

TASMANIA

CHILDREN, YOUNG PERSONS AND THEIR FAMILIES AMENDMENT BILL 2013

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Sections 7, 8 and 9 substituted
 7. Object
 8. International conventions
6. Part 1A inserted
 - PART 1A – Principles to be observed in dealing with children
 - 10A. Principles
 - 10B. Responsibility of Government
 - 10C. Role of child's family
 - 10D. Treating child with respect
 - 10E. Best interests of child
 - 10F. Child participation
 - 10G. Aboriginal children
7. Section 11 amended (Voluntary care agreement)
8. Section 12 amended (Termination of care agreement)
9. Section 19 amended (Assistance by police officer)
10. Section 22 amended (Assessment order)
11. Part 5, Division 1AA inserted
 - Division 1AA – Family meetings*
 - 29A. Family meeting held in certain circumstances

- 29B. Purpose of family meeting
 - 29C. Convening family meeting
 - 29D. Constitution of and attendance at family meeting
 - 29E. Procedure at family meeting
 - 29F. Finalising family meeting
 - 29G. Action by Secretary after family meeting
 - 29H. Publication of discussion at, and reports on, family meeting
 - 29I. Members of immediate family whose whereabouts are unknown
- 12. Section 30 amended (Family group conference held in certain circumstances)
 - 13. Section 31 amended (Purpose of family group conference)
 - 14. Section 32 amended (Convening family group conference)
 - 15. Section 36 amended (Finalising family group conference)
 - 16. Section 41 amended (Members of immediate family whose whereabouts are unknown)
 - 17. Section 42 amended (Care and protection order)
 - 18. Section 42A inserted
 - 42A. Supervision order
 - 19. Section 44 amended (Extension of care and protection order)
 - 20. Section 45 amended (Limited adjournment only)
 - 21. Section 46 amended (Interim care and protection order on adjournment)
 - 22. Section 48 amended (Variation, revocation, suspension and end of care and protection order or interim care and protection order)
 - 23. Section 49 amended (Effect of and limitations on care and protection order or interim care and protection order)
 - 24. Section 53 amended (Review of arrangements for care and protection of child)
 - 25. Section 54 amended (Matters Court must consider)
 - 26. Section 55 repealed
 - 27. Section 57 amended (How views of child are expressed)
 - 28. Section 58 amended (Children not required to express views)
 - 29. Section 63 substituted
 - 63. Evidence

30. Section 69 amended (Powers and duties of Secretary in relation to children under guardianship or in custody of Secretary generally)
31. Section 70 amended (Power of Secretary to consent to adoption of child)
32. Section 71 amended (Review of circumstances of child under long-term guardianship of Secretary)
33. Section 77O amended (Service of application)
34. Part 9: Heading amended
35. Part 9, Division 2 repealed
36. Section 87 amended (Functions of facilitator)
37. Section 88 amended (Guidelines for facilitator)
38. Section 97 amended (Circumstances in which child may be taken into safe custody)
39. Section 103 amended (Duty to maintain confidentiality)
40. Section 104 amended (Power of police officer to enforce order by removing child)
41. Section 111A amended (Access to information under *Right to Information Act 2009*)
42. Schedule 3 repealed
43. Schedule 4 amended (Warrants)
44. Repeal of Act

CHILDREN, YOUNG PERSONS AND THEIR FAMILIES AMENDMENT BILL 2013

*(Brought in by the Minister for Children, the Honourable
Michelle Anne O'Byrne)*

A BILL FOR

**An Act to amend the *Children, Young Persons and Their
Families Act 1997***

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Children, Young
Persons and Their Families Amendment Act
2013*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Principal Act

In this Act, the *Children, Young Persons and
Their Families Act 1997** is referred to as the
Principal Act.

*No. 28 of 1997

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 4

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of *advisory panel*;
- (b) by inserting “family group” after “a” in the definition of *family group conference*;
- (c) by inserting the following definition after the definition of *family group conference*:

family meeting means a family meeting convened under section 29A or 53;

- (d) by omitting paragraph (c) from the definition of *information-sharing entity* and substituting the following paragraph:

(c) a person conducting an establishment, within the meaning of the *Health Service Establishments Act 2006*; or

- (e) by inserting the following definition after the definition of *State*:

supervision order has the meaning given by section 42A;

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 5

5. Sections 7, 8 and 9 substituted

Sections 7, 8 and 9 of the Principal Act are repealed and the following sections are substituted:

7. Object

- (1) The object of this Act is to provide for the care and protection of children in a manner that –
 - (a) maximises a child’s best interests; and
 - (b) recognises that a child’s family is the preferred environment for his or her care and upbringing; and
 - (c) recognises that the responsibility for the protection of a child rests primarily with the child’s parents and family.
- (2) The Minister is to seek to further the object of this Act in partnership with Government Agencies, councils, non-government organisations (whether incorporated or unincorporated), families and communities.

8. International conventions

For the purposes of, and without limiting, section 8B of the *Acts Interpretation Act 1931*, any international convention

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 6

relating to children to which Australia is a signatory and which is in force is extrinsic material in relation to the interpretation of a provision of this Act.

Note Examples of conventions are the UN Convention of the Rights of the Child (1990) and the International Declaration on the Rights of Indigenous Peoples (2007).

6. Part 1A inserted

After section 10 of the Principal Act, the following Part is inserted:

**PART 1A – PRINCIPLES TO BE OBSERVED IN
DEALING WITH CHILDREN**

10A. Principles

In performing or exercising a function or power under this Act, a person is to –

- (a) uphold the principles set out in sections 10B, 10C, 10D, 10E, 10F and 10G as far as practicable; and
- (b) have regard to any national standards or charters relating to the rights or treatment of children published by the Commonwealth Government that are relevant.

10B. Responsibility of Government

The Tasmanian Government has responsibility for promoting and safeguarding the wellbeing of children and, if required, assisting families in fulfilling their responsibilities for the care, upbringing and development of their children.

10C. Role of child's family

- (1) The family of a child –
 - (a) has the primary responsibility for the care, upbringing and development of the child; and
 - (b) is entitled to be treated with respect at all times.
- (2) In fulfilling its responsibilities, the family of a child is entitled to –
 - (a) bring up the child in any language or tradition that is otherwise legal; and
 - (b) foster in the child any cultural, ethnic or religious values that are otherwise legal.
- (3) A child should only be removed from his or her family if there is no other reasonable way to safeguard his or her wellbeing.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 6

- (4) Should a child need to be removed from his or her family, regard should be had to the following principles as far as is consistent with the best interests of the child and as far as is practicable:
 - (a) contact between the child and his or her family and community should be encouraged and supported so as to preserve and strengthen the relationships between the child and the members of his or her family, whether or not the child resides within his or her family;
 - (b) eventually the child should be returned to reside within the family.

10D. Treating child with respect

- (1) A child is a valued member of society and is entitled to be treated in a manner that respects the child's dignity and privacy.
- (2) All children are entitled to have their rights respected and ensured without discrimination.
- (3) Any decision under this Act relating to a child should be made –

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 6

- (a) promptly having regard to the child's circumstances; and
- (b) in a manner that is consistent with the cultural, ethnic and religious values and traditions relevant to the child; and
- (c) with, as far as practicable, the informed participation of the child, the child's family and other persons who are significant in the child's life.

10E. Best interests of child

- (1) In performing functions or exercising powers under this Act, the best interests of the child must be the paramount consideration.
- (2) Without limiting the matters that may be taken into account in determining the best interests of a child, the following matters are to be taken into account for that purpose:
 - (a) the need to protect the child from physical, psychological and other harm and from exploitation;
 - (b) the views of the child, having regard to the maturity and understanding of the child;

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 6

- (c) the capacity and willingness of the child's parents or other family members to care for the child;
- (d) the nature of the child's relationships with his or her parents, other family members and other persons who are significant in the child's life, including siblings;
- (e) the child's need for stable and nurturing relationships with his or her parents, other family members, other persons who are significant in the child's life and the community;
- (f) the child's need for stability in living arrangements;
- (g) the child's physical, emotional, intellectual, spiritual, developmental and educational needs;
- (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's guardians;
- (i) the need to provide opportunities for the child to achieve his or her full potential;

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 6

-
- (j) the child's age, maturity, sex, sexuality and cultural, ethnic and religious backgrounds;
 - (k) any other special characteristics of the child;
 - (l) the likely effect on the child of any changes in the child's circumstances;
 - (m) the least intrusive intervention possible in all the circumstances;
 - (n) the opportunities available for assisting the child to recover from any trauma experienced –
 - (i) in relation to being separated from his or her parents, family and community; or
 - (ii) as a result of abuse or neglect;
 - (o) any persuasive reports of the child being harmed or at risk of harm and the cumulative effects of such harm or risk.

10F. Child participation

If a decision is, or is to be, made under this Act in relation to a child –

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 6

(a) the child –

(i) should be provided with adequate information and explanation about the decision in a manner that the child can understand; and

(ii) if appropriate having regard to the child's maturity and understanding, should be provided with the opportunity to respond to the proposed decision; and

(iii) if appropriate having regard to the child's maturity and understanding, should be provided with the opportunity to express his or her views freely; and

(iv) should be provided with assistance in expressing those views; and

(b) the views of the child should be taken into account, having regard to the child's maturity and understanding.

10G. Aboriginal children

- (1) Aboriginal families, kinship groups, Aboriginal communities and organisations representing the Aboriginal people have a major, self-determining role in promoting the wellbeing of Aboriginal children.
- (2) A kinship group, Aboriginal community or organisation representing the Aboriginal people nominated by an Aboriginal child's family should be allowed to contribute to the making of a decision under this Act in relation to the child.
- (3) An Aboriginal child, as far as is practicable, should be placed with a person in the following order of priority:
 - (a) a member of the child's family;
 - (b) an Aboriginal person in the child's community in accordance with local community practice;
 - (c) another Aboriginal person;
 - (d) a person who –
 - (i) is not an Aboriginal person; but
 - (ii) in the Secretary's opinion, is sensitive to the child's

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 7

needs and capable of promoting the child's ongoing affiliation with the culture of the child's community and, if possible, the child's ongoing contact with his or her family.

- (4) As far as is practicable, an Aboriginal child removed from his or her family and community, should be placed in close proximity to them.

7. Section 11 amended (Voluntary care agreement)

Section 11 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsections:

- (1) In this section –

extension period means –

- (a) 12 months for an agreement made under subsection (1A) in relation to a child if the Secretary considers that –
- (i) the child has special needs

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 7

arising from a
disability; or

- (ii) special
circumstances
exist and it is
in the best
interests of the
child; or

- (b) 3 months in any other
case;

initial period means –

- (a) 6 months for an
agreement made under
subsection (1A) in
relation to a child if
the Secretary
considers that –
 - (i) the child has
special needs
arising from a
disability; or
 - (ii) special
circumstances
exist and it is
in the best
interests of the
child; or
- (b) 3 months in any other
case.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 7

- (1A) If the guardians of a child temporarily are unable to care for or maintain the child or exercise adequate supervision of, and control over, the child –
- (a) the guardians, acting together, and the Secretary may enter into an agreement under which the Secretary will have the care and custody of the child for a period not exceeding the initial period specified in the agreement; and
 - (b) before the termination of a care agreement, the guardians, acting together, and the Secretary may extend the agreement for a period not exceeding the extension period.
- (b) by omitting from subsection (2) “subsection (1) –” and substituting “subsection (1A) –”;
- (c) by omitting subsections (3) and (4) and substituting the following subsections:
- (3) Despite subsection (1A)(a), the Secretary may not enter into a care agreement if –

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 7

- (a) the Secretary has reasonable grounds for suspecting or believing, or knows, that the child is at risk for any reason other than that the guardians are or will be temporarily unable to care for or maintain the child or exercise adequate supervision of, and control over, the child; and
 - (b) the Secretary reasonably suspects that the guardians cannot or will not be able, while temporarily being without the care of the child, to change their behaviours so that when the child is returned to their care there will be no such risk to the child.
- (4) Despite subsection (1A)(b), a care agreement may not be extended so that it will operate for a total period of more than –
 - (a) 18 months in the case where the Secretary, in making the agreement, considered that –

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 8

(i) the child had special needs arising from a disability; or

(ii) special circumstances exist and it is in the best interests of the child; or

(b) 3 months in any other case.

8. Section 12 amended (Termination of care agreement)

Section 12(5) of the Principal Act is amended by omitting “a period, not exceeding 3 months,” and substituting “the period”.

9. Section 19 amended (Assistance by police officer)

Section 19 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) A magistrate may issue a warrant for the purposes of subsection (3) if the magistrate is satisfied that –

(a) reasonable steps have been taken to obtain the consent of the occupier of the premises or place to the exercise of the powers

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 10

referred to in that subsection and
those steps have been
unsuccessful; or

- (b) there are reasonable grounds for concern for the safety of the child.

10. Section 22 amended (Assessment order)

Section 22 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

- (5) An assessment order may, on application by the Secretary, be extended (once only) for the period not exceeding 8 weeks specified in the order if the Court is satisfied that –

- (a) the grounds on which the application is based are reasonable in the circumstances; and
- (b) the extension would be in the best interests of the child.

11. Part 5, Division 1AA inserted

Before Division 1 of Part 5 of the Principal Act, the following Division is inserted in Part 5:

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

Division IAA – Family meetings

29A. Family meeting held in certain circumstances

- (1) The Secretary may cause a family meeting to be convened in respect of a child if the Secretary is of the opinion that –
 - (a) the child is at risk; and
 - (b) that a family meeting is appropriate in the circumstances.
- (2) The Secretary must cause a family meeting to be convened if the Secretary is required under section 53 to convene a family meeting.

29B. Purpose of family meeting

- (1) The purpose of a family meeting convened under section 29A(1) is to provide an opportunity for a child's family and other persons attending the meeting –
 - (a) to make informed recommendations as to the arrangements for best securing the care and protection of the child; or

- (b) to review those arrangements and make further recommendations in respect of the arrangements from time to time.
- (2) The purpose of a family meeting convened under section 29A(2) is to provide an opportunity for a child's family and other persons attending the meeting to review the arrangements for care and protection of the child implemented under a care and protection order.

29C. Convening family meeting

- (1) If a family meeting is to be held, the Secretary must assign a facilitator to convene and facilitate the family meeting.
- (2) In assigning a facilitator, the Secretary may consult with the child and the child's immediate family.
- (3) The facilitator –
 - (a) must consult with the child, the child's immediate family and, in the case of an Aboriginal child, with an appropriate recognised Aboriginal organisation as to –

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

- (i) who should be invited to attend the family meeting; and
 - (ii) the time and place of the meeting; and
 - (iii) whether or not any person, including the child, should be permitted to be represented by an advocate at the meeting; and
 - (iv) the meeting's agenda and the procedure to be followed at the meeting; and
- (b) must fix a time and place for the family meeting; and
- (c) must issue a notice specifying the time and place of the family meeting.
- (4) The facilitator must invite the following persons to attend the family meeting and provide each of them with a copy of the notice issued under subsection (3)(c):
 - (a) the child;
 - (b) the immediate family of the child;

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

- (c) the other persons who, during the consultation referred to in subsection (3)(a), it is agreed are to be invited to attend;
 - (d) an employee of the Department authorised by the Secretary, either generally or in respect of the child, to present a report into the child's circumstances to the meeting;
 - (e) if the meeting is convened as required by section 53(a), any person who the care and protection order specifies is to be invited.
- (5) Despite subsection (4), the facilitator is not required to invite any person specified in that subsection to the family meeting if the attendance of that person at the meeting could result in the contravention of –
- (a) a restraint order made under the *Justices Act 1959*; or
 - (b) a family violence order, interim family violence order or police family violence order made under the *Family Violence Act 2004*; or
 - (c) an order under Part VII of the *Family Law Act 1975* of the Commonwealth; or

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

- (d) any other order of a court,
wherever made.
- (6) Despite subsection (4)(a) and (b), the facilitator is not required to invite the child or any guardian of the child to the family meeting if the facilitator is of the opinion that it would not be in the best interests of the child for the child or that other person to attend.
- (7) Despite subsection (4)(a), the facilitator is not required to invite the child to the family meeting if the facilitator is of the opinion that the child is unable to understand or participate in the proceedings of the conference by reason of his or her age or for any other reason.
- (8) The facilitator may invite one or more of the following persons to attend the family meeting and provide them with a copy of the notice issued under subsection (3)(c):
 - (a) members of the child's extended family whom the child or the child's guardians have requested the facilitator to invite;
 - (b) other members of the child's extended family that the facilitator considers should attend;

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

- (c) any other person who has had a close association with the child and that the facilitator considers should attend;
- (d) any person who has been counselling, advising or aiding the child or the child's guardians and that the facilitator considers should attend;
- (e) if the child is an Aboriginal child, a person nominated by a recognised Aboriginal organisation;
- (f) any person who has examined, assessed, counselled or treated the child in the course of the assessment of the child's circumstances and that the facilitator considers should attend;
- (g) if there are concerns about the child's education and the child attends a State school, a person nominated by the Head of Agency of the responsible Department in relation to the *Education Act 1994*;
- (h) if there are concerns about the child's education and the child receives home education, within

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

- the meaning of the *Education Act 1994*, a person nominated by the Minister administering that Act;
- (i) if there are concerns about the child's education and the child attends a registered school within the meaning of the *Education Act 1994*, a person nominated by the principal of the school;
 - (j) if there are concerns about the child's education and the child attends the Tasmanian Academy continued by the *Education and Training (Tasmanian Academy) Act 2008*, a person nominated by the Head of Agency of the responsible Department in relation to that Act;
 - (k) if there are concerns about the child's education and the child attends TasTAFE created by the *Training and Workforce Development Act 2013*, a person nominated by TasTAFE;
 - (l) any other person the facilitator considers should attend.
- (9) In determining whether a person is to be invited or not to be invited to a family meeting under subsection (8), the facilitator must take into account any

relevant restraint order made under the *Justices Act 1959* or any other relevant order of a court.

29D. Constitution of and attendance at family meeting

A family meeting consists of –

- (a) the facilitator; and
- (b) those persons who attend the meeting in response to the invitation of the facilitator.

29E. Procedure at family meeting

- (1) The procedure to be followed at a family meeting is the procedure agreed during the consultation referred to in section 29C(3)(a) or as agreed by the family meeting.
- (2) The facilitator is to conduct a family meeting in an informal manner.
- (3) If the facilitator considers it appropriate, the facilitator may adjourn the family meeting from time to time and from place to place.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

29F. Finalising family meeting

- (1) Before the facilitator declares a family meeting ended, the recommendations, or further recommendations, of the meeting as to the arrangements for best securing the care and protection of the child must be put in writing and signed by –
 - (a) the facilitator; and
 - (b) each of the following persons who are attending the meeting and concur in the decision:
 - (i) the child, if present and not excused by the facilitator from the obligation and, in the opinion of the facilitator, capable of participating in making the decision in an independent, rational and informed manner;
 - (ii) the child's advocate, if one is appointed;
 - (iii) the child's guardians, if present.
- (2) The decision of the family meeting must include the following information:
 - (a) the names of the persons who attended the family meeting;

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

- (b) details of the time and place at which the meeting was held;
 - (c) if the meeting was convened under section 29A(1), recommendations for the review of the arrangements for securing the care and protection of the child.
- (3) As soon as practicable after a family meeting ends, the facilitator must do the following:
 - (a) if the family meeting failed to reach a decision, prepare a written report stating that fact and containing –
 - (i) a summary of any proposals for recommendations discussed at the meeting; and
 - (ii) the reasons, in the facilitator's opinion, for that failure to reach a decision;
 - (b) for all family meetings, provide a copy of the decision of the family meeting or the report referred to in paragraph (a) to –
 - (i) the Secretary; and

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

- (ii) the child; and
- (iii) each guardian of the child; and
- (iv) any other person involved in implementing the arrangements for securing the care and protection of the child recommended in the decision; and
- (v) each person who attended the meeting; and
- (vi) any other person the facilitator considers appropriate.

29G. Action by Secretary after family meeting

- (1) On receipt of the decision of a family meeting convened under section 29A(1), the Secretary may –
 - (a) if the Secretary considers the arrangements for securing the care and protection of the child recommended in that decision to be suitable, approve those arrangements; or
 - (b) if the Secretary does not consider those arrangements suitable –

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

- (i) reconvene the family meeting for the purpose of reconsidering those arrangements and recommending other or further arrangements; or
 - (ii) take action under Division 1 or 2 in relation to the child.
- (2) On receipt of the report as to the failure of a family meeting to reach a decision, the Secretary may –
 - (a) reconvene the family meeting for the purpose of reaching a decision recommending arrangements for securing the care and protection of the child; or
 - (b) take action under Division 1 or 2 in relation to the child.
- (3) The Secretary must provide notice, in writing, of his or her decision under subsection (1) or (2) to the facilitator and –
 - (a) to –
 - (i) the child; and
 - (ii) each guardian of the child; and

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 11

- (iii) any other person involved in implementing the arrangements for securing the care and protection of the child recommended in the decision; and
 - (iv) each person who attended the meeting; and
 - (v) any other person the facilitator considers appropriate; or
- (b) to each person who was invited to attend a family meeting if the Secretary does not consider the arrangements for securing the care and protection of the child recommended by the meeting suitable and decides to reconvene the family meeting or take action under Division 1 or 2 in relation to the child; or
- (c) to each person who was invited to attend a family meeting that failed to reach a decision if the Secretary decides to reconvene the family meeting.

29H. Publication of discussion at, and reports on, family meeting

- (1) Except as allowed by this Act, a person must not publish in any manner –
 - (a) a decision of a family meeting; or
 - (b) any report relating to a family meeting; or
 - (c) anything said or done at a family meeting.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 18 months, or both.

- (2) Evidence of anything said at a family meeting is not admissible in any proceedings.
- (3) Despite subsection (2), the written record of the decision made by a family meeting, or the written report of the facilitator made following the failure of a family meeting to reach a decision, is admissible in proceedings under Division 2 for the purpose of establishing that a decision was or was not made.
- (4) The *Right to Information Act 2009* does not apply in relation to –
 - (a) any report on a family meeting; or

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 12

- (b) the written record of the decision of a family meeting; or
- (c) the written report of a facilitator following the failure of a family meeting to reach a decision.

29I. Members of immediate family whose whereabouts are unknown

This Division does not apply in relation to a member of a child's immediate family whose whereabouts cannot, after reasonable inquiry, be ascertained.

12. Section 30 amended (Family group conference held in certain circumstances)

Section 30 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) “after considering any report of an advisory panel relating to the child,”;
- (b) by omitting subsections (2) and (3) and substituting the following subsection:
 - (2) The Secretary must cause a family group conference to be convened if –
 - (a) the Court has adjourned proceedings and referred a matter to a family group

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 13

conference for
consideration and report;
or

- (b) the Secretary is required under section 53 to convene a family group conference.

13. Section 31 amended (Purpose of family group conference)

Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “section 30(3)” and substituting “section 30(2)(a)”;
- (b) by inserting the following subsection after subsection (2):
 - (3) The purpose of a family group conference convened under section 30(2)(b) is to provide an opportunity for a child’s family and other persons attending the meeting to review the arrangements for care and protection of the child implemented under a care and protection order.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 14

14. Section 32 amended (Convening family group conference)

Section 32(10) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (h) “Government” and substituting “State”;
- (b) by inserting the following paragraph after paragraph (h):
 - (ha) if there are concerns about the child’s education and the child receives home education, within the meaning of the *Education Act 1994*, a person nominated by the Minister administering that Act;
- (c) by omitting from paragraph (i) “non-Government school,” and substituting “registered school within the meaning of the *Education Act 1994*,”;
- (d) by omitting from paragraph (k) “TasTAFE.” and substituting “TasTAFE,”;
- (e) by inserting the following paragraph after paragraph (k):
 - (l) any other person the facilitator considers should attend.

15. Section 36 amended (Finalising family group conference)

Section 36(2)(d) of the Principal Act is amended by omitting “section 30(3)” and substituting “section 30(2)”.

16. Section 41 amended (Members of immediate family whose whereabouts are unknown)

Section 41 of the Principal Act is amended by omitting “guardian” and substituting “member of a child’s immediate family”.

17. Section 42 amended (Care and protection order)

Section 42 of the Principal Act is amended as follows:

(a) by omitting subsection (2) and substituting the following subsection:

(2) The Secretary may apply to the Court for a care and protection order if –

(a) a family meeting or family group conference has been held in relation to the child; or

(b) the Secretary considers that it is in the best interests of the child for

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 17

the application to be made
without delay.

- (b) by omitting from subsection (3) “Secretary,” and substituting “Secretary and subject to subsection (6),”;
- (c) by omitting from subsection (3)(b)(i) “group conference” and substituting “meeting or family group conference,”;
- (d) by omitting paragraph (a) from subsection (4) and substituting the following paragraph:
 - (a) a supervision order;
- (e) by omitting from subsection (4)(b) “period not exceeding 12 months,” and substituting “period,”;
- (f) by omitting from subsection (4)(c) “period not exceeding 12 months,” and substituting “period,”;
- (g) by omitting from subsection (4)(c)(ii) “persons,” and substituting “persons; or”;
- (h) by inserting the following subparagraph after subparagraph (ii) in subsection (4)(c):
 - (iii) the Secretary and one or 2 other persons;
- (i) by omitting paragraph (d) from subsection (4);

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 17

- (j) by inserting the following subsection after subsection (4):

(4A) Without limiting the orders the Court may make under subsection (4)(g) and the matters to which the Court may have regard to in determining whether to make such an order, the Court may have regard to any relevant prescribed matter in making such a determination.

- (k) by omitting from subsection (5)(c) “living” and substituting “residing”;

- (l) by omitting subsection (6) and substituting the following subsection:

(6) The Court may not make a care and protection order unless satisfied that –

(a) the views of the child have been duly considered, having regard to the age, understanding and maturity of the child; and

(b) the views of the parents or other existing guardians have been duly considered; and

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 17

- (c) if the order places a child under the guardianship of a person who is not an existing guardian (whether in addition to, or in substitution for, the guardianship of an existing guardian) –
 - (i) all reasonable steps have been taken to provide the services required to enable the child's protection and care needs to be met within the home of a parent or other existing guardian of the child; and
 - (ii) the person proposed as guardian is suitable to have guardianship of the child, having regard to any prescribed matters, and is willing and able to assume guardianship; and

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 18

(d) either –

(i) a family meeting
or family group
conference has
been held in
relation to the
child; or

(ii) it is in the best
interests of the
child for the order
to be made
without further
delay; and

(e) no other order, apart from
the order considered,
would be in the best
interests of the child.

18. Section 42A inserted

After section 42 of the Principal Act, the
following section is inserted in Division 2:

42A. Supervision order

(1) In this section –

specified means specified in a
supervision order.

(2) A *supervision order* is an order of the
Court that, although not affecting the

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 18

guardianship or custody of a child,
provides –

- (a) that the Secretary is responsible for supervising a child; and
 - (b) for the child to be placed in the day-to-day care of one or more of the child's guardians.
- (3) A supervision order –
- (a) must require the guardians of the child to permit the Secretary to visit the child at his or her residence and to carry out any duties of the Secretary under the order; and
 - (b) must require the child and the guardians of the child to comply with any reasonable and lawful direction that the Secretary provides to the child or the guardians; and
 - (c) may require the child or a guardian of the child to do, or refrain from doing, any specified thing; and
 - (d) must not include a requirement as to where the child may or may not reside, other than a requirement –

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 18

- (i) that the child reside with the specified guardian or guardians; or
 - (ii) if the order specifies that the child is to reside with more than one guardian and those guardians do not reside together, that the child is to reside with each of those guardians for the specified times or for the times agreed by those guardians.
- (4) For the purposes of subsection (3)(b) –
 - (a) the Secretary may only give a direction if he or she considers the direction to be in the best interests of the child; and
 - (b) the direction must be in a form approved by the Secretary.
- (5) A supervision order has effect –
 - (a) if the Court is satisfied that there are special circumstances that warrant the order having effect for a period exceeding 12 months, for the period not exceeding 24 months specified in the order; or

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 18

- (b) in any other case, for the period not exceeding 12 months specified in the order.
- (6) If a supervision order has effect for a period exceeding 12 months, the Secretary, within 12 months after the making of the order must –
 - (a) review the operation of the order; and
 - (b) in writing, notify the Court, the child and the guardians of the child as to whether he or she considers –
 - (i) that it is in the best interests of the child for the order to continue to have effect for the specified period; or
 - (ii) that it would not be detrimental to the best interests of the child for the order to cease to have effect 12 months after its making.
- (7) If the Secretary –
 - (a) fails to notify the Court, the child and the guardians as required under subsection (6)(b); or

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 19

- (b) notifies the Court, the child and the guardians as required under subsection (6)(b) that he or she considers that it would not be detrimental to the best interests of the child for the supervision order to cease to have effect 12 months after its making –

the supervision order so ceases to have effect 12 months after its making.

19. Section 44 amended (Extension of care and protection order)

Section 44 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “family meeting or” after “a”;
- (b) by omitting subsection (2) and substituting the following subsection:
 - (2) A care and protection order may be extended for the period the Court considers appropriate in the best interests of the child.

20. Section 45 amended (Limited adjournment only)

Section 45 of the Principal Act is amended by omitting “exceptional circumstances,” and substituting “reasonable grounds to do so,”.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 21

21. Section 46 amended (Interim care and protection order on adjournment)

Section 46(3)(c) of the Principal Act is amended by omitting “living;” and substituting “residing;”.

22. Section 48 amended (Variation, revocation, suspension and end of care and protection order or interim care and protection order)

Section 48 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) A care and protection order under section 42(4)(c) granting guardianship of a child to a person until the child attains 18 years of age ceases to have effect on the making of a parenting order under Part VII of the *Family Law Act 1975* of the Commonwealth in respect of the child.

23. Section 49 amended (Effect of and limitations on care and protection order or interim care and protection order)

Section 49(5) of the Principal Act is amended as follows:

- (a) by omitting “settled and permanent” and substituting “stable”;

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 24

- (b) by omitting “section 42(4)(d)” and substituting “section 42(4)(c)”.

24. Section 53 amended (Review of arrangements for care and protection of child)

Section 53 of the Principal Act is amended as follows:

- (a) by inserting “family meeting or” after “A”;
- (b) by inserting in paragraph (a) “meeting or” after “a”;
- (c) by inserting in paragraph (b) “meeting or” after “a”;
- (d) by inserting in paragraph (c) “meeting or” after “a”.

25. Section 54 amended (Matters Court must consider)

Section 54(b) of the Principal Act is amended by omitting “sections 8 and 9.” and substituting “Part 1A.”.

26. Section 55 repealed

Section 55 of the Principal Act is repealed.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 27

27. Section 57 amended (How views of child are expressed)

Section 57 of the Principal Act is amended by omitting “wishes” and substituting “views”.

28. Section 58 amended (Children not required to express views)

Section 58 of the Principal Act is amended by omitting “wishes” and substituting “views”.

29. Section 63 substituted

Section 63 of the Principal Act is repealed and the following section is substituted:

63. Evidence

In any proceedings under this Act, the Court –

- (a) is to conduct proceedings before it in an informal manner; and
- (b) is not bound by the rules of evidence; and
- (c) is to consider evidence on the balance of probabilities; and
- (d) may inform itself in any way it considers appropriate.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 30

30. Section 69 amended (Powers and duties of Secretary in relation to children under guardianship or in custody of Secretary generally)

Section 69(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “sections 8 and 9;” and substituting “Part 1A;”;
- (b) by omitting from paragraph (d) “settled and permanent” and substituting “stable”.

31. Section 70 amended (Power of Secretary to consent to adoption of child)

Section 70 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “section 42(4)(d);” and substituting “section 42(4)(c);”;
- (b) by omitting from subsection (2)(b) “sections 8 and 9;” and substituting “Part 1A;”;
- (c) by omitting from subsection (2)(c) “settled and permanent” and substituting “stable”.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 32

32. Section 71 amended (Review of circumstances of child under long-term guardianship of Secretary)

Section 71 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) Where a child is subject to a care and protection order under section 42(4)(c) that places the child, for a period exceeding 12 months, under the guardianship of a person who is not an existing guardian (whether in addition to, or substitution for, the guardianship of an existing guardian), the Secretary –
 - (a) must review the circumstances of the child in the first year of that guardianship; and
 - (b) on his or her own motion or on the application of the child or a person made guardian by the order, may review the circumstances of the child at any time or times after the expiration of that first year.

33. Section 77O amended (Service of application)

Section 77O(b) of the Principal Act is amended by omitting “living;” and substituting “residing;”.

34. Part 9: Heading amended

Part 9 of the Principal Act is amended by omitting “**COMMISSIONER FOR CHILDREN, ADVISORY PANELS AND FACILITATORS**” from the heading to that Part and substituting “**COMMISSIONER FOR CHILDREN AND FACILITATORS**”.

35. Part 9, Division 2 repealed

Division 2 of Part 9 of the Principal Act is repealed.

36. Section 87 amended (Functions of facilitator)

Section 87(a) of the Principal Act is amended by inserting “family meeting or” after “a”.

37. Section 88 amended (Guidelines for facilitator)

Section 88(1) of the Principal Act is amended by inserting “family meeting or” after “a”.

38. Section 97 amended (Circumstances in which child may be taken into safe custody)

Section 97 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) A magistrate may issue a warrant for the purpose of having a child taken into safe custody if the magistrate is satisfied by

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 38

evidence on oath or by the affidavit of the Secretary, an employee of the Department or a police officer that –

- (a) a child is absent without lawful authority or excuse from –
 - (i) the place in which the child has been placed; or
 - (ii) the person in whose custody the child has been placed –

by or under the authority of an assessment order, interim assessment order, care and protection order or interim care and protection order; and

- (b) either –
 - (i) reasonable steps have been taken to return the child to the place in which, or the person with whom, the child was so placed and those steps have been unsuccessful; or
 - (ii) there are reasonable grounds for concern for the safety of the child.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 39

39. Section 103 amended (Duty to maintain confidentiality)

Section 103(2) of the Principal Act is amended as follows:

- (a) by inserting “family meeting or” after “attends a”;
- (b) by inserting “meeting or” after “at the”.

40. Section 104 amended (Power of police officer to enforce order by removing child)

Section 104 of the Principal Act is amended as follows:

- (a) by omitting “For” and substituting “(1) For”;
- (b) by inserting the following subsection:
 - (2) A magistrate may issue a warrant for the purposes of subsection (1) if the magistrate is satisfied that –
 - (a) reasonable steps have been taken to remove the child without a warrant and without using force and those steps have been unsuccessful; or
 - (b) there are reasonable grounds for concern for the safety of the child.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 41

41. Section 111A amended (Access to information under *Right to Information Act 2009*)

Section 111A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “*Freedom of Information Act 1991*” and substituting “*Right to Information Act 2009*”;
- (b) by omitting from subsection (2) “*Freedom of Information Act 1991*,” and substituting “*Right to Information Act 2009*,”.

42. Schedule 3 repealed

Schedule 3 to the Principal Act is repealed.

43. Schedule 4 amended (Warrants)

Schedule 4 to the Principal Act is amended by inserting after clause 3 the following clause:

3A. Revocation of warrant before execution

- (1) At any time before a warrant issued under section 97 or 104 is executed, the Secretary, an employee of the Department, a police officer or a guardian of a child in respect of which the warrant is issued may apply to a magistrate, whether or not the warrant was issued by that magistrate or another

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 43

magistrate, for the revocation of the warrant.

- (2) A magistrate may revoke a warrant issued under section 97 or 104 if satisfied that –
 - (a) the warrant has not been executed; and
 - (b) the grounds on which the warrant was issued no longer exist.
- (3) An application may be made in person or, if made by the Secretary, an employee of the Department or a police officer, by telephone.
- (4) A magistrate may only revoke a warrant if satisfied of the matters specified in subclause (2) –
 - (a) if the application is made in person, on information given on oath personally or by affidavit; or
 - (b) if the application is made by telephone, on information given by telephone.
- (5) When revoking a warrant on an application by telephone, the magistrate –
 - (a) must inform the applicant of the facts that, in the opinion of the

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 43

magistrate, justify the revocation of the warrant; and

- (b) must not proceed to revoke the warrant unless the applicant undertakes to make an affidavit verifying those facts; and
 - (c) must record in writing –
 - (i) the name and rank or position in the Department of the applicant; and
 - (ii) the address or description of the premises or place to which the warrant relates; and
 - (iii) the facts that justify, in his or her opinion, the issue of the warrant; and
 - (iv) the date and time the warrant is revoked; and
 - (d) must sign that record or a copy of that record and file the signed record or copy, and any supporting affidavit, with the Court.
- (6) If the applicant for the revocation of a warrant applies by telephone –

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 43

- (a) the applicant must –
 - (i) record in writing the name of the magistrate who revoked the warrant and the information specified in subclause (5)(c); and
 - (ii) as soon as reasonably practicable after the magistrate revokes the warrant, provide the magistrate with an affidavit in accordance with his or her undertaking made under subclause (5)(b); and
 - (b) the record made by the applicant under paragraph (a)(i) is taken to be a revocation of the warrant issued by the magistrate.
- (7) A warrant is revoked –
- (a) in the case of an application made in person, when the magistrate issues the revocation of the warrant; or
 - (b) in the case of an application made by telephone, when the magistrate communicates the terms of the revocation of the warrant to the applicant.

*Children, Young Persons and Their Families Amendment
Act 2013
Act No. of*

s. 44

- (8) An application for the revocation of a warrant does not stay the warrant.
- (9) If, before the application for the revocation of a warrant is determined, the warrant is executed, the application is taken to have been withdrawn.

44. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.