

CHILD CARE BILL 2002

EXPLANATORY NOTES

PART 1—PRELIMINARY

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The object of the Bill is to protect, and promote the best interests of, children receiving child care.

The ways in which the object is to be achieved include—

- (a) establishing a licensing system for child care services; and
- (b) regulating the way child care services are conducted; and
- (c) setting standards for persons who provide child care.

REASONS FOR THE BILL

The current *Child Care Act (1991)* has been in force for 9 years, and whilst it was benchmark legislation at the time, it has become increasingly dated, and lacks the flexibility to respond to the changing needs of families and address the anomalies that have become evident in the present system.

The review of the current legislation for child care is a key initiative of the *Queensland Child Care Strategic Plan 2000-2005*. The Strategic Plan supports the development of a new regulatory framework that assists in the provision of high quality child care services which are sufficiently flexible to respond to the diverse and changing needs of families.

The proposed new legislation represents the results of a comprehensive review of the current regulatory framework and standards in child care and has relied on extensive consultation with the sector and other key stakeholders to inform its development.

The Child Care Bill 2002 aims to regulate the provision of child care services within Queensland using a regulatory tiering approach to determine the appropriate standards for each sector of the child care industry. The Bill defines the scope of what is a child care service for the purposes of determining which services are required to be licensed. In addition, the Bill sets out requirements related to staffing and qualifications, the conduct of the service and operational matters, and monitoring and enforcement powers.

The key new directions in the regulatory framework include the introduction of performance-based standards, the regulation of school age care programs through a system of licensing, and the introduction of a minimum qualification.

The proposed new regulatory framework aims to address concerns with the existing child care legislation by:

- reducing duplication in standards which are covered by other legislation;
- moving away from prescribed service types;
- establishing a framework in which standards are set and monitored depending on a number of variables, ie number of children being cared for, number of hours children are in care, the ages of the children, and the setting of the service; and
- introducing standards that allow for flexibility in service delivery.

ESTIMATED COSTS FOR GOVERNMENT IMPLEMENTATION

Costings on the implementation of the new legislation are mainly related to the development of resources and training for the sector and regional departmental staff. It is anticipated that there will be a relatively small increase in staffing costs associated with the commencement of the new legislation for Department of Families regional staff. Additional work for regional staff will be related to the licensing of school age care services for the first time and supporting services in understanding the new legislation. A working group has been established to focus on streamlining the workload and departmental processes used by regional staff to reduce the impact of the changes.

It is envisaged that the costs associated with implementation will be met through existing program area and regional budgets.

RESULTS OF CONSULTATION

Consultations on the proposed regulatory framework commenced in April 2000 and focused on the structure of the legislation and key areas of proposed reform. Consultation sessions were held across the State and an Issues Paper was developed to assist stakeholders in providing feedback. The results of this consultation phase informed the development of an exposure draft of the proposed new legislation for child care.

Extensive state-wide consultation on the exposure draft was conducted between November 2001 and April 2002. The consultation phase included 45 sessions across the State with service providers and key representatives from the sector, sessions with peak organisations and government departments.

Whilst representatives at the consultation sessions were generally supportive of the proposed new legislation there were some areas which required further revision after the consultation phase. These changes have been incorporated into the final drafts of the Bill and regulation.

The following Government departments and agencies were consulted in relation to the Bill:

- Commission for Children and Young People
- Department of Industrial Relations
- Queensland Health
- Education Queensland
- Department of Justice and Attorney-General
- Department of Premier and Cabinet
- Department of State Development
- Treasury Department
- Department of Emergency Services

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

Under section 4(2)(a) of the *Legislative Standards Act 1992*, legislation must have sufficient regard to the rights and liberties of individuals. A key component of the Bill, aimed at ensuring the protection of children and quality of care, is the amendment of the *Commission for Children and Young People Act 2000* to include employment in child care as one of the

regulated categories of care. Presently, the Department of Families undertakes criminal history checks on child care workers under the provisions of the *Child Care Act 1991*.

Under these proposed amendments to the *Commission for Children and Young People Act 2000*, when deciding whether a suitability notice should be issued to an applicant, the Commissioner for Children and Young People may take into consideration complaints and charges that have not resulted in a conviction.

The screening process creates a tension between the rights of individuals and the competing rights of a child. The tension is underpinned by the principle that every child is entitled to be cared for in a way that protects the child from harm and promotes the child's well being. Provisions relating to employment screening are considered necessary in order to recognise that principle.

The employment screening provisions also include the following safeguards to protect the rights of individuals:

- ensuring written notice of a decision by the Commissioner that a person is not suitable for child-related employment is accompanied by reasons for the decision and information about a person's right to have the decision reviewed by a tribunal; and
- protecting the privacy of persons who have a criminal history by maintaining confidentiality as to an employee's criminal history and not disclosing the contents of that history to other employees. The issue of positive screening notices is a matter between the licensee of the service and the Commission for Children and Young People; and
- requiring the Commissioner to take into account the circumstances surrounding a person's criminal history in each case.

Section 103 of the Bill provides that the Chief Executive may give an individual a prohibition notice on the basis that the Chief Executive is satisfied that there would be an unacceptable risk of harm to children if the person were responsible for providing care for children. This provision could be seen to limit the rights and liberties of that individual. The power to make this determination exists to protect children, who are being provided with care, from harm and, therefore, it is considered that this provision is appropriate and strikes a balance between carers' rights and the paramount consideration of the Department's need to protect children.

The Bill contains various provisions to safeguard the interests of affected individuals. For example, section 163 of the Bill provides that if the Chief Executive makes a decision prohibiting a person from providing care of children or a decision to refuse to issue a licence to a person, then the person concerned may appeal to the Children's Services Tribunal.

Under section 118 of the Bill, as well as with the occupier's consent or under a warrant, there are three other ways in which an authorised officer may enter a place, namely if:

- it is a public place and the entry is made when it is open to the public; or
- it is a child care centre, home, part of a home or other place and the entry is made when child care is being provided at the place under a licence; or
- it is not a home and the entry is made when the place is open for the conduct of business.

Section 128 of the Bill provides that an authorised officer who enters a place that may be entered under Part 7 of the Bill without the occupier's consent and without a warrant may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against this Act.

Similarly, section 118(2) of the Bill provides that for the purposes of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—

- enter land around a building at the place to an extent that is reasonable to contact the occupier; or
- enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

Although these provisions confer the power to enter premises and to seize evidence after entry without a warrant issued by a judge or other judicial officer, the powers are narrowly framed and reasonably worded. In the case of section 118(2), the power exists solely to enable the authorised officer to ask the occupier of a place for consent to enter. Given the maintained community interest in issues of protection of children, it is considered appropriate to ensure these powers are available to the Department when monitoring child care.

Section 170 of the Bill provides that a person may report matters that the person reasonably believes is a contravention of another Act where the

matter is relevant to ensuring the safe and appropriate conduct of a child care service or the safe and appropriate provision of child care. It is arguable that this section infringes individuals' rights, however, this provision is narrowly worded in that the reportable matters are confined to those that are relevant to ensuring the safe and appropriate conduct of a child care service or the safe and appropriate provision of child care. In view of this, the provision is consistent with the object of the Bill to protect and promote the best interests of children receiving child care.

Section 141 of the Bill provides that an authorised officer may notify a person (the "second person") that another person is a "disqualified person", if the authorised officer knows, or reasonably suspects, that the second person provides child care at the home in which the disqualified person lives, or provides child care at a home at a time when the disqualified person is usually present at the home. A "disqualified person" is defined as a person for whom a negative suitability notice or a prohibition notice is in force. It is arguable that this section infringes individuals' rights. However, section 141 of the Bill acts as a mechanism allowing authorised officers to inform a second person that another person is a disqualified person and, therefore, child care is not able to be provided at the home of the disqualified person or in their presence. This provision is narrowly worded and is necessary, as it is important that child care is not provided in such circumstances.

Section 144 provides protection against self-incrimination when a person is required to give information or a document to an authorised officer. However, under section 138 the protection does not apply if the requirement relates to a person's licence or a document required to be kept by the person under the Act. The provision is arguably appropriate because the purpose of the document keeping requirements may be defeated if the document can not be required to be produced for inspection and because the person is on notice, when keeping the document, that it is a document that must be produced to an authorised officer on demand.

Section 159 provides that the executive officers of a corporation commit an offence if they do not ensure the corporation complies with the Act. The provision also applies to the executive officers of a parents and citizens association licensed under the Act (section 38). However, provisions to this effect are common in legislation, and the provisions are in a standard form and contain standard defences relating to whether the officer was in a position to influence the conduct of the corporation.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Division 1—Introduction

Clause 1 sets out the short title of the proposed Act.

Clause 2 provides that the Act will commence on a day fixed by proclamation.

Division 2—Interpretation

Clause 3 provides that particular words used in the Act are defined in the Dictionary in Schedule 2.

Clause 4 provides a definition of the term “child care”. “Child care” means care of a child provided by someone other than a relative or guardian of the child, and at a place other than the child’s home, for reward in the course of a service for regularly providing care of children.

Clause 5 provides a definition of the term “child care service”. The section specifically excludes seven types of services from the definition, such as a service for providing primary, secondary or special education conducted by a school.

Clause 6 provides that a note in the text of the Act is part of the Act.

Division 3—Application, object and guiding principles

Clause 7 sets out the powers of the Act in binding the Commonwealth and the States.

Clause 8 sets out the objects of the Act. The primary focus of the Act is as detailed in the Policy Objectives of the Bill, contained in these Explanatory Notes. The section lists the principle mechanisms that enable the objects of the Act to be met namely:

- establishing a licensing system for child care services; and
- regulating the way child care services are conducted;
- setting standards for persons who provide child care.

Clause 9 sets out the guiding principles of the Act. The principles are focused on providing a child care service which recognises the best interests of children as the paramount concern. The principles set out how this can be achieved giving consideration to the individual needs and differences within children, respecting the responsibility of parents and a recognising the role of the community. The chief executive needs to give consideration to the guiding principles when making licensing decisions.

PART 2—LICENSING OF CHILD CARE SERVICES

Division 1—Licensing generally

Clause 10 sets out the types of child care services that may be licensed under the Act and distinguishes them throughout the legislation on the basis of the setting in which they are provided, either “centre based” or “home based”.

Clause 11 provides the link between this Act and the *Integrated Planning Act 1997*. The intention is to make it clear that licensees are still required to meet all of the requirements of the *Integrated Planning Act 1997*, and the issuing of a licence does not necessarily mean that the licensee has complied with all of his/her obligations under that Act. The section also provides that a licence for a centre based service may only authorise the provision of child care in one child care centre.

Clause 12 deals with licences for home based services. The provision makes it clear that in a licensed home based care service the service may be delivered in a number of homes, ie. not just out of one location.

Clause 13 allows for a person to hold multiple licences under this Act. It also provides that a licence may be held jointly and clarifies that all holders of the licence will be recognised as the licensee for the purposes of this Act, subject to a contrary intention.

Clause 14 sets out the duration of the licence period as being not longer than 3 years.

Clause 15 sets out the format of a licence in respect of the details that will be recorded on that actual licence.

Division 2—Requirement to operate child care service under a licence

Clause 16 creates the offence of conducting a child care service without a licence.

Clause 17 creates the offence of contravening a licence condition.

Division 3—Process for issue or renewal of licence

Clause 18 provides that for this division, “information” includes a document.

Clause 19 deals with the issuing of a licence. Under subsection (3), the applicant for a licence must also provide any other relevant information and documents reasonably required by the chief executive to decide the application. In the absence of specific provisions dealing with “disqualified premises” as are contained in the current legislation (section 24 of the *Child Care Act 1991*), this section may also be used by the Department to obtain further information from an applicant where there may be some risk associated with the location of the premises from which a service is going to operate, eg the service is located next to a service station which has underground petrol tanks.

Clause 20 allows a provisional licence to be issued in certain circumstances. In the event that a licensee is issued with a provisional licence, it is not intended that subsequent provisional licence would be issued, or that the term of the initial provisional licence would be extended. This is because the provisional licence should only be issued in circumstances where the chief executive is satisfied that the outstanding issues may be resolved within the term stated in the provisional licence, ie not longer than 3 months. A provisional licence will be issued in circumstances where minor matters are outstanding at the point of issuing a licence or renewing a licence. Examples of minor matters include where some pieces of play equipment have failed to arrive, or the licensee has yet to develop certain policies. For the provisional licence to be issued the

outstanding matters should not be ones that go towards meeting the safety of the care being provided or proposed to be provided.

Clause 21 provides the process for renewing a licence and the timeframes for this process and details the requirements of the licensee to provide relevant information to assist in the determination by the chief executive of a renewal. The intention is for the determination to be made by the Department as soon as practicable however, this is dependent on the timeliness of the licensee.

Clause 22 outlines the circumstances in which an application for renewal of a licence would lapse.

Division 4—Bases for making licensing decisions

Clause 23 provides that the division applies to the chief executive in deciding whether to issue, renew, amend, revoke or suspend a licence, or in deciding the conditions that are to apply to a licence.

Clause 24 outlines the definitions that apply for the division.

Clause 25 provides that the chief executive must have regard to the guiding principles of the Act when making decisions. For example, the chief executive may decide not issue a licence on the grounds that the service does not respect the dignity and privacy of children in its care.

Clause 26 outlines the requirements for licensees in respect of their suitability for the position. Whilst suitability notices are issued through the Commission for Children and Young People the chief executive has additional grounds for refusing an application from a potential licensee as outlined in the subsection (4).

Clause 27 provides that the chief executive must be satisfied that the licensee is complying with the *Commission for Children and Young People Act 2000* in relation to the engagement of each carer in, and staff member of, the child care service. For example, the licensee will need to keep copies of suitability notices as evidence of compliance with the *Commission for Children and Young People Act 2000*.

Clause 28 deals with the suitability of a child care centre and facilities. The provision contains a general statement that the chief executive must be satisfied that the child care centre is safe and suitable for use as a child care centre, and that the facilities are also safe and suitable for use in providing child care under the licence.

Specific considerations that are listed in the section include:

- whether the centre is above ground
- whether the centre is in premises that also contain a home.

Including these two matters as specific considerations replaces the prohibitions contained in the *Child Care Act 1991*.

Under this provision, it is within the chief executive's discretion to license centres in either situation provided that the chief executive is satisfied of the overall safety and suitability of the centre.

These provisions remove the unreasonable restrictions on a number of existing licensees and allow for greater discretion.

In addition, the provisions as proposed will allow for the development of child care centres in high density areas, eg in apartment blocks and office buildings (provided that the outside space requirements contained in the building standards can be met as required).

The provision is in keeping with the new outcomes-based approach of the legislation and will enable the particular circumstances of each new centre to be taken into account when deciding whether to issue a licence and on what conditions the licence should be issued.

Clause 29 provides an overriding power for the chief executive to require homes and facilities to be generally safe and suitable. Whilst there are specific provisions regarding building and facility requirements this provision allows for additional discretion in determining whether a child care service should be licensed or continue to hold a licence.

Clause 30 provides that the chief executive must have regard to whether the child care service is conducted, or proposed to be conducted, principally within an Aboriginal or Torres Strait Islander community, and the culturally specific needs of Aboriginal or Torres Strait Islander children.

Clause 31 provides additional considerations of the chief executive in respect of issuing a licence. Subclause (3) requires a licensee to have an address for service in Queensland. This provision has been inserted to overcome difficulties under the current legislation where a licensee lives overseas or interstate.

Division 5—Licensed capacity of centre based service

Clause 32 deals with licensed capacity. Licensed capacity is only relevant for centre based services. (A licensed capacity will not be specified for a licensed home based service, such as for a licensed Family Day Care Scheme).

The provision allows a single number or different numbers for different times to be specified as the licensed capacity. For example, for a school age care service, the licensed capacity may be specified as a certain figure during school weeks, and another figure during the school holidays. It should be noted that for school age care services, the intention is that operationally, licensed capacity will be a set number, but the Department will use a “band” approach when referring to the number of children that may be accommodated by the service.

The licensed capacity of a service, other than a school age care service, must not be more than 75 children. This is in keeping with the current restriction and is based on ensuring that child care centres are not institutionalised. The limit on the maximum number of children ensures that children are cared for in smaller groups which has a direct impact upon the quality of care.

In addition, a licence may specify that the licensed capacity may be exceeded by a certain number of children at specific times. For example, if the licensed capacity is 65 children, and in order to accommodate shift workers, or the end of the school day when school children arrive at a centre before younger children are collected, the licence may stipulate that 10 additional children may be accommodated in the centre. Subject to any variation allowed under the legislation, the licensee will be required to meet the standard requirements (ie the staff/child ratios and maximum group sizes) notwithstanding that the licensed capacity is being exceeded. However, the provision is intended to allow some flexibility in meeting building (ie space) and facilities requirements.

This clause also deals with considerations in deciding appropriate licensed capacity. Subsection (6)(b) identifies the extent to which the available space and facilities are also used by children other than the children in care at the centre as a relevant consideration. Subsection (6)(c) specifically identifies as a relevant consideration, the number of times that the licensed capacity has been exceeded, including through invoking the emergency care provisions. This is one of the safeguards against abuse of the emergency care provisions.

Clause 33 This provision relates to emergency care, and has been included in response to submissions from families and centre based services that the legislation needed to allow licensees to accommodate additional children in certain, emergency situations. The legislation applies safeguards around how the provision can be used, eg limit of one additional child or a sibling group.

Division 6—Nominee for licence held by corporation

Clause 34 requires a nominee to be nominated by a licensee that is a corporation. This provision has been inserted to overcome difficulties in dealing with corporate licensees under the current legislation.

Clause 35 sets out the purposes and effect of appointing the nominee and requires them to help ensure compliance, and to facilitate communication between the licensee and the Department. The appointment of a nominee does not affect the licensee’s responsibility to ensure the licensed service is conducted in compliance with the legislation.

Division 7—Licence held by parents and citizens association

Clause 36 sets out the definitions of “association” and “executive officer” for the purposes of the division.

Clause 37 provides that a parents and citizens association may hold a licence for a school age care service.

Clause 38 provides that the Act applies to a licensee that is a parents and citizens association as if the association were a corporation, and the association’s executive officers were executive officers of the corporation.

Clause 39 provides that a parents and citizens association may be prosecuted for an offence against the Act, and outlines how this may be done.

Division 8—Amendment of licence

Clause 40 outlines how an application for an amendment of a licence may be made.

Clause 41 outlines the restrictions in relation to amendments that can be made in relation to a licence.

Clause 42 relates to the powers of the chief executive to amend a licence without receiving an application from a licensee. This clause may be used by the chief executive as a form of enforcement action. For example, where a service is consistently operating above its licensed capacity the chief executive may give the licensee a “show cause notice” advising the licensee of the proposed amendment to reduce the service’s licensed capacity. Under this provision the licensee would have at least 30 days to respond in writing to the chief executive to demonstrate why this action should not be taken. There is a requirement for the chief executive to advise the licensee of the outcome of this process.

This clause also provides the chief executive with the power to amend a licence at the licensee’s written request without issuing a “show cause notice”. For example, where a room of a service is structurally unsafe due to storm damage, it may be necessary to reduce the licensed capacity of the service until such time as the matter is rectified.

The amendment of a licence has effect when the notice of the amendment is given to the licensee or any later time specified in the notice.

Clause 43 provides that the chief executive has the power in certain situations relating to the wellbeing and safety of children to urgently amend a licence without first issuing a “show cause notice” to the licensee. The period of the amendment in this instance cannot be for more than 60 days. The intention of this provision is to provide a mechanism for the chief executive to take immediate action if necessary in the best interests of children attending a service. For example, where it is determined that facilities within the babies room are unsafe or present a health risk the chief executive may determine that it is necessary to urgently amend the licence capacity and provision of child care to that age group until the matter has been rectified.

Clause 44 provides for administrative amendments to licences requested by licensees. For example, where the contact details for the licensee may have changed.

Division 9—Suspension or revocation of licence

Clause 45 provides the range of circumstances in which the chief executive may suspend or revoke a licence. These include the following:

- a contravention of the Act or condition of the licence;
- the inability of a licensee to continue conducting the service;
- if a licensee is unsuitable to conduct the service;
- if a nominee or corporation's executive officers are unsuitable to conduct the service;
- if there is no nominee appointed;
- a contravention of the *Commission for Children and Young People Act 2000* in relation to the engagement of a carer or staff member;
- if a child care centre is not considered safe and suitable;
- if a licensee has failed to comply with notice relating to the Building Act requirements;
- for another reason which relates to the safety and wellbeing of children.

Subclauses (2)—(7) detail the process used by the chief executive in suspending or revoking a licence. The chief executive must issue a “show cause notice” providing the licensee with an opportunity to respond in writing within 30 days. The chief executive is required to notify the licensee of the outcome of the process and also has the power to lift the suspension at a time earlier than that stated on the notice. Subclause (7) provides that the chief executive may suspend or revoke the licence without issuing a “show cause notice” at the written request of the licensee. For example, this may occur if the licensee is unable to continue to conduct the service.

Clause 46 provides that the chief executive has the power in certain situations relating to the wellbeing and safety of children to urgently suspend a licence without first issuing a “show cause notice” to the licensee. The period of the suspension in this instance cannot be for more than 14 days after which time a “show cause notice” must be issued or the suspension is lifted. The intention of this provision is to provide a mechanism for the chief executive to take immediate action in stopping the provision of child care if it is in the best interests of children attending a service.

Clause 47 clarifies the status of a licence when it is suspended, namely that a licence is not current during the time of the suspension which means that a service is unable to operate until such time as the suspension is lifted.

Clause 48 clarifies that when a licence has been suspended or revoked there is an obligation on the licensee to return the licence to the chief executive immediately. This is to ensure that no service can continue to operate falsely under a suspended or revoked licence.

Clause 49 provides that when a licence has been suspended or revoked there is an obligation on the licensee to ensure that parents or guardians of the child care service and each carer in the home based care service is notified of the suspension or revocation. Subclause (5) specifically requires that a notice be displayed at the centre for the duration of the suspension in order to inform parents and the public of the status of the licence. A regulation provides more details about the nature of that notice to ensure that it achieves its intended purpose.

Clause 50 requires the licensee to apply to the chief executive using the approved form and pay the prescribed fee for the licence to be lifted following a suspension.

Division 10—Other dealings with licence

Clause 51 relates to transfer of a licence. This provision allows a licence to be transferred from one licensee to another. For example, upon sale of a centre and business, or where a licensee is an individual and for business purposes wishes to change the name of the licensee from the individual to a company.

The ability to transfer the licence rather than requiring a new licence has implications in respect of the fee payable by the new licensee (ie application for licence fee is higher than for the fee for transferring a licence).

In addition, Departmental processes for dealing with applications for transfer, including in the case of the sale of a business, will be streamlined. In the case of a sale of the business, it is envisaged that the outgoing and incoming licensee will identify those areas that are proposed to change under the new licensee, eg will new staff be engaged?

The areas identified will be the areas that the Department will specifically check before allowing the application for transfer to proceed. In addition, the incoming licensee will need to satisfy all of the requirements in respect of suitability.

Clause 52 provides for a licensee surrendering a licence after giving notice to the chief executive. The surrender takes place on the day the

notice is given or at a time stated in the notice. The licensee has an obligation to return the licence to the chief executive 7 days after the surrender takes effect unless the person has a reasonable excuse.

Clause 53 provides for a replacement licence to be issued provided the application is in the approved form and accompanied by the prescribed fee. A replacement licence would be issued where the chief executive is satisfied that the licence has been lost, stolen or destroyed, or damaged.

Division 11—Death of licensee

Clause 54 relates to the death of a sole licensee and the procedures to be followed in transferring a licence under these circumstances. The clause serves to clarify how the service may continue to operate during a transitional period and subject to the personal representative's suitability as detailed in subclauses (4), (7) and (8).

Clause 55 clarifies that where one or more licensees die the other surviving licensees continue in that role with the responsibilities of a licensee.

PART 3—CARERS, STAFF AND RELATED MATTERS

Division 1—Preliminary

Clause 56 defines a carer within a child care service as a person who is engaged to provide child care in the course of the service, or a person conducting the service and providing child care in the course of the service.

Clause 57 defines staff member as being a person engaged in a position in the service or a person conducting the service and carrying out the functions of the position. Subclause (2) further clarifies that for centre based services each carer is a staff member. However, subclause (3) provides that in a home based service a person who is engaged only as a carer in the service is not a staff member for the purposes of the Act.

Clause 58 defines the meaning of “engage” for the purposes of the legislation.

Clause 59 details what constitutes a prescribed first aid competency.

Division 2—Requirements for centre based service

Clause 60 outlines the purpose of this division in setting the requirements for groups and staffing levels in centre based care. The clauses in this division have been specifically included to allow some flexibility in what are otherwise relatively prescriptive group size and staffing requirements contained in the Regulation.

Clause 61 provides that standard requirements are established by regulation to apply across most of the day for centre based services and also during rest periods.

Clause 62 provides that the licensee of a centre based service must ensure the standard requirements are complied with at all times the service is conducted on a day between 5.00am and 10.00pm.

Clause 63 provides that a licence condition for a centre based service may provide for rest periods for the service.

Clause 64 sets out some of the key functions of a director in a child care centre (ie programming, policies, and communication with parents). The list is not intended to be exhaustive or a position description in the same way as the current legislation. The intention of the new legislation is to move away from prescribing the roles or setting out specific position descriptions for carers in services.

Clause 65 provides that there must be at least two adults present at a centre based service at all times child care is being provided at the child care centre in the course of the service. Subclause (3) goes on to detail different requirements for school age care services.

Clause 66 provides that whenever child care is being provided at a place (note this includes a vehicle) in respect of a licence to operate a centre based service, a person with the prescribed first aid competency must be present.

The requirement in respect of centre based services is outcomes based. To meet the requirement, the licensee will need to demonstrate that in the case of contingencies, such as the illness of one or two staff members, there will be sufficient staff with the first aid competency present. This may mean that the majority of staff in the centre will be required to meet the first aid competency.

Division 3—Requirements for home based service

Clause 67 sets out the functions of a coordinator for a home based care service (ie professional support for carers, monitoring standards, and the coordination of the placement of children with carers).

The section outlines the requirements for coordinator hours to be completed by each service. There is some flexibility in how this requirement can be met in that the coordinator hours can be completed simultaneously by more than one coordinator, ie a job sharing arrangement.

Clause 68 requires that a carer in a home based care service must be an adult.

Clause 69 requires that each carer in a home based service must have the prescribed first aid competency.

Division 4—Qualifications, training and study

Clause 70 establishes the context for the regulation to prescribe in what circumstances a licensee may engage someone to a position (eg as group leader or director) if they do not have the requisite qualification.

Clause 71 provides protection to the licensee in situations where they have engaged a staff member without the requisite qualifications because the licensee reasonably believed that the person had the qualification or was enrolled in the course of study.

Clause 72 requires the licensee to keep documentary evidence of the prescribed qualification for each staff member. Subclause (3) specifies the type of document required.

Clause 73 requires the licensee to keep documentary evidence of a staff member's enrolment in a prescribed course.

Division 5—Suitability notices

Clause 74 requires that a licensee must keep a current positive suitability notice or application for a suitability notice if not yet decided for each carer or staff member in a child care service.

The Department will no longer have a role in processing criminal history checks for services. These functions are now covered by the Commission for Children and Young People.

PART 4—CONDUCT OF LICENSED SERVICE

Division 1—General

Clause 75 provides that the licensee must conduct the service in accordance with the guiding principles of the Act and ensure the safety of the children in care and promote their wellbeing.

It is intended that this clause provides the licensee with an over-arching responsibility to operate the service in accordance with the broad objects and principles of this Act. This clause serves to cover the general conduct of the service where other clauses specifically address requirements.

Clause 76 provides that the licensee must prepare and maintain a range of policies as set out in subclause (2). The licensee has an obligation to make a copy of these policies available to parents on request and must ensure that staff members are also aware of these policies.

Clause 77 replaces the current approach of prescribing the functions of the assistant, group leader, assistant director, director and coordinator.

The provision is outcomes focussed in that it requires the licensee to ensure that each position has a role statement without prescribing what the functions should be. The provision also requires that the role statements be provided to staff and parents and that they are kept up to date.

Clause 78 provides parents or guardians with access to observe the provision of child care except where there is an order of a court or tribunal.

Clause 79 provides that a licensee cannot enter into an exclusion agreement as defined in subclause (3).

Clause 80 provides that the licensee must inform the chief executive of changes in relation to the status of suitability notices for the licensee, executive officer or nominee and other changes relating to the licensee as specified in subclause (2).

Notification of these details is important for the Department in monitoring the status of the licence and whether the service is continuing to operate in compliance with the Act.

Clause 81 requires that a licensee must report harm to children. In consultation there was some criticism that this provision would mean that licensees would be reporting to the Department every small injury that a child received. The provision defines “serious injury” as an injury for which treatment from a doctor has been sought or ought reasonably to have been sought.

The requirement under the *Child Care Act 1991* is clarified in the licensing handbook which refers to “hospitalisation”. The term “hospitalisation” is considered too high a threshold, ie a child may be taken to hospital and treated by a doctor but not actually hospitalised.

Where treatment from doctor is sought or ought reasonably to have been sought, it is appropriate that the Department is notified, so that if necessary, an investigation may be instigated.

Clause 82 provides that a licensee must have insurance cover as prescribed under regulation.

Clause 83 provides that the licensee of a child care service may provide child care to children under the licence while they are away from their principal place of care on an excursion, or being transported to or from the principal place of care.

Clause 84 requires that licensees make available to carers and staff members copies of the current legislation.

Division 2—Records

Clause 85 requires that the licensee keep records for the period prescribed under regulation.

Clause 86 provides that a licensee must allow a parent or guardian access to records relating to their child unless there is an order of a court or tribunal which prohibits this from occurring.

Clause 87 sets out the requirements for licensees to ensure that records are kept confidential. This includes the treatment of confidential information by a licensee, staff member or carer. Subclause (3) outlines situations where confidential information may be disclosed.

Clause 88 outlines the record-keeping obligations when a person stops being a licensee.

Division 3—Other matters applying to licensed centre based service

Clause 89 requires that the licensee provide a suitable program appropriate to the children attending the service. The regulation provides greater detail about the specific requirements relating to programming.

The Department will also provide further information about programming and how this requirement would be assessed by the Department in policy and procedure documents. The Department would need to take into consideration the assessment of programming which occurs as part of the National Child Care Accreditation process.

Clause 90 provides licensee must ensure that the licence for the child care service is prominently displayed at the centre.

Division 4—Limits on number of children at 1 place applying to licensed home based service

Clause 91 defines what is meant by “prescribed limits”.

Clause 92 sets out the limits on the numbers of children able to be cared for by a carer in licensed home based care.

Clause 93 provides that the chief executive may impose a condition on a licence for a home based service that further restricts the maximum number of children that can be cared for.

Clause 94 provides that emergency care can be provided for in licensed home based care, and sets out the requirements for this type of care.

Clause 95 provides that clauses 91 to 94 also apply to the licensee of a home based service while child care is being provided in the course of the service at a place other than a home.

Clause 96 sets out requirements for playgroups and excursions involving other carers in licensed home based care.

Throughout the consultation process on the exposure draft of the proposed new legislation it became evident that the practice of more than 2 carers gathering or “playgroups” were not accommodated within the

proposed legislation. Home based care services value the practice of carers coming together to participate in activities, provide opportunities for children to socialise with other children and to provide peer support for carers.

Feedback through the consultation phase indicated that there was a range of practices across the State in relation to the operation of playgroups. Some Family Day Care Schemes independently regulated the operation of playgroups while others provided few safeguards.

The Act sets out safeguards around the frequency of gatherings, the numbers of carers and children participating and the environment in which playgroups can take place to ensure the safety of children and consistency across the State.

The intention is to place reasonable limits around the operation of playgroups to ensure that children are not attending playgroups all day everyday and missing out on the benefits of the home environment, for example, regular sleep times.

Division 5—Other matters applying to licensed home based service

Clause 97 places the onus on the carer in a licensed home based care scheme to ensure that each adult occupant (ie person who lives in the home or is usually present in the home when the care is provided) has a current positive suitability notice.

The licensee has a corresponding obligation to ensure that carers comply with the obligation, and in addition, the licensee must keep certified copies of the suitability notices.

Clause 98 provides that the licensee is responsible for ensuring that the home based service provides appropriate activities and experiences for the children attending the service.

The requirements for home based care in relation to this requirement are different from those requirements for centre based care ie less structured and onerous. This is in recognition of the differences in these service types and the fact that in home based care the carer is usually working independently throughout the day.

PART 5—CONDUCT OF STAND ALONE SERVICE

Clause 99 provides that a person conducting a stand alone care service must be an adult.

Clause 100 places responsibility on the carer in a stand alone care service to ensure that care is not being provided in a home where, for example, an occupant is a disqualified person or does not have a positive suitability notice.

Clause 101 sets out the maximum number of children who can be cared for in stand alone care. The clause includes detailed examples of possible scenarios which could arise when providing stand alone care.

Clause 102 requires a person conducting a stand alone service to have the level of insurance prescribed under regulation.

PART 6—PROHIBITION NOTICES

Division 1—Basis for issuing notice

Clause 103 provides that the chief executive has the power to issue a prohibition notice if they are satisfied that there is an unacceptable risk of harm to children.

Division 2—Procedure

Clause 104 requires that the chief executive issue a “show cause notice” to the person before issuing a prohibition notice. The person will then have at least 14 days to give a written submission to the chief executive stating their case.

Clause 105 requires the chief executive to consider any written submission from the person and ensure that the person is informed of the outcome of the chief executive’s decision.

Clause 106 clarifies that the prohibition notice can apply more broadly to a person who may not at the time of the notice be responsible for providing care for children.

Clause 107 stipulates the content required in a prohibition notice.

Clause 108 outlines the situations in which a prohibition notice can be cancelled.

Division 3—Offences

Clause 109 provides that is an offence to contravene a prohibition notice.

Clause 110 provides an offence for a licensee engaging a person with a prohibition notice when they ought reasonably have known that the prohibition notice was in force.

PART 7—MONITORING AND ENFORCEMENT

Division 1—Authorised officers

Clause 111 relates to the appointment of authorised officers by the chief executive for the purpose of carrying out functions of the Act.

Clause 112 places limits and conditions on the powers of authorised officers.

Clause 113 details ways in which an authorised officer may stop holding office. The options for no longer continuing to hold office are not limited to subclause (1).

Clause 114 provides that an authorised officer may resign by signed notice to the chief executive unless they are holding another position which requires them to be an authorised officer, in which case they would be required to resign from both positions.

Clause 115 sets out the requirements for authorised officers to have an identity card and lists the information contained on this card.

Clause 116 requires that an authorised officer return their identity card within 21 days of ceasing to be an authorised officer.

Clause 117 sets out the requirements of authorised officers to ensure that they display their identity card when exercising a power under the Act.

Division 2—Powers of authorised officers

Subdivision 1—Entry of places

Clause 118 relates to the powers of entry of authorised officers. The clause provides that there are a range of situations when an authorised officer may enter a place including, where there is consent from the owner, where it is a public place, where child care is being provided under a licence or where there is a warrant.

Subclause (2) allows the authorised officer to enter land around the place or part of the place without consent for the purpose of contacting the occupier.

Subdivision 2—Procedure for entry

Clause 119 details the process for obtaining consent where an authorised officer seeks to enter a place. There is a range of information that the authorised officer is required to provide to the occupier.

Clause 120 allows an authorised officer to apply to a magistrate for a warrant. It may be necessary for the officer to provide additional information to assist the magistrate in determining the application.

Clause 121 outlines the grounds for a magistrate issuing a warrant and the details of the warrant including the extent of the authorised officers' powers. These grounds for issuing a warrant relate to the collection of evidence that may relate to an offence.

Clause 122 outlines the process for applying for a special warrant that would be used, for example, in urgent circumstances or due to the officer's remote location.

Clause 123 provides the specific process to be used by an authorised officer when entering a place with a warrant. Subclause (3) provides some protection to the officer should they believe that communicating with the occupier of the place and discussing the warrant will compromise the process.

Clause 124 outlines the requirements in relation to an authorised officer entering a home and preserving privacy.

Subdivision 3—Powers after entry

Clause 125 outlines the general powers of an authorised officer after they have entered a place. The powers relate specifically to monitoring and enforcing compliance with the Act therefore the scope of things an officer may do includes searching areas, collecting evidence and requiring the occupier of the place to give reasonable help in exercising these powers.

Clause 126 makes it an offence for a person not to give reasonable help or information to an authorised officer unless they have a reasonable excuse.

Subdivision 4—Power to seize evidence

Clause 127 clarifies the definition of “owner” of a seized thing as being the person entitled to possess it.

Clause 128 provides that an authorised officer may seize evidence after entry without consent or warrant.

Clause 129 provides for circumstances where the authorised officer has been able to obtain consent or a warrant. The authorised officer may only seize something which is consistent with their purpose of entry and which they reasonably believe is evidence of an offence against the Act.

Clause 130 requires that a receipt be issued for seized items to the person from whom it was seized unless it is impracticable or unreasonable to give a receipt. There is also a requirement for the details contained on the receipt.

Clause 131 provides for circumstances where seized items cannot be returned to their owner and the requirements on the State in terms of handling these items.

Clause 132 requires authorised officers to return seized things within particular timeframes.

Clause 133 requires that an authorised officer allow an owner access to a seized thing where reasonable and practicable prior to the seized thing being forfeited or returned.

Subdivision 5—Power to obtain information

Clause 134 provides authorised officers with the power to require a person to state their name and address and if necessary provide evidence of the correctness of this information if they find a person committing an offence against this Act or reasonably believe that the circumstances that person is in may lead to an offence against this Act.

Clause 135 provides authorised officers with the power to require a person to state their date of birth if they believe an offence is being committed and the person is not an adult. The person where reasonable may be required to provide documentary evidence of their date of birth.

Clause 136 provides authorised officers with the power to issue a notice to a person if they reasonably believe that an offence has been committed and that the person may be able to provide information about the offence.

Clause 137 provides authorised officers with the power to require a person to produce documents.

Clause 138 makes it an offence not to produce documents as required under clause 137 unless the person has a reasonable excuse. However, it is not a reasonable excuse to refuse to produce these documents on the basis that providing the information might tend to incriminate the individual.

Subdivision 6—Monitoring suitability of relevant persons

Clause 139 provides for an authorised officer to require an occupant of a home in which stand alone care is provided to apply for a suitability notice. The authorised officer can request this when they reasonably suspect that the person is an occupant of that home and where they suspect that the person may have a criminal history which may make them unsuitable to be present in the home while care is being provided.

This section only relates to adult occupants of the home.

Clause 140 allows the chief executive to obtain information about suitability checks. This provision has been included to allow the Commission for Children and Young People to provide information to the chief executive upon request, about the status of suitability notices and applications before the Commission.

Clause 141 provides that an authorised officer has the power to inform a person providing child care from a home that a person who lives at the same home is a disqualified person. There is an obligation to advise the person if the occupant stops being a disqualified person.

Subdivision 7—Other compliance matters

Clause 142 provides for an authorised officer to give a person a compliance notice in situations where the officer believes that a person is contravening the Act or has contravened the Act or where there is likely to be a repeat of the contravention.

The clause sets out what is required to be listed on the compliance notice including the fact that the notice may state the steps that need to be taken by the person to remedy the contravention.

Clause 143 provides for a specific compliance notice related to meeting the Building Act requirements for centre based care.

As the building requirements no longer form part of the child care legislation it is necessary to have this clause which allows for enforcement action to be linked to compliance with these separate requirements under the Building Act.

Division 3—Miscellaneous

Clause 144 relates to self-incrimination and is a standard provision in contemporary legislation.

Clause 145 relates to compensation and is a standard provision in contemporary legislation.

Clause 146 makes it an offence to alter a licence without the written authorisation of the chief executive.

Clause 147 makes it an offence to provide false or misleading information to an authorised officer.

Clause 148 makes it an offence to provide false or misleading documents to an authorised officer.

Clause 149 makes it an offence to obstruct an authorised officer in the exercise of a power.

Clause 150 makes it an offence to impersonate an authorised officer.

PART 8—LEGAL PROCEEDINGS

Division 1—Evidence

Clause 151 provides that this division applies to a proceeding under this Act.

Clause 152 provides that it is only necessary to provide proof of the authority of the chief executive or authorised officer if a party gives reasonable notice of requiring this information.

Clause 153 clarifies that signatures for the chief executive and authorised officers are taken to be evidence of their signatures.

Clause 154 details a range of evidentiary aids relating to a licence that may be authenticated as such through a certificate signed by the chief executive.

Division 2—Offence proceedings

Clause 155 requires that a proceeding for an offence against this Act be taken in a summary way under the *Justices Act 1886*. Subclause (2) sets out the timeframes for the proceeding.

Clause 156 clarifies that the stated day a complaint came to a complainant's knowledge is taken to be evidence of the matter stated.

Clause 157 clarifies that it is not necessary to specify whether information provided was either false or misleading in a proceeding for an

offence against this Act. The charge can simply state that the information was false or misleading.

Clause 158 provides that when proving a person's state of mind regarding a particular act or omission under the Act, a representative, as defined in subclause (4) can be taken to committed the offence.

Clause 159 provides that executive officers are responsible for compliance with this Act and will each be held responsible for committing an offence under this Act unless they exercised reasonable diligence or were not in a position to influence the conduct of the corporation in relation to the offence.

Clause 160 provides that it is a defence for the licensee to prove that they exercised reasonable diligence to ensure compliance with the provision.

Clause 161 provides that a person is able to use as a defence the fact that they sighted reasonable evidence of a person's age if that person's age is the reason for them contravening a provision.

Clause 162 allows emergencies to be used as a reason for a person committing an offence against a provision of this Act when proceedings are taken against a person.

PART 9—GENERAL

Division 1—Reviewable decisions

Clause 163 lists the range of decisions that are reviewable by applying to the Children Services Tribunal, for example, the treatment of licences and the issuing of prohibition notices.

Clause 164 requires that the chief executive give a notice to the person who has applied for a review of a decision by the chief executive.

Division 2—Application of Commission for Children and Young People Act 2000

Clause 165 clarifies that for the purposes of the *Commission for Children and Young People Act 2000* a corporation's executive officers and the nominee are taken to be carrying on a child care business.

Clause 166 requires that applications for suitability notices from occupants of homes are dealt with under the *Commission for Children and Young People Act 2000* as if the person were carrying on a regulated business.

Division 3—Confidentiality

Clause 167 outlines the duty of confidentiality under the Act.

Clause 168 outlines the situations in which a person may record, use or disclose information.

Clause 169 outlines situation in which a person may disclose information to relevant entities in other jurisdictions.

Clause 170 outlines when a person may report matters of concern to other departments.

Division 4—Miscellaneous

Clause 171 requires that a register of licences be kept by the chief executive. The register must contain specific details from each licence and is available for inspection by the public on payment of a prescribed fee.

Clause 172 provides for a review of the qualification provisions and transporting provisions by the Minister.

Clause 173 provides for the chief executive to delegate powers under the Act to an appropriately qualified officer or employee.

Clause 174 provides the power for the chief executive to approve forms under this Act.

Clause 175 provides for regulations to be made under this Act. Subclause (2) specifies the matters a regulation may cover.

PART 10—REPEAL AND TRANSITIONAL PROVISIONS***Division 1—Repeal***

Clause 176 repeals the *Child Care Act 1991*.

Division 2—General transition provisions

Clause 177 ensures the continued operation of licences issued under the *Child Care Act 1991*.

Clause 178 provides that the section applies to certain applications made under the repealed Act.

Clause 179 provides that the chief executive must notify corporations that they must nominate a nominee. The corporation will have 2 months from when the chief executive gives notice to nominate a nominee.

Clause 180 applies to services that were transitioned under the previous legislation with a maximum licensed capacity of more than 75.

Those services can maintain a licensed capacity in excess of 75 under the new legislation, but the licensed capacity cannot be increased, ie if the licensed capacity is 100 then the licence cannot be amended to allow the licensed capacity to be 105.

Clause 181 provides that if a notice was given under the repealed Act immediately before the commencement day of the new legislation the notice will be taken to be a compliance notice under clause 142 of this Act.

Clause 182 deals with applications for review by the Children Services Tribunal where a decision was made by the chief executive under the repealed Act.

Clause 183 provides that decisions by the Children Services Tribunal that had not been decided by the commencement day of the new legislation be transitioned. The Tribunal is able to continue to deal with the application as if the repealed Act had not been repealed.

Clause 184 provides that where a licence for home based care exists before the commencement of this Act a carer does not commit an offence for an adult occupant not having a current suitability notice until their

licence expires and an application has been made for a suitability notice for the occupant.

Clause 185 clarifies that prohibition notices issued under the *Child Care Act 1991* continue when the new legislation commences.

Clause 186 clarifies that authorised officers under the *Child Care Act 1991* will be taken to be appointed as authorised officers under this Act.

Clause 187 provides the transitional timeframes for services that were not required to be licensed under the *Child Care Act 1991*, but will be required to be licensed under the new legislation, ie school age care services and some indigenous services in Far North Queensland.

These services will have 2 years from the date of commencement of the new legislation to apply for a licence, and 5 years from the date of commencement to demonstrate compliance with building requirements.

Clause 188 provides that centres that received an unlimited exemption from certain building requirements under the *Child Care Act 1991* will continue to be exempt from the relevant performance criteria in the building standards that form part of the Building Act.

Division 3—Transitional provisions about qualifications

Clause 189 outlines circumstances in which assistants are taken to be qualified.

Clause 190 provides that certain registered nurses are taken to have group leader qualifications.

Clause 191 outlines the transitional provisions for holders of, and applicants for, certificates of endorsement.

Clause 192 outlines circumstances in which an unqualified person engaged as a director, assistant director or group leader is taken to be qualified.

Clause 193 outlines the transitional provision for unqualified persons who were at least 45 years of age on commencement of the *Child Care Act 1991*.

Clause 194 outlines the circumstances in which an unqualified person can be engaged as a coordinator.

Division 4—Regulatory impact statement for first regulation

Clause 195 provides that the requirements of the *Statutory Instruments Act 1992* in relation to consultation on a regulation made under this Act do not apply where that consultation has already occurred and the Legislative Assembly has been made aware of that process and the results of consultation.

Both the Bill and draft regulation were broadly consulted on as part of the process for developing this legislation. A Regulatory Impact Statement (RIS) and Public Benefit Test (PBT) have also been completed for this legislation.

PART 11—AMENDMENTS

Clause 196 provides for the amendment of Acts listed in Schedule 1.

SCHEDULE 1***AMENDMENT OF ACTS******CHILDREN SERVICES TRIBUNAL ACT 2000***

- 1 amendment of section 30 (2) amends the section to provide that a person cannot be a Tribunal member for a reviewable decision made under the Child Care Act 2002 if the member has been refused a licence under that Act or the previous child care legislation, or has had a licence under either of those Acts revoked.
- 2 insertion of new section 158 acts as a transitional provision for the Child Care Act 2002.

COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000

- 1 insertion of new section 126A outlines what is employment in child care.
- 2 insertion of new section 175 clarifies that “commencement day” relates to the commencement of this section.
insertion of new section 176 provides transitional arrangements for those services licensed before the commencement of the new legislation in relation to suitability notices.
insertion of new section 177 provides transitional arrangements for those people carrying on other regulated child care business.
insertion of new section 178 this section applies to a person who, immediately before the commencement day, was employed in employment mentioned in Schedule 1, section 3A.
- 3 insertion of new section 3A into Schedule 1—inserts new categories of regulated employment, for example, carers and staff members in child care services.
- 4 amendment of Schedule 1, section 4, example 4—omit, insert ‘child minding’.
- 5 amendment of Schedule 1—inserts a provision which clarifies a regulated business for the purpose of capturing those services that provide child care.
- 6 amendment of Schedule 4—inserts a range of definitions for the purposes of that legislation. These include adjunct care, child care, child care centre, child care service, commercial service, cousin, guardian and relative.
- 7 amendment of Schedule 4, definition “charge”, paragraph (b), section 177—omit, insert section 214.
- 8 amendment of Schedule 4, definition “staff member”—insert “in relation to a child care service, see the Child Care Act 2002, section 57.

CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

- 1 amendment of section 9A (1)—omit ‘Child Care Act 1991’.

***EDUCATION (ACCREDITATION OF NON-STATE SCHOOLS) ACT
2001***

- 1 amendment of section 6(2)(e)—omit, insert “a part of a school used only to provide child care”.
- 2 amendment of section 6(3)—provides a definition of child care.
- 3 amendment of Schedule 3, definition “preschool education”—provides a definition of preschool education.

SCHEDULE 2***DICTIONARY***

Schedule 2 sets out the dictionary for terms used in this Act.