

CHILD PROTECTION (INTERNATIONAL MEASURES) BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

To implement the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the Child Protection Convention) in Queensland.

To make amendments to the *Child Protection Act 1999* to correct minor drafting errors, clarify the intention of the Act and to address anomalies.

To make amendments to the *Juvenile Justice Act 1992* to correct minor drafting errors.

Reasons for the objectives and how they will be achieved

The movement of children and their families across international borders is increasing due to the globalisation of the world economy, the ease of international travel, the increase in cross-cultural marriages and displacement due to war and natural disasters.

A number of international conventions have been established and ratified by Australia to promote the protection of children when they move between countries. These include the Hague Convention on Civil Aspects of International Child Abduction and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

The purpose of the Child Protection Convention is to provide for international co-operation between Convention countries in taking measures of protection for the person and property of children. The Convention promotes co-operation among countries by eliminating potential conflicts of jurisdiction between authorities in different countries, by providing for the international recognition of measures of protection for children and by establishing formal mechanisms for co-operation and the

sharing of information between child protection authorities in different countries.

The Child Protection Convention:

- allows residence and contact orders to be recognised and enforced internationally;
- provides a framework for co-operation and an exchange of information in relation to the whereabouts and welfare of a child and the need to take measures to protect the child;
- imposes an obligation on authorities in Convention countries to inform authorities in other countries if they are aware of a child being exposed to serious danger in that other country;
- establishes rules to avoid conflict between the legal systems of different countries by establishing rules in respect of jurisdiction, applicable law, recognition and enforcement measures for the protection of children and their property;
- provides for the country which is the habitual residence of the child to have jurisdiction to make decisions for the child's benefit, except in the case of emergency in which case the country in which the child is living at the time will have jurisdiction to take urgent action.

The Convention relates to parental responsibilities such as custody, the right to determine the child's place of residence, access, guardianship, children's property, placement of a child in a foster family or institutional care and the supervision by a public authority of the care of the child.

The Convention does not apply to adoption, maintenance obligations, the establishment or contesting of a parent child relationship, issues relating to the name of the child, emancipation, trusts or succession, social security, public measures of a general nature in matters of education or health, decisions on asylum or immigration, or measures taken as a result of criminal offences committed by children.

Ratification of the Convention will not alter the substantive law in Australia relating to the nature of, or procedures for obtaining, measures for the protection of children.

The Commonwealth has lodged Australia's instrument of ratification of the Child Protection Convention so that it will come into operation in Australia on 1 August 2003.

Legislation to implement the Convention must be enacted by the Commonwealth and all Australian States and Territories.

The Commonwealth has enacted the *Family Law Amendment (Child Protection Convention) Act 2002* and will make regulations under this Act to implement the family law aspects of the Convention.

Legislation to implement the child protection aspects of the Convention is the responsibility of the States and Territories.

Model legislation to assist the States and Territories in implementing the child protection aspects of the Convention has been developed by Queensland for the Parliamentary Counsels' Committee at the request of Community Services Ministers' Conference and the Standing Committee of Attorneys-General, after extensive consultation between the jurisdictions.

The model bill is a stand alone piece of legislation intended to be enacted in substantially the same form in each jurisdiction, although it is not intended to be uniform legislation. Each State and Territory will have responsibility for and control over the form of their own Bill and consequential amendments.

The *Child Protection (International Measures) Bill 2003* is substantially based on the model bill, reflecting the fact that the model bill was drafted by the Office of the Queensland Parliamentary Counsel from a Queensland perspective. Other States and Territories may use the model bill as the basis for their legislation with changes to ensure compatibility with other legislation in their jurisdictions.

The *Child Protection (International Measures) Bill 2003* will benefit children and families who move between Queensland and Convention countries and for whom there are child protection concerns by implementing internationally agreed rules contained in the Convention:

- determining which child protection authorities have jurisdiction in relation to a child, and
- establishing formal co-operation procedures between child protection authorities in different countries.

Formal co-operation procedures for child protection authorities will assist in resolving many of the cases that come to the attention of Australian child protection authorities. Some examples of the types of cases that can arise are:

- overseas authorities requesting to transfer child protection measures for children immigrating to Australia;
- cases in which children subject to foreign child protection measures are brought to Australia without notice to the Australian child protection authorities;
- cases in which child protection proceedings have commenced in Australia but the child is removed to another country prior to the conclusion of the proceedings;
- overseas authorities asking Australia to check on the welfare of a child visiting Australia on a contact visit; and
- parents in Australia seeking the transfer to Australian authorities of children in the care of overseas child protection authorities.

Implementation of the Convention by this Bill will simplify the process of resolving these cases by providing for direct communication between central authorities in Convention countries, thus eliminating the delays and confusion which often arise from the current practice of using diplomatic channels to identify authorities responsible for handling child protection cases and to pass communications to and from Australian child protection Departments.

By designating the State child protection authority (the Department of Families) as the Central Authority for the purpose of implementing the Convention, the Bill will avoid problems for the Department that have arisen in the past in establishing its status and authority to the satisfaction of overseas courts and authorities.

The Bill implements the Child Protection Convention by providing for:

- clarification of Queensland's jurisdiction in relation to the protection of children (part 2)
- clarification of Queensland's jurisdiction in relation to the protection of the property of children (part 3)
- clarification that a Queensland authority must apply Queensland law when exercising jurisdiction under parts 2 and 3 (part 4)
- a scheme for the recognition and enforcement of foreign protection measures in Queensland (part 5)
- procedures for co-operating with Convention and non-Convention countries (part 6).

An example of a Queensland case where implementation of the Convention by this Bill would have assisted the children by reducing delay and costs follows.

A Queensland woman with two children married an American man in Australia. The family moved to the USA. The children were taken into care by child protection authorities in the US State following allegations of abuse of the children by the stepfather. The parents separated and the mother returned to Queensland, where she sought assistance from the Department of Families to have the children returned to Queensland. The negotiations between the Department and the US State were difficult and protracted because of:

- the lack of established co-operative arrangements between Australia and the USA, which would have allowed for the transfer of responsibility for the children;
- the difficulty in locating the appropriate officer in the US State with authority to negotiate;
- the difficulty in satisfying the US State of the appropriateness of the proposed care arrangements in Queensland; and
- the difficulty of satisfying the US State authorities that the Department of Families would take immediate and ongoing action to protect the children.

The judge of the US State court insisted on involving the Minister, as the judge was unsure of the status and authority of officers of the Department of Families to deal with the matter. Eventually, negotiations between the judge and the Department, through the Minister, resulted in the children being removed to Queensland, where they were placed with a foster carer under a care and protection order. The mother eventually regained custody under a protective supervision order. If the Child Protection Convention had been in place at the time of this case, the co-operation provisions would have clarified the appropriate authorities through which negotiations should occur, thereby expediting the resolution of the matter. Even if the USA were not a party to the Convention, the fact that the Department of Families had the status of a Central Authority under the Convention would assist in dealings with the US State.

Amendments to the Child Protection Act 1999

The *Child Protection Act 1999* commenced in March 2000. Since that time, problems with the drafting of a number of provisions have been identified. Some of these problems are drafting errors or omissions. Other

provisions have been identified in practice as not reflecting the intent of the provisions as outlined in the Explanatory Notes for the Child Protection Bill 1998. The proposed amendments are amendments that:

- are technical in nature, or
- are minor and non-controversial, and
- do not have significant policy or practice implications.

Amendments to the Juvenile Justice Act 1992

The *Juvenile Justice Act 1992* provides the legal and legislative framework for the administration of the criminal youth justice system in Queensland.

As a result of the wide-ranging review of the Act, the *Juvenile Justice Amendment Act 2002* was passed in Parliament on 22 August 2002. The *Juvenile Justice Amendment Act 2002* was proclaimed on 12 December 2002 and certain sections, such as sections dealing with confidentiality and publication of identifying information, commenced 16 December 2002. The remainder and majority of the provisions are set to commence operation on 1 July 2003.

A review conducted by officers of the Office of Queensland Parliamentary Counsel has revealed the need to further amend the *Juvenile Justice Act 1992* to correct minor errors and references in the Act.

References in the notes on provisions are to the *Juvenile Justice Act 1992* as re-numbered after 1 July 2003.

Estimated costs for government implementation

No additional financial implications are expected to arise from the implementation of the Child Protection Convention by this Bill. It is not expected that ratification of the Convention and its implementation will result in a significant increase in the number of international cases being dealt with by the Department of Families. The Department is already expending resources in dealing with overseas child protection cases. At present such cases arise infrequently but, when they do occur, their resolution can be a complex and lengthy process. While there may be some additional costs in communicating with overseas authorities, there may be some savings arising from the simplification of the process of resolving child protection cases as a result of implementing the Convention. By promoting co-operation and direct communication between authorities, the Convention should assist in reducing the

considerable expenses that have been incurred in the past when these matters have arisen.

There are no additional financial implications for the amendments to the *Child Protection Act 1999* and to the *Juvenile Justice Act 1992*. The proposed amendments are either technical or reflect current practice.

Consultation

Consultation has occurred with:

- Department of Premier and Cabinet
- Department of Justice and Attorney-General
- The Office of the Public Trustee
- The Chief Justice of the Supreme Court
- The Childrens Court President
- The Acting Chief Magistrate
- The Children Services Tribunal
- The Commission for Children and Young People.

The implementation of the Child Protection Convention in Australia has been the subject of lengthy consideration by Commonwealth, State and Territory Governments. A working group of Commonwealth and State officials, established by the Standing Committee of Attorneys-General and the Community Services Ministers' Conference, developed the model legislation through extensive consultation between all Australian jurisdictions commencing in 1997.

Consistency with fundamental legislative principles

Whether legislation has sufficient regard to the institution of Parliament.
(*Legislative Standards Act 1992*, section 4(2)(b))

Parliamentary scrutiny committees nationally have identified elements of National Scheme Legislation as potentially undermining the institution of Parliament. The model legislation upon which this Bill is based does not constitute National Scheme Legislation. The model Bill was drafted with the intention that it be used as an aide to assist States and Territories in implementing the Child Protection Convention. Jurisdictions are free to choose whether or not to use the model Bill as the basis for their

legislation. Each State and Territory will have responsibility for and control over the form of their own Bill and consequential amendments.

Because the Office of the Queensland Parliamentary Counsel drafted the model Bill from a Queensland perspective, the *Child Protection (International Measures) Bill 2003* largely reflects its provisions.

In order to implement the Child Protection Convention, the provisions of State legislation must reflect the obligations, duties and processes set out in the Convention. Consequently, it is expected that there will be little variation in the substance of the legislation between States and Territories.

Whether legislation has sufficient regards to the rights and liberties of individuals (Legislative Standards Act 1992, section 4(2)(a))

Clauses 30, 32 and 34

These clauses relate to the sharing of information about children between authorities and are contained in part 6 of the bill, which deals with co-operation between Convention countries. These provisions may be considered a breach of individuals' privacy and rights to the protection of their personal information. Clause 30 sets out the functions of the Department as Queensland's central authority. Clause 30(1)(d) provides that it is a function of the Department to exchange information with other authorities. However this exchange of information is subject to appropriate confidentiality provisions. In the Queensland child protection context, these provisions are sections 186 to 188 of the *Child Protection Act 1999*. Clause 30(1)(g) provides that it is a function of the Department to provide reports to central authorities on the situation of particular children. The compulsory provision of information to competent authorities under clause 32 is limited to situations where children are in serious danger. Under clause 34, information may be given to an Australian court, the Commonwealth central authority, other State central authorities and other Australian competent authorities or central authorities or competent authorities of Convention countries only where the giving of the information is consistent with the Act or the Child Protection Convention.

These provisions are integral to implementing the Child Protection Convention and are justified by:

- the need to ensure the protection and welfare of children crossing international borders;
- the limitations contained in the provisions; and

- agreement to these provisions by all jurisdictions as part of a co-ordinated approach.

Schedule 3, *Child Protection Act 1999* clauses 14, 15, 18 and 36

The amendments to the *Child Protection Act 1999*, sections 126(b), 130(b) and 142(1) and the definition of 'suitable person' in Schedule 3 may be considered as adversely affecting the rights of individuals by extending the class of persons required to undergo compulsory criminal, domestic violence and traffic history checks. However, this imposition is justified to ensure the safety of children and to protect them from further harm while in the care of the State. The intervention by the State in the lives of children who have been harmed within their families creates a duty in the State to ensure children are not further harmed while in the care of the State. This duty of care cannot be properly discharged if significant information about persons who have access to children in care because of their position within a licensed care service is not available to the Department of Families. It is considered that the rights of vulnerable children to be protected from further harm while in the care of the State override adult rights in these circumstances.

The Department of Families currently conducts these checks with the consent of the individuals involved and will continue to seek consent. However, a legislative power to conduct these checks is required where consent is not forthcoming. A legislative requirement to ensure the suitability of these persons is necessary to protect children from harm while they are in the care of the State.

Under section 136 and Schedule 2 of the *Child Protection Act 1999*, a refusal to grant or renew a licence is subject to administrative merits review by the Children Services Tribunal.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the title by which the Bill will be cited once it is enacted.

Clause 2 provides for Schedule 3 to commence on a day to be fixed by proclamation.

Clause 3 sets out the main purposes of the Bill, which are to recognise:

- the importance of international co-operation for protecting children,
- the need to avoid conflict between the legal systems of different countries in relation to measures for the protection of children, and
- that a child's best interests are a primary consideration in relation to measures of protection for the person and property of a child.

These purposes reflect the Preamble of the Child Protection Convention.

Clause 4 restricts the application of the Bill. *Clause 4(1)* provides that the Bill does not apply to those matters to which the Child Protection Convention does not apply under Article 4 of the Convention. These matters are the establishment or contesting of a parent child relationship, adoption, the name of the child, emancipation, maintenance obligations, trusts or succession, social security, public measures of a general nature in matters of education or health, measures taken as a result of criminal offences committed by children, or decisions on asylum or immigration.

Clauses 4(2) and 4(3) refer to reciprocal arrangements between Queensland and New Zealand for the interstate transfer of child protection orders and proceedings. These arrangements are established in the *Child Protection Act 1999*, chapter 7, parts 1 to 6 and in reciprocal New Zealand legislation, the *Children, Young Persons and Their Families Act 1989* (NZ), part 3A. The Bill does not apply to arrangements made between Queensland and New Zealand pursuant to this legislation, except to the extent of any inconsistency between the Bill and the arrangement in providing for the exercise of jurisdiction by Queensland or a competent authority in a Convention country, in which case the Bill prevails. This is because it is not the intention of the Child Protection Convention to

override any bilateral arrangements that provide for a greater level of protection for children who move between the two jurisdictions.

Clause 4(4) provides that measures taken in another country before the Child Protection Convention came into force for that country may be recognised in Queensland under the Bill after the Convention has come into force in Australia and the relevant country.

Clause 5 provides that the Act binds all persons, including the State.

Clause 6 provides for definitions for the Bill. Clause 6(1) provides for the dictionary in Schedule 4 to define words used in the Act. Clause 6(2) provides that, unless the contrary intention appears, expressions used in the Act or in regulations made for the Act have the same meaning as they have in the Child Protection Convention. Thus the meaning of words used in the Convention is relevant in determining the meaning of words such as ‘measure’ (articles 3 and 4), ‘habitual residence’ (articles 5 and 7), ‘urgency’ (article 11) and ‘public policy’ (article 23.2(d)).

Clause 7 provides that when a Queensland court exercises jurisdiction under the Act, the court may exercise jurisdiction on application by the department or the public trustee or on its own initiative. This clause limits who may make applications to a court under this Act to the department and the public trustee and other persons who may make an application under another provision of this Act or another Act. In Queensland, child protection orders can only be sought by the Department of Families. This clause differs slightly from the Convention to give only the Department of Families (or, in the case of property orders, the Public Trustee) the right to make an application to a court under the Act. This is a position to be adopted by all States and Territories on the basis that parties to international matters should not have greater rights than parties residing within the State or Territory. This clause also recognises the fact that child protection orders in Queensland and in other States and Territories are administered by the child welfare departments. The Child Protection Convention is broadly worded to cover both family law and child protection measures, which in many international jurisdictions are administered by the same court. The drafters of the Convention did not wish to draft the Convention in separate parts for civil law jurisdictions and for common law jurisdictions to accommodate the variations in law between these jurisdictions.

In accordance with section 33(7) of the *Acts Interpretation Act 1954*, a reference to *department* is a reference to the department of government that deals with the matter to which the Act relates and is administered by the Minister who administers the Act.

PART 2—JURISDICTION FOR THE PERSON OF A CHILD

This part implements articles 5 to 14 of the Child Protection Convention in relation to the jurisdiction of Queensland authorities (the courts and the Department of Families) to take measures directed to the protection of the person of a child. In implementing these articles, part 2 takes the approach of dealing with the various grounds of jurisdiction referred to in the articles according to the distinction traditionally applied by Australian courts, between children present in Australia and children present in other countries.

Clause 8 provides in effect that the rules of jurisdiction in part 2 apply only in the event of a conflict in jurisdiction between a Queensland court or the Department of Families and a competent authority in another country and not where the conflict in jurisdiction is between Queensland and another Australian competent authority. This provision implements the preamble to the Child Protection Convention (which makes it clear that the Convention is directed to the protection of children in international situations) and article 46 of the Convention which provides that a Convention country is not obliged to apply the provisions of the Convention to conflicts solely between different systems of law in that country. Thus neither the Convention nor part 2 applies to conflicts in jurisdiction solely between a Commonwealth authority and a State authority, or conflicts in jurisdiction solely between authorities of different States in Australia.

Clause 9 sets out the jurisdiction of Queensland authorities to take personal protection measures for children. The clause implements articles 5 to 14 and 47 of the Child Protection Convention by dealing with the various grounds of jurisdiction referred to in the articles according to the distinction traditionally applied by Australian courts, between children present in Australia and children present in other countries. Thus a Queensland authority may take a Queensland personal protection measure for a child in relation to:

- a child who is present and habitually resident in Australia (article 5);
or
- a child who is present in Australia and habitually resident in a Convention country, if:
 - the child's protection requires taking the measure as a matter of urgency (article 11)

- the measure is provisional and limited in its territorial effect to Australia (article 12)
- the child is a refugee child (article 6)
- a request to assume jurisdiction is made to the Queensland authority by a competent authority in the country of the child's habitual residence (article 8), or
- a competent authority in the country of the child's habitual residence agrees to the Queensland authority assuming jurisdiction (article 9); or
- a child who is present in a Convention country, if:
 - the child is habitually resident in Australia (article 5)
 - the child has been wrongfully removed from or retained outside Australia and the Queensland authority retains jurisdiction under article 7 of the Convention (article 7)
 - a request to assume jurisdiction is made to the Queensland authority by a competent authority in the country of the child's habitual residence (article 8), or
 - a competent authority in the country of the child's habitual residence agrees to the Queensland authority assuming jurisdiction (article 9); or
- a child who is present in Australia and is a refugee child (article 6).

To avoid doubt, clause 9(2)(e) and (f) preserves the jurisdiction of Queensland authorities to take measures for the protection of the person of a child:

- who is present in a non-Convention country, if:
 - the child is habitually resident in Australia, or
 - the child is habitually resident in a non-Convention country but is an Australian citizen; or
- who is present in Australia, if the child is habitually resident in a non-Convention country.

Clause 9(3) supplements clause 9(2)(b)(ii) in its implementation of article 12 of the Child Protection Convention in relation to the jurisdiction of a court or the department to take a provisional measure for the protection of a child. Clause 9(4) makes clear that the grounds of jurisdiction set out in clauses 9(2)(a) to (d) are subject to the limitations in clauses 10, 11 and 13.

Thus clause 9 is a comprehensive statement of the grounds of jurisdiction of Queensland authorities to take measures of protection for the person of a child.

Clause 10 implements article 7 of the Child Protection Convention which provides that the authorities of the country of the child's habitual residence retain their jurisdiction to take measures of protection for a child who has been wrongfully removed from or retained outside the country unless and until certain conditions are met. For example, if a child is removed from a Convention country to Queensland by a person in breach of an order granting custody of the child to another person, courts in that country would retain jurisdiction to make orders in relation to the child. However, if the child has been unlawfully removed to Queensland, under clause 9(2)(b)(i), Queensland authorities may take urgent measures to ensure the protection of the child.

Clause 11 relates to article 13 of the Child Protection Convention which in effect prohibits an authority in a Convention country which has jurisdiction under articles 5 to 10 from exercising that jurisdiction if an authority in another Convention country is exercising jurisdiction in accordance with the Convention, ie it deals with conflicts which may arise where concurrent jurisdictions exist under articles 5 to 10 of the Convention. Clause 11 differs from article 13 in that it requires the Queensland authority to find out whether measures have been sought in the other country. This difference recognises that in Australia, unlike in many other countries, child protection matters are separate proceedings to family law matters. It would not protect children if the Childrens Court or the Department of Families were constrained from taking action to protect a child in Queensland merely because a court in another jurisdiction was determining a family law dispute relating to the child. Clause 11(1) limits clause 11(2) to certain grounds of jurisdiction because the prohibition on exercising concurrent jurisdiction in article 13 does not apply to urgent measures under article 11 (clause 9(2)(b)(i)), provisional measures under article 12 (clause 9(2)(b)(ii)) or where there is concurrent jurisdiction with a non-Convention country (clause 9(2)(e) and (f)).

Clause 12 assists in implementing articles 8 and 9 of the Child Protection Convention. Clause 12 outlines the process for a Queensland authority to assume jurisdiction where another Convention country has jurisdiction under articles 5 or 6. Clause 12(1) implements article 8 by providing that a Queensland court or the department may accept or reject a request by a competent authority in another Convention country for the court or department to assume jurisdiction to take a Queensland personal protection measure for a child.

Clause 12(2) implements article 9 by providing that the court may order the department to request a competent authority in another Convention country to agree to the court assuming jurisdiction for the child. Consistently with article 9.3, clauses 9(2)(b)(v) and 9(2)(c)(iv) provide that the court or department may only exercise jurisdiction if the authority in the country of the child's habitual residence or country of refuge agrees to the request.

Clause 12(3) implements article 9 by providing that the court may only order the department to request the overseas authority to agree to the court assuming jurisdiction if the court considers it is better placed to assess the child's best interests than the overseas authority.

Clause 13 assists in implementing articles 8, 9 and 13 of the Child Protection Convention. Clause 13 outlines the process for a competent authority in another Convention country to assume jurisdiction where Queensland has jurisdiction under articles 5 or 6. Clause 13(1) provides that a court may order the department to request a competent authority in another Convention country to exercise jurisdiction for the child.

Clause 13(2) provides that the court may make any other order for the purposes of an order under clause 13(1). Thus, consistent with article 8.1 of the Convention, the court might make an order suspending the proceedings before the court pending a decision by the overseas authority on the request to transfer the jurisdiction.

Clause 13(3) implements article 8 by providing that an order under clause 13(1) can be made only if the court considers the overseas authority is better placed to assess the child's best interests.

Clause 13(4) implements article 9 by providing that the court may accept or reject a request under article 9 by a competent authority in another Convention country to agree to the authority assuming jurisdiction to take a personal protection measure for a child.

Clause 13(5) implements article 13 by providing that the Queensland court must not exercise jurisdiction to take a personal protection measure for a child if the competent authority in the other Convention country assumes jurisdiction under the request. Consistently with article 13, the Queensland court is not prevented from taking urgent or provisional measures for the protection of the child.

Clause 14 implements articles 11 and 12 of the Child Protection Convention. Clause 14(1) implements articles 11.2 and 12.2 in relation to Convention countries by providing that an urgent measure for a child in accordance with clause 9(2)(b)(i) (article 11.1) or a provisional measure for

a child in accordance with clause 9(2)(b)(ii) (article 12.1) ceases to operate if a measure directed to the protection of the person of the child taken by a competent authority in another Convention country is recognised by registration under clause 25.

Clause 14(2) implements articles 11.3 and 12.3 in relation to non-Convention countries by providing that an urgent measure for a child in accordance with clause 9(2)(b)(i) (article 11.1) or a provisional measure for a child in accordance with clause 9(2)(b)(ii) (article 12.1) ceases to operate if a measure directed to the protection of the person of the child taken by a competent authority in a non-Convention country is recognised under Queensland law or the law of another State.

The following is a case example of the use of urgent measures to protect a child who is present in Queensland and is habitually resident in another Convention country. A German mother and small child come to Australia on a study visa to study in Queensland. The mother abandons the child and leaves the State and cannot be located. The Department of Families knows the name of the father and the German city in which he lives. The Department contacts the German central authority to request they locate the child's father and other family members and provide an assessment of whether the father or any family member can care for the child. In the meanwhile, using the jurisdiction to take urgent measures to protect the child, the Department of Families applies for and obtains a child protection order granting short term guardianship of the child to the chief executive. The German authorities identify a relative as a suitable carer and arrangements are made for the return of the child to Germany. The authorities in Germany obtain a protective order for the child placing the child in the custody of the relative and the child is returned to Germany. If the German order is registered in Queensland, the Queensland order lapses. If the German order were not registered, the Department of Families would apply to the court for revocation of the Queensland order.

PART 3—JURISDICTION FOR DECISIONS ABOUT A GUARDIAN OF A CHILD'S PROPERTY

This part implements articles 5 to 14 of the Child Protection Convention in relation to Queensland authorities (a Queensland court or the Public Trustee) to take measures for appointing, or deciding the powers of, a

guardian of a child's property. In implementing these articles, part 3 takes the approach of dealing with the various grounds of jurisdiction referred to in the articles according to the distinction traditionally applied by Australian courts, between children present in Australia and children present in other countries.

Clause 15 provides in effect that the rules of jurisdiction in part 3 apply only in the event of a conflict in jurisdiction between a Queensland court or the Public Trustee and a competent authority in another country and not where the conflict in jurisdiction is between Queensland and another Australian competent authority. This provision implements the preamble to the Child Protection Convention (which makes it clear that the Convention is directed to the protection of children in international situations) and article 46 of the Convention which provides that a Convention country is not obliged to apply the provisions of the Convention to conflicts solely between different systems of law in that country. Thus neither the Convention nor part 3 applies to conflicts in jurisdiction solely between a Commonwealth authority and a State authority, or conflicts in jurisdiction solely between authorities of different States in Australia.

Clause 16 sets out the jurisdiction of Queensland authorities to take property protection measures for children. Clause 16(1) provides that the clause applies if a Queensland authority has jurisdiction under Queensland law to take a property protection measure for a child.

Clause 16(2) implements articles 5 to 14 of the Convention in relation to the jurisdiction of Queensland authorities to take Queensland property protection measures for a child. The drafters of the Convention included these articles in recognition of the utility of having precise rules concerning the designation and the powers of the child's legal representative to administer the child's property located in a foreign State, in particular where it is necessary to carry out the settlement of an estate, which has passed to the child. The drafters of the Convention did not intend to go beyond the appointment or determination of the powers of a guardian of a child's property. Thus, for example, the Convention does not alter traditional private international law rules on the lack of jurisdiction of a court to determine ownership of interests in foreign land or other property. Under clause 16(2), a Queensland authority may exercise jurisdiction to appoint, or decide the powers of, a guardian of a child's property in relation to:

- a child who is habitually resident in Australia (article 5); or
- a child who is habitually resident in a Convention country, if:

- the protection of the child's property in Australia requires taking the measure as a matter of urgency (article 11)
- the measure is provisional and limited in its territorial effect to Australia to property in Australia (article 12)
- a request to assume jurisdiction is made to the Queensland authority by a competent authority in the country of the child's habitual residence or country of refuge (article 8)
- a competent authority in the country of the child's habitual residence or country of refuge agrees to the Queensland authority assuming jurisdiction (article 9), or
- the child has been wrongfully removed from or retained outside Australia and the Queensland authority retains jurisdiction under article 7 of the Convention (article 7)
- a child who is present in Australia and is a refugee child (article 6).

To avoid doubt, clauses 16(2)(d) and (e) preserves the jurisdiction of Queensland authorities to appoint, or determine the powers, of a guardian of the property of a child:

- who is present in a non-Convention country, if:
 - the child is habitually resident in Australia, or
 - the child is habitually resident in a non-Convention country but is an Australian citizen; or
- who is present in Australia, if the child is habitually resident in a non-Convention country.

Clause 16(3) supplements clause 16(2)(b)(ii) in its implementation of article 12 of the Child Protection Convention in relation to the jurisdiction of a Queensland authority to take a provisional property protection measure for a child.

Clause 16(4) makes clear that the grounds of jurisdiction set out in clause 16(2)(a) to (c) are subject to the limitations in clauses 17, 18 and 20.

Thus clause 16 is a comprehensive statement of the grounds of jurisdiction of Queensland authorities to take measures appointing, or determining the powers, of a guardian of the property of a child.

Clause 17 implements article 7 of the Child Protection Convention which provides that the authorities of the country of the child's habitual residence retain their jurisdiction to take measures of protection for a child

who has been wrongfully removed from or retained outside the country unless and until certain conditions are met. For example, if a child is removed from a Convention country to Queensland by a person in breach of an order granting custody of the child to another person, courts in that country would retain jurisdiction to make orders in relation to the property of the child unless and until the conditions in article 7 are met. However, Queensland authorities may take urgent measures to ensure the protection of the child's property.

Clause 18 implements article 13 of the Child Protection Convention, which deals with conflicts that may arise where concurrent jurisdictions exist under articles 5 to 10 of the Convention. Clause 18(2) provides that a Queensland authority must not exercise jurisdiction to take a Queensland property protection measure if before the authority exercised its jurisdiction, a corresponding measure had been sought from a competent authority in a Convention country.

Clause 18(1) limits clause 18(2) to certain grounds of jurisdiction because the prohibition on exercising concurrent jurisdiction in article 13 does not apply to urgent measures under article 11 (clause 16(2)(b)(i)), provisional measures under article 12 (clause 16(2)(b)(ii)) or where there is concurrent jurisdiction with a non-Convention country (clause 16(2)(d) and (e)).

Clause 18(3) supplements clause 18(2)(b)(v) in its implementation of article 10 of the Convention in relation to the jurisdiction of a competent authority in a Convention country hearing divorce proceedings to take a measures for the protection of a child.

Clause 18(4) implements article 13.2 of the Convention by making clear that the prohibition on concurrent proceedings in clause 18(2) does not apply if the competent authority in the other Convention country has declined jurisdiction or is no longer considering taking a measure of protection.

Clause 19 assists in implementing articles 8 and 9 of the Child Protection Convention. Clause 19 outlines the process for a Queensland authority to assume jurisdiction where another Convention country has jurisdiction under articles 5 or 6. Clause 19(1) implements article 8 by providing that a Queensland court may accept or reject a request by a competent authority in another Convention country for the court to assume jurisdiction to take a Queensland property protection measure for a child.

Clause 19(2) implements article 9 by providing that the court may order, or invite the parties to the proceedings to ask, the department or the public

trustee to request a competent authority in another Convention country to agree to the court assuming jurisdiction for the child. Consistently with article 9.3, clause 16(2)(b)(iv) provides that the Queensland authority may only exercise jurisdiction if the authority in the country of the child's habitual residence or country of refuge agrees to the request.

Clause 19(3) implements article 9 by providing for the public trustee to apply to the court for an order that the public trustee may accept a request made by a competent authority in another Convention country for the public trustee to assume jurisdiction.

Clause 19(4) implements article 9 by providing that the court may only make an order or issue an invitation under clause 19(2) if the court considers it is better placed to assess the child's best interests than the overseas authority or make an order under clause 19(3)(a) if the court considers the public trustee is better placed to assess the child's best interests.

Clause 20 assists in implementing articles 8, 9 and 13 of the Child Protection Convention. Clause 20 outlines the process for a competent authority in another Convention country to assume jurisdiction where Queensland has jurisdiction under articles 5 or 6. Clause 20(1) provides that a Queensland court may order, or invite the parties to the proceeding to ask, the department or the public trustee to request a competent authority in another Convention country to exercise jurisdiction for the child.

Clause 20(2) provides that the court may make any other order for the purposes of an order under clause 20(1). Thus, consistent with article 8.1 of the Convention, the court might make an order suspending the proceedings before the court pending a decision by the overseas authority on the request to transfer the jurisdiction.

Clause 20(3) implements article 8 by providing that an order or invitation under clause 20(1) can be made only if the court considers the overseas authority is better placed to assess the child's best interests.

Clause 20(4) implements article 9 by providing that the court may accept or reject a request under article 9 by a competent authority in another Convention country to agree to the authority assuming jurisdiction to take measures for the protection of the child's property.

Clause 20(5) implements article 13 by providing that the Queensland court must not exercise jurisdiction if the competent authority in the other Convention country assumes jurisdiction under the request. Consistently with article 13, the Queensland court is not prevented from taking urgent or provisional measures for the protection of the child.

Clause 21 implements articles 10, 11 and 12 of the Child Protection Convention. Clause 21(1) implements articles 11.2 and 12.2 by providing that an urgent measure for a child in accordance with clause 16(2)(b)(i) (article 11.1) or a provisional measure for a child in accordance with clause 16(2)(b)(ii) (article 12.1) ceases to operate if a foreign property protection measure is taken by a competent authority in another Convention country. Consistently with articles 11.2 and 12.2, clause 21(1) only applies if the competent authority in the other Convention country is exercising jurisdiction in accordance with article 5 (clause 21(1)(b)(i)), article 6 (clause 21(1)(b)(ii)), article 8 (clause 21(1)(b)(iii)), article 9 (clause 21(1)(b)(iv)), article 10 (clause 21(1)(b)(v) and clause 21(2)) and article 7 (clause 21(1)(b)(vi)).

Clause 21(3) implements articles 11.3 and 12.3 by providing that an urgent measure for a child in accordance with clause 16(2)(b)(i) (article 11.1) or a provisional measure for a child in accordance with clause 16(2)(b)(ii) (article 12.1) ceases to operate if a foreign property protection measure taken by a competent authority in a non-Convention country is recognised under Queensland law or the law of another State.

PART 4—APPLICABLE LAW

Clause 22 implements articles in chapter III of the Child Protection Convention determining the law a Convention country must apply when exercising jurisdiction.

Clause 22(1) and (2) implement article 15 of the Convention by providing that a Queensland authority exercising jurisdiction under parts 2 and 3 must apply Queensland law, other than choice of law rules.

However, consistent with article 15.2, clause 22(3) provides that, in exceptional circumstances, a Queensland authority may apply or take into account the law of another country if the protection of the child or the child's property makes this necessary.

Clause 22(4) implements article 21.1 of the Convention by providing that a reference to the word law does not include choice of law rules.

PART 5—RECOGNITION OF FOREIGN MEASURES AND THEIR ENFORCEMENT IN QUEENSLAND

Part 5 implements articles in chapter IV of the Child Protection Convention relating to recognition and enforcement of measures. As required by the Convention, it establishes a scheme for recognition, by registration, of foreign protection measures. The Bill places an obligation on the department, as the state central authority, to take certain action in relation to a foreign protection measure, if requested to do so under the Child Protection Convention. A foreign protection measure includes a child protection order made in another Convention country. One of the options for action is recognition of the measure through its registration in a Queensland court.

Recognition of a foreign measure is subject to exceptions such as where the measure is manifestly contrary to public policy or where the measure places a child in institutional care or foster care in Queensland and the overseas authority did not obtain the prior consent of the Department of Families for the measure. The Bill provides that a registered foreign measure has the same force and effect as a Queensland measure.

The part also enables Queensland protection measures to be recognised and enforced in another Convention country.

It is not anticipated that the recognition and enforcement provisions will be utilised for child protection matters. The recognition and enforcement provisions will have greater application to registration of foreign parenting orders with the Family Court of Australia. Child protection matters will primarily be addressed using the co-operation provisions of the Convention. This is because child protection orders frequently involve the granting of parental responsibility to a child protection authority. If a child who is subject to such an order comes to Queensland, administration of the foreign order in Queensland would be impractical because the overseas child protection authority is not physically able to exercise its powers. This situation is different to foreign parenting orders because the child usually comes to Australia with a parent or other individual in whose favour the parenting order has been made. It is simpler for child protection orders to be sought and enforced in the country where the child is present using the co-operation provisions of the Convention than to register and enforce a foreign order. Australia's policy position on this issue was made clear when the Convention was drafted in The Hague in 1996 and there was no objection to such a position being taken.

This would mean, for example, that where a child in Queensland for the purpose of a family visit is the subject of an overseas child protection order granting guardianship of the child to the child protection authority in the country of the child's habitual residence, the Department of Families will consult with the child protection authority in the other country to establish an agreed solution to meet the child's protective needs while he or she is in Queensland. Registration in Queensland of the foreign order granting guardianship of the child to the overseas child protection authority of itself would not be sufficient to ensure the child's protection in Queensland as the overseas authority would not have the physical means to exercise guardianship in Queensland. This may mean, for example, that using the co-operation provisions the overseas authority will agree to Queensland exercising its child protection jurisdiction to protect the child while the child is in Queensland.

Clause 23 implements articles 23, 26, 15 and 24 of the Convention in relation to foreign measures for the protection of the person of a child. Clause 23(1) provides that the clause applies when the department is given a foreign personal protection measure and a request is made for the department to take action under the Convention.

Clause 23(2) requires the department to consult with the competent authority in the other country and to take one of the listed actions in response. These are to either:

- give the measure to a court for registration (article 26),
- give the measure to the Commonwealth central authority to take action (article 26),
- exercise the department's jurisdiction under part 2
- apply to the court for the court to exercise its jurisdiction under part 2 or for the court to decide whether or not to refuse recognition of the measure
- agree with the competent authority in the other country that the department will take no action.

Clause 23(3) sets out the grounds on which a Queensland court may refuse recognition of a foreign personal protection measure. These grounds replicate the grounds set out in article 23 of the Convention. Measures may be refused recognition if:

- the competent authority in the Convention country did not have jurisdiction under the Convention to take the measure (clause 23(3)(a); article 23.2.a)

- in taking the measure, the competent authority in the Convention country acted contrary to fundamental principles of procedure under Queensland law by not giving the child or a person with parental responsibility for the child an opportunity to be heard and did not take the measure as a matter of urgency (clause 23(3)(b), clause 23(4); article 23.2.b and c)
- recognition of the measure is contrary to public policy in Queensland having regard to the child's best interests (clause 23(3)(c); article 23.2.d)
- if the measure were recognised by registration, it could not be appropriately enforced under Queensland law (clause 23(3)(d); article 15.1)
- the measure is incompatible with a later measure taken in a non-Convention country in which the child habitually resides and the later measure could not be refused recognition under clause 23(3)(b) or (c) (clause 23(3)(e); article 23.2.e)
- the measure places the child in a foster care or institutional care in Queensland and the competent authority in the other country did not obtain the department's prior consent to the measure (clause 23(3)(f); article 23.2.f).

Clause 23(5) implements article 24 of the Convention by enabling an interested person to be joined as a party in a proceeding on an application by the department to the court for the court to exercise its jurisdiction under part 2 or for the court to decide whether or not to refuse recognition of the measure.

Clause 23(6) requires a foreign measure that authorises a medical procedure or treatment of the child for which a parent does not have authority to consent, to be accompanied by a Family Court declaration declaring that recognition of the measure is not contrary to public policy having regard to the child's best interests, in order for the measure to be registered in a Queensland court. This clause recognises the child welfare jurisdiction of the Family Court of Australia to determine applications for special medical procedures, such as sterilisation, for children.

Clause 24 implements article 26 of the Convention in relation to foreign measures for the protection of the property of a child. Clause 24(1) provides that the clause applies when the department is given a foreign property protection measure and a request is made for the department to take action under the Convention.

Clause 24(2) requires the department to consider whether the measure includes a provision directed to protecting the person of the child.

Clause 24(3) provides that if the measure does include a provision directed to protecting the person of the child, the department must deal with the measure under clause 23 as if it were a foreign personal protection measure.

Clause 24(4) requires the department to give a foreign property protection measure that does not include a provision directed to protecting the person of the child to the registrar of the court for registration under clause 25.

Clause 25 implements articles 14, 23.1, 26.1 and 28 of the Child Protection Convention by providing for recognition of foreign measures by registration in a Queensland court. Clause 25(1) requires the registrar to register a foreign measure given to the registrar under clause 23 or 24. The system of recognition of a foreign property measure differs from the system of recognition of a foreign personal protection measure because the background to a foreign personal protection measure can be ascertained from the competent authority in the country which took the measure. By way of contrast, a foreign property protection measure is more likely to have been taken by a party other than a competent authority in the country where the measure was taken, making it more difficult for the department to ascertain the background to the foreign property protection measure.

Clause 25(2) provides in effect that a registered foreign measure operates as if it were a Queensland measure and prevails over any prior inconsistent measure (to the extent of that inconsistency) in force in Queensland.

Clause 25(3) enables an interested person to take legal proceedings for enforcement of a registered measure.

Clause 25(4) provides that the effect of a registered measure is subject to cancellation under clause 26.

Clause 26 provides for the cancellation of a registered foreign measure. Clause 26(1) enables an interested person to apply to the court for cancellation.

Clause 26(2) enables the court to cancel the registration of a foreign measure if:

- the court may take a Queensland measure under part 2 or 3 (clause 26(2)(a) and (b));

- the competent authority in the Convention country did not have jurisdiction under the Convention to take the measure. (clause 26(2)(c); article 23.2.a) This is the same ground as in clause 23(3)(a) for refusing recognition of the measure;
- in taking the measure, the competent authority in the Convention country acted contrary to fundamental principles of procedure under Queensland law by not giving the child or a person with parental responsibility for the child an opportunity to be heard and did not take the measure as a matter of urgency (clause 26(2)(d), clause 26(3); article 23.2.b and c) This is the same ground as in clause 23(3)(b) for refusing recognition of the measure;
- recognition of the measure is contrary to public policy in Queensland having regard to the child's best interests (clause 26(2)(e); article 23.2.d) This is the same ground as in clause 23(3)(c) for refusing recognition of the measure;
- if the measure is a foreign property protection measure, the measure can not be appropriately enforced under Queensland law (clause 26(2)(f); article 15.1)

Clause 27 implements articles 25 and 27 of the Child Protection Convention.

Clause 27(1) provides that the clause applies to proceedings in a Queensland court under clause 23 or 26 in relation to foreign measures.

Clause 27(2) implements article 25 by binding a Queensland court in relation to the findings of fact on which the competent authority in the other Convention country based its jurisdiction.

Clause 27(3) implements article 27 by stating that the Queensland court must not review the merits of the measure, except when determining a cancellation of registration application under clause 26.

Clause 27(4) and (5) are evidentiary provisions.

Clause 28 implements articles 23, 26 and 28 of the Child Protection Convention by enabling the department to give a Queensland measure relating to a child to a central authority of another Convention country for recognition and enforcement of the Queensland measure in that country. However, prior to giving a Queensland personal protection measure to a central authority of another Convention country for recognition and enforcement, the department must consult with the central authority or the competent authority of that country.

PART 6—CO-OPERATION AND OTHER MATTERS

Part 6 implements articles in chapter V of the Child Protection Convention by setting out Queensland's obligations to co-operate and share information with competent authorities in other Convention countries. The Convention likewise requires other Convention countries to co-operate with the Department of Families by providing information about children and families upon request and to consult about taking measures for the protection of children. These provisions are the most useful provisions of the Convention from an Australian child protection perspective as they will ensure that requests for assistance can be made directly to the relevant authorities and that those requests will receive a response.

An example of how the information sharing requirements will assist children is exemplified by the following case. A mother and child were internationally mobile. Child protection concerns about the mother arose when they were in Queensland. The child had previously been the subject of an application under the Hague Convention on Civil Aspects of International Child Abduction by the mother through the Swedish central authority. The father had previously unlawfully brought the child to Australia from Sweden. As a result of that application the child was returned to the mother in Sweden. The Swedish authorities refused, on the basis of their confidentiality requirements, to provide any information to the Department of Families about the child. This made it difficult for the Department of Families to take appropriate action to protect the child, as it did not have sufficient information. The mother fled Australia with the child to Finland. Eventually the authorities in Finland took action to protect the child. Under the Convention, the Swedish authorities would be required to share relevant information with the Department of Families to enable the Department to take appropriate protective action.

The co-operation provisions will assist in cases where children are in Queensland with parents who have limited visas. For example, a British family is in Queensland on a work visa issued to the father. Child protection concerns are notified to the Department and the child is taken into care under a Queensland child protection order. The parents intend to move to Spain for the father to take up an offer of employment. Under immigration rules, the child cannot remain in Australia once the parents' visa expires. The Department of Families contacts the relevant authorities in Spain to exchange information about the protective needs of the child and to request that the Spanish authorities take action to protect the child

when the child arrives in Spain. A number of cases with similar facts to this example have occurred in Queensland in the past few years.

An example of where the co-operation provisions would benefit Queensland children who are in care under the *Child Protection Act 1999* arose in the case of a 15 year old girl whose family was originally from the Philippines. The chief executive of the Department had guardianship of the child. The Department of Families assessed that it was in the best interests of the young person to visit her ill grandmother in the Philippines. The young person was to travel with her parents. The Department had some concerns that the parents may not return the young person to Queensland. The Convention would assist the Department in making requests to the Philippines authority to take action to supervise the young person's visit and ensure her return to Queensland.

Clause 29 implements article 29 of the Child Protection Convention by designating the Department of Families as Queensland's central authority for the Convention.

Clause 29(2) provides that the chief executive of the department is responsible for performing the functions and exercising the powers of the department under the Act.

Clause 30 sets out the department's functions in co-operating with central authorities of Convention countries.

Clause 30(1) implements articles 30 to 35 of the Child Protection Convention by providing that the department has the following functions:

- to co-operate with central authorities of other Convention countries to find solutions for the protection of children or their property (clause 30(1)(a); article 31.a and 31.b)
- to help in the implementation of measures directed to protecting children or their property (clause 30(1)(b); article 31.b and 35)
- to consider taking Queensland measures at the request, or invitation, of a competent authority of another country (clause 30(1)(c); article 32.b)
- to exchange information, subject to appropriate confidentiality provisions (clause 30(1)(d); articles 34.1 and 31.a)
- to provide information on laws and services (clause 30(1)(e); article 30.2)
- to help in locating children (clause 30(1)(f); article 31.c)

- to provide reports on the situation of particular children (clause 30(1)(g); article 32.a)
- to apply to Queensland courts in response to requests from competent authorities in other Convention countries to transfer or receive jurisdiction or to take measures for children (clause 30(1)(h); articles 31.a and 32.b)

Clause 30(2) implements article 33.2 of the Convention by requiring the department to take into account the child's best interests when considering whether to consent to a request by a competent authority of another Convention country to place a child in foster care or in institutional care in Queensland.

Clause 30(3) provides that clause 30(1) is subject to clause 34(2). This means that if the sharing of information would not be consistent with the Convention or the Bill, then the Department is not bound to perform the functions set out in clause 30(1). For example, under article 37, an authority shall not request or transmit information if to do so would be likely to place a child or their family in danger.

Clause 31 implements article 33 by requiring the Queensland authority to obtain the consent of the competent authority in a Convention country before placing a child in foster care or institutional care in the Convention country.

Clause 32 implements article 36 of the Child Protection Convention. Article 36 applies where authorities in one country take measures to protect a child and the child is moved to another country (for example, the child is moved by the child's parents). If the child is exposed to serious danger (for example, risk of abuse or neglect by the parents), the Convention obliges authorities in the first country to inform authorities in the second country about the danger. In practice, it would then be a matter for authorities in the second country to consider taking measures of protection for the child in accordance with the jurisdiction provisions of the Convention. Clauses 32(2) to (5) provide protection for persons making disclosures under clause 32(1). This protection is similar to protection currently provided in the *Child Protection Act 1999*, section 22, for persons who report suspected harm to a child to the chief executive of the Department of Families.

Clause 33 implements article 35 of the Child Protection Convention by providing for Queensland authorities to co-operate with authorities in other Convention countries to resolve disputes over contact by a parent with his or her child.

Clause 33(1) implements article 35.2 by requiring a court to admit into evidence and consider a finding by a competent authority in another Convention country on the suitability of a parent to have contact with a child.

Clause 33(2) implements article 35.3 by giving a discretion to a court to adjourn proceedings pending the outcome of a request to authorities in another Convention country for a finding on the suitability of a parent to have contact with his or her child.

Clause 33(3) implements article 35.2 by providing for a court to make a finding on the suitability of a parent to have contact with his or her child.

Clause 33(4) implements article 35.2 by requiring the department, when considering contact between a child and his or her parent, to consider evidence and any findings of a competent authority in a Convention country on the suitability of a parent to have contact with the child.

Clause 34 implements articles of the Child Protection Convention relating to the disclosure of information. The Convention includes provisions that require the communication of information between authorities in Convention countries (articles 8, 9, 30, 32, 33, 34, 35, 37, 41 and 42). Clause 34(2) provides that courts and authorities in Australia may give information to authorities in other Convention countries. Clause 34(2) also applies to the communication of information between Australian authorities because such information may be necessary in channelling, or co-ordinating the gathering, of information for transmission to other Convention countries. Clause 34(2) is limited to communications necessary to comply with the Child Protection Convention or this Act (which implements the Convention).

PART 7—MISCELLANEOUS

Clause 35 implements article 40 of the Child Protection Convention by enabling a Queensland authority to provide a written notice to a person exercising parental responsibility under a Queensland measure upon their request containing information about the powers conferred on the person by the measure.

Clause 36 implements articles 26 and 40 of the Child Protection Convention by providing for the department to assist an interested person

to request a competent authority in another country to vary or cancel a foreign measure.

Clause 37 enables the chief executive of the Department of Families to delegate his or her powers under clause 29 to an appropriately qualified officer of the Department.

Clause 38 provides that regulations may be made under the Act. Clause 38(1) provides that Governor in Council may make the regulations. Clause 38(2) provides that a regulation may prescribe that a particular measure or type of measure will have effect as a particular type of Queensland measure and the way in which the type of measure has effect and can be varied.

Clause 39 provides that Schedules 2 and 3 amend the Acts mentioned in those Schedules.

SCHEDULE 1

CHILD PROTECTION CONVENTION

Schedule 1 sets out the full text of the Child Protection Convention.

SCHEDULE 2

AMENDMENT OF OTHER ACTS

CHILD PROTECTION ACT 1999

Clause 1 inserts new section 6A in the *Child Protection Act 1999* to clarify that the *Child Protection (International Measures) Act 2003* includes provision about the exercise of jurisdiction under the *Child Protection Act 1999*.

Clause 2 renumbers section 186(2)(b), (c) and (d) as a consequence of the amendment to section 186(2) made by clause 3.

Clause 3 amends section 186(2) by inserting a new paragraph to enable the sharing of information disclosing the identity of a notifier with central authorities of Convention countries under Part 6 of *the Child Protection (International Measures) Act 2003*.

CHILDRENS COURT ACT 1992

Clause 1 amends section 6 of the *Childrens Court Act 1992* to clarify that the *Child Protection (International Measures) Act 2003* includes provision about the exercise of jurisdiction under the *Childrens Court Act 1992*.

PUBLIC TRUSTEE ACT 1978

Clause 1 inserts new section 5 in the *Public Trustee Act 1978* to clarify that the *Child Protection (International Measures) Act 2003* includes provision about the exercise of jurisdiction under the *Public Trustee Act 1978*.

SUPREME COURT ACT 1995

Clause 1 inserts new section 2A in the *Supreme Court Act 1995* to clarify that the *Child Protection (International Measures) Act 2003* includes provision about the exercise of jurisdiction under the *Supreme Court Act 1995*.

SCHEDULE 3

AMENDMENT OF OTHER ACTS

CHILD PROTECTION ACT 1999

Clause 1 amends section 6(4) to correct a drafting error.

Clause 2 omits section 23 and replaces it with a re-drafted definition of “parent” for the purpose of Part 2 – Temporary Assessment Orders. The purpose of the re-drafted definition is to better achieve the intention of the Act as set out in the Explanatory Notes to the Child Protection Bill 1998. The Explanatory Notes for the equivalent clause states:

“(The relevant clauses) limits the meaning of the term “parent” in this part to include only parents or others who by law have parental responsibility for the child. The term includes parents or others who would currently have legal parental responsibility if it were not for a child protection order granting custody or guardianship of the child to the chief executive or someone else.

The meaning of parent has been limited in this part because it deals only with parents whose legal rights may be affected by the provisions of this part, eg by the granting of custody or guardianship to the chief executive. Elsewhere in the Bill, “parent” is afforded a broader meaning to be inclusive of other persons parenting the child, eg step parents who care for the child but may not have legal parental responsibility.”

The current definition provides:

“parent”, of a child, means each of the following persons—

- (a) the child’s guardian;
- (b) a person with custody of the child;
- (c) if the child is in a person’s custody or guardianship under this Act – anyone else who would be the child’s guardian if the child were not in the person’s custody or guardianship under this Act.

“Guardian” is defined in Schedule 3 of the Act to mean “a person who is recognised in law as having all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.”

There are two problems with the way the current definition of ‘parent’ is drafted. The definition of ‘guardian’ may technically exclude a person who has some, but not all, the duties, powers, responsibilities and authority etc. The definition could therefore technically exclude a parent, or another person such as a grandparent, who has a Family Court parenting order that allocates only some aspects of parental responsibility to the person. For example, under a Family Court order, a person may have the right to have specified contact with a child, but not the right to have the child live with them or the responsibility to make decisions about the child’s long term care, welfare and development. The second problem is that ‘a person with custody of the child’ could include a person who has mere possession of the child.

It is clear from the Explanatory Notes for the Child Protection Bill 1998 that it was intended that a person who has a legal parental relationship with a child that may be affected by the making of an order under the *Child Protection Act 1999* should be considered a parent and therefore a respondent to any application for an order. The way the provisions are currently drafted are deficient in achieving the intent of the Act.

The new definition will ensure that mothers and fathers, persons who have Family Court residence or contact orders for the child (including persons who have overseas parenting orders that are registered in the Family Court) and persons who have custody or guardianship of the child under a law of Queensland or another State (such as pursuant to a Supreme Court order or as testamentary guardian under a will) are parents for the purpose of Childrens Court proceedings for a temporary assessment order.

Clause 3 omits section 37 and replaces it with a re-drafted definition of “parent” for the purpose of Part 3 – Court Assessment Orders. The current definition in section 37 is the same as the current definition in section 23. The re-drafted definition is the same as the re-drafted definition for section 23. The reason for amending this section is the same reason as set out in the note for clause 2.

Clause 4 omits section 52 and replaces it with a re-drafted definition of “parent” for the purpose of Part 4 – Child Protection Orders. The current definition in section 52 is the same as the current definition in sections 23 and 37. The re-drafted definition is the same as the re-drafted definition for sections 23 and 37. The reason for amending this section is the same reason as set out in the note for clause 2.

Clause 5 amends the heading of section 61 by replacing the word “Provisions” with the word “Types”. This amendment reflects the fact that

the child protection orders set out in section 61 are distinct orders and not possible provisions of one order.

Clause 6 replaces section 65 with a re-drafted provision to reflect the amendment made by clause 4 to the definition of ‘parent’ in section 52. The term ‘interested person’ is no longer necessary as all ‘interested persons’ will come within the amended definition of ‘parent’.

Clause 7 inserts a footnote in section 66(2) to assist the reading and application of the Act by referring the reader to section 47(2).

Clause 8 amends section 67(1) by deleting the word ‘or’ between paragraph (a) and paragraph (b). Section 67(1) sets out the court’s powers to make interim orders on adjournment of an application for a court assessment order or a child protection order. Paragraph (a) enables the court to grant temporary custody of the child to the chief executive or a family member. Paragraph (b) enables the court to make an interim order restricting a parent’s contact with the child. The amendment clarifies the intention that these two interim orders may be made simultaneously.

Clause 9 amends section 67 to rectify a drafting error by inserting a new subsection (3) to define ‘parent’ for the purpose of the section. Because of a drafting oversight, the broader definition of ‘parent’ contained in section 11 currently applies to this section. Because section 67 provides for the powers of the Childrens Court to make interim orders in court proceedings for court assessment orders and child protection orders, the amendment applies the same definition of ‘parent’ as in sections 37 and 52.

Clause 10 amends section 81 to rectify a drafting oversight. Chapter 2, Part 6, Division 4 of the Act contains provisions about placement decisions for a child who is in the chief executive’s custody or guardianship. Section 82 of the Act enables the chief executive to place a child in the care of a licensed care service, approved foster carer or other person the chief executive considers appropriate. Section 81 provides that Division 4 applies if, under an assessment order or child protection order, the chief executive is granted custody or guardianship of the child. Because of the drafting of section 81, a technical gap exists in the chief executive’s power to place a child with a care service or a carer where the child is in the chief executive’s custody and guardianship under the Act but the child is not under an order. These circumstances may arise in the time between taking a child into protective custody under section 18 (Child at immediate risk may be taken into custody) and the granting of a temporary assessment order. Also, under section 99, a child may be in the chief executive’s custody or guardianship but technically there is no order in place because the order has expired and the application for extension or substitution of the

order has not yet been determined by the Childrens Court. The clause amends section 81 to apply Division 4 to where the chief executive has custody or guardianship of the child under the Act.

Clause 11 amends section 97 by replacing the word ‘doctor’ with the phrase ‘health practitioner’. This amendment will extend the protection provided by section 97 to ‘health practitioners’, in addition to the current protection provided to doctors, when examining and/or treating a child. “Health practitioner” is defined in an amendment to schedule 3 to include a broad range of health professionals such as nurses, dentists, speech therapists, physiotherapists and psychologists. It was always the intention that medical examinations and treatments may be provided by other health professionals as well as doctors. The current definition of ‘medical examination’ in Schedule 3 contemplates examinations being carried out by doctors and other health professionals. For example, it may be necessary for a child to be examined and treated by a nurse in a remote area where a doctor is not immediately available. The current limitation in section 97 is an oversight, which will be remedied by this amendment.

Clause 12 amends section 117 (Who may appeal) to rectify a drafting error by inserting a new subsection (3) to define ‘parent’ for the purpose of the section. Because of a drafting oversight, the broader definition of ‘parent’ contained in section 11 currently applies to this section. Because section 117 deals with appeals from temporary assessment orders, the amendment applies the same definition of ‘parent’ for this section as the definition for Part 2 which deals with the making of temporary assessment orders.

Clause 13 inserts a new paragraph (d) in section 121 to enable an appellate court to remit a matter back to the magistrate or Childrens Court. The failure to include this power was an oversight during the drafting of the Act.

Clause 14 amends section 126 to expand the categories of persons whose suitability the chief executive must be satisfied of before granting an application for a licence or for renewal of a licence to provide care services to children in the custody or guardianship of the chief executive under the Act. This amendment is consequential to the amendment to section 142 expanding the categories of persons for whom inquiries about their suitability may be made by the chief executive. The amendment expands paragraph (b) to include directors of corporations which have applied for a licence, nominees for a license and persons who will be engaged in relation to the provision of care services as well as persons responsible for directly managing the service. The amendment ensures that a licence will not be

granted unless all persons involved in the management and provision of the care service, including volunteers, employees and contractors who may come into contact with children, are suitable persons to have contact with children.

Clause 15 amends section 130(1)(b) to extend the requirement on nominees for a licence to ensure that persons engaged in the direct care of children for the service are suitable persons to a requirement to ensure that all persons engaged in relation to the provision of care services are suitable persons to have contact with children. This amendment is consequential upon the amendment to section 142 expanding the categories of persons for whom inquiries about their suitability may be made by the chief executive.

Clause 16 amends the heading of Chapter 4, part 2, division 4 by adding the phrase ‘and surrender’. This amendment is consequential to the amendment made by clause 17.

Clause 17 inserts new section 141A to enable approved foster carers and licensed care services to voluntarily surrender their approvals or licences to the chief executive. Chapter 4 of the Act provides a regime for the approval of foster carers and for the licensing of care services, such as residential care services and shared family care agencies which arrange for the placement of children with foster carers. Currently, due to an oversight in the drafting of the Act, there is no provision enabling licensed care services and approved foster carers to surrender their licences or approvals when they no longer wish to continue to provide care services or foster care. The absence of this provision means that the cancellation process set out in the Act must be used. This process is based on the assumption that the services or carers are not voluntarily surrendering their licences or approvals and is inappropriate and for these circumstances.

Clause 18 amends section 142(1)(a)(ii) to expand the categories of persons associated with a licensed care service or applicant for a licence for whom inquiries about their suitability may be made by the chief executive to the commissioner of the police service or the chief executive for transport. Currently, section 142 of the Act enables the chief executive to obtain criminal, domestic violence and traffic history checks for foster carers and adult members of the foster carer’s household and for the person who is directly responsible for managing a licensed care service and for anyone else directly engaged in the care of children for the service. Under the Act, ‘criminal history’ includes spent convictions and charges.

Currently, the Act does not enable personal history checks to be done for:

- nominees for a licence for a care service,
- Board or committee of management members of a licensee who may not be directly managing the service or directly caring for children but may be on the premises and having contact with children, or
- other staff, volunteers or contracted workers of licensed care services who are not directly caring for children, but may have contact with children.

While consent is always sought to do the checks, this clause broadens the scope of persons for whom checks can be conducted without relying on the consent of the individual concerned to ensure that people associated with licensed care services who may have contact with children are subject to the same level of checks as foster carers.

Clause 19 replaces the reference to ‘authorised person’s’ in section 154(3) with a reference to ‘authorised officer’s’ to correct a drafting error.

Clause 20 amends section 162(2) to make it an offence for a person who has lawfully removed a child from the care of the child’s carer, to keep the child beyond the allowed period. Currently, section 162(2) provides that it is an offence to unlawfully remove a child who is in the chief executive’s custody or guardianship under an order from the care of the child’s carer. The section only makes the keeping of a child an offence where the child has been unlawfully removed. There may be instances where permission is given to a person to take a child for a specified period of time, but the person does not return the child when required. The clause amends this section to make the keeping of a child beyond the permitted period an offence.

Clause 21 amends section 163(1) to clarify that the section applies to child protection orders made in other States that have the same or similar effect as a Queensland order granting custody or guardianship of a child to the chief executive but are not described as ‘custody’ or ‘guardianship’ under that State’s child protection legislation. For example, in some other States, child protection orders are described as orders allocating aspects of parental responsibility, including residence and responsibility for making the types of decisions guardians would make.

Clause 22 amends section 163(2) to make it an offence for a person in Queensland who has lawfully removed a child, who is in the custody or guardianship of an interstate officer under an order made under a child welfare law or interstate law of another State, from the care of the child’s carer, to keep the child beyond the allowed period. Currently, section

163(2) provides that it is an offence for a person in Queensland to unlawfully remove a child in the custody or guardianship of a person under a child welfare law or interstate law of another State from the care of the child's carer. The section only makes the keeping of a child an offence where the child has been unlawfully removed. There may be instances where permission is given to a person to take a child for a specified period of time, but the person does not return the child when required. This clause amends this section to make the keeping of a child beyond the permitted period an offence.

Clause 23 amends section 164(2) to make it an offence for a person who has lawfully removed a child from the custody or guardianship of a person under the Act, to keep the child beyond the allowed period. Currently, section 164(2) provides that it is an offence to unlawfully remove a child from a person's custody or guardianship under the Act. The section only makes the keeping of a child an offence where the child has been unlawfully removed. There may be instances where permission is given to a person to take a child for a specified period of time, but the person does not return the child when required. The clause amends this section to make the keeping of a child beyond the permitted period an offence.

Clause 24 amends section 165(1) to clarify that the section applies to child protection orders made in other States that have the same or similar effect as a Queensland order granting custody or guardianship of a child to the chief executive but are not described as 'custody' or 'guardianship' under that State's child protection legislation. For example, in some other States, child protection orders are described as orders allocating aspects of parental responsibility, including residence and responsibility for making the types of decisions guardians would make.

Clause 25 amends section 165(2) to make it an offence for a person in Queensland who has lawfully removed a child from the custody or guardianship of a person under a child welfare law or interstate law of another State, to keep the child beyond the allowed period. Currently, section 165(2) provides that it is an offence for a person in Queensland to unlawfully remove a child from custody or guardianship of a person under a child welfare law or interstate law of another State. The section only makes the keeping of a child an offence where the child has been unlawfully removed. There may be instances where permission is given to a person to take a child for a specified period of time, but the person does not return the child when required. The clause amends this section to make the keeping of a child beyond the permitted period an offence.

Clause 26 amends section 167 to make it an offence for a person to keep a child who is in the chief executive's custody or guardianship out of the State with the intention of obstructing, preventing or defeating the administration or enforcement of the Act. Currently, section 167 only makes it an offence for a person to take a child out of the State with the intention of obstructing, preventing or defeating the administration or enforcement of the Act. There may be instances where a person who takes a child out of the State only forms the intention not to return the child to Queensland after the person has left the State. This clause corrects this anomaly.

Clause 27 amends section 191(1) by including within the terms of the section, persons who once were, but are no longer engaged in the administration of the Act. Currently, section 191 enables persons engaged in the administration of the Act to refuse to disclose to a court or tribunal certain information obtained under the Act (such as records of confidential therapeutic counselling or information which if disclosed is likely to endanger a person's safety or psychological health). Unlike the general confidentiality provision, section 187, section 191 does not apply to persons who once were, but are no longer engaged in the administration of the Act. The clause corrects this unintended anomaly.

Clause 28 omits section 205 and replaces it with a re-drafted definition of "parent" for the purpose of Chapter 7 – Interstate Transfers of Child Protection Orders and Proceedings. The current definition in section 205 is the same as the current definition in sections 23, 37 and 52. The re-drafted definition is the same as the re-drafted definition for sections 23, 37 and 52. The reason for amending this section is the same reason as set out in the note for clause 2.

Clause 29 omits section 242 and replaces it with a re-drafted definition of "parent" for the purpose of Chapter 7, Part 7 – Interstate Transfers for Non-Participating States. The current definition in section 242 provides that a 'parent' for this Part is a person who would be the child's guardian if a child protection order or interstate were not in force for the child. The re-drafted definition is the same as the re-drafted definition for sections 23, 37, and 205. The reason for amending this section is the same reason as set out in the note for clause 2.

Clause 30 amends section 243(1)(a) to clarify that the section applies to child protection orders made in other States that have the same or similar effect as a Queensland order granting custody or guardianship of a child to the chief executive but are not described as 'custody' or 'guardianship' under that State's child protection legislation. For example, in some other

States, child protection orders are described as orders allocating aspects of parental responsibility, including residence and responsibility for making the types of decisions guardians would make.

Clause 31 amends section 245(1) to clarify that the section applies to child protection orders made in other States that have the same or similar effect as a Queensland order granting custody or guardianship of a child to the chief executive but are not described as ‘custody’ or ‘guardianship’ under that State’s child protection legislation. For example, in some other States, child protection orders are described as orders allocating aspects of parental responsibility, including residence and responsibility for making the types of decisions guardians would make.

Clause 32 omits the definition of *guardian* from Schedule 3 of the Act. Because of the amended definition of ‘parent’ in sections 23, 37, 52, 205 and 242, this definition is no longer required.

Clause 33 inserts the following definitions in Schedule 3 of the Act.

The word *director* of an applicant for a licence or a licensee is defined for the purpose of clauses 14 (amended section 126(b)) and 18 (amended section 142(1)(a)(ii)).

The phrase *health practitioner* is defined for the purpose of clause 11 (amended section 97).

Clause 34 amends the definition of *interstate welfare authority* in Schedule 3 of the Act for the purpose of sections 243 and 245 to clarify that the definition applies to interstate child protection authorities which may have responsibility for the custody or guardianship of children but the responsibility is not described as ‘custody’ or ‘guardianship’ under that State’s child protection legislation. For example, in some other

States, child protection orders are described as orders allocating aspects of parental responsibility, including residence and responsibility for making the types of decisions guardians would make.

Clause 35 amends the definition of *medical examination* in Schedule 3 of the Act to replace the reference to ‘nurse or other health professional’ with a reference to ‘health practitioner’ to ensure consistency in expression with the amendment made by clause 11 (amended section 97).

Clause 36 amends the definition of *suitable person* in Schedule 3 of the Act for the purpose of clauses 14 (amended section 126(b)), 15 (amended section 130(1)(b)) and 18 (amended section 142(1)(a)(ii)). Consequential amendments will be made to the *Child Protection Regulation 2000*, section 9, to include definitions of *suitable person* for the purpose of determining

the suitability of directors, nominees and persons who will be or are engaged in relation to the provision of care services.

CHILD PROTECTION AMENDMENT ACT 2000

Clause 1 amends amendment 1 in the Schedule of this Act by omitting this provision and replacing it with a re-drafted definition of “parent” for the purpose of the *Child Protection Act 1999*, Chapter 7 – Interstate Transfers of Child Protection Orders and Proceedings. This re-drafted definition is the same as the re-drafted definition for sections 23, 37, 52 and 205 of the *Child Protection Act 1999*. This provision requires amendment as it is an uncommenced provision. The reason for amending the definition of ‘parent’ in this section is the same reason as set out in the note for clause 2.

JUVENILE JUSTICE ACT 1992

Clause 1 amends section 79 to correct the wording of the section so that the words “that the child” appear immediately before paragraphs (a) and (b) of the section.

Clause 2 omits paragraph (a) of section 79 because the reference to the child is now in the body of the section as a result of the amendment made by clause 1.

Clause 3 amends the heading of section 145 to correct the reference to the word “Commission” in the section heading so that it reads “Chief executive (corrective services), to make it consistent with the body of the section.

Clause 4 amends section 150(5) to replace the references in paragraph (a) to ‘part 3A’ of both the *Community Service (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* with a reference to ‘part 5’. This amendment reflects the re-numbering of these two Acts.

Clause 5 amends section 200(3) so that the words ‘must not be not less’ read as ‘must not be less’ than the 20 hours referred to in the section, as this is what is intended by the section.

Clause 6 amends section 235(3) to correct the reference to an order ‘made under subsection (1)’, so that it reads ‘under this section’ as the order referred to in the section is not made under subsection (1).

Clause 7 amends section 254(4) to correct the reference to the *Transport Operations (Road Use Management) Act 1995* by replacing the words ‘mentioned in paragraph (a) or (b) of the section’ with ‘under section 79 of that Act’ as the offences referred to in section 254(4) now appear in s79 of the *Transport Operations (Road Use Management) Act 1995*.

Clause 8 amends section 278 to replace the words ‘imprisonment for 1 year’ with the words ‘1 year’s imprisonment’ so as to reflect current drafting practice.

Clause 9 amends section 279 to replace the words ‘imprisonment for 1 year’ with the words ‘1 year’s imprisonment’ so as to reflect current drafting practice.

SCHEDULE 4

DICTIONARY

The Dictionary defines certain words and expressions used in the Bill.

The expression *another country* is defined for the purposes of clauses 4(4), 22(3), 30(1), 32(1) and 35(1) as a Convention country or a non-Convention country.

The word *Australia* is defined for the purposes of clauses 4(4), 8(2), 9(2), 15(2), 16(2), 27(5) and 34 as including Australia’s external territories. This definition is required, as the Convention will be ratified for the whole of Australia, including the external territories.

Central Authority is defined for the purposes of clauses 8(1), 15(1), 23(2), 28, 29(1) and 34. The Convention provides for authorities to be designated in each Convention country as central authorities in order to facilitate international communication and co-operation between courts and other competent authorities.

Child is defined as an individual who is under 18 years. This definition is consistent with the Convention and with Queensland law.

The expression *Child Protection Convention* is defined as the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children signed at the Hague on 19 October 1996 and comes into force in Australia on 1 August 2003. The text of the Convention is set out in schedule 1.

Childrens Court is defined as the Childrens Court established under the *Childrens Court Act 1992* for the purposes of other definitions in this clause.

Commonwealth central authority, for the purposes of clauses 23(2) and 34(1), has the same meaning given by the *Family Law Act 1975* (Cth), section 111CA(1) which provides that the Commonwealth central authority is the Secretary of the Attorney-Generals Department.

The expression *competent authority* is defined for the purposes of parts 2, 3, 5, 6 and 7. A competent authority may be a court, a child protection agency, public guardian, public trustee, guardianship board or other person or body which has authority under the law of a country to take measures of protection for the person or property of a child.

The expression *Convention country* is defined for the purposes of parts 2, 3, 5 and 6. A country becomes a Convention country by lodging with the depositary of the Convention an instrument of ratification or accession in accordance with articles 57 or 58 of the Convention.

The expression *country of refuge* is defined for the purposes of clauses 9(2), 16(2) and 18(2) which, among other things, implement article 6 of the Convention which deals with the jurisdiction of courts and other competent authorities to take measures of protection for children who are refugees.

The word *entity* is defined for the purpose of the definition of *competent authority* in this clause.

The expression *external territory* is defined for the purpose of the definition of *Australia* in this clause as having the same meaning as given by the *Acts Interpretation Act 1901* (Cth).

The expression *foreign measure* is defined for the purposes of clauses 9(3), 16(3), 25, 26, 27(1), 29(2) and 36 as a foreign personal protection measure and a foreign property protection measure.

The expression *foreign personal protection measure* is defined for the purposes of clauses 14, 23, 24 and 26.

The expression *foreign property protection measure* is defined for the purposes of clauses 21(1), 24 and 26(2).

The expression *non-Convention country* is defined for the purposes of clauses 9(2), 14(2), 15(1), 16 and 23(3).

The expression *parental responsibility* is defined for the purposes of clauses 18(3), 21(2), 23(4) and 26(3) and has the same meaning as provided in article 1 of the Convention.

Public trustee is defined for the purposes of the definition of *Queensland authority* in this clause and of clauses 15, 18, 19, 20 and 32 as meaning the public trustee under the *Public Trustee Act 1978*.

The expression *Queensland authority* is defined for the purposes of clauses 4(3), 9, 10, 11, 12, 14, 16, 17, 18, 21, 22, 31, 32, 33, 34 and 35 as being a Queensland court or the department (for Queensland personal protection measures) or a Queensland court or the public trustee (for Queensland property protection measures).

Queensland court is defined as the Supreme Court, the District Court, the Childrens Court, the Magistrates court or the Children Services Tribunal, which administratively reviews certain decisions made by the chief executive under the *Child Protection Act 1999*.

Queensland law is defined for the purposes of the definitions of *Queensland personal protection measure* and *Queensland property protection measure* in this clause and of clauses 8, 9, 14, 15, 16, 21, 22, 23, 26 and 32.

Queensland measure is defined for the purposes of clauses 28, 29, 30, 35 and 38 as a Queensland personal protection measure and a Queensland property protection measure.

Queensland personal protection measure is defined for the purposes of part 2 (Jurisdiction for the person of a child) which implements provisions of the Convention which regulate the grounds of jurisdiction which courts and other competent authorities may exercise in taking measure for the protection of the person of a child (as distinct from measures for the protection of the property of the child dealt with in part 3) and part 5 (Recognition of foreign measures and their enforcement in Queensland). Under Article 3 of the Convention, a measure may relate to matters such as custody, residence, contact, guardianship, placement of a child in a foster family or institutional care and supervision by a public authority of the care of a child. Examples of Queensland personal protection measures are provided.

Queensland property protection measure is defined for the purposes of part 3 (Jurisdiction for decisions about a guardian of a child's property) and part 5 (Recognition of foreign measures and their enforcement in Queensland).

The expression *refugee child* is defined for the purposes of clauses 9(2), 16(2), 18(2) and 21(1) which, among other things, implement article 6 of the Convention which deals with the jurisdiction of courts and other competent authorities to take measures of protection for children who are refugees.

The word *registrar* is defined for the purpose of part 5, which deals with the recognition of foreign measures and their enforcement in Queensland.