

# **CHILD SAFETY LEGISLATION AMENDMENT BILL 2004**

## **A BILL FOR AN ACT TO AMEND PARTICULAR ACTS TO INCREASE CHILD SAFETY, AND FOR OTHER PURPOSES**

### **EXPLANATORY NOTES**

#### **GENERAL OUTLINE**

#### **OBJECTIVES OF THE LEGISLATION**

The objective of the Bill is to implement the first stage of legislative reforms resulting from the Crime and Misconduct Commission's report *Protecting Children: An Inquiry into Abuse of Children in Foster Care*. The amendments seek to improve support and accountability arrangements for children who are most at risk. The Acts amended are:

- *Births Deaths and Marriages Registration Act 2003*;
- *Child Protection Act 1999*;
- *Children Services Tribunal Act 2000*;
- *Commission for Children and Young People Act 2000*;
- *Coroners Act 2003*;
- *Health Services Act 1991*; and
- *Ombudsman Act 2001*.

#### **REASONS FOR THE OBJECTIVES AND HOW THEY WILL BE ACHIEVED**

The objectives of the Bill will be achieved in the following ways:

- *Establishing a new office of the “Commissioner for Children and Young People and Child Guardian”*

The Bill extends the statutory office of the Commissioner for Children and Young People to become the office of the Commissioner for Children and Young People and Child Guardian (the commissioner).

With the additional role of child guardian, the commissioner will be responsible for an extended range of monitoring auditing and reviewing functions in relation to children who come to the attention of the Department of Child Safety. A new statutory office of assistant commissioner will be created to be responsible to the commissioner for the proper performance of the child guardian functions.

- *Expanding the existing monitoring functions of the commissioner*

The Bill expands the current functions of the commissioner to include monitoring, auditing and reviewing the handling of cases of children in the child safety system by service providers and the systems, policies and practices of service providers in relation to these children.

- *Enlarging the commissioner’s existing powers for the monitoring functions*

The commissioner’s powers will extend to the Department of Child Safety and non-government services that operate under a licence to provide care for children in the chief executive's custody or guardianship under the *Child Protection Act 1999* (service providers).

The commissioner will be empowered to:

- Give a written notice to a service provider to give information or documents to the commissioner.
  - Require service providers to provide regular information about systems, policies and practices.
  - Require the service provider to undertake a review of their systems, policies or practices and provide a report to the children’s commissioner.
- *Extension of the Community Visitor Program*

Community visitors currently children in residential facilities, detention centres and authorised mental health services (visitable sites). The Bill extends the program to include visits to:

- children in the custody or guardianship of the chief executive under the *Child Protection Act 1999* who are placed in the care of an approved foster carer or other appropriate person; and
- children who are not subject to an order under the *Child Protection Act 1999* but are placed with a carer under an agreement between the chief executive and the child's parents/guardians.
- *Expansion of the Commissioner's powers to seek the Children Services Tribunal's review of decisions*

The Bill will significantly expand the ability of the commissioner to apply to the Tribunal for review of certain decisions made by the Department of Child Safety.

- *Review of child deaths*

The Bill provides a legislative framework for reviews by the Department of Child Safety of cases where children have died within three years of coming to the attention of the department. It also establishes an independent Child Death Case Review Committee to monitor the reviews undertaken by the Department of Child Safety.

- *Establishment of the Child Death Register and child death research function*

The Bill establishes a register of child deaths and gives the commissioner the responsibility of reviewing causes and patterns of the death of children and for conducting broader research on this issue.

- *Revision and reordering of the principles of the Child Protection Act 1999*

The Bill reorders the child protection principles in the *Child Protection Act 1999*, so that the Act is to be administered according to an overarching principle that the welfare and best interests of a child are paramount. The amendment seeks to reinforce the existing requirement that children's rights, interests and welfare should take precedence over the rights and interests of adults where there is a conflict.

A new principle that the child should be kept informed of matters affecting him or her in a way that is appropriate having regard to their age and ability to understand is also included.

- *New power to respond to notification made before birth about suspected risk to child after birth.*

The Bill enables the Department of Child Safety to respond to notifications made before a child is born that the child may be at risk of harm after birth.

- *Annual reporting by government agencies who provide child protection services*

The Bill requires certain government agencies to annually report on departmental operations relevant to child protection. A consolidated report will then be prepared for the Minister for Child Safety to table in the Legislative Assembly.

## **ADMINISTRATIVE COSTS TO GOVERNMENT OF IMPLEMENTATION**

The legislative amendments in this Bill are a fundamental component of implementing the reforms to the child protection system. The Government has committed additional funding in excess of \$200 million per annum by 2006-07 to improve the delivery of child protection in Queensland. The costs of administering the new legislation are incorporated into the additional funding allocation to child protection.

## **CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES**

### **EXCLUSION OF LIABILITY FOR DEFAMATORY PUBLICATION**

Clause 16 (inserting new section 246D into the *Child Protection Act 1999*) and Clause 78 and 81 (inserting new section 89O and s892F(6) into the *Commission for Children and Young People Act 2000*) exclude liability for defamatory publications made in good faith and for the purposes of the respective Acts.

The exclusion is necessary because the quality and effectiveness of child death case review and research functions would be jeopardised if people could not freely and frankly disclose and consider all relevant information. The Bill includes safeguards to prevent disclosure of identifying information that will serve to address risk to the reputation of persons.

### **CRIMINAL HISTORY CHECKS**

The child death case review committee provisions include provision for criminal history checks with the *Criminal Law (Rehabilitation of Offenders) Act 1986* being specifically overridden. However this is considered necessary due the nature of the work of this committee.

## **CONSULTATION**

### **Community**

Save the Children, Churches of Christ, Create Foundation, the State AICCA (the peak body for Aboriginal and Torres Strait Islander Child Care Agencies) and Foster Care Queensland have been consulted on parts of the bill.

### **Government**

The following agencies have been consulted on the amendments:

- Department of Justice and Attorney-General
- Commission for Children and Young People
- Queensland Police Service
- Queensland Treasury
- Queensland Health
- The Ombudsman
- Department of Communities
- Department of Aboriginal and Torres Strait Islander Policy
- Education Queensland
- Department of Housing
- Department of Corrective Services
- State Coroner
- Registrar of Births, Deaths and Marriages
- President of Children Services Tribunal
- Legal Aid Queensland

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

*Clause 1* states the short title of the Bill.

*Clause 2* states that the Act commences on a day to be fixed by proclamation.

### **PART 2—AMENDMENT OF THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT 2003**

*Clause 3* provides that this part amends the *Births, Deaths and Marriages Registration Act 2003*.

*Clause 4* inserts new sections 48A and 48B into the *Births, Deaths and Marriages Registration Act 2003*.

New section 48A applies if the registrar registers the death of a child other than a stillborn child. The section obliges the registrar to give the commissioner and the chief executive (child safety) a notice of the registration. The notice to the commissioner is to assist the commissioner in the commissioner's new child death research functions of keeping a register of, and researching all, child deaths in Queensland. The notice to the chief executive (child safety) is to assist in the chief executive's new function to review the deaths of certain children.

The notice to the commissioner must include the following information to the extent that it is known to the registrar:

- the registration number for the registration
- the child's name;
- the child's place of birth;
- the child's usual place of residence;
- the child's age;

- the child's sex;
- the child's occupation, if any;
- the duration of the last illness, if any, had by the deceased child;
- the date and place of death;
- the cause of death.

The notice to the chief executive (child safety) must include the following information to the extent that it is known to the registrar:

- the child's name;
- the child's place of birth;
- the child's usual place of residence;
- the date and place of death.

New section 48B allows the registrar and the commissioner to enter into an arrangement for the provision of further information to the commissioner about the births and deaths of children from the register or a source document, or for the provision of a copy of a source document to the commissioner. The type of information the commissioner could seek under such an arrangement would be a copy of the medical certificate as to the cause of death of the deceased child, information about the deceased child's siblings (if any) and information as to whether the deceased child was an Aboriginal or Torres Strait Islander.

The registrar and the commissioner must, as far as practicable having regard to the commissioner's child death research functions, protect the persons to whom the information or source document relates from unjustified intrusion of their privacy. The provision of information under such an arrangement will assist the commissioner in the performance of the commissioner's new child death research function.

*Clause 5* inserts a definition of "commissioner" into the Dictionary in Schedule 2 of the *Births, Deaths and Marriages Registration Act 2003*.

### **PART 3—AMENDMENT OF CHILD PROTECTION ACT 1999**

*Clause 6* states that this part amends the *Child Protection Act 1999*.

*Clause 7* provides for the amendment of section 5 of the *Child Protection Act 1999*, which sets out the principles for the administration of the Act. The purpose of these amendments is to make it clear that:

- in taking action or making decisions under the Act, the welfare and best interests of a child are paramount over the interests of adults where there is a conflict, and
- a child or young person should be kept informed about decisions or actions affecting them in a way that is appropriate to his or her age and ability to understand.

Subclause (1) omits the principle in paragraph 5(b) that the child's welfare and best interests are paramount. This principle is re-ordered as new subsection 5(1) by subclause (4) to make it clear that all other principles are subject to the principle that the welfare and best interests of the child are paramount.

Subclause (2) re-numbers the remaining principles as a consequence of the re-ordering of this principle.

Subclause (3) inserts a new principle that a child should be kept informed of matters affecting him or her in a way and to the extent that is appropriate into section 5. This new principle supports existing principles in section 5 that the child's views must be considered and the child should be given the opportunity to take part in making decisions affecting his or her life.

*Clause 8* renumbers section 7 and inserts a new child death review function for the chief executive of reviewing the deaths of certain children as set out in the new Chapter 7A. The child death review function is aimed at promoting the department's accountability and facilitating ongoing learning and improvement in the department's delivery of services to children and families.

*Clause 9* inserts a new section 21A after section 21 of the Act. This new section enables the chief executive to respond to reports made before the birth of a child that the child may be at risk of harm after birth. The purpose of this new section is to enable the chief executive to offer assistance and support to a pregnant woman where there are concerns that the child may need protection after the child is born. Nothing in this provision enables the chief executive to take any action to compel a pregnant female to do or not do something. In this section it is intended that the word "action" includes a decision of the chief executive to take no further action. The term "pregnant woman" is intended to include a pregnant adult or a pregnant girl.



*Clause 10* amends section 22 of the Act. Currently this section confers protection from liability and breaches of professional codes or standards to people who act honestly in notifying or giving information about alleged harm to a child.

The amendment to this section extends these protections to people who notify or give information before a child is born about suspected risk of harm to the child after the child is born.

*Clause 11* amends section 74 to ensure that, when telling a child in the chief executive's custody or guardianship about the charter of rights, the chief executive also tells the child about the Commission for Children and Young People and Child Guardian and other entities known to the chief executive that can help the child if the child considers that the charter of rights is not being respected. The charter of rights for children in care is set out in Schedule 1 of the *Child Protection Act 1999*.

*Clause 12* renumbers section 148 (5) as section 148 (6) and inserts a requirement that, as soon as practicable after receiving a report of harm to children in residential care, the chief executive must give a copy of the report to the Commissioner for Children and Young People and Child Guardian.

*Clause 13* amends section 186 to extend confidentiality protection to a person who notifies the chief executive, authorised officer or police officer, before a child is born, that the person suspects that the child may be at risk of harm after child is born.

*Clause 14* amends section 188 to extend the protection from liability for disclosing confidential information to certain people who disclose the information given to them, by the chief executive, for the purpose of obtaining the further information requested by the chief executive for a review.

*Clause 15* replaces section 194 to enable officers, employees or agents of Queensland Health to provide confidential information under section 63 of the *Health Services Act 1991* relevant to the protection or welfare of a child to the Children's Court, the chief executive, an authorised officer or police officer. The information includes information given prior to a child's birth that is relevant to the protection or welfare of the child after he or she is born. The section also enables officers, employees or agents of Queensland Health to give the chief executive confidential information that is relevant to a review or supplementary report relating to the death of a child under new Chapter 7A of the Act.

*Clause 16* inserts a new Chapter 7A – Child Deaths, into the *Child Protection Act 1999, sections 246A-H*. This part establishes a legislative framework for the Department of Child Safety’s role in conducting case reviews for child deaths. The reviews do not investigate cause of death, but focus on the adequacy and appropriateness of departmental interventions, policies, procedures and interactions with other agencies as they related to a child who died.

The Bill creates a two–tiered process for child death case reviews. Chapter 7A provides for the chief executive to conduct and complete a review within 6 months from the time the chief executive becomes aware of a death. This review is then subject to external scrutiny provided by a newly established Child Death Case Review Committee (CDCRC) under the *Commission for Children and Young People and Child Guardian Act 2000*.

New section 246A provides that the chief executive must conduct a review about the department’s involvement with a child who has died, if within the three years before the child’s death, the chief executive:

- (i) became aware of an allegation of harm or of risk of harm to that child within 3 years before the child’s death; or
- (ii) took action under the *Child Protection Act 1999* in relation to the child; or
- (iii) before the child was born, formed a reasonable suspicion that the child may have been in need of protection after birth.

New section 246B states that the chief executive must decide the terms of reference for each review which may include, but are not limited to the following:

- ascertaining whether the department’s involvement with a child complied with relevant legislative and policy requirements;
- considering the adequacy and appropriateness of the department’s involvement with the child and family;
- commenting on the sufficiency of the department’s involvement with other entities and the adequacy of legislation and policy in relation to the child;
- making recommendations in relation to any of the above matters;
- suggesting strategies to implement the recommendations.

The section also provides that the chief executive must decide the extent of a review. The decision may be made having regard to factors such as the history of the child's contact with the department.

New section 246C clarifies that the chief executive may request, from another entity, information about a child that was relevant to the child's protection or welfare while the child was alive. A request for information does not override particular statutory provisions governing access to and release of information.

Entity is defined in section 36 of the *Acts Interpretation Act 1954* to include a person and an unincorporated body.

New section 246D requires that the chief executive must complete a child death case review and give a copy of the report to the CDCRC as soon as practicable but in any case, within 6 months of becoming aware of the child's death.

New section 246E provides that any person who provides information to the chief executive when undertaking a review does not incur liability and cannot be held to have breached any code of ethics or departed from accepted standards of professional conduct by reason of having provided the information.

New section 246F states that it is a lawful excuse for the publication of a defamatory statement made in a review and any supplementary report by the chief executive that the publication is made in good faith and is, or purports to be, made for this Act.

New section 246G provides that the chief executive must provide the CDCRC with a supplementary report if a notice is received under Clause 80 which creates new section 89T(3) of the *Commission for Children and Young People and Child Guardian Act 2000*.

The chief executive must comply with the notice as soon as practicable, but in any case, within a timeframe that allows the CDCRC to complete its review function and report within 3 months under Clause 80, which creates a new section 89U(1) of the *Commission for Children and Young People and Child Guardian Act 2000*.

New section 246H provides that in relation to reportable deaths under the *Coroners Act 2003* the chief executive must give the State Coroner a copy of the case review completed by the chief executive, any supplementary report prepared for the CDCRC under new section 246G and a copy of the report received from the CDCRC. The chief executive

will also provide the State Coroner with the name, date of birth and date of death of the child.

*Clause 17* inserts new sections 248 and 248A. The new section 248 requires the listed entities to give the chief executive reports about the entities' operations relating to child protection within four months of the end of each financial year. The section provides that a regulation may set out the matters that must be included in a report. The section requires the chief executive to prepare a consolidated report and give it to the Minister who must table the report in the Legislative Assembly within 14 sitting days.

The new section 248A provides that the powers under sections 145 and 146 of the *Child Protection Act 1999* and made under the Child Protection Regulation 2000 made under section 249 (2) (c) may be exercised to help the commissioner to perform the commissioner's monitoring functions under the *Commission for Children and Young People Act 2000*. It also clarifies that information and documents obtained under these powers may be given to the commissioner for the same reason.

*Clause 18* amends the heading of Chapter 9 Part 2 by inserting "For Act No.10 of 1999" after "Provisions".

*Clause 19* inserts a new part 3 in chapter 9 of the *Child Protection Act 1999* to provide for transitional arrangements for this Bill. New section 261 provides that the first report prepared under new section 248 is due by 31 October 2005 and relates to the part of the 2004/2005 financial year after commencement of new section 248 of the *Child Safety Amendment Act 2004*.

*Clause 20* amends the dictionary in schedule 3 of the *Child Protection Act 1999* to provide a definition of the CDCRC for the purposes of new Chapter 7A.

## **PART 4—AMENDMENT OF CHILDREN SERVICES TRIBUNAL ACT 2000**

*Clause 21* provides that Part 4 amends the *Children Services Tribunal Act 2000*.

*Clause 22* amends section 7 to reorder the principles for this Act to clarify that the welfare and best interests of the child are paramount. The existing principle requiring that, in decisions involving a child, the child's views and wishes should be taken into account having regard to the "child's age and maturity" is changed to refer to the "child's age and ability to understand" This amendment makes the wording of this principle consistent with the wording of this principle where it appears in section 5 of the *Child Protection Act 1999* and in the amended section 6 of the *Commission for Children and Young People Act 2000*.

*Clause 23* amends section 57(1) to replace "those Acts" with "Acts" to clarify that the commissioner under the *Commission for Child and Young People and Child Guardian 2000* can review a decision made under the *Child Protection Act 1999*.

*Clause 24* amends section 58(3) to provide that if the applicant for a reviewable decision is the commissioner then the application must be filed within 28 days after the commissioner gives notice to the chief executive (child safety) under new section 140B (4) of the *Commission for Child and Young People Act 2000*, inserted by Clause 81.

*Clause 25* amends section 60 to allow the Children Services Tribunal (the Tribunal) to shorten the period from 7 days for the decision maker to give notice of the parties who are entitled to apply for a review of the reviewable decision to the Registrar of the Tribunal. The Tribunal can only shorten the time period if it is satisfied that not to do so will result in the child's interests being adversely affected or another party to the review suffering hardship.

*Clause 26* amends section 62 to allow the Tribunal to shorten the period from 7 days for persons who are given an information notice to elect to become parties. The Tribunal can only shorten the time period if it is satisfied that not to do so will result in the child's interests being adversely affected or another party to the review suffering hardship.

*Clause 27* amends section 70 to renumber the reference to the amended section 7.

*Clause 28* amends section 73 to allow the President or the presiding member to constitute the Tribunal to shorten the time periods in section 60 and 62.

*Clause 29* amends schedule 2 (dictionary) to insert a definition of the chief executive (child safety), a definition of the commission and a definition of the commissioner.

## **PART 5—AMENDMENT OF THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000**

*Clause 30* provides that this part and schedule 1 amend the *Commission for Children and Young People Act 2000* (the Act).

*Clause 31* amends the title of the Act from *Commission for Children and Young People Act 2000* to the *Commission for Children and Young People and Child Guardian Act 2000*.

*Clause 32* amends section 1 short title of the Act from *Commission for Children and Young People Act 2000* to the *Commission for Children and Young and Child Guardian Act 2000*.

*Clause 33* clarifies that a note in the text of the Act is a part of the Act.

*Clause 34* amends the object of the Act to refer to the new office of the Commission for Children and Young People and the Child Guardian.

*Clause 35* amends section 6 which sets out the principles for the Act. The clause amends the heading of the section to clarify that the principles apply to the administration of the Act. The amendments reorder the principles for this Act to clarify that the welfare and best interests of the child are paramount. The existing principle requires that, in decisions involving a child, the child's views and wishes should be taken into account having regard to the "child's age and maturity" is changed to refer to the child's "age and ability to understand". This amendment makes the wording of this principle consistent with the wording of the principle in amended section 5 of the *Child Protection Act 1999* and in the amended section 7 of the *Children's Services Tribunal Act 2000*.

*Clause 36* inserts a new section 7A to clarify that the commissioner has a clear jurisdiction to deal with matters involving children while they were in the child safety system even after the children are no longer in the child safety system.

*Clause 37* inserts a new part 1 division 4 to provide for the meaning of child "*in the child safety system*". New section 11A provides that a child is "in the child safety system" when the chief executive (child safety) has become aware, whether because of receiving a notification or otherwise, of alleged harm or alleged risk of harm to the child.

The child ceases to be in the child safety system if:

- the chief executive (child safety) decides there is no ground for forming a reasonable suspicion that the child is in need of protection; or
- the child is not subject to an order under the *Child Protection Act 1999* and the chief executive (child safety) decides not to take action or further action relating to the child.

This means that the scope of the child guardian functions includes the chief executive deciding under section 14 of the *Child Protection Act 1999* whether or not there is a reasonable suspicion that the child is in need of protection and any subsequent decisions about whether there is a need to take action and, if so, what action to take to ensure the child's protection from harm. It also includes any decision of the chief executive that results in the child ceasing to be in the child safety system.

The commissioner's child guardian role relates to services provided to a child while the child is in the child safety system. This section should be read with the new section 7A in that the commissioner's child guardian functions may be exercised in relation to a child even though the child is no longer in the child safety system.

*Clause 38* replaces the heading of Part 2 with "Commissioner, Assistant Commissioner and Commission".

*Clause 39* replaces the existing section 12 with a new section that establishes the "Commissioner for Children and Young People and Child Guardian", an "Assistant Commissioner" and an office called "the Commission for Children and Young People and Child Guardian". The commission consists of the commissioner, the assistant commissioner and the staff of the commission.

*Clause 40* replaces the existing section 15 (k) with a new section 15 (k) and 15 (ka) which gives the commissioner the functions of administering a community visitor program and recording, analysing, researching and reporting on information about deaths of children in Queensland. Sections 15(ba) to 15(o) are renumbered as sections 15(c) to 15(t). New sections 15 (ba) to 15 (bd) are inserted which give the commissioner the functions of:

- monitoring, auditing and reviewing the handling of cases of children in the child safety system by the Department of Child Safety and other service providers;
- monitoring, auditing and reviewing the systems, policies and practices of the Department of Child Safety and other service providers that affect children in the child safety system;

- investigating matters relating to services provided to children in the child safety system;
- seeking to resolve, with the chief executive (child safety), disputes about reviewable decisions; and
- monitoring compliance by the chief executive (child safety) with section 83 of the *Child Protection Act 1999* which guides decision making about placements of Aboriginal and Torres Strait children.

New section 15(2) provides that the commissioner's child guardian functions are the functions under sections 15 (1)(c) to (f) and the other functions of the commissioner, so far as they relate to children in the child safety system.

New section 15(3) provides that the commissioner's monitoring functions are the functions set out in subsections 1(c) and (f). These terms are used throughout Part 5 of this Bill.

*Clause 41* inserts a new section 15A that provides that the assistant commissioner is responsible to the commissioner for the proper performance of the commissioner's child guardian functions.

*Clause 42* amends section 16 to clarify that the commissioner has all necessary powers to carry out the commissioner's functions, including the powers under parts 2A (monitoring) and 3 (complaints and investigations).

*Clause 43* inserts a new section 16A provides that the assistant commissioner has the powers of the commissioner under the Act that are necessary or convenient to perform the assistant commissioner's role. Subsection (2) of the Act enables references to the commissioner to be read as also meaning the assistant commissioner in relation to the use of powers for the performance of the child guardian functions. The assistant commissioner is subject to the directions of the commissioner in the exercise of the powers.

*Clause 44* amends section 18 by inserting a new subsection (2) that states a set of principles to guide the way in which the commissioner must perform the commissioner's monitoring functions and powers. The commissioner must, to the greatest extent practicable, work cooperatively with service providers and help build their capacity to meet the needs of children in the child safety system. The commissioner must also have regard to the capacity of service providers to comply with the requirements by the children's commissioner and other legislative and licensing obligations a service provider may have. The commissioner must also



respect and promote the role of Aboriginal and Torres Strait Islander service providers in supporting families and communities to care for their children and, as far as possible, enter into arrangements with service providers for performing the commissioner's monitoring function.

*Clause 45* amends section 20 to insert a new sub section to make it clear that a reference to a child in section 20(2)(b) includes a child who has died. The effect of this will be that the commissioner will have to refer a matter relating to the death of a child who the commissioner considers may have been the victim of a criminal offence to the police commissioner, or if the matter involved a relevant criminal activity as defined under that section, the Crime and Misconduct Commission.

*Clause 46* inserts a new part 2, division 3A to provide for the appointment of the assistant commissioner. New section 28A provides that the assistant commissioner is to be appointed by the Governor in Council and sets out the requirements for eligibility for appointment. It also provides that division 3, with any necessary changes, applies to the assistant commissioner as if a reference to the commissioner was a reference to the assistant commissioner and a reference to the commissioner's duties was a reference to the assistant commissioner's role. Subsection 3 requires the assistant commissioner to have knowledge of laws and practice relating to child protection in addition to the current eligibility requirements for the commissioner in section 21(2).

*Clause 47* inserts a new Part 2A – The Powers and Obligations Relating to Commissioner's Monitoring Function.

The effect of the new Part 2A is as follows:

New section 31A provides that the commissioner may only exercise the powers under Part 2A to perform the commissioner's monitoring function.

New section 31B clarifies that Part 2A only applies to the Department of Child Safety and a service provider holding a licence to provide care services under the *Child Protection Act 1999*. Currently the care services licensed under the *Child Protection Act 1999* are services whose primary purpose is to provide placement and support services for children in care.

New section 31C allows the commissioner, by written notice, to require a service provider to give the commissioner information, documents or copies of documents, within a stated reasonable time. The notice must state the purpose for making the requirement. In relation to the Department of Child Safety the notice must state the way in which the information or documents must be given. The department must comply with the notice. In relation to licensed care services the notice must state the way in which

the commissioner seeks to have the information or documents given. The licensed care service must comply with the notice to the extent that it must give the requested information or documents within a stated time but is not required to give them in the stated way.

For example, if the notice to the licensed care service sought entry to their premises they would not be obliged to comply.

New section 31D provides that where a notice is given to the Department of Child Safety under section 31C, the stated way mentioned in the notice must be reasonably necessary for achieving the stated purpose for making the requirement and reasonable, having regard to the matters stated in section 18(2). The example refers to a situation where the commissioner may require entry to departmental premises to conduct an audit.

New section 31E provides that if the commissioner considers a licensed care service has not complied with a notice under section 31C the commissioner may ask the chief executive of the Department of Child Safety to facilitate access to the information or documents sought under the notice within a reasonable time. The chief executive must comply with the request. The chief executive must also keep the commissioner informed about progress in facilitating access, including reasons for any delay.

New section 31F provides that a relevant service provider must give to the commissioner the information prescribed under a regulation about its systems, policies or practices affecting children in the child safety system.

New section 31G allows the commissioner to require a service provider to conduct a review of the service providers handling of cases in the child safety system or the service provider's systems, policies or practices, if the commissioner has a particular concern about these matters. The commissioner may require the service provider to provide a report or to stop carrying out the review. The commissioner could then assume responsibility for the review commenced by the service provider. If the service provider is a licensed service provider:

- the chief executive (child safety) has to be informed before the commissioner requires the service provider to conduct the review
- the commissioner may also require the chief executive (child safety) to help the service provider undertake the review; and
- the commissioner must give the chief executive (child safety) a copy of the report about the review.

New section 31H provides that the commissioner can make recommendations to service providers about matters that have been identified through the commissioner's monitoring of that service.

New section 31I provides that the commissioner may give a report to the Minister responsible for the Department of Child Safety if the commissioner considers that a relevant service provider has contravened a provision of this division or failed to take appropriate action in response to a recommendation made under new section 31H.

New section 31J provides that a person does not commit an offence only by failing to comply with this division. The remedies available to the commissioner for non-compliance by a service provider are under new sections 31E and I.

*Clause 48* amends part 3 heading by inserting “And Investigations”.

*Clause 49* inserts a new part 3 division 1AA – Preliminary.

New section 31K states that this part provides a process for making and resolving complaints investigating complaints and undertaking investigations, which include complaints investigations, relating to a service provided or required to be provided to a child in the child safety system.

Previously the commissioner could only investigate complaints initiated by the commissioner or others. The effect of this new section is to enable the commissioner to conduct investigations without a complaint necessarily having been made.

*Clause 50* omits sections 32 (a) and (b) which currently define the types of complaints that can be acted upon by the commissioner in relation to children under the *Child Protection Act 1999*. It replaces these two sub sections with a more expansive provision that enables complaints to be made about a child in the child safety system (defined in new section 11A).

*Clause 51* amends the heading in division 3 so that division 3 applies not only to investigating complaints but also to investigations generally.

*Clause 52* amends the heading of section 41 to read “Investigation of a complaint”.

*Clause 53* omits section 42 heading and renumbers and relocates sections 42(2) and (3). The effect of this is to merge the existing sections 41 and 42 into one section (section 41). The amended section 41 outlines the process for starting an investigation into a complaint.

*Clause 54* inserts a new section 42 which empowers the commissioner to investigate matters relating to a service provided or required to be provided

to a child in the child safety system without the necessity of a complaint. To initiate an investigation in this manner the commissioner must first believe that the rights, interests or wellbeing of a child may be seriously affected if the investigation is not conducted, or that the matter raises issues of public interest, or a significant issue about a law, policy or practice underlying or required for a service. This reflects considerations the commissioner must currently have regard to under section 37 when deciding whether to initiate a complaint in the commissioner's own name. Subsection (3) enables the commissioner to make reasonably necessary inquiries to decide whether to investigate a matter. Subsection (4) requires the commissioner to give a written notice to the service provider to whom the investigation relates before exercising the investigation powers. Subsection (5) sets out what the notice must state.

*Clause 55* amends section 43(1) to ensure that the power to access a child under section 43 applies to the new investigation function.

*Clause 56* omits section 56(1) and inserts a new provision to clarify that the commissioner has the power to stop an investigation if the commissioner is satisfied it would not be in the best interests of the child to continue the investigation.

*Clause 57* amends the heading of section 57 to clarify that section 57 applies only to complaint investigations.

*Clause 58* amends section 58 to extend the reporting requirement after the investigation of a complaint, to investigations initiated by the commissioner, not necessarily arising from a complaint.

*Clause 59* omits and inserts a new section 64, 64A and 64B. The new section extends the community visitor program beyond the current visitable sites to homes of persons with whom certain children in the child safety system are placed. These children are:

- children who are in the custody or guardianship of the chief executive under the *Child Protection Act 1999* and have been placed in the care of an approved foster carer or other person other than a parent; and
- children who remain in the custody and guardianship of their parents or guardians but who have been placed in the care of someone other than a parent of the children as a result of an agreement between the children's parents or guardians and the chief executive.

These homes where the children are residing are called visitable homes. This does not include where children are residing at home with their parents.

*Clause 60* amends part 4 division 2 heading to add homes to clarify that the division applies to visitable homes.

*Clause 61* amends section 65 to state that the commissioner must arrange regular and frequent visits to both visitable sites and visitable homes.

*Clause 62* amends section 66 to clarify that this section only applies to visitable sites.

*Clause 63* inserts a new section 66A to require the community visitor to visit a visitable home or communicate with a child residing in a visitable home if requested by the child. If the child requests, through the carer, that a community visitor attend, the carer is required to tell the commissioner as soon as possible. If the child requests, through the carer, a particular community visitor, the carer must take reasonable steps to inform that particular community visitor as soon as possible.

A community visitor must comply with a request to visit or communicate with a child residing at a visitable home as soon as practicable after being informed of the request.

Subsection (4) makes it clear that a person does not commit an offence by failing to comply with these requirements set out in subsections (2),(3) and (4).

*Clause 64* amends section 67 to apply the requirements of that section to reports of community visitors after visits to visitable homes. It inserts a new subsection 2A to specify to whom the commissioner may give a copy of a report about a visit to a visitable home.

*Clause 65* amends section 68 to add visitable homes to the functions of the community visitor. The functions of the community visitor are re-organised into those applicable to visitable sites and those applicable to visitable homes.

*Clause 66* amends the heading of part 4 division 3 subdivision 2 to extend the powers of entry in that subdivision to visitable homes.

*Clause 67* amends subsection 69(2) to provide for requirements for a community visitor to enter a visitable home by consent. The carer must either consent or the entry must be authorised by warrant.

*Clause 68* amends section 70 to extend the current procedure for obtaining consent to entry to visitable homes, and in relation to any proceedings in which consent is an issue.

*Clause 69* amends section 71 to allow community visitors to apply for a warrant for a visitable home as well as a visitable site.

*Clause 70* amends section 72 (1), (2) (a) (i) and 2 (b) to enable the issuing of a warrant to gain entry to a visitable home as well as a visitable site.

*Clause 71* replaces section 73 to provide procedures for entry to visitable homes as well as visitable sites under a warrant.

*Clause 72* amends the heading of section 74 to clarify that the powers in that section to inspect the site or inspect or copy a document held at the site applies only to visitable sites.

*Clause 73* amends the heading of section 75 to ensure consistency of reference to visitable sites in relation to what the community visitor may require of a staff member at a visitable site.

*Clause 74* amends the heading of section 76 to clarify that the power in that section to require documents to be produced applies only to visitable sites.

*Clause 75* inserts a new section 76A which provides for powers which may be exercised by a community visitor upon entry to a visitable home. These powers are to assess the appropriateness of the home for the accommodation of the child, to have access to the child, to talk privately with the child (which may be in a place away from the home at the child's request and to require a carer of the home to help the community visitor. However, a person does not commit an offence only by failing to give reasonable help to exercise the visitor's powers.

*Clause 76* amends section 77 by requiring the community visitor to seek and take into account the views and wishes of a child residing at visitable site when including information about the child in a report to the commissioner under section 67(1). A new subsection (2) is inserted to require the community visitor to seek and take into account the views and wishes of the child at the visitable home before asking a carer or anyone else about the child or giving information about the child in a report under section 67 (1).

*Clause 77* amends section 78 to oblige the community visitor to act in a way that preserves the privacy of people in the visitable home and respects

the wishes of any children in the home who may not wish to talk to the community visitor.

*Clause 78* amends section 81 to ensure that approved foster carers are excluded from being community visitors.

*Clause 79* omits section 89, which is replaced by new section 163A, combining it with a new reporting obligation about child guardian functions.

*Clause 80* inserts new Part 4A – Child Deaths, sections 89A- 89ZH. This Part establishes the Child Death Case Review Committee (CDCRC) and includes provisions relating to its functions, membership, conduct of business and its reviews and reports. The CDCRC is an important mechanism for ensuring the external accountability of the Department of Child Safety in performing its child death case review function. This Part also outlines new functions for the commissioner in relation to a child death register and research aimed at reducing and preventing child deaths.

New section 89A defines key terms in Division 1 - the Child Death Case Review Committee.

New section 89B provides that the CDCRC is established.

New section 89C sets out the functions of the CDCRC. The CDCRC is to review all child death reviews conducted by the chief executive under the *Child Protection Act 1999*, Chapter 7A. In relation to matters arising out of the reviews, it is to make recommendations about improvements to the Department of Child Safety's policies, relationships with other relevant entities and about whether disciplinary action should be taken against officers, or employees of the Department of Child Safety in relation to the department's involvement with a child. It is to monitor the implementation of its recommendations and if asked by the Minister, provide the Minister with information about particular reviews or classes of reviews.

New section 89D provides that the CDCRC is to act independently when performing its functions and is not under the control or direction of any other entity, including the Minister and the commissioner.

New section 89E provides that in performing its functions, the CDCRC may obtain help from anyone who is appropriately qualified to provide help.

New section 89F provides for the membership of the CDCRC. The commissioner and the assistant commissioner are to be members. No less than 5 and no more than 7 other members may be appointed by the Minister. Subsection 2 stipulates the qualifications and experience

required to be eligible for appointment as a CDCRC member. Subsection 3 provides that without limiting the matters to which the Minister may have regard when deciding on suitability to appoint as a CDCRC member, the Minister must not appoint a person who does not consent to a criminal history check before appointment and may have regard to the person's criminal history. Under subsection 4, the CDCRC membership must include at least 1 Aboriginal person and 1 Torres Strait Islander person, in recognition of the reality that Indigenous children are over-represented in the child safety system.

New section 89G clarifies that the requirements regarding criminal history checks and regard to criminal history (as contained in section 89F) do not apply if the State Coroner is being appointed to the CDCRC. The new section also provides that the State Coroner may nominate a person to act as his/ her deputy in relation to the CDCRC.

New section 89H provides that where a person whom the Minister is proposing to appoint to the CDCRC has consented to a criminal history check, the Minister may request and obtain from the police commissioner a written report about the person's criminal history and a brief description of the circumstances of any conviction or charge mentioned in the person's criminal history. Subsection 5 requires the Minister to destroy the criminal history report as soon as practicable after it is no longer needed for the purpose for which it was requested.

New section 89I provides that sections 89F (3) and 89H apply regardless of *the Criminal Law (Rehabilitation of Offenders) Act 1986*.

New section 89J provides that a member appointed to the CDCRC holds office for no more than 3 years stated in the instrument of appointment. Any appointment is on a part time basis and subject to conditions set by the Minister. An appointed member is entitled to payment of fees and allowances that may be fixed by the Minister.

New section 89K provides that the office of an appointed member becomes vacant if the appointed member resigns by signed notice to the Minister or is removed from office as a member under section 89H.

New section 89L provides for when the Minister may remove an appointed member. A member, other than the State Coroner, may be removed because they are mentally or physically incapable of performing duties, incompetent, inefficient, neglect duties or because the member is otherwise unsuitable to continue as a member or has ceased to be a member of an entity when that was the basis for appointment to the CDCRC.



New section 89M provides that the commissioner is to chair the CDCRC and shall preside at all meetings at which the commissioner is present. If the chairperson is not present at a meeting of the CDCRC, a member chosen by the members present at a meeting of the CDCRC shall preside.

New section 89N deals with matters relating to a quorum for the CDCRC. A quorum is the number equal to one-half of the number of its members for the time being holding office or, if one-half is not a whole number, the next higher whole number. However, if a review to be considered by the CDCRC concerns an Aboriginal child, at least one member present must be an Aboriginal person for a quorum. Likewise, if a review to be considered by the CDCRC concerns a Torres Strait Islander child, at least one member present must be a Torres Strait Islander person for a quorum.

New section 89O provides that any question at a CDCRC meeting is to be decided by a majority of the votes of the members present. Each member present has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

New section 89P provides that the CDCRC must keep minutes of its meetings.

New section 89Q provides for situations where there may be a conflict of interest for a CDCRC member. If a CDCRC member, including the commissioner and assistant commissioner, has an interest in an issue being considered, or about to be considered by the CDCRC, and the interest could conflict with the proper performance of the person's duties in relation to the issue, the person must disclose the nature of the interest to a CDCRC meeting as soon as practicable.

Unless the CDCRC directs otherwise, the member who discloses the interest in the issue must not be present when the CDCRC considers the issue, or must not participate in a decision of the CDCRC about the issue. The member should also not be present when the CDCRC is considering whether to give a direction about the matter.

Subsection 5 provides for where another person may have an interest that should be declared and subsection 6 provides for a CDCRC quorum where an interest has been declared and a member cannot be present or participate in a decision about an issue as a result of having disclosed an interest. A disclosure of an interest and the CDCRC's decision about the disclosure of an interest and the CDCRC's decision about the disclosure must be recorded in the CDCRC's minutes and noted in any report on its review under new section 89T (2).

New section 89R provides that the CDCRC may conduct its business, including meetings, in the way it considers appropriate. On occasion, for example, the CDCRC may decide that a meeting is to be held by teleconference.

New section 89S provides that the CDCRC, in consultation with the chief executive of the Department of Child Safety and other entities that the CDCRC considers relevant, must develop criteria to be used in conducting its reviews of the Department of Child Safety case reviews. These criteria will be published by notice in the gazette.

New section 89T applies where the CDCRC is given a report of a child death case review under the *Child Protection Act 1999* section 246D(2). The CDCRC is to conduct a review of the report using the published review criteria and is to prepare a report about its review as soon as practicable, but in every case, so that it complies with the three month time limit in section 89U(1).

The CDCRC may request a supplementary report about a review matter from the chief executive of the Department of Child Safety. The CDCRC may also have regard to any report by the Ombudsman relating to a child's death, where the CDCRC is considering the Department of Child Safety's review of its involvement with that particular child. Without limiting the contents of the CDCRC report, it may recommend that the chief executive of the Department of Child Safety take stated action within a stated time that is reasonable in the circumstances.

New section 89U provides that within 3 months after receiving the report of the original review from the chief executive of the Department of Child Safety, the CDCRC must provide a copy of the report of the CDCRC review to the chief executive and the commissioner. The report will not include any information identifying or that is likely to lead to the identification of any individual and is to be given to the commissioner in this form to assist in the exercise of other child death functions, such as research.

New section 89V provides that the CDCRC may ask the chief executive of the Department of Child Safety to notify the CDCRC within a reasonable stated time of the steps taken to give effect to the CDCRC recommendations and, if no steps have been taken, the reasons for this.

New section 89W applies where, after considering the response from the chief executive of the Department of Child Safety, the CDCRC considers that no steps have been taken to implement the CDCRC recommendations or that the steps taken have been inadequate or inappropriate. The CDCRC

may report on the matter to the Minister and the Minister for Child Safety. The CDCRC must attach to the report a copy of its report on the Department of Child Safety's child death case review and the response provided by the chief executive of the Department of Child Safety under new section 89V.

New section 89X provides that any member of the CDCRC, or any person providing administrative support, or who has given, or is giving expert help to the CDCRC must not record or intentionally disclose confidential information gained through these roles, except to the extent necessary to perform the person's functions in relation to the CDCRC. If the person is the State Coroner or the person nominated as the Coroner's deputy under new section 89 G, information may be disclosed for the purpose of assisting an investigation under the Coroners Act 2003. The maximum penalty for contravening this provision is 100 penalty units.

New section 89Y provides that if a defamatory statement is made in a report prepared by the CDCRC, it is a lawful excuse that the publication is made in good faith and is, or purports to be, for this Act.

New section 89Z provides that a relevant person is neither competent nor compellable to produce in a legal process, or in compliance with a requirement under an Act, any document that has been created by or solely for the purpose of the CDCRC or to divulge or communicate any information gained through the person's involvement in the CDCRC. A relevant person is a person who is or was a member of the CDCRC, provided administrative support to the CDCRC, or provided help to the CDCRC.

New section 89ZA provides that within 4 months after the end of a financial year, the CDCRC must give to the Minister a report about the performance of the CDCRC functions during that year. The report must not include information that identifies or is likely to identify any individuals referred to in the Department of Child Safety reports and related documentation received by the CDCRC. The first report is due by 31 October 2005 and must relate to the period starting on the day the section commences and ending on 30 June 2005.

New section 89ZB provides that the commissioner must ensure that the CDCRC has the administrative support reasonably required for the CDCRC to carry out its functions.

New section 89ZC requires the commissioner to keep a register of child deaths in Queensland.

New section 89ZD provides that where a person wants to access information in the child death register for the purpose of conducting research, aimed at reducing the likelihood of child deaths, access will only be provided with the commissioner's consent. The commissioner may only consent if satisfied that the person is a genuine researcher and the information is reasonably necessary for the research.

The commissioner must not give the person access to information that identifies someone, unless the commissioner reasonably believes the person's identity is necessary for the research to be effective and the opportunity for increased knowledge that may result from the research outweighs the need to protect the privacy of any living or dead person. The maximum penalty for contravening this provision is 100 penalty units.

New section 89ZE states that the commissioner's functions to help reduce the likelihood of child deaths are to:

- classify the deaths recorded in the register according to cause of death, demographic information and other relevant factors and to analyse the information to identify patterns or trends;
- conduct research, alone or in co-operation with other entities;
- identify areas for further research by the children's commissioner or other entities;
- make recommendations about laws, policies and practices arising from the maintenance of the child death register and the commissioner's child death research activities.

New section 89ZF requires the commissioner to prepare a report to the Minister on a number of matters for the previous financial year. Within 14 days after receiving the report, the Minister must then table the report in the Legislative Assembly. The matters that the commissioner must report on are:

- the results of analyzing information included in the register;
- the children's commissioner's activities relating to research about child deaths;
- any persons given access to information on the register for research purposes;
- recommendations the commissioner has made about laws, policies, practices or services; and
- the extent to which previous recommendations have been implemented.

The commissioner may also prepare reports on the matters listed in section 89ZE.

New section 89ZG enables a government entity to enter into arrangements with the commissioner for the provision of information or documents to the commissioner. This does not apply to the Children Services Tribunal, the registrar under the *Births, Deaths and Marriages Act 2003*, and the State Coroner. Provisions regarding access to information held by each of these are contained in their respective legislation.

When providing information or documents, or entering into arrangements to do so, the commissioner and the government entity must as far as practicable, protect the persons to whom the information or document relates from unjustified intrusion on their privacy. The section protects a person from certain liabilities when providing access to information or documents under this section, and sets parameters around the fees that can be charged for a service performed under this section.

New section 89ZH allows information that otherwise should not be disclosed because of confidentiality safeguards in the Act to be disclosed and referred where appropriate and relevant to the Commissioner of Police, the Crime and Misconduct Commission and the State Coroner.

*Clause 81* inserts a new part 7A – Commissioner may apply for Review of Certain Decisions. This part contains the new sections 140A and 140B. Sections 140A and 140B have been inserted in the Act to allow the commissioner to seek a review of certain decisions of the chief executive of the Department of Child Safety in relation to children within the child safety system.

New section 140A lists exhaustively the types of decisions that can be reviewed by the Childrens Services Tribunal on the application of the commissioner. The reviewable decisions are:

- the decision to take action or failure to take action after the chief executive of the Department of Child Safety has formed a reasonable suspicion that the child is in need of protection;
- the decision under section 87(2) of the Child Protection Act 1999 by the chief executive of the Department of Child Safety not to take action to refuse to allow or restrict contact between the child and the child's family;
- the decision of the chief executive of the Department of Child Safety to take or not take steps to ensure that the child who is placed with an approved foster carer, licensed care service or

departmental care services receives a standard of care in relation to rights and needs listed in section 122 of the *Child Protection Act 1999*; and

- a reviewable decision under schedule 2 of the *Child Protection Act 1999* about placement, contact and supervision matters.

The new section 140A provides that if the chief executive amends or substitutes a reviewable decision during the period when the commissioner is seeking to resolve the matter and the substituted decision does not resolve the matter then the substituted decision is the reviewable decision for the purpose of 140B

The section also provides that is the chief executive makes a reviewable decision during the period when the commissioner is seeking to resolve a failure, by the chief executive, to take action or decide a step and that reviewable decision does not resolve the matter, then it is the reviewable decision for the purpose of section 140B.

Section 140B provides that the commissioner can only apply to the Children Services Tribunal for a review of a reviewable decision of the chief executive of the Department of Child Safety if the commissioner is dissatisfied with the decision and the matter has not been resolved with the chief executive to the commissioner's satisfaction. Further, the commissioner can only apply to the Children Services Tribunal if the commissioner is satisfied that to do so is in the child's best interests.

Before the commissioner can apply to the Children Services Tribunal the commissioner must give to the chief executive a written notice that the commissioner intends to apply for a review of the decision.

*Clause 82* amends section 159 to enable the commissioner to enter into arrangements with other complaints agencies to avoid inappropriate duplication of activities when exercising their respective functions relating to complaints about services provided to children.

*Clause 83* inserts a new section 161 that extends the definition of an "official" to include protection against liability for certain acts or omissions to a member of the CDCRC.

*Clause 84* inserts a new section 163A to require the commissioner's annual report under the *Financial Administration and Audit Act 1977* for a financial year to include a report on the performance of the commissioner's child guardian functions and the operations of community visitors.

*Clause 85* amends section 165 to provide for delegations of powers by the assistant commissioner.

*Clause 86* inserts a new part 9, division 6 to provide for specific transitional arrangements under this Bill.

New section 183 provides for the current commissioner to continue in office as the Commissioner for Children and Young People and Child Guardian until the end of the term stated in that person's appointment, and ensures that references in documents to the Commissioner for Children and Young People will be taken to be a reference to the Commissioner for Children and Young People and Child Guardian.

New section 184 provides for the current Commission for Children and Young People to continue as the Commission for Children and Young People and Child Guardian ensures that references in documents to the Commission for Children and Young People will be taken to be a reference to the Commission for Children and Young People and Child Guardian.

New section 185 requires the commissioner, as far as is practicable, to record in the register for child deaths that is established under section 89ZC, the child deaths that happened before the commencement day of the *Child Safety Legislation Amendment Bill 2004*, as well as those child deaths that occurred on or after 1 January 2001. The first annual report required under section 89ZF is due by 31 October 2005 and must include the information the children's commissioner has included in the register before 1 July 2005.

New section 186 clarifies that if the *Child Protection Act 1999* is administered only in a part of a department, a reference in this Act to the Department of Child Safety is a reference only to that part.

*Clause 87* amends the dictionary in schedule 4 to delete the definitions of "chief executive (families)", "commission" and "commissioner" and "visitable site" and inserts definitions for various terms used in the *Child Safety Legislation Amendment Bill 2004*.

## **PART 6—AMENDMENT OF THE CORONERS ACT 2003**

*Clause 88* states that this part amends the *Coroners Act 2003*.

*Clause 89* amends the definition of "death in care" to also mean a child in placement with the consent of a parent or guardian. This term is further defined in Clause 95 by an amendment to the dictionary in Schedule 2 of the *Coroners Act 2003* to mean a child:

- about whom an authorised officer is investigating, or has investigated, alleged harm or alleged risk of harm under the *Child Protection Act 1999*, section 14; and
- who is residing with someone other than the person with whom the child normally resides as a result of an agreement between a parent or guardian of the child and the chief executive (child safety).

The effect of this clause is that the deaths of these children will have to be reported to a coroner.

*Clause 90* inserts a new section 10A obliging the State Coroner to notify the commissioner of the deaths of children that have been reported to the State Coroner under section 7 of the *Coroners Act 2003*. (Coroners are obliged to notify the State Coroner of all deaths reported to them under section 7 of the *Coroners Act 2003*). The State Coroner must notify the commissioner within 30 days after the death is reported to the State Coroner. The section also obliges the State Coroner to give the commissioner a copy of the police's report to the coroner under section 7(3) of the *Coroners Act 2003*. The State Coroner does not have to do this if the State Coroner considers that providing the report is likely to prejudice an investigation by a coroner or police officer.

The State Coroner is obliged to obliterate any information in the report which identifies anyone unless the State Coroner believes the person's identity is necessary for the commissioner's child death research function.

*Clause 91* amends section 45 of the *Coroners Act 2003* to oblige coroners to forward a copy of their findings to the commissioner where the deceased person was a child.

*Clause 92* amends section 46 of the *Coroners Act 2003* to oblige coroners to forward a copy of their comments to the commissioner if the comments relate to the death of a child.

*Clause 93* amends section 47 to ensure that the Minister for Child Safety and the chief executive (child safety) will receive a copy of the coroner's comments and findings resulting from the investigation into the death of a child in a placement with the consent of a parent or guardian.

*Clause 94* inserts new sections 54A, 54B and 54C to facilitate the commissioner having access to investigation documents under the *Coroners Act 2003* for the commissioner's child death research function.

New section 54A allows the chief executive to enter into an arrangement with the commissioner about giving the commissioner access to



investigation documents. The State Coroner may provide access to the commissioner under the arrangement. Subsection (4) provides that sections 53, 54 and 55 of the *Coroners Act 2003* do not apply in relation to access to investigation documents under the arrangement; however access to investigation documents under the arrangement is subject to the protections of certain sections in Division 4 of Part 3 of the *Coroners Act 2003*. These protections include section 52 of the *Coroners Act 2003* which precludes access in certain circumstances including prejudicing investigations for contraventions of the law and section 56 of the *Coroners Act 2003* under which access can be refused in the public interest.

New section 54B obliges the State Coroner to ensure that all identifying information is obliterated before giving access to the commissioner under the arrangement unless the State Coroner believes that the person's identity is necessary for the purpose of the commissioner's child death research function. The section also ensures that if the investigation document is a police document the commissioner of police has to agree to it being accessed and if the investigation document is not a coronial or police document, the chief executive of the entity that prepared it has to agree to it being accessed. This is consistent with the existing access to investigation documents provisions in Division 4 of Part 3 of the *Coroners Act 2003*.

New section 54C allows the chief executive to charge fees for giving the commissioner access to investigation documents under an arrangement.

An "investigation document" referred to in section 54A, 54B and 54C includes a document obtained under the *Coroners Act 1958* that is similar in nature to an investigation document defined under this Act.

*Clause 95* amendment of s 71 inserts a new subsection into section 71 to make it absolutely clear that despite section 71(4) (which provides that the State Coroner must devote the whole of his or her time to the duties of the State Coroner), the State Coroner may be appointed to the Child Death Case Review Committee.

*Clause 96* inserts certain definitions into the Dictionary in Schedule 2 of the *Coroners Act 2003* consequential to these amendments. The existing definition of "investigation document" is amended to include a document connected to the investigation that is given under section 246H of the *Child Protection Act 1999* or section 57A of the *Ombudsman Act 2001* to the State Coroner for use by a coroner.

## **PART 7—AMENDMENT OF HEALTH SERVICES ACT 1991**

*Clause 97* states that this part amends the *Health Services Act 1991*.

*Clause 98* amends section 57 by replacing the reference to section 63(2) “(gb)” with “(j)”. This is a consequential amendment.

*Clause 99* amends section 63(2)(g) of the *Health Services Act 1991* to achieve consistency with current drafting practices used in the new section 63(2)(gaa).

Section 63 of the *Health Services Act 1991* imposes a strict duty of confidentiality on employees, officers and agents of Queensland Health. This duty prohibits the giving of any information to another person if the information would enable a person who is receiving, or has received, a public sector health service to be identified. Section 63 also sets out exceptions to the duty. The amendments to section 63 deal with these exceptions to facilitate more effective information exchange in appropriate circumstances.

New section 63(2)(gaa) enables information to be given to an entity of the State under an agreement between the chief executive and the entity, where the agreement is prescribed under a regulation and the chief executive considers that disclosing the information is in the public interest. An exception currently applies to agreements with the Commonwealth or with other States, but does not apply to other Queensland government entities. The new subsection will ensure that any barriers to Queensland Health giving information to entities such as the new Department of Child Safety, the commissioner and Child Safety Directors in other government departments will be removed.

New sections 63(2) (gc) and (gd) allow information to be disclosed for the purpose of planning, managing, monitoring or evaluating health services. Under the proposed exception, information can be disclosed to another employee of Queensland Health or to an entity prescribed under a regulation for the purpose of planning, managing, monitoring or evaluating health services.

This provision will allow information to be disclosed for a range of quality improvement activities and for health services planning. This amendment will, for example, allow Queensland Health employees to provide information to the Director of Child Safety, Queensland Health, for quality improvement purposes. This will ensure that the Child Safety

Director, Queensland Health, is not limited in their capacity to monitor and evaluate Queensland Health's performance on child safety.

New section 63(3)(a) enables information provided to the Commonwealth, a State or an entity of the Commonwealth or a State to be passed on to a third party with the written agreement of the chief executive. This measure will provide flexibility in circumstances where it is necessary to pass the information on to another person or entity to fulfil the purpose of the original disclosure.

Other section 63 amendments are minor and editorial in nature, involving the renumbering of sections and appropriate cross-referencing to reflect the new numbering.

## **PART 8—AMENDMENT OF OMBUDSMAN ACT 2001**

*Clause 100* states that this part amends the *Ombudsman Act 2001*.

*Clause 101* inserts a new section 57A and 57B.

The new section 57A allows the Ombudsman to give a copy of a report relating to a death that was reportable under the *Coroners Act 2003* or the subject of an inquiry under the *Coroners Act 1958* to the State Coroner:

- for use by a coroner in a coronial investigation or inquiry
- for use by the State Coroner in his/ her functions under the *Coroners Act 2003*

The ombudsman can also give a copy of a report to the Attorney - General for use in his/ her functions either as Minister or Attorney - General under the *Coroners Act 1958* or the *Coroners Act 2003*. (This could include directing that an inquest be held into the death.)

The new section 57B allows the Ombudsman to give a copy of a report to the Child Death Case Review Committee (CDCRC) is carrying out a review or has carried out a review relating to the child.

**PART 9—AMENDMENT OF OTHER ACTS**

*Clause 102* sets out the consequential amendments to various Acts set out in schedule 2 to make the correct references to the *Commission for Children and Young People and Child Guardian Act 2000*, and the Commissioner for Children and Young People and Child Guardian.