to
any period on and after the relevant
commencement day to be an act or decision
of the Youth Parole Board.

11 Parole

- (1) Without limiting clause 9, an order made by the Youth Residential Board under section 454 of the old provisions and existing immediately before the relevant commencement day is taken on and after the relevant commencement day for all purposes to be an order of the Youth Parole Board under section 458 and the new provisions apply accordingly.
- (2) A warrant signed by the secretary or a member of the Youth Residential Board under section 456(5)(a) and existing immediately before the relevant commencement day is taken on and after the relevant commencement day to be a warrant signed by the secretary of the Youth Parole Board under section 460(5)(a) to apprehend the person and return the person to a youth residential centre to serve the unexpired portion of the person's sentence of detention.
- (3) Section 460 as in force on and after the relevant commencement day applies to any warrant issued under section 460 but not executed before that day.

12 Saving of proceedings of Youth Residential Board

- (1) The Youth Parole Board may continue and complete under the new provisions any proceedings before the Youth Residential Board under the old provisions that were not completed before the relevant commencement day.

- (2) For the purposes of any proceedings referred to in subclause (1), the Youth Parole Board may have regard to any files, documents or findings of the Youth Residential Board in relation to those proceedings.

13 Saving of evidentiary provision

Section 437 as in force immediately before the relevant commencement day continues in effect in relation to any order, document or certificate signed before that day despite the repeal of that section by Part 5 of the Amending Act.

14 Saving of immunity provision

Section 440 as in force immediately before the relevant commencement day continues in effect in relation to anything done or omitted to be done before that day despite the repeal of that section by Part 5 of the Amending Act.

15 Reports by Youth Parole Board

- (1) The Youth Parole Board must in its first report under section 452(1) on or after the relevant commencement day include a report of the matters set out in 441(1) in relation to the Youth Residential Board in relation to the prescribed period, or part of that period, under section 441(1) up to the relevant commencement day.
- (2) The Youth Parole Board may continue and complete under section 452(2), any report of the Youth Residential Board commenced but not completed under section 441(2) before the relevant commencement day.

-
- (3) For the purposes of a report referred to in subclause (1) or (2), the Youth Parole Board may have regard to any files or documents of the Youth Residential Board.

PART 5—TRANSITIONAL REGULATIONS

16 Transitional regulations

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the amendments made to this Act by the amending Act.
- (2) Regulations made under this clause have effect despite anything to the contrary in any other Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.
- (3) This section expires on 1 March 2017."
-

**PART 9—AMENDMENT OF COMMISSION FOR CHILDREN
AND YOUNG PEOPLE ACT 2012**

155 Definitions

See:
Act No.
79/2012
and
amending
Act Nos
79/2012,
26/2014 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

In section 3 of the **Commission for Children and
Young People Act 2012** insert—

"community service has the same meaning as it
has in the **Children, Youth and Families
Act 2005**;"

156 Vulnerable children and young persons

In section 5(g) of the **Commission for Children
and Young People Act 2012**, for "custody or
guardianship" substitute "care".

**157 Commission may conduct inquiry concerning
provision of services**

For section 39(2) of the **Commission for
Children and Young People Act 2012**,
substitute—

"(2) The inquiry must relate to—

- (a) services provided, or omitted to be
provided, by a community service,
health service, human service or school;
or
- (b) child protection services or youth
justice services provided, or omitted to
be provided, by the Secretary—

to or in relation to—

- (c) a vulnerable child or young person; or
- (d) a group of vulnerable children or young
persons; or

- (e) a child, if those services deal with matters affecting his or her safety or wellbeing; or
- (f) a group of children, if those services deal with matters affecting their safety or wellbeing; or
- (g) a primary family carer, if those services deal with matters affecting, or may otherwise affect, the safety or wellbeing of his or her child; or
- (h) a group of primary family carers, if those services deal with matters affecting, or may otherwise affect, the safety or wellbeing of those carers' children."

158 Section 48 substituted

For section 48 of the **Commission for Children and Young People Act 2012** substitute—

"48 Commission must first give opportunity to respond to adverse comment or opinion

- (1) Despite any other provision of this Part, the Commission must not give a report of an inquiry to a Minister or the Secretary if—
 - (a) the report includes any comment or opinion that is adverse to any person; and
 - (b) the Commission has not given the person an opportunity to comment on the adverse comment or opinion.

- (2) Despite any other provision in this Part, the Commission must not give a report of an inquiry to a Minister or the Secretary if—
- (a) the report includes any comment or opinion that is adverse to—
 - (i) a community service; or
 - (ii) a health service; or
 - (iii) a human service; or
 - (iv) a school; or
 - (v) child protection services or youth justice services provided, or omitted to be provided by the Secretary; and
 - (b) the Commission has not given the following an opportunity to comment on the adverse comment or opinion—
 - (i) the person in charge of the community service, health service or human service; or
 - (ii) the principal of the school; or
 - (iii) the Secretary, in relation to the child protection services or youth justice services."

159 Application of Division

In the Note at the foot of section 49 of the **Commission for Children and Young People Act 2012**, for "adverse material" substitute "any adverse comment or opinion".

160 New section 73 inserted

After section 72 of the **Commission for Children and Young People Act 2012** insert—

"73 Transitional provision—Tabling of reports of certain inquiries under Division 3

- (1) Division 7 of Part 5 applies to the report of an inquiry under Division 3 of that Part as if it were a report of an inquiry under Division 4 of that Part if—
- (a) the Commission had commenced the inquiry before the commencement day, other than on the recommendation of the Minister; and
 - (b) the inquiry is in relation to—
 - (i) services provided, or omitted to be provided, by a community service; or
 - (ii) child protection services or youth justice services provided, or omitted to be provided, by the Secretary; and
 - (c) the inquiry could have been undertaken under Division 4 of that Part if it had commenced after the commencement day.
- (2) In this section—

commencement day means the day on which Part 9 of the **Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014** comes into operation."

PART 10—AMENDMENT OF OTHER ACTS

Division 1—Adoption Act 1984

161 Guardianship of child awaiting adoption

See:
Act No.
10150.
Reprint No. 6
as at
1 February
2008
and
amending
Act Nos
13/2010,
29/2011,
25/2013 and
17/2014.
LawToday:
www.
legislation.
vic.gov.au

In section 46(3)(b) of the **Adoption Act 1984**, for
"guardianship to Secretary order or long-term
guardianship to Secretary order" **substitute**
"care by Secretary order or long-term care order".

Division 2—Assisted Reproductive Treatment Act 2008

162 Definitions

See:
Act No.
76/2008.
Reprint No. 1
as at
1 December
2013
and
amending
Act No.
37/2014.
LawToday:
www.
legislation.
vic.gov.au

In section 3 of the **Assisted Reproductive
Treatment Act 2008**, for paragraphs (a), (b)
and (c) of the definition of *child protection order*
substitute—

- "(a) a family reunification order;
(b) a care by Secretary order;"

Division 3—Child Employment Act 2003

163 Definitions

In section 3 of the **Child Employment Act 2003**, in the definition of *guardian*, for "who has been granted (whether alone or with another person or persons) guardianship of the child" **substitute** "on whom parental responsibility for the child has been conferred (whether alone or with another person or persons)".

See:
Act No.
81/2003.
Reprint No. 1
as at
26 September
2007
and
amending
Act Nos
13/2010,
26/2010,
51/2010,
72/2010,
43/2012,
70/2013,
17/2014,
19/2014 and
37/2014.
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**Division 4—Children, Youth and Families Amendment Act
2014**

164 Sharing of information

In section 5 of the **Children, Youth and Families Amendment Act 2014**, for section 213Q(c)(ii) **substitute—**

"(ii) section 346 of the **Mental Health Act 2014**."

Division 5—Coroners Act 2008

165 Definitions

See:
Act No.
77/2008.
Reprint No. 1
as at
21 July 2011
and
amending
Act Nos
52/2012,
83/2012,
5/2013,
31/2013,
52/2013,
58/2013,
63/2013,
1/2014,
17/2014,
26/2014 and
37/2014.
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In section 3(1) of the **Coroners Act 2008**, in the definition of *person placed in custody or care*, for paragraph (a) **substitute**—

"(a) a person for whom the Secretary to the Department of Human Services has parental responsibility under the **Children, Youth and Families Act 2005**; or".

**Division 6—Criminal Organisations Control and Other Acts
Amendment Act 2014**

166 Repeal of section 132

Section 132 of the **Criminal Organisations Control and Other Acts Amendment Act 2014** is repealed.

167 Release on parole from youth justice centre

In section 133 of the **Criminal Organisations Control and Other Acts Amendment Act 2014**, in the inserted section 458(8), after "detained in" **insert** "a youth residential centre or".

Division 7—Limitation of Actions Act 1958

168 Interpretation

In section 27A(1) of the **Limitation of Actions Act 1958**, in the definition of *guardian*, for "who is granted guardianship of the minor" **substitute** "on whom parental responsibility for the minor is conferred".

See:
Act No.
6295.
Reprint No. 10
as at
21 August
2013
and
amending
Act No.
67/2013.
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legislation.
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Division 8—Mental Health Act 2014

169 References to orders

(1) In section 3(1) of the **Mental Health Act 2014**—

(a) the definitions of *custody to Secretary order* and *guardianship to Secretary order* are **repealed**;

(b) **insert** the following definitions—

"care by Secretary order has the same meaning as it has in section 3(1) of the **Children, Youth and Families Act 2005**;

family reunification order has the same meaning as it has in section 3(1) of the **Children, Youth and Families Act 2005**;"

(2) In sections 17(e), 32(2)(a), 35(4)(a), 37(3)(c), 40(1)(e), 41(3)(d), 43(b), 46(2)(a), 48(2)(g), 50(2)(b), 55(2)(g), 59(d), 60(2)(d), 63(b), 64(3)(g), 64(5)(b), 65(4)(g), 65(5)(d), 66(2)(d), 71(4)(g), 76(2)(f), 79(2)(d), 82(d), 84(2)(h), 88(3)(g), 88(6)(h), 94(3)(g), 96(4)(g), 107(e), 129(2)(f), 189(1)(i), 271(e), 272(2)(d), 277(e),

See:
Act No.
26/2014
and
amending
Act Nos
26/2014.
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278(2)(d), 281(4)(g), 283(2)(b), 285(1)(f), 287(a),
290(2)(b), 291(2)(g), 293(1)(b), 294(2)(d),
297(3)(b), 306(3)(e), 307(3)(g), 309(1)(b),
310(2)(d), 321(3)(g), 323(3)(g), 346(2)(k),
352(3)(e) of the **Mental Health Act 2014**, for
"custody to Secretary order" **substitute** "family
reunification order".

- (3) In sections 17(e), 32(2)(a), 35(4)(a), 37(3)(c),
40(1)(e), 41(3)(d), 43(b), 46(2)(a), 48(2)(g),
50(2)(b), 55(2)(g), 59(d), 60(2)(d), 63(b),
64(3)(g), 64(5)(b), 65(4)(g), 65(5)(d), 66(2)(d),
71(4)(g), 76(2)(f), 79(2)(d), 82(d), 84(2)(h),
88(3)(g), 88(6)(h), 94(3)(g), 96(4)(g), 107(e),
129(2)(f), 189(1)(i), 271(e), 272(2)(d), 277(e),
278(2)(d), 281(4)(g), 283(2)(b), 285(1)(f), 287(a),
290(2)(b), 291(2)(g), 293(1)(b), 294(2)(d),
297(3)(b), 306(3)(e), 307(3)(g), 309(1)(b),
310(2)(d), 321(3)(g), 323(3)(g), 346(2)(k),
352(3)(e) of the **Mental Health Act 2014**, for
"guardianship to Secretary order" **substitute**
"care by Secretary order".

Division 9—Sentencing Act 1991

170 Definitions

- (1) In section 3(1) of the **Sentencing Act 1991**, the
definition of *Youth Parole Board* is **repealed**.
- (2) In section 48B of the **Sentencing Act 1991**, for
the definition of *child protection order*
substitute—

"child protection order means any of the
following orders under the **Children, Youth
and Families Act 2005**—

- (a) an interim accommodation order;
(b) a family preservation order;".

See:
Act No.
49/1991.
Reprint No. 16
as at
1 July 2014
and
amending
Act Nos
15/2014,
17/2014,
26/2014,
37/2014 and
47/2014.
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**PART 11—FURTHER AMENDMENT OF CHILDREN, YOUTH
AND FAMILIES ACT 2005**

171 Definitions

In section 3(1) of the Principal Act, **insert** the following definition—

"major long-term issue , in relation to a child, means an issue about the care, wellbeing and development of the child that is of a long-term nature and includes an issue of that nature about—

- (a) the child's education (both current or future); and
- (b) the child's religious and cultural upbringing; and
- (c) the child's health; and
- (d) the child's name."

172 New sections 175A and 175B inserted

After section 175 of the Principal Act **insert**—

"175A Secretary may specify certain issues

- (1) The Secretary may specify issues relating to a child in out of home care about which a person who has care of the child may be authorised to make decisions.

Example

The Secretary may specify issues including but not limited to—

- the signing of school consent forms; or
- obtaining routine medical care for the child; or
- the day to day treatment of a child who suffers from a chronic or serious health condition.

- (2) The Secretary must not specify an issue under subsection (1) that is a major long-term issue in relation to a child who is subject to an interim accommodation order, interim protection order, supervised custody order or custody to Secretary order.
- (3) The issues specified by the Secretary under this section may be specified in relation to—
 - (a) a particular child; or
 - (b) a child subject to a particular type of order; or
 - (c) a person who provides a certain category of care under this Act.

175B Authorisation of carer to make certain decisions

- (1) This section applies if a child is placed in out of home care in accordance with—
 - (a) an interim accommodation order; or
 - (b) a protection order.
 - (2) The Secretary or the person in charge of an out of home care service may authorise a person who has care of the child to make decisions in relation to the child on the issues specified by the Secretary under section 175A.
 - (3) A person who is authorised under subsection (2) may make a decision in relation to the child on a specified issue, when the child is under that person's care, without consulting the Secretary about that issue."
-

PART 12—REPEAL OF AMENDING ACT

173 Repeal of amending Act

This Act is **repealed** on 1 March 2017.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Children, Youth and Families Amendment (Permanent Care and Other
Matters) Act 2014
No. 61 of 2014

Endnotes

ENDNOTES

† *Minister's second reading speech—*
Legislative Assembly: 7 August 2014
Legislative Council: 21 August 2014

The long title for the Bill for this Act was "A Bill for an Act to amend the **Children, Youth and Families Act 2005** and to amend the **Commission for Children and Young People Act 2012** and to make consequential amendments to other Acts and for other purposes."