



Queensland

Child Safety (Carers) Amendment Act 2006

Act No. 17 of 2006



Queensland

Child Safety (Carers) Amendment Act 2006

Contents

		Page
Part 1	Preliminary	
1	Short title	8
2	Commencement	8
Part 2	Amendment of Child Protection Act 1999	
3	Act amended in pt 2 and schedule	8
4	Amendment of s 125 (Application for, or renewal of, licence).	8
5	Amendment of s 126 (Restrictions on granting application).	9
6	Amendment of s 129 (Refusal of application)	10
7	Amendment of s 130 (Nominees).	10
8	Amendment of s 136 (Refusal of application)	10
9	Insertion of new ch 4, pt 2, div 4, sdiv 3, and sdiv 4 hdg	11
	Subdivision 3 Immediate suspension or cancellation of particular authorities	
	140AB Definitions for sdiv 3	11
	140AC Immediate suspension	12
	140AD Notice of suspension	13
	140AE Period of suspension	13
	140AF End of suspension	13
	140AG Cancellation of certificate of approval	14
	140AH Cancellation of licence	15
	140AI Notice of cancellation	15
10	Amendment of s 143 (Effect of failure to decide application for, or for renewal of, authority).	16
11	Insertion of new s 143A	16
	143A Further consideration of application for authority	16
12	Insertion of new ss 148A and 148B, and ch 4, pt 3	17

	148A	Chief executive to notify children's commissioner about particular persons.	17
	148B	Obtaining particular information from children's commissioner	18
	Part 3	Application of Commissioner's Act	
	148C	Application to licensed care service	18
	148D	Pending application for prescribed notice.	19
13		Amendment of s 159 (Payments for care and maintenance)	19
14		Amendment of s 159M (Particular prescribed entities giving and receiving relevant information)	20
15		Insertion of new ch 9, pt 6	20
	Part 6	Transitional provisions for Child Safety (Carers) Amendment Act 2006	
	266	Definitions for pt 6.	20
	267	Application for licence.	21
	268	Application for particular certificate of approval	21
16		Amendment of sch 3 (Dictionary)	21
Part 3		Amendment of Child Safety Legislation Amendment Act 2005	
17		Act amended in pt 3	22
18		Amendment of s 14 (Insertion of new ch 2, pt 3B of Act No. 10 of 1999)	23
19		Amendment of s 38 (Replacement of ss 132–135 of Act No. 10 of 1999)	25
20		Amendment of s 42 (Amendment of s 137 (Amendment of authority on application of holder) of Act No. 10 of 1999)	26
21		Amendment of s 44 (Insertion of new ss 138A–138C of Act No. 10 of 1999)	27
22		Amendment of s 45 (Amendment of s 139 (Authority may be suspended or cancelled) of Act No. 10 of 1999)	27
23		Amendment of s 49 (Amendment of s 141 (Amendment, suspension and cancellation of authorities) of Act No. 10 of 1999)	28
24		Amendment of s 51 (Replacement of ch 4, pt 2, div 5, hdg and s 142 of Act No. 10 of 1999)	28
25		Omission of s 52 (Amendment of s 143 (Effect of failure to decide application for, or for renewal of, authority) of Act No. 10 of 1999)	32
26		Amendment of s 66 (Insertion of new ch 9, pt 5 of Act No. 10 of 1999)	32
27		Replacement of s 67 (Replacement of sch 2 (Reviewable decisions and aggrieved persons) of Act No. 10 of 1999)	32

67	Replacement of sch 2 (Reviewable decisions and aggrieved persons)	32
	Schedule 2 Reviewable decisions and aggrieved persons	
28	Amendment of s 68 (Amendment of sch 3 (Dictionary) of Act No. 10 of 1999)	34
Part 4	Amendment of Commission for Children and Young People and Child Guardian Act 2000	
29	Act amended in pt 4	35
30	Insertion of new s 99BA	35
	99BA Matters about particular regulated employment	36
31	Amendment of s 99F (Who is a volunteer)	36
32	Amendment of s 100 (Application for notice—regulated employment)	36
33	Amendment of s 101 (Application for notice—regulated business)	37
34	Amendment of s 102B (Actions of commissioner after making decision on application)	37
35	Replacement of s 104B (Starting employment)	38
	104B Starting employment	38
	104BA Currency of prescribed notice for person continuing employment	39
36	Amendment of s 108 (Person holding negative notice, or who has withdrawn consent to employment screening, not to apply for, or start or continue in, regulated employment)	39
37	Insertion of new s 109A	39
	109A Currency of prescribed notice for person carrying on regulated business	39
38	Amendment of s 119A (Cancellation if conviction for excluding offence and imprisonment or disqualification order)	40
39	Amendment of s 119C (Effect of charge for excluding offence pending charge being dealt with)	41
40	Amendment of s 121 (Person may apply for review of decision)	41
41	Amendment of s 122 (Commissioner may obtain information from police commissioner)	42
42	Amendment of s 122A (Notice of change in police information about a person)	42
43	Amendment of s 123 (Withdrawal of employee's consent to employment screening)	43
44	Insertion of new s 123A	43
	123A Notice about withdrawal of application or negative notice	43

45	Amendment of s 126 (Use of information obtained under this part about a person)	44
46	Amendment of s 126B (Commissioner may give information to accreditation board about director of school's governing body) . .	44
47	Insertion of new s 126D	45
	126D Notice of charge or conviction for serious offence . . .	45
48	Amendment of s 152 (Confidentiality of information about criminal history)	46
49	Amendment of s 153 (Confidentiality of other information)	47
50	Amendment of s 161 (Protection from liability)	47
51	Replacement of s 163 (Other reports relating to commissioner's functions)	48
	163 Other reports by commissioner	48
52	Amendment of s 163A (Annual report by commission)	49
53	Insertion of new s 164A	49
	164A Commissioner may enter into arrangement with chief executive (child safety)	49
54	Insertion of new pt 9, div 8	50
	Division 8 Further transitional provisions for the Commission for Children and Young People and Child Guardian Amendment Act 2004	
	196 Definitions for div 8	50
	197 Main purpose of div 8	50
	198 Circumstances, after commencement, in which pre-amended Act applies to outstanding relevant application	51
	199 Circumstances, after commencement, in which this Act applies to outstanding relevant application	52
	200 Relevant applications dealt with before commencement	52
	201 Application of ss 122 and 122A in particular circumstances	53
	202 Circumstances, after commencement, relating to ss 118 and 119 of pre-amended Act	53
	203 Circumstances, before commencement, relating to ss 118 and 119 of pre-amended Act	55
	204 Circumstances where pre-amended Act applies to application for review made before commencement .	55
	205 Circumstances where this Act applies to notices issued before the commencement	56
	206 References to prescribed notice	57
55	Insertion of new pt 9, div 9	57

	Division 9	Transitional provisions for Child Safety (Carers) Amendment Act 2006	
	207	Definition for div 9.	57
	208	Regulated employment—volunteers	57
	209	Regulated employment—other persons.	58
	210	Carrying on regulated business	59
	211	Particular certificates of approval under Child Protection Act 1999	59
	212	Particular licences under Child Protection Act 1999 .	60
56		Amendment of sch 1 (Regulated employment and businesses for employment screening).	61
57		Amendment of sch 4 (Dictionary).	62
Schedule		Amendment of Child Protection Act 1999	64



Queensland

Child Safety (Carers) Amendment Act 2006

Act No. 17 of 2006

An Act to amend the *Child Protection Act 1999*, the *Child Safety Legislation Amendment Act 2005* and the *Commission for Children and Young People and Child Guardian Act 2000*

[Assented to 2 May 2006]

The Parliament of Queensland enacts—**Part 1 Preliminary****1 Short title**

This Act may be cited as the *Child Safety (Carers) Amendment Act 2006*.

2 Commencement

- (1) Sections 40 and 42 are taken to have commenced on 17 January 2005 immediately after the *Commission for Children and Young People and Child Guardian Amendment Act 2004* commenced.
- (2) The following provisions commence on 31 May 2006—
 - part 2
 - sections 30 to 39, 41, 43, 44, 46, 47, 53, 55 to 57
 - the schedule.

Part 2 Amendment of Child Protection Act 1999**3 Act amended in pt 2 and schedule**

This part and the schedule amend the *Child Protection Act 1999*.

4 Amendment of s 125 (Application for, or renewal of, licence)

- (1) Section 125(1)(d)—
renumber as section 125(1)(e).

(2) Section 125(1)—

insert—

‘(d) be accompanied by a notice that—

- (i) is signed by the nominee for the licence; and
- (ii) states whether or not for each person mentioned in section 126(b)(i) or (ii), the person has a current positive prescribed notice or a current negative prescribed notice; and
- (iii) if the person has a current positive prescribed notice—states the expiry date for the notice; and
- (iv) if the person does not have a current prescribed notice—states whether or not there is a current application for a prescribed notice for the person; and’.

(3) Section 125(2), ‘criminal history,’—

omit.

5 Amendment of s 126 (Restrictions on granting application)

(1) Section 126(b)(iii) and (iv), after ‘will be’—

insert—

‘, or are,’.

(2) Section 126(c) and (d)—

renumber as section 126(e) and (f).

(3) Section 126—

insert—

‘(c) each person mentioned in paragraph (b)(i) or (ii) has a current positive prescribed notice; and

- (d) the applicant will comply with the Commissioner's Act, part 6,¹ in carrying on a regulated business or employing persons in regulated employment under that Act; and'.

6 Amendment of s 129 (Refusal of application)

Section 129(2)(c) and (d)—

omit, insert—

- '(c) unless the application is refused because a person mentioned in section 126(b)(i) or (ii) does not have a current positive prescribed notice—
- (i) state that the applicant may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
- (ii) state how to apply to have the decision reviewed.'

7 Amendment of s 130 (Nominees)

Section 130(1)—

insert—

- '(c) the licensee complies with the Commissioner's Act, part 6, in carrying on a regulated business or employing persons in regulated employment under that Act.'

8 Amendment of s 136 (Refusal of application)

Section 136(2)(c) and (d)—

omit, insert—

- '(c) unless the application is refused because a person mentioned in section 135(1)(a)(iii) or (b)(iv) does not have a current positive prescribed notice—

¹ The Commissioner's Act, part 6 (Screening for regulated employment and regulated businesses)

- (i) state that the applicant may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
- (ii) state how to apply to have the decision reviewed.’.

9 Insertion of new ch 4, pt 2, div 4, sdiv 3, and sdiv 4 hdg

Before section 140A—

insert—

‘Subdivision 3 Immediate suspension or cancellation of particular authorities

‘140AB Definitions for sdiv 3

‘In this subdivision—

apply for a review, of a decision under the Commissioner’s Act to issue or give a negative prescribed notice, means apply to the tribunal under section 121 or 121E² of that Act for review of the decision.

approved carer does not include a provisionally approved carer.

disqualifying event, for a person, means—

- (a) the person is issued with or given a negative prescribed notice other than—
 - (i) under a prescribed provision; or
 - (ii) on cancellation of a positive prescribed notice that is suspended; or
- (b) the person’s positive prescribed notice is suspended; or
- (c) an application for a prescribed notice about the person is withdrawn.

2 The Commissioner’s Act, section 121 (Person may apply for review of decision) or 121E (Consequence of decision on appeal)

prescribed provision means the Commissioner's Act, section 102(6)(a) or 119A.³

relevant person—

- (a) for an approved carer's certificate of approval—means a person who is a member of the carer's household; or
- (b) for a licence—means the nominee for the licence or a director of the licensee.

'140AC Immediate suspension

- '(1) Subsection (2) applies if a disqualifying event happens to—
 - (a) an approved carer, or a member of an approved carer's household; or
 - (b) the nominee for a licence, or a director of a licensee.
- '(2) The chief executive must suspend the approved carer's certificate of approval or the licence as soon as practicable after becoming aware of the disqualifying event.
- '(3) Subsection (4) applies if a relevant person for an authority is issued with or given a negative prescribed notice under a prescribed provision.
- '(4) The chief executive must suspend the authority as soon as practicable after the day the negative prescribed notice is issued or given, unless the chief executive decides to cancel the authority under section 140AG(3) or 140AH(1).
- '(5) However, the chief executive must not suspend an authority because a disqualifying event happens to a relevant person for the authority, or the relevant person is issued with or given a negative prescribed notice under a prescribed provision, if the chief executive is satisfied the person is no longer a relevant person.

3 The Commissioner's Act, section 102 (Decision on application) or 119A (Cancellation if conviction for excluding offence and imprisonment or disqualification order)

‘140AD Notice of suspension

- ‘(1) If a person’s authority is suspended under this subdivision, the chief executive must immediately give written notice of the suspension to the person.
- ‘(2) The notice must state—
 - (a) that the authority is suspended under section 140AC; and
 - (b) the reason for the suspension.
- ‘(3) The suspension of the person’s authority takes effect on the day the notice is given to the person.

‘140AE Period of suspension

‘The suspension of an authority remains in force until the earliest of the following to happen—

- (a) the day on which the authority is due to expire under this Act;
- (b) the suspension ends under section 140AF;
- (c) the authority is cancelled under section 140AG or 140AH.

‘140AF End of suspension

- ‘(1) The suspension of a person’s authority ends if the person or relevant person is issued with or given a positive prescribed notice or a further positive prescribed notice.
- ‘(2) If an authority is suspended because a disqualifying event happens to a relevant person for the authority, or the relevant person is issued with or given a negative prescribed notice under a prescribed provision, the chief executive must end the suspension if satisfied the person is no longer a relevant person.
- ‘(3) If the chief executive ends the suspension of a person’s authority under subsection (2)—
 - (a) the chief executive must give the person written notice that the suspension is ended; and

- (b) the suspension ends on the day the notice is given to the person.

'140AG Cancellation of certificate of approval

- '(1) If an approved carer is issued with or given a negative prescribed notice under a prescribed provision, the chief executive must cancel the carer's certificate of approval as soon as practicable after the day the notice is issued or given.
- '(2) If an approved carer's certificate of approval is suspended under this subdivision and the carer is issued with or given a negative prescribed notice, other than under a prescribed provision, the chief executive must cancel the certificate of approval as soon as practicable after—
 - (a) if the carer does not apply for a review of the decision to issue or give the notice—the end of the period in which the carer may apply for the review; or
 - (b) if the carer applies for a review and the decision to issue or give the notice is upheld on the review—the day the decision is upheld.
- '(3) If a relevant person for an approved carer's certificate of approval is issued with or given a negative prescribed notice under a prescribed provision, the chief executive may cancel the certificate of approval after the day the notice is issued or given, whether or not the certificate has been suspended under this subdivision.
- '(4) If an approved carer's certificate of approval is suspended under this subdivision and a relevant person for the carer's certificate of approval is issued with or given a negative prescribed notice, other than under a prescribed provision, the chief executive may cancel the certificate of approval after—
 - (a) if the relevant person does not apply for a review of the decision to issue or give the notice—the end of the period in which the person may apply for the review; or
 - (b) if the relevant person applies for a review and the decision to issue or give the notice is upheld on the review—the day the decision is upheld.

- ‘(5) The chief executive must not cancel a certificate of approval under subsection (3) or (4) if satisfied the relevant person is no longer a member of the approved carer’s household.

‘140AHCancellation of licence

- ‘(1) If a relevant person for a licence is issued with or given a negative prescribed notice under a prescribed provision, the chief executive may cancel the licence after the day the notice is issued or given, whether or not the licence has been suspended under this subdivision.
- ‘(2) If a licence is suspended under this subdivision and a relevant person for the licence is issued with or given a negative prescribed notice, other than under a prescribed provision, the chief executive may cancel the licence after—
- (a) if the relevant person does not apply for a review of the decision to issue or give the notice—the end of the period in which the person may apply for the review; or
 - (b) if the relevant person applies for a review and the decision to issue or give the notice is upheld on the review—the day the decision is upheld.
- ‘(3) The chief executive must not cancel a licence under this section if satisfied the relevant person is no longer the nominee for the licence or a director of the licensee.

‘140AI Notice of cancellation

- ‘(1) If the chief executive cancels a person’s authority under this subdivision, the chief executive must immediately give written notice of the cancellation to the person.
- ‘(2) The notice must state each of the following—
- (a) that the authority is cancelled under section 140AG or 140AH;
 - (b) the reason for the cancellation;
 - (c) if the chief executive decides to cancel the authority under section 140AG(3) or (4) or 140AH—

- (i) that the person may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
 - (ii) how to have the decision reviewed.
- ‘(3) The cancellation of the person’s authority takes effect on the day the notice is given to the person.

‘Subdivision 4 Other matters about amendment, suspension or cancellation’.

10 Amendment of s 143 (Effect of failure to decide application for, or for renewal of, authority)

- (1) Section 143(4)—
renumber as section 143(5).
- (2) Section 143—
insert—
- ‘(4) Subsection (1) is subject to section 143A.’.

11 Insertion of new s 143A

After section 143—
insert—

‘143A Further consideration of application for authority

- ‘(1) This section applies if the chief executive considers more time is needed to decide an application for an authority because of the nature of the matters that need to be considered in deciding it.
- ‘(2) The chief executive and the applicant may at any time before the end of 90 days after the application is properly made agree in writing to extend the period within which the application must be decided.
- ‘(3) The agreement must state the period of the extension.
- ‘(4) If the chief executive does not decide the application within the period as extended under subsection (2)—

- (a) the chief executive is taken to have decided to refuse the application; and
- (b) the applicant is taken to have received notice of the decision at the end of the period.’

12 Insertion of new ss 148A and 148B, and ch 4, pt 3

Before chapter 5—

insert—

‘148A Chief executive to notify children’s commissioner about particular persons

- ‘(1) This section applies if—
- (a) the chief executive applies for a prescribed notice about a person and, before the application is decided, the chief executive—
 - (i) becomes aware that the person no longer proposes to be engaged in regulated employment mentioned in the Commissioner’s Act, schedule 1, section 6G(1) or (2);⁴ or
 - (ii) if the person has applied for a certificate of approval—refuses the person’s application for the certificate; or
 - (b) the chief executive becomes aware that a person engaged in regulated employment mentioned in paragraph (a)(i) stops being engaged in the employment.
- ‘(2) The chief executive must as soon as practicable give the children’s commissioner written notice of the fact.
- ‘(3) The notice must include—
- (a) the person’s name, address and date of birth; and
 - (b) if the person has a current positive prescribed notice—the notice’s registration number under the Commissioner’s Act.

4 The Commissioner’s Act, schedule 1 (Regulated employment and businesses for employment screening), section 6G (Care of children under Child Protection Act 1999)

‘148B Obtaining particular information from children’s commissioner

- ‘(1) The chief executive may ask the children’s commissioner for the following information—
- (a) information about whether a relevant person—
 - (i) has a current positive prescribed notice or a current negative prescribed notice; or
 - (ii) has a positive prescribed notice that is suspended under the Commissioner’s Act; or
 - (iii) has a current application for a prescribed notice;
 - (b) if the relevant person has a positive notice—the expiry date for the notice;
 - (c) if the relevant person has a negative notice—the date of issue of the notice.
- ‘(2) The children’s commissioner must comply with a request under subsection (1).
- ‘(3) In this section—
- relevant person* means—
- (a) an applicant for a certificate of approval or an adult member of the applicant’s household; or
 - (b) the nominee for, or a director of an applicant for or holder of, a licence.

‘Part 3 Application of Commissioner’s Act**‘148C Application to licensed care service**

- ‘(1) This section applies for the application of the Commissioner’s Act.
- ‘(2) If a corporation carries on the business of a licensed care service, each of the following persons is taken to be also carrying on the business—

- (a) the nominee for the licence;
- (b) the directors of the licensee.

‘148D Pending application for prescribed notice

- ‘(1) Subsection (2) applies if—
 - (a) a person who does not have a current positive prescribed notice is taken to be a volunteer engaged in regulated employment under the Commissioner’s Act because the person becomes an adult member of—
 - (i) the household of an applicant for a certificate of approval; or
 - (ii) an approved carer’s household; and
 - (b) an application for a prescribed notice about the person is current.
- ‘(2) The Commissioner’s Act, section 104B,⁵ does not apply in relation to the person while the application is current.
- ‘(3) Subsection (4) applies if—
 - (a) a corporation holds a licence; and
 - (b) a person who does not have a current positive prescribed notice becomes the nominee for the licence or a director of the corporation; and
 - (c) an application for a prescribed notice about the person is current.
- ‘(4) The Commissioner’s Act, section 109(1), does not apply to the person while the application is current.’

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

- (1) Section 159(1), ‘the allowance prescribed under a regulation’—
omit, insert—

⁵ The Commissioner’s Act, section 104B (Starting employment)

‘the allowance decided by the chief executive’.

(2) Section 159—

insert—

‘(4) For subsection (1), the amount of the allowance must be worked out under a written policy of the department about the payment of allowances to carers for a child’s care and maintenance.’.

14 Amendment of s 159M (Particular prescribed entities giving and receiving relevant information)

Section 159M(1)—

insert—

‘(e) the principal of a school that is accredited, or provisionally accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*.’.

15 Insertion of new ch 9, pt 6

Before schedule 1—

insert—

**‘Part 6 Transitional provisions for
Child Safety (Carers)
Amendment Act 2006**

‘266 Definitions for pt 6

‘In this part—

commencement means the day on which the provision in which the term is used commences.

post-amended Act means this Act as in force after the commencement.

‘267 Application for licence

- ‘(1) This section applies to an application made under section 125 that, immediately before the commencement, had not been decided.
- ‘(2) Sections 125(1)(d) and 126(c) and (d) of the post-amended Act do not apply to the application.

‘268 Application for particular certificate of approval

- ‘(1) This section applies to an application for, or renewal of, a certificate of approval as an approved foster carer that, immediately before the commencement, had not been decided.
- ‘(2) Section 135(1)(a)(iii) of the post-amended Act does not apply to the application.’.

16 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘apply for a prescribed notice means apply for a prescribed notice under the Commissioner’s Act.

apply for a review, for chapter 4, part 2, division 4, subdivision 3, see section 140AB.

children’s commissioner means the Commissioner for Children and Young People and Child Guardian under the Commissioner’s Act.

commencement, for chapter 9, part 6, see section 266.

Commissioner’s Act means the *Commission for Children and Young People and Child Guardian Act 2000*.

current—

- 1 A prescribed notice is **current** if it is in force, and is not suspended, under the Commissioner’s Act.
- 2 An application for a prescribed notice is **current** if it has been made under the Commissioner’s Act and has not been decided or withdrawn.

disqualifying event, for chapter 4, part 2, division 4, subdivision 3, see section 140AB.

member, of a person's household, includes—

- (a) someone who lives in the person's home; and
- (b) someone who stays overnight in the person's home at least—
 - (i) once a week in a month; or
 - (ii) once a fortnight in 2 consecutive months; or
 - (iii) once a month in 6 consecutive months.

negative prescribed notice means a negative notice under the Commissioner's Act, schedule 4.

positive prescribed notice means a positive notice under the Commissioner's Act, schedule 4.

post-amended Act, for chapter 9, part 6, see section 266.

prescribed notice means a prescribed notice under the Commissioner's Act, schedule 4.

prescribed provision, for chapter 4, part 2, division 4, subdivision 3, see section 140AB.

relevant person, for chapter 4, part 2, division 4, subdivision 3, see section 140AB.

Part 3

Amendment of Child Safety Legislation Amendment Act 2005

17 Act amended in pt 3

This part amends the *Child Safety Legislation Amendment Act 2005*.

18 Amendment of s 14 (Insertion of new ch 2, pt 3B of Act No. 10 of 1999)

(1) Section 14, proposed section 51Z—

omit, insert—

‘51Z Application of pt 3B

‘This part applies to a child if—

(a) there is no assessment order in force granting custody of the child to the chief executive and the chief executive—

(i) reasonably suspects the child is a child in need of protection and considers an investigation is necessary to assess the child’s need of protection; and

(ii) is satisfied it is necessary to provide interim protection for the child while the investigation is carried out; or

(b) there is no child protection order in force granting custody or guardianship of the child to anyone and the chief executive is satisfied the child—

(i) is a child in need of protection; and

(ii) needs ongoing help under this Act.’

(2) Section 14, proposed section 51ZA, ‘ongoing help’—

omit, insert—

‘help, including ongoing help.’

(3) Section 14, proposed section 51ZB—

omit, insert—

‘51ZB Considering intervention with agreement

‘The chief executive must give proper consideration to intervening with the parents’ agreement if—

(a) the child’s views and wishes, if able to be ascertained, have been considered; and

(b) for a child to whom section 51Z(a) applies, the chief executive is satisfied the child’s parents are able and willing to work with the chief executive to meet the

child's interim protection needs while the investigation is carried out; and

- (c) for a child to whom section 51Z(b) applies, the chief executive is satisfied—
- (i) the child's parents are able and willing to work with the chief executive to meet the child's protection and care needs; and
 - (ii) it is likely that, by the end of the proposed intervention, the child's parents will be able to meet the child's protection and care needs.'

(4) Section 14, proposed section 51ZD, 'A *care agreement*'—
omit, insert—

'(1) A *care agreement*'.

(5) Section 14, proposed section 51ZD, after the note—
insert—

'(2) A care agreement entered into for a child to whom section 51Z(a) applies is an *assessment care agreement*.

'(3) A care agreement entered into for a child to whom section 51Z(b) applies is a *child protection care agreement*'.

(6) Section 14, proposed section 51ZG—
omit, insert—

'51ZG Effect of particular agreement

'While a child protection care agreement is in force for the child, the chief executive has custody of the child.'

(7) Section 14, proposed section 51ZH(2) to (7)—
renumber as section 51ZH(4) to (9).

(8) Section 14, proposed section 51ZH—
insert—

'(2) The period of an assessment care agreement must not be more than 30 days.

'(3) An assessment care agreement may not be extended.'

(9) Section 14, proposed section 51ZH(4) to (8), as renumbered, before 'care agreement'—

insert—

‘child protection’.

19 Amendment of s 38 (Replacement of ss 132–135 of Act No. 10 of 1999)

(1) Section 38, proposed section 133(3)—

omit, insert—

‘(3) The approved form may require the disclosure of any of the following—

- (a) the applicant’s criminal history, domestic violence history and traffic history;
- (b) the membership of the applicant’s household;
- (c) information of which the applicant is aware, or that the applicant reasonably suspects, about the criminal history, domestic violence history and traffic history of each member of the applicant’s household;
- (d) information about whether the applicant and each adult member of the applicant’s household has a current positive prescribed notice, a current negative prescribed notice or a current application for a prescribed notice;
- (e) if the applicant or an adult member of the applicant’s household has a current positive prescribed notice—the expiry date for the notice.’.

(2) Section 38, proposed section 134(3)—

insert—

‘(d) information about whether the applicant and each adult member of the applicant’s household has a current positive prescribed notice, a current negative prescribed notice or a current application for a prescribed notice;

(e) if the applicant or an adult member of the applicant’s household has a current positive prescribed notice—the expiry date for the notice.’.

(3) Section 38, proposed section 135, ‘The chief executive’—

omit, insert—

- ‘(1) The chief executive’.
- (4) Section 38, proposed section 135(1)(a)(iii) and (iv), as renumbered—
renumber as section 135(1)(a)(iv) and (v).
- (5) Section 38, proposed section 135(1)(a), as renumbered—
insert—
‘(iii) the applicant and each adult member of the applicant’s household have a current positive prescribed notice; and’.
- (6) Section 38, proposed section 135(1)(b)(iv) and (v), as renumbered—
renumber as section 135(1)(b)(v) and (vi).
- (7) Section 38, proposed section 135(1)(b), as renumbered—
insert—
‘(iv) the applicant and each adult member of the applicant’s household have a current positive prescribed notice; and’.
- (8) Section 38, proposed section 135—
insert—
- ‘(2) In this section—
adult member, of an applicant’s household, means a person who is an adult member of the household both at the time when the application is made and when it is decided.’.

20 Amendment of s 42 (Amendment of s 137 (Amendment of authority on application of holder) of Act No. 10 of 1999)

Section 42—

insert—

- ‘(2A) Section 137(5), as renumbered, after ‘person’—

insert—

‘and has a current positive prescribed notice or a current application for a prescribed notice’.

21 Amendment of s 44 (Insertion of new ss 138A–138C of Act No. 10 of 1999)

- (1) Section 44, proposed section 138B(2)(b)—
omit.
- (2) Section 44, proposed section 138B(2)(c) and (d)—
renumber as proposed section 138B(2)(b) and (c).

22 Amendment of s 45 (Amendment of s 139 (Authority may be suspended or cancelled) of Act No. 10 of 1999)

- (1) Section 45—
insert—
- ‘(3A) Section 139(1)(h), as renumbered—
omit, insert—
‘(h) it is inappropriate for the holder to continue to hold the authority because of—
 - (i) information given to the chief executive under division 6 or the Commissioner’s Act, other than information in relation to which the chief executive must suspend or cancel the authority under subdivision 3; or
 - (ii) a circumstance prescribed under a regulation.’.
- (2) Section 45(4), ‘section 139(5)’—
omit, insert—
‘section 139(7)’.
- (3) Section 45(5), after proposed section 139(4)—
insert—
- ‘(5) Also, the chief executive may suspend or cancel an authority if any of the following persons does not have a current positive prescribed notice—
 - (a) if the authority is a licence—a relevant person for the licence;

(b) if the authority is a certificate of approval—the holder of the certificate or an adult member of the holder’s household.

‘(6) Subsection (5) does not apply to an authority that may be suspended or cancelled under subdivision (3).’.

23 Amendment of s 49 (Amendment of s 141 (Amendment, suspension and cancellation of authorities) of Act No. 10 of 1999)

Section 49—

insert—

‘(2A) Section 141(4), after ‘cancellation’—

insert—

‘, other than under subdivision 3,.’.

24 Amendment of s 51 (Replacement of ch 4, pt 2, div 5, hdg and s 142 of Act No. 10 of 1999)

(1) Section 51, proposed section 141B(1)—

omit, insert—

‘(1) A person’s *personal history* is—

(a) for the nominee for a licence or a person to whom section 141D applies—the person’s domestic violence history and traffic history; or

(b) for an approved foster carer or kinship carer, or a member of the carer’s household who has a current positive prescribed notice—the person’s domestic violence history and traffic history; or

(c) for a member of an approved foster carer’s or kinship carer’s household who does not have a current positive prescribed notice—the person’s criminal history, domestic violence history and traffic history; or

(d) for a provisionally approved carer or a member of the carer’s household—the person’s criminal history, domestic violence history and traffic history.’.

- (2) Section 51, proposed chapter 4, part 2, division 6—
omit, insert—

**‘Division 6 Notification of other information
 about licences and associated
 persons**

‘141H Nominee for licence

- ‘(1) This section applies to the nominee for a licence if any of the following events happen—
- (a) the nominee applies for a prescribed notice and the application is withdrawn;
 - (b) the nominee is charged with an excluding offence or convicted of a serious offence;
 - (c) the nominee must, under the Commissioner’s Act, section 113 or 114,⁶ apply for a further prescribed notice;
 - (d) the nominee becomes aware that an application for a prescribed notice about a relevant person for the licence—
 - (i) is withdrawn; or
 - (ii) is made because of a change in the person’s criminal history;
 - (e) the nominee becomes aware that a relevant person for the licence—
 - (i) is charged with an excluding offence or convicted of a serious offence; or
 - (ii) is issued with or given a negative prescribed notice.
- ‘(2) The nominee must, immediately after the event happens, give the chief executive written notice of the event.

Maximum penalty—100 penalty units.

⁶ The Commissioner’s Act, section 113 (Change in criminal history of person carrying on regulated business) or 114 (Change in criminal history of other persons)

- ‘(3) For an event mentioned in subsection (1)(d) or (e), the notice must state—
- (a) the relevant person’s name and date of birth; and
 - (b) if the person has a current positive prescribed notice—the notice’s registration number under the Commissioner’s Act.
- ‘(4) In this section—
- relevant person***, for a licence, means—
- (a) a person responsible for directly managing the licensed care service under the licence; or
 - (b) a person engaged in relation to the provision of care services by the service.

‘141 Director of licensee

- ‘(1) This section applies if any of the following events happen in relation to a director of a licensee—
- (a) the director applies for a prescribed notice and the application is withdrawn;
 - (b) the director is charged with an excluding offence or convicted of a serious offence;
 - (c) the director must, under the Commissioner’s Act, section 113 or 114, apply for a further prescribed notice.
- ‘(2) The director must immediately disclose to the nominee for the licence the fact that the event has happened.
- Maximum penalty—100 penalty units.
- ‘(3) On receiving the disclosure, the nominee must immediately give the chief executive written notice of the event.
- Maximum penalty—100 penalty units.’.
- (3) Section 51, proposed section 142—
- omit, insert—*

‘142 Meaning of ***police information***

‘In this division—

police information, about a person, means the following—

- (a) for an applicant for a certificate of approval who has, or to whom the chief executive proposes to issue, a provisional certificate—the person’s criminal history and domestic violence history;
 - (b) for another applicant for a certificate of approval—the person’s domestic violence history;
 - (c) for a holder of a foster carer or kinship carer certificate—the person’s domestic violence history;
 - (d) for an adult member of the household of a person mentioned in paragraph (a)—the person’s criminal history and domestic violence history;
 - (e) for an adult member of the household of a person mentioned in paragraph (b) or (c), other than an adult member to whom paragraph (f) or (g) applies—the person’s domestic violence history;
 - (f) for a person who does not have a current positive prescribed notice and becomes an adult member of the household of an applicant mentioned in paragraph (b) after the application is made—the person’s criminal history and domestic violence history;
 - (g) for a person who does not have a current positive prescribed notice and becomes an adult member of an approved foster carer’s or kinship carer’s household after the carer is issued with a certificate of approval—the person’s criminal history and domestic violence history;
 - (h) for a person mentioned in section 142A(a)—the person’s domestic violence history.’.
- (4) Section 51, proposed section 142C(2), ‘charge, or of investigative information,’—
omit, insert—
‘charge’.
- (5) Section 51, proposed section 142C(5)—
omit.
- (6) Section 51, proposed section 142D—
omit.

(7) Section 51, proposed section 142E—
renumber as section 142D.

25 Omission of s 52 (Amendment of s 143 (Effect of failure to decide application for, or for renewal of, authority) of Act No. 10 of 1999)

Section 52—
omit.

26 Amendment of s 66 (Insertion of new ch 9, pt 5 of Act No. 10 of 1999)

Section 66, proposed section 263(2)(a)—
omit, insert—

‘(a) if the administrative approval was given before 31 July 2004—the anniversary of the day of its issue first happening after 31 July 2006; or’.

27 Replacement of s 67 (Replacement of sch 2 (Reviewable decisions and aggrieved persons) of Act No. 10 of 1999)

Section 67—
omit, insert—

‘67 Replacement of sch 2 (Reviewable decisions and aggrieved persons)

Schedule 2—
omit, insert—

‘Schedule 2 Reviewable decisions and aggrieved persons

section 247 and schedule 3, definitions *aggrieved person* and *reviewable decision*

Reviewable decision

Directing a parent in relation to a supervision matter stated in a child protection order (section 78)

Deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship (section 86(2))

Not informing a child’s parents of person in whose care the child is and where the child is living (section 86(4))

Refusing to allow, restricting, or imposing conditions on, contact between a child and the child’s parents or a member of the child’s family (section 87(2))

Removing a child from the care of the child’s carer (section 89)

Refusing an application for, or to renew, a licence (section 129) other than because a person mentioned in section 126(b)(i) or (ii) does not have a current positive prescribed notice

Aggrieved person

The parent given the direction

The child’s parents or the child

A parent given the notice or the child

A person affected by the decision

A carer entitled to apply to have a decision reviewed under section 91 or a child to whom a notice must be given stating the matters mentioned in section 90(4)(b) to (d)

The applicant or licensee

Reviewable decision**Aggrieved person**

Refusing an application for, or to renew, a certificate of approval as an approved foster carer or an approved kinship carer (section 136) other than because a person mentioned in section 135(1)(a)(iii) or (b)(iv) does not have a current positive prescribed notice

The applicant or certificate holder

Refusing an application to amend an authority other than a provisional certificate (section 137)

The authority holder

Amending an authority other than a provisional certificate (section 138)

The authority holder

Suspending or cancelling an authority other than a provisional certificate (section 140)

The authority holder

Cancelling an authority (section 140AG(3) or (4) or 140AH)

The authority holder

Arranging for an interstate welfare authority to assume custody or guardianship of a child (section 245)

A person to whom notice of the decision must be given under section 245(6)'.’.

28 Amendment of s 68 (Amendment of sch 3 (Dictionary) of Act No. 10 of 1999)

(1) Section 68(2), proposed definitions *approved carer*, *investigated person* and *investigative information*—

omit.

(2) Section 68(2)—

insert—

‘*approved carer*—

(a) generally, means—

(i) an approved foster carer; or

(ii) an approved kinship carer; or

(iii) a provisionally approved carer; or

- (b) for chapter 4, part 2, division 4, subdivision 3—see section 140AB.

assessment care agreement see section 51ZD(2).

child protection care agreement see section 51ZD(3).

convicted means found guilty, or having a plea of guilty accepted, by a court whether or not a conviction is recorded.

excluding offence means an excluding offence under the Commissioner's Act.

serious offence means a serious offence under the Commissioner's Act.'

- (3) Section 68(2), proposed definition *care agreement*, 'section 51ZD'—

omit, insert—

'section 51ZD(1)'.
'

- (4) Section 68(2), proposed definition *kin*, paragraph (a), second occurring—

renumber as proposed definition *kin*, paragraph (b).

Part 4

Amendment of Commission for Children and Young People and Child Guardian Act 2000

29 Act amended in pt 4

This part amends the *Commission for Children and Young People and Child Guardian Act 2000*.

30 Insertion of new s 99BA

After section 99B—

insert—

‘99BA Matters about particular regulated employment

- ‘(1) This section applies if a person is engaged, or proposes to be engaged, in regulated employment mentioned in schedule 1, section 6G(1) or (2).
- ‘(2) For this part, and for no other purpose—
- (a) the State is taken to be employing, or proposing to employ, the person in the regulated employment; and
 - (b) the chief executive (child safety) may carry out a function of the State relating to the person; and
 - (c) if the person must disclose information to the person’s employer, or notify the employer about a matter—the person must disclose the information to, or notify, the chief executive (child safety).

Note—

This declaration arises out of the volunteer or non-employee status of persons engaged in regulated employment mentioned in schedule 1, section 6G(1) or (2).’.

31 Amendment of s 99F (Who is a *volunteer*)

Section 99F(2), definition *financial reward*—
omit, insert—

‘financial reward does not include—

- (a) a payment that is a reimbursement for out-of-pocket expenses; or
- (b) for a person who is an approved carer—an allowance or other amount paid to the person under the *Child Protection Act 1999*, section 159.⁷.

32 Amendment of s 100 (Application for notice—regulated employment)

- (1) Section 100(6)—
renumber as section 100(8).

⁷ *Child Protection Act 1999*, section 159 (Payments for care and maintenance)

- (2) Section 100—
insert—
- ‘(6) For an application under subsection (1)—
- (a) the employee is liable to pay the employer the fee mentioned in subsection (2)(d); and
 - (b) if the employer pays the fee, the amount of the fee is a debt payable by the employee to the employer.
- ‘(7) Subsection (6) applies subject to—
- (a) a written agreement entered into between the employer and the employee; or
 - (b) an industrial instrument under the *Industrial Relations Act 1999*; or
 - (c) another document that regulates wages and conditions of employment and is enforceable under the *Workplace Relations Act 1996* (Cwlth).’.

33 Amendment of s 101 (Application for notice—regulated business)

- (1) Section 101(7)—
renumber as section 101(8).
- (2) Section 101—
insert—
- ‘(7) Also, the person is taken to have withdrawn the application if—
- (a) the person gives the commissioner, or the commissioner gives the person, written notice that the person is charged with an excluding offence; and
 - (b) the commissioner gives the person a notice of deemed withdrawal under this subsection.’.

34 Amendment of s 102B (Actions of commissioner after making decision on application)

- (1) Section 102B(4)(c), ‘or the nominee of a licensee’—

omit, insert—

‘the nominee of a licensee, or an adult occupant of a carer’s home that is a licensed home based service’.

- (2) Section 102B(4)—

insert—

‘(e) if the commissioner is aware that the relevant person is the nominee for, or an executive officer of an applicant for or holder of, a licence under the *Child Protection Act 1999*—the chief executive (child safety)’.

- (3) Section 102B—

insert—

‘(4A) If, under section 102(6)(a), a relevant person is issued with a negative notice and a notice about the person is given to the chief executive (child safety) under subsection (4), that notice must state that the person was issued with the negative notice under section 102(6)(a)’.

- (4) Section 102B(4A) to (6)—

renumber as section 102B(5) to (7).

35 Replacement of s 104B (Starting employment)

Section 104B—

omit, insert—

‘104B Starting employment

‘A person must not employ another person (the *employee*) in regulated employment unless the employee has a positive notice.

Maximum penalty—10 penalty units.

Note—

For the application of this section to persons taken to be volunteers engaged in regulated employment mentioned in schedule 1, section 6G(2), see the *Child Protection Act 1999*, section 148D.⁸

⁸ *Child Protection Act 1999*, section 148D (Pending application for prescribed notice)

‘104BA Currency of prescribed notice for person continuing employment

- ‘(1) This section applies if—
- (a) a person has a positive notice (the *previous notice*) and is employed in regulated employment; and
 - (b) the person’s employer applied for a further prescribed notice about the person at least 30 days before the previous notice expires; and
 - (c) the application has not been decided.
- ‘(2) Despite section 104(2), but subject to suspension or cancellation of the previous notice, the previous notice remains current from the day it would otherwise end under that subsection until the application is decided or withdrawn.’.

36 Amendment of s 108 (Person holding negative notice, or who has withdrawn consent to employment screening, not to apply for, or start or continue in, regulated employment)

- (1) Section 108(2), ‘apply for, or start or continue in,’—
omit, insert—
 ‘start or continue in’.
- (2) Section 108(2), from ‘but’ to ‘before’—
omit, insert—
 ‘but withdrawn under section 123(2) or (3B) before’.

37 Insertion of new s 109A

Part 6, division 3, subdivision 2, after section 109—
insert—

‘109A Currency of prescribed notice for person carrying on regulated business

- ‘(1) This section applies if—
- (a) a person to whom section 109 applies has a positive notice (a *previous notice*); and

- (b) the person applied for a further prescribed notice about the person at least 30 days before the previous notice expires; and
 - (c) the application has not been decided.
- ‘(2) Despite section 104(2), but subject to suspension or cancellation of the previous notice, the previous notice remains current from the day it would otherwise end under that subsection until the application is decided or withdrawn.’.

38 Amendment of s 119A (Cancellation if conviction for excluding offence and imprisonment or disqualification order)

- (1) Section 119A(4)(c) and (d), ‘if the relevant person’—
omit, insert—
‘if the commissioner is aware that the person’.
- (2) Section 119A(4)(d), ‘disciplining the relevant person’—
omit, insert—
‘disciplining the person’.
- (3) Section 119A(4)—
insert—
‘(e) if the commissioner is aware that the person is the nominee for, or an executive officer of an applicant for or holder of, a licence under the *Child Protection Act 1999*—the chief executive (child safety)’.
- (4) Section 119A—
insert—
- ‘(4A) A notice given to the chief executive (child safety) under subsection (4) about a person must state that the person was given the negative notice under section 119A.’.
- (5) Section 119A(4A) to (7)—
renumber as section 119A(5) to (8).

39 Amendment of s 119C (Effect of charge for excluding offence pending charge being dealt with)

- (1) Section 119C(5)(c) and (d), ‘if the person’—
omit, insert—
‘if the commissioner is aware that the person’.
- (2) Section 119C(5)(d), ‘relevant person’—
omit, insert—
‘person’.
- (3) Section 119C(5)—
insert—
‘(e) if the commissioner is aware that the person is the nominee for, or an executive officer of an applicant for or holder of, a licence under the *Child Protection Act 1999*—the chief executive (child safety).’.

40 Amendment of s 121 (Person may apply for review of decision)

- (1) Section 121(1)—
omit, insert—
- ‘(1) A person may apply to the Children Services Tribunal for a review of either of the following decisions of the commissioner—
 - (a) a decision as to whether or not there is an exceptional case as mentioned in section 102(4) or (7), 119B(2) or 119D(3) if, because of the decision, the commissioner issued a negative notice, or refused to cancel a negative notice, about the person;
 - (b) a decision that the person had been charged with an excluding offence if, because of the decision, the positive notice held by the person was suspended under section 119C(1).’.

(2) Section 121—

insert—

‘(1A) An application to review a decision mentioned in subsection (1)(b) may only be made if the person claims he or she has not been charged with the relevant excluding offence.’.

41 Amendment of s 122 (Commissioner may obtain information from police commissioner)

Section 122(1)(b), from ‘been withdrawn’—

omit, insert—

‘been withdrawn; or’.

42 Amendment of s 122A (Notice of change in police information about a person)

(1) Section 122A(1)—

omit, insert—

‘(1) This section applies if, for a person in relation to whom either of the following happens, the police commissioner reasonably suspects the person is a person mentioned in section 122(1)(a) to (c)—

- (a) the person’s criminal history changes;
- (b) the police commissioner decides, under section 121A, that information about the person is investigative information (regardless of when the act or omission relevant to the investigative information happened or is alleged to have happened).

‘(1A) The police commissioner may notify the commissioner that—

- (a) the person’s criminal history has changed; or
- (b) the police commissioner has decided that information about the person is investigative information.’.

(2) Section 122A(2)(c)—

omit, insert—

‘(c) a brief description of the conviction or charge to which the change relates, or of the investigative information.’.

(3) Section 122A(4), ‘subsection (1)’—

omit, insert—

‘subsection (1A)’.

43 Amendment of s 123 (Withdrawal of employee’s consent to employment screening)

(1) Section 123(5)—

renumber as section 123(6).

(2) Section 123—

insert—

‘(5) If the employee’s consent to employment screening under this part is withdrawn, the application is taken to have been withdrawn.’.

44 Insertion of new s 123A

After section 123—

insert—

‘123A Notice about withdrawal of application or negative notice

‘(1) This section applies if—

(a) an application about a person is made under section 100 or 101;⁹ and

(b) the application is withdrawn or the person has a current negative notice.

‘(2) The commissioner must give written notice about the withdrawal or the negative notice to the following—

(a) if the person is employed in regulated employment—the employer;

⁹ The Commissioner’s Act, section 100 (Application for notice—regulated employment) or 101 (Application for notice—regulated business)

- (b) if the person is a trainee student of an education provider—the education provider;
 - (c) if the commissioner is aware that the person is a licensee, the nominee of a licensee, or an adult occupant of a carer’s home that is a licensed home based service, under the *Child Care Act 2002*—the chief executive of the department in which that Act is administered;
 - (d) if the commissioner is aware that the person is carrying on a regulated business as a religious representative and considers there is an entity within the relevant organised or recognised religious group with responsibility for supervising or disciplining the person—the entity;
 - (e) if the commissioner is aware that the person is the nominee for, or an executive officer of an applicant for or holder of, a licence under the *Child Protection Act 1999*—the chief executive (child safety).
- ‘(3) If the notice under subsection (2) is about the person having a current negative notice, it must state each of the following—
- (a) the date of issue of the negative notice;
 - (b) if it is given to the chief executive (child safety) and the negative notice was issued or given to the person under section 102(6)(a) or 119A—the section under which the negative notice was issued or given.’.

45 Amendment of s 126 (Use of information obtained under this part about a person)

Section 126, after ‘for this part’—

insert—

‘or a report under section 163’.

46 Amendment of s 126B (Commissioner may give information to accreditation board about director of school’s governing body)

Section 126B(2)—

insert—

- ‘(c) if an application by a director under section 101 is withdrawn—the withdrawal of the application.’.

47 Insertion of new s 126D

Part 6, division 5—

insert—

‘126D Notice of charge or conviction for serious offence

- ‘(1) This section applies if—
- (a) because of information given to the commissioner by the chief executive (child safety), the commissioner is satisfied a person—
 - (i) is a provisionally approved carer or an adult member of a provisionally approved carer’s household; or
 - (ii) is, and was at the commencement of this section, an approved carer; or
 - (iii) is an adult member of an approved carer’s household; or
 - (iv) is a person who becomes an adult member of the household of an applicant to be an approved carer after the application is made and before it is decided; and
 - (b) an application for a prescribed notice about the person is current; and
 - (c) the commissioner is aware that the person is charged with, or convicted of, a serious offence after the application is made.
- ‘(2) The commissioner must as soon as practicable give written notice to the chief executive (child safety) stating the following—
- (a) the person’s name;
 - (b) that there has been a change in the person’s criminal history;
 - (c) whether or not the change in criminal history is a charge or conviction;

(d) that the charge or conviction is for a serious offence.

‘(3) In this section—

approved carer does not include a provisionally approved carer.’.

48 **Amendment of s 152 (Confidentiality of information about criminal history)**

(1) Section 152—

insert—

‘(2A) This section also applies to a person who is or has been—

(a) the Minister and in that capacity received a verbal report, or a written report (a *document*), under section 163¹⁰ that included information mentioned in subsection (1)(b); or

(b) a person mentioned in subsection (4)(c) or (d) and in that capacity acquired the information, or gained access to the document in so far as it relates to the information.’.

(2) Section 152(4)—

insert—

‘(ba) if subsection (2A)(a) applies—to a public service officer of the department, the commissioner, a staff member or a member of the Minister’s staff for the purpose of obtaining advice relating to the information; or

(bb) if subsection (2A)(b) applies— to the Minister, a public service officer of the department, the commissioner, a staff member or a member of the Minister’s staff for the purpose of providing advice to the Minister relating to the information; or’.

(3) Section 152(4)(d), after ‘Act’—

insert—

‘or is authorised under section 163’.

10 Section 163 (Other reports by the commissioner)

- (4) Section 152(4)(ba) to (d)—
renumber as section 152(4)(c) to (f).

49 Amendment of s 153 (Confidentiality of other information)

- (1) Section 153(3), before paragraph (a)—
insert—
'(aa) the Minister or a member of the Minister's staff; or'.
- (2) Section 153(3)—
insert—
'(ba) a public service officer of the department; or'.
- (3) Section 153(3)(aa) to (d)—
renumber as section 153(3)(a) to (f).
- (4) Section 153—
insert—
- '(5) Without limiting subsection (4)(a), a person makes a record of confidential information or discloses it to someone else for this Act in the following circumstances—
- (a) if the person is the Minister—the Minister makes the record, or discloses the information to the commissioner, a member of the commission's staff, a public service officer of the department or a member of the Minister's staff, (the *relevant person*) for the purpose of obtaining advice relating to a report given to the Minister under section 163;
- (b) if the person is a relevant person—the person makes the record, or discloses the information to the Minister or another relevant person, for the purpose of providing advice to the Minister relating to the report.'

50 Amendment of s 161 (Protection from liability)

- (1) Section 161(3), definition *official*, before paragraph (a)—
insert—

‘(aa) the Minister or a member of the Minister’s staff; or’.

(2) Section 161(3), definition *official*—

insert—

‘(ba) a public service officer of the department; or’.

(3) Section 161(3), definition *official*, paragraph (c), ‘(a) or (b)’—

omit, insert—

‘(b) or (c)’.

(4) Section 161(3), definition *official*, paragraphs (aa) to (d)—

renumber as paragraphs (a) to (f).

51 Replacement of s 163 (Other reports relating to commissioner’s functions)

Section 163—

omit, insert—

‘163 Other reports by commissioner

‘(1) The commissioner may provide the Minister with a report relating to the administration of this Act, including the performance and exercise of the commissioner’s functions and powers under this Act.

‘(2) The commissioner must provide the Minister with a report of a type mentioned in subsection (1) if the Minister asks for it.

‘(3) A report under this section—

(a) may relate to matters generally or to a particular matter;
or

(b) may include confidential information about a person obtained under part 6 including confidential information

to which section 126 or 153 applies or that is mentioned in 152(1)(b).¹¹.

52 Amendment of s 163A (Annual report by commission)

Section 163A—

insert—

‘(c) information about the number of times the Minister asked the commissioner for a report under section 163 during the year.’.

53 Insertion of new s 164A

After section 164—

insert—

‘164A Commissioner may enter into arrangement with chief executive (child safety)

- ‘(1) The commissioner and the chief executive (child safety) may enter into a written arrangement about the administration of part 6¹² in relation to—
- (a) a person who is or is likely to be engaged in regulated employment mentioned in schedule 1, section 6G; or
 - (b) a regulated business mentioned in schedule 1, section 16.
- ‘(2) Without limiting subsection (1), the arrangement may provide for the electronic transfer of information, including on a daily basis, held by the commissioner about the person or business.
- ‘(3) However, if information is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.’.

11 Sections 126 (Use of information obtained under this part about a person), 152 (Confidentiality of information about criminal history) and 153 (Confidentiality of other information)

12 Part 6 (Screening for regulated employment and regulated businesses)

54 Insertion of new pt 9, div 8

After section 195—

insert—

‘Division 8 Further transitional provisions for the Commission for Children and Young People and Child Guardian Amendment Act 2004

‘196 Definitions for div 8

‘In this division—

commencement means commencement of this section.

post-amended Act means the *Commission for Children and Young People and Child Guardian Act 2000* as in force from time to time on and after 17 January 2005 and before the commencement.

pre-amended Act means the *Commission for Children and Young People and Child Guardian Act 2000* as in force immediately before 17 January 2005.

relevant applicant, in relation to a relevant application, means the person in relation to whom the relevant application is made.

relevant application means an application under section 100 or 101¹³ of the pre-amended Act that was received by the commissioner before 17 January 2005.

suitability notice means a suitability notice under the pre-amended Act.

‘197 Main purpose of div 8

‘The main purpose of this division is to clarify and declare the law applying, in particular circumstances, to relevant applications and to suitability notices.

¹³ Section 100 (Application for notice—regulated employment) or 101 (Application for notice—regulated business) of the pre-amended Act

‘198 Circumstances, after commencement, in which pre-amended Act applies to outstanding relevant application

- ‘(1) This section applies to a relevant application and the relevant applicant if—
- (a) a decision under section 102(1)¹⁴ of the pre-amended Act about the relevant application had not been made before 17 January 2005; and
 - (b) before the commencement, the commissioner had not issued a prescribed notice to the relevant applicant; and
 - (c) on or after 17 January 2005, no police information and no disciplinary information about the relevant applicant was received by the commissioner.
- ‘(2) The pre-amended Act applies to the relevant application and the relevant applicant for the purpose of making a decision about the relevant application.
- ‘(3) If the decision, by application of the pre-amended Act, involves declaring the relevant applicant to be a suitable person for child-related employment, the relevant applicant is to be issued, under section 102(2)(a) of this Act, with a positive notice.
- ‘(4) If the decision, by application of the pre-amended Act, involves declaring the relevant applicant to be an unsuitable person for child-related employment, the relevant applicant is to be issued, under section 102(2)(b) of this Act, with a negative notice.
- ‘(5) On the issuing of a positive notice as mentioned in subsection (3), or a negative notice as mentioned in subsection (4), this Act, and not the pre-amended Act, applies.
- ‘(6) Despite subsection (5), if a negative notice is issued—
- (a) the relevant applicant may only apply under section 121 of the pre-amended Act for a review of the decision under section 102 of the pre-amended Act; and

14 Section 102 (Decision on application) of the pre-amended Act

- (b) the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.

‘199 Circumstances, after commencement, in which this Act applies to outstanding relevant application

‘This Act, and not the pre-amended Act, applies to all matters relating to a relevant application, and any decision relating to the relevant application, if—

- (a) a decision under section 102(1) of the pre-amended Act about the relevant application had not been made before 17 January 2005; and
- (b) before the commencement, the commissioner had not issued a prescribed notice to the relevant applicant; and
- (c) on or after 17 January 2005, police information or disciplinary information about the relevant applicant was received by the commissioner.

‘200 Relevant applications dealt with before commencement

- ‘(1) This section applies to a relevant application if a decision in relation to the relevant application was made on or after 17 January 2005 and before the commencement.
- ‘(2) If the commissioner dealt with the relevant application by applying the pre-amended Act, it is declared that—
 - (a) the relevant application has been validly dealt with by applying the pre-amended Act; and
 - (b) a decision of the commissioner in relation to the relevant application is not invalid only because the decision involved the application of the pre-amended Act; and
 - (c) this Act, and not the pre-amended Act, applies to all matters relating to the decision after the decision is made.
- ‘(3) Despite subsection (2)(c), if the decision is to issue a negative notice—

- (a) the relevant applicant may only apply under section 121 of the pre-amended Act for a review of the decision under section 102 of the pre-amended Act; and
 - (b) the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.
- ‘(4) If the commissioner dealt with the relevant application by applying the post-amended Act, it is declared that—
- (a) the relevant application has been validly dealt with by applying the post-amended Act; and
 - (b) a decision of the commissioner in relation to the relevant application is not invalid only because the decision involved the application of the post-amended Act; and
 - (c) this Act, and not the pre-amended Act, applies to all matters relating to the decision.

‘201 Application of ss 122 and 122A in particular circumstances

- ‘(1) For the application of sections 122 and 122A¹⁵ to a relevant application and the relevant applicant, the relevant application is taken to be an application for a prescribed notice that has not been withdrawn and the relevant applicant is taken not to have withdrawn his or her consent to employment screening under part 6.¹⁶
- ‘(2) Subsection (1) does not prevent a relevant application from being withdrawn before the commissioner decides the relevant application.

‘202 Circumstances, after commencement, relating to ss 118 and 119 of pre-amended Act

- ‘(1) This section applies if—
- (a) before 17 January 2005, the commissioner—

15 Sections 122 (Commissioner may obtain information from police commissioner) and 122A (Notice of change in police information about a person)

16 Part 6 (Screening for regulated employment and regulated businesses)

- (i) had received an application under section 118(2) of the pre-amended Act to cancel a negative notice (a ***previous section 118 application***); or
 - (ii) had received or otherwise become aware of information that may have allowed the commissioner to exercise a power as mentioned in section 119(1) or (1A) of the pre-amended Act (the ***previous section 119 power***) in relation to a suitability notice; and
 - (b) before the commencement, the commissioner had not decided whether or not to grant the previous section 118 application or to exercise the previous section 119 power.
- (2) The pre-amended Act applies in relation to the previous section 118 application or the exercise of the previous section 119 power and, subject to subsection (6), the commissioner may grant or refuse the previous section 118 application or exercise or not exercise the previous section 119 power.
- ‘(3) After a decision is made about whether or not to grant the previous section 118 application, or to exercise the previous section 119 power, this Act, and not the pre-amended Act, applies.
- ‘(4) However, if the decision under subsection (2) is a decision to issue a negative notice to a person, or a decision refusing a person’s application to cancel a negative notice—
- (a) the person may only apply under section 121 of the pre-amended Act for a review of the decision; and
 - (b) the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.
- ‘(5) Despite subsections (1) to (4), subsection (6) applies if, on or after 17 January 2005, the commissioner received or receives information that allowed or allows the commissioner to exercise a power as mentioned in section 119(1) or (2) of this Act in relation to a suitability notice—
- (a) that is the subject of a previous section 118 application; or

(b) to which a previous section 119 power may be exercised.

‘(6) This Act, and not the pre-amended Act, applies to all matters relating to the suitability notice mentioned in subsection (5).

‘203 Circumstances, before commencement, relating to ss 118 and 119 of pre-amended Act

‘(1) If, on or after 17 January 2005 and before the commencement, the commissioner cancelled or refused to cancel a suitability notice, whether under section 118 or 119 of the pre-amended Act or post-amended Act, the cancellation or refusal is declared to have been validly dealt with by applying the pre-amended Act or post-amended Act.

‘(2) If the cancellation or refusal has been dealt with by applying the pre-amended Act, the cancellation or refusal may only be reviewed on an application for review under section 121 of the pre-amended Act and the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.

‘(3) Subject to subsection (2), this Act, and not the pre-amended Act, applies to all matters relating to the cancellation or refusal.

‘204 Circumstances where pre-amended Act applies to application for review made before commencement

‘(1) If, before the commencement, there was no final decision in relation to a previous application for review, the pre-amended Act applies to the previous application for review, the review and any appeal relating to the decision on review.

‘(2) If, before the commencement, the tribunal had started to hear a previous application for review but had not made a final decision, the tribunal may, for the purposes of subsection (1), exercise its powers under the *Children Services Tribunal Act 2000* and issue directions in relation to the previous application for review and the hearing.

- ‘(3) If, before the commencement, a final decision in relation to a previous application for review had been made, the pre-amended Act applies to the following—
- (a) if, under the *Children Services Tribunal Act 2000*, section 38(1)(c),¹⁷ the tribunal had set aside the commissioner’s decision that was the subject of the previous application for review and returned it to the commissioner for reconsideration—the reconsideration;
 - (b) otherwise—any appeal relating to the final decision.

- ‘(4) In this section—

final decision means a decision of the tribunal under the *Children Services Tribunal Act 2000*, section 38.

previous application for review means an application to the tribunal for a review of a decision made before 17 January 2005 to issue a negative notice or to refuse to cancel a negative notice.

tribunal means the Children Services Tribunal.

‘205 **Circumstances where this Act applies to notices issued before the commencement**

- ‘(1) This section applies to each of the following notices—
- (a) a suitability notice issued under the pre-amended Act and in force immediately before 17 January 2005;
 - (b) a prescribed notice issued on or after 17 January 2005 and before the commencement.
- ‘(2) It is declared that this Act applies in relation to the notice unless—
- (a) a provision of this division provides that the pre-amended Act applies; or
 - (b) division 7 otherwise provides.

¹⁷ *Children Services Tribunal Act 2000*, section 38 (Powers of tribunal on review)

‘206 References to prescribed notice

‘It is declared that in an Act or document, a reference to a prescribed notice may, if the context permits, be taken to include a reference to a suitability notice.’.

55 Insertion of new pt 9, div 9

Before schedule 1—

insert—

‘Division 9 Transitional provisions for Child Safety (Carers) Amendment Act 2006

‘207 Definition for div 9

‘In this division—

commencement means the day on which the provision in which the term is used commences.

‘208 Regulated employment—volunteers

‘(1) This section applies if, immediately before the commencement—

(a) a person (the *employee*) was employed or was continuing to be employed by another person (the *employer*) in employment that, after the commencement, is regulated employment mentioned in schedule 1, section 6G(1) or (2); and

(b) the person does not have a positive notice.

‘(2) Section 127(2) does not apply to the employment of the employee.

‘(3) Despite subsection (2), the employee may continue in the regulated employment and the employer may continue to employ the employee in the regulated employment until—

(a) if an application for a prescribed notice about the person is made within 6 months after the commencement and is

- not withdrawn—the day a prescribed notice is issued to the person; or
- (b) if an application for a prescribed notice about the person is made within 6 months after the commencement and is withdrawn—the day the application is withdrawn; or
 - (c) if an application for a prescribed notice about the person is not made within 6 months after the commencement—6 months after the commencement.
- ‘(4) Also, despite subsection (2), section 112 does not apply to the person until the first application for a prescribed notice about the person is made after the commencement.

‘209 Regulated employment—other persons

- ‘(1) This section applies if, immediately before the commencement—
- (a) a person (the *employee*) was employed or was continuing to be employed by another person (the *employer*) in employment that, after the commencement, is regulated employment mentioned in schedule 1, section 6G(3); and
 - (b) the person does not have a positive notice.
- ‘(2) Section 127(2) does not apply to the employment of the employee.
- ‘(3) Despite subsection (2), the employee may continue in the regulated employment, and the employer may continue to employ the employee in the regulated employment until—
- (a) if an application for a prescribed notice about the person is made within 6 months after the commencement and is not withdrawn—the day a prescribed notice is issued to the person; or
 - (b) if an application for a prescribed notice about the person is made within 6 months after the commencement and is withdrawn—the day the application is withdrawn; or
 - (c) if an application for a prescribed notice about the person is not made within 6 months after the commencement—6 months after the commencement.

- ‘(4) Also, despite subsection (2), section 112 does not apply to the person until the first application for a prescribed notice about the person is made after the commencement.

‘210 Carrying on regulated business

- ‘(1) This section applies if, immediately before the commencement—
- (a) a person was carrying on a business that, after the commencement, is a regulated business mentioned in schedule 1, section 16; and
 - (b) the person does not have a positive notice.
- ‘(2) Section 109 does not apply to the carrying on of the business until—
- (a) if the person applies for a prescribed notice within 6 months after the commencement and does not withdraw the application—the day a prescribed notice is issued to the person; or
 - (b) if the person applies for a prescribed notice within 6 months after the commencement and withdraws the application—the day of the withdrawal; or
 - (c) if the person does not apply for a prescribed notice within 6 months after the commencement—6 months after the commencement.
- ‘(3) Section 113 does not apply to the person until the person first applies for a prescribed notice after the commencement.

‘211 Particular certificates of approval under Child Protection Act 1999

- ‘(1) This section applies if—
- (a) before the commencement, a person has applied for a certificate of approval and the application has not been decided; and
 - (b) after the commencement, the person is issued with the certificate of approval.

- ‘(2) Despite section 104B, a relevant person may be employed in regulated employment mentioned in schedule 1, section 6G(1) or (2) until—
- (a) if an application for a prescribed notice about the person is made within 6 months after the commencement and is not withdrawn—the day a prescribed notice is issued to the person; or
 - (b) if an application for a prescribed notice about the person is made within 6 months after the commencement and is withdrawn—the day the application is withdrawn; or
 - (c) if an application for a prescribed notice about the person is not made within 6 months after the commencement—6 months after the commencement.
- ‘(3) Also, section 112 does not apply to a relevant person until the first application for a prescribed notice about the person is made after the commencement.

- ‘(4) In this section—

certificate of approval means a certificate of approval under the *Child Protection Act 1999*.

relevant person means each of the following persons if the person does not have a positive notice—

- (a) the applicant for the certificate of approval;
- (b) a person who is an adult member of the applicant’s household when the certificate of approval is issued.

‘212 Particular licences under Child Protection Act 1999

- ‘(1) This section applies if—
- (a) before the commencement, a person has applied for a licence under the *Child Protection Act 1999* and the application has not been decided; and
 - (b) after the commencement, the person is issued with the licence.
- ‘(2) Section 109 does not apply to a relevant person until—
- (a) if the person applies for a prescribed notice within 6 months after the commencement and does not withdraw

- the application—the day a prescribed notice is issued to the person; or
- (b) if the person applies for a prescribed notice within 6 months after the commencement and withdraws the application—the day of the withdrawal; or
 - (c) if the person does not apply for a prescribed notice within 6 months after the commencement—6 months after the commencement.
- ‘(3) Section 113 does not apply to a relevant person until the person first applies for a prescribed notice after the commencement.
- ‘(4) In this section—
- relevant person* means each of the following persons if, immediately before the commencement, the person does not have a positive notice—
- (a) the nominee for the licence under the *Child Protection Act 1999*;
 - (b) an executive officer of the licensee.’

56 Amendment of sch 1 (Regulated employment and businesses for employment screening)

- (1) Schedule 1, section 1(2)(b), from ‘service’—
omit, insert—
‘service.’
- (2) Schedule 1, section 5(2)(b), from ‘service’—
omit, insert—
‘service; or’.
- (3) Schedule 1—
insert—

‘6G Care of children under Child Protection Act 1999

- ‘(1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, providing care for a child as an approved carer, other than a provisionally approved carer.

- ‘(2) If a person provides, or is likely to provide, care for a child in the person’s capacity as an approved carer, other than a provisionally approved carer, each adult member of the person’s household is taken to be a volunteer who is engaged in regulated employment.
- ‘(3) Employment is regulated employment if—
- (a) any of the usual functions of the employment is carried out, or is likely to be carried out, inside a licensed residential facility; or
 - (b) the employee is employed by a licensed care service and any of the usual functions of the employment includes or is likely to include providing support for an approved carer.
- ‘(4) Without limiting subsection (3), each of the following persons is taken to be engaged in regulated employment under the subsection—
- (a) a person who is responsible for directly managing a licensed care service;
 - (b) a person who is engaged in relation to the provision of care to a child by a licensed care service.’.

(4) Schedule 1, part 2—
insert—

‘16 Businesses relating to licensed care service under Child Protection Act 1999

‘A business is a regulated business if—

- (a) the usual activities of the business include, or are likely to include, a licensed care service; or
- (b) the usual activities of the business include, or are likely to include, carrying out activities or providing services inside a licensed residential facility.’.

57 Amendment of sch 4 (Dictionary)

- (1) Schedule 4—

insert—

‘*commencement* means—

- (a) for part 9, division 5—see section 179; or
- (b) for part 9, division 9—see section 207.

licensed care service means a licensed care service under the *Child Protection Act 1999*.

licensed residential facility means a licensed residential facility under the *Child Protection Act 1999*.

member, of a person's household, see the *Child Protection Act 1999*, schedule 3.

provisionally approved carer means a provisionally approved carer under the *Child Protection Act 1999*.'.

- (2) Schedule 4, definition *employment*, paragraph (c)—
renumber as paragraph (d).
- (3) Schedule 4, definition *employment*—
insert—
'(c) in relation to regulated employment mentioned in schedule 1, section 6G(1) or (2)—includes employment by the State in the circumstances mentioned in section 99BA; or'.

Schedule Amendment of Child Protection Act 1999

section 3

1 Before section 137—

insert—

‘Subdivision 1 Amendment’.

2 Before section 139—

insert—

‘Subdivision 2 Suspension or cancellation, other than immediate suspension or cancellation’.

3 Section 140A, heading, from ‘Commissioner’—

omit, insert—

‘children’s commissioner about particular information’.

4 Section 140A(5)—

omit.

5 Before section 141A—

insert—

‘Subdivision 5 Surrender’.

6 Section 148(5), from ‘Commissioner’—

omit, insert—

‘children’s commissioner to help the commissioner perform the commissioner’s monitoring functions under the Commissioner’s Act.’.

Schedule (continued)

7 Section 186(2)(d)—*omit, insert—*

‘(d) to the children’s commissioner in compliance with a notice given by the commissioner under the Commissioner’s Act requiring the disclosure; or’.

8 Sections 246G(1) and (2) and 246H(1)(a)(iii), ‘Commission for Children and Young People and Child Guardian Act 2000’—*omit, insert—*

‘Commissioner’s Act’.

9 Section 248A, heading, from ‘Commissioner’—*omit, insert—*

‘children’s commissioner’.

10 Section 248A(1), from ‘the commissioner,’—*omit, insert—*

‘the children’s commissioner, for the purpose of supporting the commissioner in the performance of the commissioner’s monitoring functions under the Commissioner’s Act.’.

11 Section 248A(2), definitions, *commissioner* and *monitoring functions*—*omit.***12 Schedule 3, definition *CDCRC*, ‘Commission for Children and Young People and Child Guardian Act 2000’—***omit, insert—*

‘Commissioner’s Act’.

© State of Queensland 2006