



OPERATIONAL CIRCULAR

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**Subject: Child Protection -
 Children And Community Services Act 2004**

The *Children and Community Services Act 2004* ("**CCSA**") came into operation on 1 March 2006. The CCSA replaces the *Child Welfare Act 1947*, *Community Services Act 1972* and the *Welfare and Assistance Act 1961*.

The Department for Community Development is responsible for the administration of the CCSA and for the protection of children at risk of harm and neglect in this State.

This document has been prepared for WA Health and WA Health officers responsible for or involved with child welfare and protection issues. Its purpose is to outline some of the key provisions and implications of the CCSA in child protection cases and the legal obligations that arise in such matters.

This document is not intended to be, nor should it be relied upon as, a substitute for legal or other professional advice. WA Health officers who are unsure of applicable legal obligations, should request legal advice tailored to the individual circumstances from Legal & Legislative Services. Royal Perth Hospital, Sir Charles Gairdner Hospital, Fremantle Hospital, King Edward Memorial Hospital and Princess Margaret Hospital may alternatively seek legal advice from the State Solicitor's Office.

Dr Neale Fong
**DIRECTOR GENERAL
DEPARTMENT OF HEALTH**

CHILDREN AND COMMUNITY SERVICES ACT 2004

CONTENTS	Page
Definitions	3
Best interests of child paramount	4
Authorised officers of DCD	5
Delegation of powers	5
Child in need of protection	6
Reporting allegations or concerns about a child and protection from liability for giving information	6
Confidentiality of notifier's identity	7
Preliminary inquiries where concerns for child's wellbeing exist	7
Access to child at hospital, school or other place without parental consent	8
Provisional protection and care	9
Protection orders	10
Negotiated placement agreement	11
Requests for assistance	11
Exchange of information	12
Power to keep child under 6 years of age in hospital	14
Power of CEO of DCD to give consent	15
Identifying person with authority to give consent to medical treatment on behalf of child	15
Identifying person with authority to give consent to disclosure of confidential information on behalf of child	17
Protection from liability for giving information	17
Protection from liability generally	18
Objection to disclose certain information during legal proceedings	18
Obstruction	19
Offences	19
Transitional provisions	19
Appendix A: List of Authorised Officers and their key powers and duties	
Appendix B: List of Delegates and their key powers and duties	
Appendix C: Pro-forma section 23(3) request for 'relevant information'	

Definitions

1. Terms used in this document have the following meanings:

Authorised delegate	An officer of DCD or other person to whom the CEO of DCD has formally delegated a power or duty under the CCSA (see paragraph 12).
Authorised officer	An officer appointed by the CEO of DCD in that capacity either generally for the purposes of the CCSA or for the purposes of the provisions of the CCSA specified in the appointment (see paragraph 6).
CCSA	<i>Children and Community Services Act 2004</i>
Child	A person under the age of 18 years.
CWA	<i>Child Welfare Act 1947</i>
DCD	The Department for Community Development.
CEO of DCD	Chief Executive Officer of the Department for Community Development.
Harm	In relation to a child, includes harm to the child's physical, emotional or psychological development and, in determining whether a child is 'in need of protection' (see paragraph 15), means any detrimental effect of a significant nature on the child's wellbeing.
Neglect	In determining whether a child is 'in need of protection', includes a failure by the child's parents to provide, arrange or allow the provision of adequate care for the child or effective medical, therapeutic or remedial treatment for the child.
Officer	A person employed or engaged by DCD as a public service officer under the <i>Public Sector Management Act 1994</i> , a contract for services (i.e., an independent contractor) or otherwise.
Parent	In relation to a child, means a person (other than the CEO of DCD) who at law has responsibility for the long-term care, welfare and development of the child; or the day-to-day care, welfare and development of the child.
Parental responsibility	In respect of a child, means all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.
Public health authority	An individual area health service, public hospital or other public service health agency within WA Health
Relative	A child's parent, grandparent, step-parent, sibling, uncle or aunt, cousin, spouse or de facto partner whether through consanguinity, marriage or a de facto relationship, adoption or natural relationship or, in the case of an Aboriginal or Torres Strait Islander child, such equivalent person recognised under the customary law or tradition of the child's community or Torres Strait Island.
WA Health	Refers collectively to the public health system of Western Australia including the Department of Health, the various metropolitan and country area health services, public hospitals and other public service health agencies.

WA Health officer

A person employed by the Department of Health or a public health authority as a public service officer or employee under the *Public Sector Management Act 1994* or a contract of service.

Wellbeing

Includes the care, development, health and safety of the child.

Best interests of child paramount – sections 7 and 8

2. DCD, its officers, the court and any other person performing a function or exercising a power under the CCSA, are to regard the child's best interests as the paramount consideration.
3. In determining the best interests of the child, the following factors must be considered –
 - 3.1 The need to protect the child from harm (which includes harm to the child's physical, emotional or psychological development).
 - 3.2 The capacity of the child's parents to protect the child from harm.
 - 3.3 The capacity of the child's parents (or any other person) to provide for the child's needs.
 - 3.4 The nature of the child's relationship with its parents, siblings and other relatives or persons significant in the child's life.
 - 3.5 The parents' attitude to the child and to parental responsibility.
 - 3.6 The child's wishes or views (though regard must be given to the child's age and level of understanding in determining the weight to be attached to such wishes or views).
 - 3.7 The importance of continuity and stability in the child's living arrangements and the likely effect a disruption to these arrangements will have on the child (including separation from his or her parents, siblings, carer or other significant person in the child's life).
 - 3.8 The need for the child to maintain contact with the child's parents, siblings and other relatives and significant persons in the child's life.
 - 3.9 The child's age, maturity, sex, sexuality, background and language.
 - 3.10 The child's cultural, ethnic or religious identity.
 - 3.11 The child's physical, emotional, intellectual, spiritual, developmental and educational needs.
 - 3.12 Any other relevant characteristics of the child.
 - 3.13 The likely effect on the child of any change in the child's circumstances.

Authorised officers of DCD – sections 3, 25 and 26

4. As demonstrated in this document, a number of statutory duties and powers afforded under the CCSA may be exercised by 'authorised officers' of DCD. Not all officers of DCD are 'authorised officers'. Authorised officers for the purpose of the CCSA are 'officers' appointed by the CEO of DCD either for general or specific purposes of the CCSA.
5. Where appointed, authorised officers are issued with identity cards, which they are legally required to display when exercising a power under the CCSA.
6. **Appendix A** contains a list of 'authorised officers' appointed by the CEO of DCD by Instrument of Authorisation signed in March 2006 together with their respective powers and duties. Appendix A refers only to those authorised officers, powers and duties that may be of relevance to WA Health. It is not a comprehensive list.
7. WA Health officers should request to see the identity card of any individuals holding themselves out as an 'authorised officer' of DCD or wishing to exercise a power or perform a duty under the CCSA conferred on the same. As an authorised officer's appointment may be for a specific purpose only, it is important to check the identity card to verify the individual's authority to carry out the particular power to be exercised.
8. It is recommended that where practicable, WA Health officers should document the fact they have sighted the authorised officer's identity card, including a notation of the relevant particulars sighted on the card (e.g., name, position held, the fact the ID photograph matches person holding themselves out as an authorised officer, date of issue, reference to relevant power).

Delegation of powers – sections 16 and 24

9. The Minister for Community Development may delegate to the CEO of DCD any of the powers or duties given to him or her under the CCSA. The delegation must be in writing and signed by the Minister. The delegation may expressly authorise the CEO to further delegate such power or duty.
10. The CEO of DCD may delegate to any officer of DCD or other person any of the powers or duties given to the CEO under the CCSA. The delegation must be in writing and signed by the CEO of DCD. However, the officer to whom the power or duty is delegated cannot further delegate that power or duty.
11. In April 2006, the CEO of DCD signed an Instrument of Delegation under which some of the CEO's powers and duties were delegated to various DCD officers.
12. **Appendix B** contains a list of the CEO's delegates and their respective powers and duties. Appendix B refers only to those powers and duties that may be of relevance to WA Health. It is not a comprehensive list.
13. If not otherwise evident from this document, Appendix A or Appendix B, enquiries should be made with DCD or Legal & Legislative Services where there is uncertainty concerning an individual's authority to exercise a power or perform a duty under the CCSA.

Child in need of protection – section 28

14. DCD's statutory child protection powers arise in respect of post-partum children who are (or who appear to be) under the age of 18 years and in need of protection.
15. A child will be "**in need of protection**" where –
 - 15.1 The child's parents have abandoned the child and, after reasonable enquiries, the parents cannot be found and no other suitable adult (e.g., a relative) can be found who is willing and able to care for the child.
 - 15.2 The child's parents are dead or incapacitated and, after reasonable enquiries, no suitable adult (e.g., a relative) can be found who is willing and able to care for the child.
 - 15.3 The child has suffered (or is likely to suffer) harm as a result of physical, sexual, emotional or psychological abuse or neglect and the child's parents have not protected (or are unlikely or unable to protect) the child from further harm. See paragraph 1 for the definition of 'harm' and 'neglect'.
 - 15.4 The child has suffered (or is likely to suffer) harm as a result of the child's parents inability to provide or arrange –
 - 15.4.1 Adequate care for the child; or
 - 15.4.2 Effective medical, therapeutic or remedial treatment for the child.

Reporting allegations or concerns about a child and protection from liability for giving information – section 129(1)(a)

16. Like the former CWA, the new legislation does **not** impose a mandatory reporting obligation or otherwise require the disclosure of information to DCD by health care professionals or other individuals where a child is, or is suspected of being, in need of protection (as defined in paragraph 15).
17. However, the CCSA does afford protection from liability to any individual who voluntarily divulges information in good faith to the CEO of DCD or another officer of DCD concerning a child's wellbeing (see, paragraph 86). A person is generally deemed to be acting in 'good faith' where he or she acts honestly and without improper motive.
18. Health care professionals and other confidants who have concerns or information relevant to the wellbeing of a child may report their suspicions to DCD by contacting DCD's Crisis Care Unit or its local district office. Provided the information is divulged in good faith and is limited to that concerning the child's wellbeing, liability for breach of confidentiality will not arise.
19. There is **no** requirement that a child must be at imminent, likely and serious risk of harm or neglect before a child reported to DCD can be justified.
20. Any decision to report a child to DCD should be well documented including the reasoning that led to the decision to notify DCD.

21. Any request by DCD for patient medical records or the preparation of medical reports or witness statements should be made, in the absence of an appropriate and valid patient consent, under authority of section 23 of the CCSA (see paragraph 55).

Confidentiality of notifier's identity – section 240(2)

22. Section 240(2) of the CCSA protects the identity of a person ("**the notifier**") who in good faith gives information or causes information to be given to the CEO of DCD or another officer of DCD that raises concerns about the wellbeing of a child.
23. A person who in the course of duty becomes aware of the identity of the notifier must not disclose identifying information to another person unless:
- 23.1 The disclosure is made –
- 23.1.1 For the purpose of performing functions under the CCSA;
- 23.1.2 With the written consent of the notifier; or
- 23.1.3 In legal proceedings with leave of the court or tribunal concerned; or
- 23.2 The identifying information has already been disclosed in legal proceedings and the court or tribunal concerned has not made an order prohibiting further disclosure.
24. '**Identifying information**' in relation to the notifier means information that identifies the notifier, or is likely to lead to his or her identification, or from which the identity of the notifier could be deduced.

Preliminary inquiries where concerns for child's wellbeing exist – sections 31 and 32

25. Where the CEO of DCD (or another officer of DCD) receives information raising concerns about a child's wellbeing, the CEO (or an authorised delegate) may cause inquiries to be made to determine whether action should be taken to safeguard or promote the child's wellbeing.
26. If upon completion of preliminary inquiries the CEO of DCD (or authorised delegate) determines that action should be taken to safeguard or promote the child's wellbeing, the CEO (or authorised delegate) may do one or more of the following:
- 26.1 Arrange the provision of social services to the child and the child's parents or other relative.
- 26.2 Arrange a meeting to develop a plan to address the child's ongoing needs in a way that ensures the best outcome of the child concerned, between an officer of DCD and one or more of the following individuals:
- 26.2.1 The child's parents or other relative.
- 26.2.2 A person who is significant in the child's life.
- 26.2.3 A representative of a person or body providing social services under an agreement with the Minister for Community Development.

- 26.2.4 A representative from a public authority (including a public health authority).
- 26.3 Enter into a negotiated placement agreement in respect of the child.
- 26.4 Arrange for an authorised officer of DCD to conduct an investigation to ascertain whether the child may be in need of protection.
- 26.5 Arrange for the child to be placed in provisional protection and care (either with or without a warrant).
- 26.6 Arrange for an application to be made to the court for a protection order.
- 26.7 Arrange any other action in respect of the child that the CEO of DCD (or authorised delegate) considers reasonably necessary.

Access to child at hospital, school or other place without parental consent – sections 33, 34, 120, 121 and 125

- 27. An authorised officer of DCD may have access to a child without parental consent for the purpose of conducting an investigation to ascertain whether the child may be in need of protection.
- 28. Section 33(1) of the CCSA provides –
 - “(1) If, in the course of an investigation [to ascertain whether the child may be in need of protection], an authorised officer believes on reasonable grounds that –
 - (a) it is in the best interests of the child for the officer to have access to the child before the child’s parents become aware of the investigation; or
 - (b) if the child’s parents were to know in advance about the proposed access, the proper and effective conduct of the investigation would be likely to be jeopardise,

the authorised officer, without informing the child’s parents, may have access to the child at a school, hospital or place where a child care service is provided, and remain at the school, hospital or place, for as long as the officer reasonably considers necessary for the purpose of the investigation.....”
- 29. The authorised officer must notify in advance the person in charge of the school, hospital or child care service of his or her intention to exercise the above power. A warrant is not required for the exercise of this power.
- 30. The authorised officer may apply to the court for a ‘warrant (access)’ where access to the child is (or it is believed will be) denied, or entry to the place where the child is suspected to be cannot be obtained.
- 31. Where granted, a ‘warrant (access)’ authorises an authorised officer of DCD or police officer to enter at any time any place where such persons reasonably believe the child to be:
 - 31.1 To search the place for the purpose of finding the child;
 - 31.2 To remain at the place for as long as reasonably necessary to find the child; and

- 31.3 If found, to remain at the place and have access to the child for as long as reasonably necessary.
32. An authorised officer or police officer executing a ‘warrant (access)’ must produce the original or a copy of it when asked to do so by a person at the place where the warrant is executed.
33. ‘Access’ for the purpose of the above encompasses the power to observe and interview the child without a parent of the child or any other person being present. This power is unlikely to extend to more intrusive forms of examination.

Provisional protection and care – sections 29, 35, 36, 37, 38, 123 and 124

Provisional protection and care with warrant – section 35

34. An authorised officer of DCD who believes a child to be in need of protection may apply to the court for a ‘warrant (provisional protection and care)’ where he or she is:
- 34.1 Unable to find the child; or
- 34.2 Believes that leaving the child at the place where the child is living poses an unacceptable risk to the child’s wellbeing; or
- 34.3 Believes that if a parent of the child or other person becomes aware of a proposed protection application in respect of the child, the child will be moved from the place where he or she is living and the officer will be unable to find the child.
35. Where granted by the court, a ‘warrant (provisional protection and care)’ authorises an authorised officer of DCD or police officer to enter at any time any place where such persons reasonably believe the child to be:
- 35.1 To search the place for the purpose of finding the child;
- 35.2 To remain at the place for as long as reasonably necessary to find the child; and
- 35.3 If found, to take the child into provisional protection and care and to such place as the CEO of DCD directs.
36. An authorised officer or police officer executing a ‘warrant (provisional protection and care)’ must produce the original or a copy of it when asked to do so by a person at the place where the warrant is executed.
37. Following execution of a ‘warrant (provisional protection and care)’, the CEO of DCD must make a protection application to the court within 2 working days after the child is taken into provisional protection and care.

Provisional protection and care without warrant where immediate and substantial risk to child’s wellbeing – section 37

38. Where there are reasonable grounds to suspect that there is an immediate and substantial risk to a child’s wellbeing, an authorised officer of DCD or police officer may enter and search any place the child is believed to be and take the child into provisional

protection and care. In these circumstances, a 'warrant (access)' or 'warrant (provisional protection and care)' is not necessary.

39. If a police officer takes a child into provisional protection and care pursuant to section 37 of the CCSA, he or she must notify the CEO of DCD. Upon a child being taken into provisional protection and care under section 37, the CEO of DCD may make a protection application (or if appropriate another application) to the court.
40. If the CEO of DCD decides not to make an application to the court, the CEO must ensure that as soon as practicable the child is returned to the person providing the child's day-to-day care (usually the parents) or other person nominated by the parents.
41. If the child has already been in the care of the CEO of DCD immediately before being taken into provisional protection and care pursuant to section 37 of the CCSA, the CEO may make any appropriate arrangements for the child.

Cessation of provisional protection and care – section 29(3)

42. A child, if taken into provisional protection and care pursuant to section 37 of the CCSA, ceases to be in provisional protection and care when:
 - 42.1 The child is returned to the person providing the child's day-to-day care (usually the parents) or is placed in the care of a person nominated by the child's parents.
 - 42.2 The court makes an interim order that the child be returned to the person providing the child's day-to-day care or be placed in the care of another person.
 - 42.3 The court makes or refuses to make a protection order in respect of the child.

Protection orders – sections 45, 47-48, 54-55, 57, 59, 60-62

43. In contrast to the CWA, a child found to be in need of protection is no longer made a 'Ward' of the State or placed 'under the control' of DCD.
44. Instead, where on the hearing of a protection application the court finds the child is in need of protection, it may make one of the following protection orders:
 - 44.1 **Protection order (supervision)** – This order provides for the supervision of the wellbeing of the child by the CEO of DCD (or an authorised delegate). It does not affect parental responsibility for the child except to the extent (if any) necessary to give effect to the order. The order remains valid for the period specified in it unless extended or revoked by further court order. The period specified must not exceed 2 years and must end before the child reaches 18 years of age.
 - 44.2 **Protection order (time-limited)** – This order gives the CEO of DCD parental responsibility for the child to the exclusion of any other person for such period as specified in it. The order remains valid for the period specified unless extended or revoked by further court order. The period specified must not exceed 2 years and must end before the child reaches 18 years of age.
 - 44.3 **Protection order (until 18)** – This order gives the CEO of DCD parental responsibility for the child to the exclusion of any other person until the child

reaches 18 years of age. The order remains valid until the child reaches 18 years of age unless revoked by further court order.

- 44.4 **Protection order (enduring parental responsibility)** – This order gives a natural person (or two natural persons jointly) other than the CEO of DCD or a parent of the child concerned, parental responsibility for the child to the exclusion of any other person until the child reaches 18 years of age. The order remains valid until the child reaches 18 years of age unless revoked by further court order. The natural person in whose favour parental responsibility is given is called the ‘enduring parental carer’.

Negotiated placement agreement – section 75

45. Parents acting together (or a parent acting alone in specified circumstances) may enter into a negotiated placement agreement (“**NPA**”) with the CEO of DCD (or an authorised delegate) to provide for the care of their child or children.
46. A NPA is used where there are no child protection concerns but the child’s parents are unable to provide for the care of the child (e.g., due to a parent’s hospitalisation). It provides a mechanism by which a child may be placed in the care of the CEO of DCD with the consent of the parents who retain continuing capacity as decision-makers for the child.
47. A NPA remains valid for the period specified in it or any extension of it, unless terminated. A NPA and any extension of it must be in writing signed by the CEO of DCD (or an authorised delegate) and the child’s parent(s).
48. The CEO of DCD (or authorised delegate) or the parent(s) of the child may terminate a NPA at any time by written notice to the parties to the NPA. A parent need not be a party to the NPA in order to terminate it.

Requests for assistance – section 22(3)

49. The CEO of DCD (or an authorised delegate) may request the Department of Health or a public health authority to provide specific assistance where, in the CEO’s (or authorised delegate’s) opinion, it would assist in the performance of one or more of the CEO’s functions under the CCSA. Where the CEO of DCD (or authorised delegate) makes such a request, the assistance being sought must be specified.
50. The functions of the CEO of DCD under the CCSA are described as follows –
- 50.1 To consider and initiate, or assist in, the provision of social services to children, other individuals, families and communities.
- 50.2 To take or cause to be taken any action, not inconsistent with the CCSA, in respect of a child or class or group of children that the CEO of DCD considers reasonably necessary for the purpose of safeguarding or promoting the wellbeing of the child or children concerned.
- 50.3 To provide, and where appropriate, manage facilities (including land, buildings and other property) for purposes consistent with the objects of the CCSA.

- 50.4 To establish procedures for dealing with complaints about social services provided under the CCSA or otherwise relating to the administration of the CCSA.
- 50.5 To promote, encourage, conduct and publish research on matters relating to the objects of the CCSA.
- 50.6 To collect and publish, or assist in the collection and publication of, information and statistics on matters relating to the objects of the CCSA.
51. The Department of Health and public health authorities must make reasonable endeavours to comply with requests for assistance made by the CEO of DCD (or an authorised delegate) under authority of section 22(3) of the CCSA. The obligation is to make reasonable efforts to comply and will only arise if compliance:
- 51.1 Is consistent with the duties and responsibilities of the Department or public health authority; and
- 51.2 Does not unduly prejudice the performance of the Department or public health authority's functions.
52. An example of where there may be no obligation to try to comply with a request for assistance made under authority of section 22(3) of the CCSA, is where the CEO of DCD (or an authorised delegate) requests a public hospital to routinely inform DCD of the name and address of all pregnant children (under the age of 18 years of age) who present to the hospital for treatment. Where (hypothetically) compliance with the request would be inconsistent with the hospital's duty of patient confidentiality and be likely to adversely affect the hospital's function as a health care provider (e.g., because it may result in pregnant minors not seeking treatment for fear of a report to DCD), it is arguable the obligation to make reasonable endeavours to comply with the request does not arise. However, as discussed below, there are specific provisions in the CCSA for the disclosure of information to DCD.
53. The CCSA does not specify the form in which requests for assistance should be made. However, it is recommended that in non-urgent situations and where practicable, DCD should be asked to put the request in writing signed by the CEO of DCD (or an authorised delegate).
54. Where someone other than the CEO of DCD (or an authorised delegate) makes a request for assistance under section 22(3) of the CCSA and compliance with the same would contravene a competing legal obligation (e.g., a duty of confidentiality), the request must be declined.

Exchange of information – section 23

55. Section 23 of the CCSA (which replaces section 10C of the CWA) permits the CEO of DCD, an authorised delegate or an authorised officer of DCD to:
- 55.1 Disclose relevant information to the Department or a public health authority or interested person; or

- 55.2 Request the Department or a public health authority or an interested person who or which holds relevant information to disclose the information to the CEO of DCD, an authorised delegate or an authorised officer of DCD.
56. It should be noted that:
- 56.1 Only '**relevant information**' may be requested. 'Relevant information' is information that, in the opinion of the CEO of DCD, an authorised delegate or authorised officer is likely to be relevant to either:
- 56.1.1 The wellbeing of a child or a class or group of children; or
- 56.1.2 The performance of a function under the CCSA.
- 56.2 Requests for relevant information may be made to the Department, public health authorities or 'interested persons'. An '**interested person**' is a person or body that, in the opinion of the CEO of DCD, an authorised delegate or authorised officer, has a direct interest in the wellbeing of a child or a class or group of children. Therefore, an interested person may (in some circumstances) be a treating medical practitioner or other health care professional. An interested person may be requested to provide information held by him or her both in written and unwritten form.
- 56.3 Responsibility for assessing whether information is relevant and whether a person is an interested person rests with the CEO of DCD, authorised delegate or authorised officer. There is no obligation for WA Health officers to make such assessment.
- 56.4 A request under section 23 of the CCSA may be made only to the Department or public health authority or interested person 'holding' the relevant information. The term 'hold' is likely to cover information in the relevant party's physical possession as well as information under their control (i.e., where the party has a legal right to obtain possession of documents not otherwise in his or her physical possession). A non-salaried medical practitioner will have no legal right to obtain possession of a patient's public health authority medical records though he or she will as part of the treatment process at times have physical possession of the same. It is generally preferable that requests for a patient's medical records be made to the public health authority that owns them under authority of section 23 of the CCSA.
- 56.5 Compliance with a request for relevant information made by the CEO of DCD, an authorised delegate or authorised officer is voluntary. It is therefore at the discretion of the Department, public health authority or interested person to disclose confidential information when requested to do so under authority of section 23 of the CCSA.
- 56.6 No civil or criminal liability, breach of confidence or breach of professional ethics, standards or relevant regulatory statute will arise where the Department, public health authority or interested person divulges information under authority of section 23 of the CCSA provided disclosure is made in good faith. This protection will only be available in respect of a disclosure of information to DCD. It does not provide protection for disclosures to third parties such as the police or teaching staff employed by the Department of Education.

57. Wherever WA Health officers have doubts concerning their authority to release confidential patient information and appropriate patient consent is not available and cannot be obtained, it is recommended that DCD be asked to make the request for information under authority of section 23 of the CCSA. In the absence of appropriate patient consent, requests made by DCD for a patient's medical records or for the preparation and release of witness statements or medical reports must be made under authority of section 23 of the CCSA.
58. The form in which requests for relevant information should be made under section 23 of the CCSA is not specified. In non-urgent situations and where practicable, DCD should be asked to make section 23 requests for confidential patient information in writing. The pro-forma section 23 request appearing at **Appendix C** can be sent to DCD for its use when preparing the written request.
59. Confidential information may be released on the basis of a verbal request in emergency situations once the identity and authority of the person making the request has been verified (e.g., an authorised officer's identity card has been sighted and checked). A notation of the verbal request, the enquiries conducted and any documents sighted to verify the person's authority should be recorded in the patient's medical file. Further, the person making the request should be asked to confirm the verbal request in writing under section 23 of the CCSA once the emergency is over.

Power to keep child under 6 years of age in hospital – section 40

60. Section 40 of the CCSA replaces section 29(3a) of the CWA.
61. Under the new legislation, the officer for the time being in charge of a hospital ("**the officer in charge**") may keep a child in the hospital for the purpose of observation, assessment or treatment, or otherwise to safeguard or promote the wellbeing of the child if:
- 61.1 The child is under 6 years of age and is brought to the hospital for observation, assessment or treatment, or is admitted to the hospital; and
- 61.2 The officer in charge believes on reasonable grounds that the child is in need of protection (see paragraph 15 for definition).
62. The child may be kept in hospital whether or not a parent of the child consents to that action. However, the child must not be kept in hospital for more than 2 working days (i.e., excluding Saturdays, Sundays, public holidays or public service holidays).
63. Where a child is kept in hospital, the officer in charge must notify the CEO of DCD (or an authorised delegate) as soon as practicable. Notification may be given orally or in writing. However, any oral notification must be followed up with a written notification as soon as practicable.
64. The officer in charge may give the CEO of DCD (or an authorised delegate) any information relating to the child that the officer in charge reasonably believes is necessary to safeguard or promote the wellbeing of the child.
65. It is an offence for any person to take a child who is being detained in a hospital unless consent has been given by the CEO of DCD, an authorised delegate or the officer in

charge (but in the case of the latter, consent may only be given after consultation with the CEO of DCD or an authorised delegate).

Power of CEO of DCD to give consent – section 127

66. Section 127 of the CCSA replaces section 50 of the CWA.
67. In circumstances where the consent of a child's parents is ordinarily required or customarily sought, the CEO of DCD (or an authorised delegate) has authority to give consent on behalf of a child the subject of a:
- 67.1 Protection order (time-limited).
 - 67.2 Protection order (until 18).
 - 67.3 Negotiated placement agreement (NPA) but only where expressly authorised to do so in the NPA.
68. In such cases, the consent of the CEO of DCD (or an authorised delegate) must both be in writing and signed by the CEO (or authorised delegate).

Identifying person with authority to give consent to medical treatment on behalf of child

Parental responsibility generally

69. In general, the power to give consent to medical treatment on behalf of a child vests with the person or persons having parental responsibility for the child.
70. Each of the parents of a child will generally have full parental responsibility for the child by virtue of their relationship and either parent is able to give consent on behalf of the child.
71. Parental responsibility covers all the duties, powers and responsibilities and authority that, by law, parents have in relation to their child. This includes responsibility for their child's long-term as well as the child's day-to-day care, welfare and development. A decision relating to a child's religion is an example of a responsibility associated with the child's long-term care. Decisions relating to daily living such as the time a child will go to bed or the television programs a child may watch are examples of responsibilities associated with the child's day-to-day care.
72. Parental responsibility is not affected by changes to relationships (i.e., if the parents separate, divorce or remarry). However, it can be varied by court order in family breakdown situations (i.e., the parents have separated or divorced). It can also be varied by court order or otherwise affect by certain other circumstances in child protection cases as explained below.

Child in provisional protection and care

73. The parents of a child placed in provisional protection and care (see paragraphs 34 and 38) retain full parental responsibility and have authority to give consent to medical treatment on behalf of their child.
74. However, section 29(2) of the CCSA authorises the CEO of DCD or an authorised delegate (subject to any interim court order) to make decisions about the day-to-day care, welfare and development of a child in provisional protection and care, including decisions about medical or dental examination, treatment or procedure in respect of the child.

Child the subject of a protection order (time limited) or a protection order (until 18)

75. The parents of a child the subject of a protection order (time limited) or a protection order (until 18) are fully divested of parental responsibility over their child for the duration of the court order (see paragraphs 44.2 and 44.3).
76. In these circumstances, the only person with authority for the child is the CEO of DCD (or an authorised delegate) and consent to medical treatment on behalf of the child must be sought from the CEO (or an authorised delegate) in accordance with section 127 of the CCSA (see paragraph 68).

Child the subject of a protection order (supervision)

77. The parents of a child the subject of a protection order (supervision) retain full parental responsibility over their child except to the extent (if any) necessary to give effect to the order (see paragraph 44.1).
78. In other words, the parents of the child will generally retain authority to give consent to medical treatment on behalf of their child. However, there may be exceptions but it will depend on the wording of the court order and the individual circumstances of the case.

Child the subject of a protection order (enduring parental responsibility)

79. The parents of a child the subject of a protection order (enduring parental responsibility) are fully divested of parental responsibility over their child for the duration of the court order (see paragraph 44.4).
80. In these circumstances, the person or persons with authority for the child and who can give consent to medical treatment on behalf of the child will be the person or persons (other than the parents or the CEO of DCD) expressly named in the court order as having been granted parental responsibility for the child.

Child subject of a Negotiated Placement Agreement (“NPA”)

81. The parents of a child the subject of a NPA (see paragraph 46) retain full parental responsibility and are generally the appropriate persons to give consent to medical treatment on behalf of their child.
82. However, the CEO of DCD (or an authorised delegate) will be permitted to give consent to treatment on behalf of the child the subject of the NPA where the NPA expressly authorises the CEO (or relevant authorised delegate) to do so. In these circumstances, consent must be sought from the CEO (or relevant authorised delegate) in accordance with section 127 of the CCSA (see paragraph 68).

Limitations on giving consent to medical treatment

83. The power to give consent to treatment on behalf of a child (regardless of who is vested with such power) is subject to:
- 83.1 The overriding criterion of the child's best interests; and
 - 83.2 Any limitations imposed under another statute or requirement to obtain the approval of the court exercising its *parens patrie* jurisdiction. For example, non-therapeutic sterilisation procedures where court approval is necessary.
 - 83.3 The ability of a child assessed as a 'mature minor' (i.e., *Gillick* competent) to give consent on his or own behalf (which may itself be subject to statutory limitations, e.g., termination of pregnancies).

Identifying person with authority to give consent to the disclosure of confidential information on behalf of child

84. The broad principles relating to the giving of consent to medical treatment outlined above, would also be applicable to the giving of consent to disclosure of a child's confidential patient information.
85. However, where DCD is seeking confidential information about the child for the purpose of an investigation or intended or pending child protection application, it will generally be appropriate for the disclosure of the information to be made in accordance with a request made under section 23 of the CCSA (see paragraph 55).

Protection from liability for giving information – section 129(2)

86. Section 129(2) of the CCSA affords protection from liability to any person who in good faith gives information:
- 86.1 To the CEO of DCD or another officer of DCD about any aspect of the wellbeing of a child.
 - 86.2 To the CEO of DCD or another officer of DCD for the purposes of an investigation by an authorised officer of DCD to ascertain whether a child may be in need of protection.
 - 86.3 To the CEO of DCD or another officer of DCD for the purposes of an application to the court for a protection order or other order.
 - 86.4 To the CEO of DCD where the officer in charge of a hospital detains a child under 6 years of age is in hospital.
87. Section 129(2) of the CCSA provides that in giving information in the circumstances outlined in paragraph 86, the person –
- (a) does not incur any civil or criminal liability;
 - (b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law;
- and

- (c) is not to be taken to have breached any professional ethics or standards or to have engaged in unprofessional conduct.”

Protection from liability generally – section 246(1) and (4)

88. Section 246(1) and (4) of the CCSA provides that:

- “(1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act...
- (4) A person who, at the request of a police officer or an authorised officer, assists the officer in the exercise of a power under this Act is to be taken, for the purposes of this section, to be performing a function under this Act.”

89. This provision appears to provide protection from an action in tort (e.g., negligence, false imprisonment, battery, assault) to a health care professional or other individual who, in good faith and for the purpose of a provision of the CCSA does the following:

- 89.1 Assists a police officer upon request in the exercise of a power under the CCSA;
 89.2 Assists an authorised officer of DCD upon request in the exercise of a power under the CCSA; or
 89.3 Does anything or omits to do anything under authority of the CCSA.

90. An example of the application of section 246(1) of the CCSA, would be where a parent of a child commences legal proceedings for the tort of false imprisonment against a person in charge of a hospital who exercise his or her power to detain the child under section 40 of CCSA. By operation of section 246(1) of the CCSA, the person in charge of the hospital cannot be liable for the tort of false imprisonment if his or her decision to keep the child in hospital was made in good faith and in the performance of a function under the CCSA (e.g., to safeguard the wellbeing of the child).

Objection to disclose certain information during legal proceedings – section 239(1)

91. Section 239(1) of the CCSA provides:

“A person may, in any legal proceedings, object to disclosing information obtained by, or made available to, the person in the performance of functions under this Act, or in the provision of social services under an agreement referred to in section 15(1) on the grounds that-

- (a) its disclosure endangers, or is likely to endanger, a person’s safety or psychological health;
 (b) it is a record of confidential counselling with a child or a child’s relative; or
 (c) it is information personal to a child, a child’s relative or a child’s carer and the person reasonably believes that it is not materially relevant to the proceedings.”

92. Section 239(1) of the CCSA permits an officer of DCD or a person or body who provides social services pursuant to an agreement with the Minister for Community Development, to object to disclosing information obtained in their official capacity to the court on the grounds specified in paragraph 91.

93. The right to object does not apply to the Department or a public health authority or its staff except to the extent the authority has entered into an agreement with the Minister for Community Development to provide social services.

Obstruction - section 242

94. A person must not obstruct or hinder a person who is performing or attempting to perform a function under the CCSA.
95. This provision would arguably not apply to a health care professional that refuses to provide information requested by DCD pursuant to section 23 of the CCSA because there is no legal obligation to comply with such request (see paragraph 56.5).

Offences – sections 101 to 103

96. Section 101 of the CCSA makes it an offence for a person who has the care or control of a child to fail to protect a child from harm. Section 101(1) of the CCSA states –
- “A person who has the care or control of a child and who engages in conduct [including acts and omissions] –
- (a) knowing that the conduct may result in the child suffering harm as a result of any one or more of the following –
- (i) physical abuse;
 - (ii) sexual abuse;
 - (iii) emotional abuse;
 - (iv) psychological abuse; or
 - (v) neglect...; or
- (b) reckless as to whether the conduct may have that result,
- is guilty of a crime, and is liable to imprisonment for 10 years.”
97. Section 102 of the CCSA creates the offence of leaving a child unsupervised in a vehicle. Section 103 of the CCSA creates the offence of tattooing or branding a child.
98. Offences against sections 101 and 102 of the CCSA are crimes (indictable offences) and this reflects the more serious nature of the offences. An offence against section 103 of the CCSA is a simple offence that is dealt with by a magistrate in the lower courts.

Transitional provisions – clause 3 and 9 of Schedule 1

99. On and after commencement of the CCSA on 1 March 2006:
- 99.1 Any existing order under the CWA making a child a Ward of the State or placing a child under the control of DCD until the relevant child reaches 18 years of age, has the effect as if it were a ‘protection order (until 18) (see paragraph 44.3).
- 99.2 Any existing order under the CWA other than one making a child a Ward of the State or placing a child under the control of DCD until the relevant child reaches 18 years of age, has the effect as if it were a ‘protection order (time limited) (see paragraph 44.2). The existing order remains valid until its expiry where it has less than 2 years to run. In all other cases, the order runs for a period of 2 years from 1 March 2006.
- 99.3 A child who immediately before 1 March 2006 is detained in a hospital under section 29(3a) of the CWA is taken on and after that date to be kept in the

hospital under section 40(2) of the CCSA (see paragraph 61). The period the child has been detained in the hospital prior to 1 March 2006 is included in the reckoning of the period of detention for the purpose of paragraph 62.

APPENDIX A

Children & Community Services Act 2004, section 25 LIST OF 'AUTHORISED OFFICERS' AND THEIR KEY POWERS AND DUTIES

Authorised Officers and authority conferred on same	s.23(2) & (3) To disclose 'relevant information' to, or request disclosure of 'relevant information' from, public health authorities.	s.32(1)(d)(e) To conduct investigation to ascertain whether child in need of protection and take action to place child in provisional protection and care	s.33 To have access to child at school, hospital or other place where child care services provided for purpose of investigation	s.37 To take child into provisional protection and care without warrant if child at immediate and substantial risk	s.52 To have access to child subject to protection order (supervision) at any reasonable time	s.121 & s.124 To execute warrant (access) where granted – i.e., to enter, search & remain at place specified in warrant and to have access to child	s.122 & s.124 To execute warrant (apprehension) where granted – i.e., to enter, search and remain at place specified in warrant and to apprehend child	s.123 & s.124 To execute warrant (provisional protection & care) – i.e., to enter, search and remain at place specified in warrant and to take child into provisional protection & care and to place CEO of DCD directs
Clinical Psychologist	√		√	√	√			
Clinical Social Worker	√		√	√	√			
Community Child Protection Worker	√	√	√	√	√	√	√	√
Counselling Psychologist	√		√	√	√			
Director ACSS*	√	√	√	√	√	√	√	√
Director North/South/East	√	√	√	√	√	√	√	√
Director Operational Policy	√	√	√	√	√	√	√	√
District Manager	√	√	√	√	√	√	√	√
Executive Director CDSS	√	√	√	√	√	√	√	√
Family Welfare Officer	√	√	√	√	√	√	√	√
Field Worker	√	√	√	√	√	√	√	√

* Adolescent & Child Support Service

APPENDIX A

Children & Community Services Act 2004, section 25 LIST OF 'AUTHORISED OFFICERS' AND THEIR KEY POWERS AND DUTIES

Authorised Officers and authority conferred on same	s.23(2) & (3) To disclose 'relevant information' to, or request disclosure of 'relevant information' from, public health authorities.	s.32(1)(d)(e) To conduct investigation to ascertain whether child in need of protection and take action to place child in provisional protection and care	s.33 To have access to child at school, hospital or other place where child care services provided for purpose of investigation	s.37 To take child into provisional protection and care without warrant if child at immediate and substantial risk	s.52 To have access to child subject to protection order (supervision) at any reasonable time	s.121 & s.124 To execute warrant (access) where granted – i.e., to enter, search & remain at place specified in warrant and to have access to child	s.122 & s.124 To execute warrant (apprehension) where granted – i.e., to enter, search and remain at place specified in warrant and to apprehend child	s.123 & s.124 To execute warrant (provisional protection & care) – i.e., to enter, search and remain at place specified in warrant and to take child into provisional protection & care and to place CEO of DCD directs
Field Worker ACSS*	√	√	√	√	√	√	√	√
Intensive Placement Support Worker	√	√	√	√	√	√	√	√
Manager Child Placement Services	√	√	√	√	√	√	√	√
Practice Development Officer	√	√	√	√	√	√	√	√
Practice Development Officer ACSS*	√	√	√	√	√	√	√	√
Psychologist	√		√	√	√			
Senior Field Officer	√	√	√	√	√	√	√	√
Senior Field Officer ACSS*	√	√	√	√	√	√	√	√
Senior Field Worker	√	√	√	√	√	√	√	√
Senior Operational Policy Officer	√	√	√	√	√	√	√	√
Senior Practice Development Officer	√	√	√	√	√	√	√	√

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APPENDIX A

Children & Community Services Act 2004, section 25 LIST OF 'AUTHORISED OFFICERS' AND THEIR KEY POWERS AND DUTIES

Authorised Officers and authority conferred on same	s.23(2) & (3) To disclose 'relevant information' to, or request disclosure of 'relevant information' from, public health authorities.	s.32(1)(d)(e) To conduct investigation to ascertain whether child in need of protection and take action to place child in provisional protection and care	s.33 To have access to child at school, hospital or other place where child care services provided for purpose of investigation	s.37 To take child into provisional protection and care without warrant if child at immediate and substantial risk	s.52 To have access to child subject to protection order (supervision) at any reasonable time	s.121 & s.124 To execute warrant (access) where granted – i.e., to enter, search & remain at place specified in warrant and to have access to child	s.122 & s.124 To execute warrant (apprehension) where granted – i.e., to enter, search and remain at place specified in warrant and to apprehend child	s.123 & s.124 To execute warrant (provisional protection & care) – i.e., to enter, search and remain at place specified in warrant and to take child into provisional protection & care and to place CEO of DCD directs
Senior Professional Officer Psychology	√		√	√	√			
Senior Professional Officer Social Work	√	√	√	√	√	√	√	√
Team Leader	√	√	√	√	√	√	√	√
Team Leader ACSS*	√	√	√	√	√	√	√	√
Team Leader Emergency Accommodation	√	√	√	√	√	√	√	√

* Adolescent & Child Support Service

APPENDIX B

Children & Community Services Act 2004, section 24 LIST OF DELEGATES OF CEO OF DCD AND THEIR KEY POWERS AND DUTIES

Delegates of CEO of DCD and the powers and duties delegated to same	All DCD positions	All level 5 & above DCD positions	Community Child Protection Worker	Coordinator Agency Placement	Crisis Care Manager	District Manager	Director North/South/East	Director ACSS	Director Licensing and Standards	Director Operational Policy	Executive Director CDSS	Executive Director PSD	Executive Director Special Projects	Family Welfare Officer	Field Worker	Financial Assistance Officer	Intensive Placement Support Worker	Manager Child Placement Service	Practice Development Officer	Resource Officer	Secretary Case Review Panel	Senior Field Worker	Senior Officer Aboriginal Service	Senior Operational Policy Officer	Senior Practice Development Officer	Senior Professional Officer Psychology	Senior Professional Officer Social Work	Supervisor Fostering Service	Team Leader
s.32(1)(d) To cause an investigation to be conducted by an Authorised Officer of DCD to ascertain whether child may be in need of protection.					✓	✓	✓	✓		✓	✓	✓	✓					✓	✓			✓		✓					✓
s.32(1)(e) To take or cause to be taken action to place child in provisional protection and care.					✓	✓	✓	✓		✓	✓	✓	✓					✓											
s.32(1)(e) To take action to place child in provisional protection and care.			✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓			✓		✓	✓				✓
s.32(1)(f) To take or cause to be taken any other action in respect of the child considered reasonably necessary.			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓			✓		✓	✓				✓
s.38(3) To make any arrangements considered appropriate for care of child who was in care of CEO of DCD immediately prior to being taken into provisional protection and care without warrant					✓	✓	✓	✓		✓	✓	✓	✓																
s.40(4) To receive notice from officer in charge of hospital of child under 6 years of age detained in hospital.					✓	✓	✓	✓		✓	✓	✓	✓																✓
s.40(6) To receive from officer in charge of hospital information to safeguard or promote child's wellbeing.			✓		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓		✓					✓	✓				✓
s.40(8) To give consent to the taking from hospital of a child under 6 years detained in that hospital.					✓	✓	✓	✓		✓	✓	✓	✓																
s.40(9) To consult with officer in charge of hospital regarding the taking of a detained child under 6 years from hospital before giving consent to same.					✓	✓	✓	✓		✓	✓	✓	✓																
s.47(1) Child subject to protection order (supervision) To supervise wellbeing of child.			✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓		✓			✓		✓	✓				✓
s.53 To ensure provision of appropriate social services to child under protection order (supervision) and child's parents.			✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓		✓			✓		✓	✓				✓
s.75 and s.77 To enter into, extend and terminate NPA*.					✓	✓	✓	✓		✓	✓	✓	✓																

* Negotiated Placement Agreement

APPENDIX B

Children & Community Services Act 2004, section 24 LIST OF DELEGATES OF CEO OF DCD AND THEIR KEY POWERS AND DUTIES

Delegates of CEO of DCD and the powers and duties delegated to same	All DCD positions	All level 5 & above DCD positions	Community Child Protection Worker	Coordinator Agency Placement	Crisis Care Manager	District Manager	Director North/South/East	Director ACSS	Director Licensing and Standards	Director Operational Policy	Executive Director CDSS	Executive Director PSD	Executive Director Special Projects	Family Welfare Officer	Field Worker	Financial Assistance Officer	Intensive Placement Support Worker	Manager Child Placement Service	Practice Development Officer	Resource Officer	Secretary Case Review Panel	Senior Field Worker	Senior Officer Aboriginal Service	Senior Operational Policy Officer	Senior Practice Development Officer	Senior Professional Officer Psychology	Senior Professional Officer Social Work	Supervisor Fostering Service	Team Leader	
<p>s.98 To ensure child leaving care of CEO of DCD is provided with social services considered appropriate.</p>					√	√	√	√		√	√	√							√		√		√						√	
<p>s.127 Child subject to protection order (time limited) (until 18) or NPA* (where NPA expressly authorises same): To approve anaesthetic or operative procedures where neither parent agrees, excluding approval of termination of life support, which can only be authorised by the CEO of DCD.</p>											√	√	√																	
<p>s.127 Child subject to protection order (time limited) (until 18) or NPA* (where NPA expressly authorises same): To approve anaesthetic or operative procedures where both parents agree in writing or in circumstances where after reasonable inquiries only one parent can be found and that parent agrees in writing.</p>						√					√	√	√																	
<p>s.127 Child subject to protection order (time limited) (until 18) or NPA* (where NPA expressly authorises same): To approve medical or dental examination and treatment not referred to in the row above.</p>					√	√	√	√			√	√	√					√			√		√							√
<p>s.127 Child subject to protection order (time limited) (until 18) or NPA* (where NPA expressly authorises same): To consent to termination of pregnancy.</p>											√	√	√																	

* Negotiated Placement Agreement

APPENDIX C
REQUEST FOR 'RELEVANT INFORMATION'
Section 23(3) of the Children and Community Services Act 2004
(To be typed on the DCD letterhead)

The Proper Officer

[Insert name and address of public authority]

Attention: [Insert name of officer responsible for handling section 23(3) requests on behalf of public authority if known.]

Dear Sirs

RE: SECTION 23(3), CHILDREN AND COMMUNITY SERVICES ACT 2004 – REQUEST FOR INFORMATION RELATING TO [INSERT FULL NAME AND DATE OF BIRTH OF THE CHILD THE SUBJECT OF THE SECTION 23(3) REQUEST]

Alternative 1:

I am an authorised officer of the Department for Community Development (“DCD”) appointed under section 25 of the *Children and Community Services Act 2004* (“CCSA”). By Instrument of Authorisation dated 20 March 2006, I am authorised to make requests pursuant to section 23(3) of the CCSA. Attached is a true copy of my identity card (the original of which is available for inspection upon request) showing my authority to exercise this power.

Alternative 2:

I am a delegate of the Chief Executive Officer of the Department for Community Development (“DCD”) pursuant to section 24(1) of the *Children and Community Services Act 2004* (“CCSA”). By Instrument of Delegation signed the Chief Executive Officer of DCD on 6 April 2006, I am authorised to make requests pursuant to section 23(3) of the CCSA.

Section 23(3) of the CCSA permits DCD’s Chief Executive Officer, authorised delegates and authorised officers to request public authorities holding ‘relevant information’ to disclose the same.

A ‘public authority’ is defined under the CCSA as:

- “(a) a department of the Public Service
 - (a) a State agency or instrumentality;
 - (b) ...
 - (c) a body, whether corporate or unincorporated, or the holder of an office, post or position, established or continued for a public purpose under a written law.”

‘Relevant information’ is defined under the CCSA as being any information likely to be relevant to the wellbeing of a child or a class or group of children or the performance of a function under the CCSA.

I have reason to believe that you hold relevant information within the meaning of Section 23(1) of the CCSA and, as such, formally request from you [Describe information requested with sufficient precision to enable the public authority to immediately identify the information sought. A vague or imprecise request will simply result in delay while the public authority seeks clarification from DCD as to the information sought].

Please forward the above information to the signatory to this request at the address appearing at the foot of this letter.

Yours faithfully