Child Safety Legislation Amendment Bill (No. 2) 2004

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Child Safety Legislation Amendment Bill (No. 2) 2004*.

Policy Objectives of the Legislation

The objective of the Bill is to implement the second 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 strengthen:

- coordination of agency responses to the protection and care needs of children,
- case planning processes for children subject to ongoing intervention under the *Child Protection Act 1999*,
- reporting of suspected harm to children by mandating doctors and nurses to notify the Department of Child Safety,
- the monitoring powers of the Commission for Children and Young People and Child Guardian by extending those powers to other agencies.

The Acts amended are:

- *Births, Deaths and Marriages Registration Act*
- *Child Care Act 2002*
- *Child Protection Act 1999*
- *Coroners Act 2003*
- *Commission for Children and Young People and Child Guardian Act 2000*

- *Family Services Act 1987*
- *Juvenile Justice Act 1992*
- *Health Act 1937*

Reasons for the Bill

In July 2003, the Crime and Misconduct Commission commenced an inquiry into the abuse of children in foster care. The report of the Inquiry, *Protecting Children: An Inquiry into Abuse of Children in Foster Care*, found that the child protection system in Queensland had failed many children. The report highlighted systemic failures over many years and contained 110 recommendations for improvements to child protection legislation, policy and practices. The legislative reforms recommended by the Crime and Misconduct Commission are aimed at ensuring a more child focussed approach to child protection and strengthening safeguards for children and young people in the child protection system.

Achieving the Objectives

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

- *Establishing a legislative framework for case planning for children who are in need of protection and require ongoing assistance under the Child Protection Act 1999.* The key components of this framework are:
    - a duty on the Chief Executive of the Department of Child Safety to ensure that case plans are developed and revised;
    - the establishment of family group meetings which involve the child, the child's extended family and other people and entities who comprise the child's system of support as central to the case planning process;
    - case plans are to be regularly reviewed, at least once every six months. The chief executive will report on each review and is required to report on certain matters, such as the progress of alternative or parallel planning for children who may be at risk of not being able to return to the care of a parent within an appropriate time frame.
- *Requiring information about each other to be given to the child and carer*

The Bill will amend the *Child Protection Act 1999* to require:

- the chief executive of the Department of Child Safety and licensed care services to provide a prospective carer for a child with the information the carer reasonably needs to decide whether to accept the placement of the child;
- the chief executive to provide information to the child about the prospective carer necessary to enable the child to participate in decision making about the proposed placement;
- the chief executive and licensed care services to provide to a carer for a child the information the carer reasonably needs to provide appropriate care for the child and to ensure the safety of the child, the carer and members of the carer's household;
- the chief executive and licensed care service, in deciding what information to give a carer, to consider the views and wishes of the child, the length of the proposed placement and the child's right to privacy under the Charter of Rights for a Child in Care;
- the chief executive to provide the child and carer with an opportunity to meet prior to the placement, if possible;
- the chief executive to inform the child of the information given to the carer and why the information was given.

These amendments support the principles in section 5 of the Act to keep the child informed of matters affecting him or her, to consider the views of the child and to ensure the child has the opportunity to participate in making decisions affecting his or her life and implement recommendation 7.26 of the Crime and Misconduct Commission Report.

- *Enabling provisions for the sharing of information between service providers about a child's protection and care needs*

The Bill amends the *Child Protection Act 1999* to remove any legal or legislative barriers to service providers sharing information relevant to the protection and care of children. The timely sharing of relevant information by agencies about a child's protection or care needs is essential to ensuring the safety of a child and coordinated and responsive service delivery that meets the needs of the child and his or her family.

The Bill requires 'prescribed entities' to give relevant information to the Department of Child Safety if requested by the chief executive. 'Prescribed entities' are the Queensland Police Service, the Departments of Communities, Health, Education, Disability Services, Housing, Corrective Services, care services licensed under the *Child Protection Act 1999*, non-

State schools and hostels funded by the Department of Education for the accommodation of students.

Service providers and prescribed entities that give relevant information will be protected from liability and cannot be held to have breached any law or Act.

- *Establishing the SCAN system*

The Bill will amend the *Child Protection Act 1999* to provide a legislative basis for the operation of Suspected Child Abuse and Neglect (SCAN) System as recommended by the Crime and Misconduct Commission. The Bill sets out the functions of the SCAN system, the core members of the system and the responsibilities of the core members.

- *Expanding the coverage of the Commission for Children and Young People and Child Guardian's monitoring powers to other agencies*

The Bill will amend Part 2A of the *Commission for Children and Young People and Child Guardian Act 2000,* to enable the Commissioner for Children and Young People and Child Guardian (the commissioner) to monitor an extended range of agencies. The Bill differentiates between the commissioner's monitoring functions and powers (and exemptions) relevant to this extended range of agencies and those functions and powers relevant to the Department of Child Safety and licencees.

The Bill inserts provisions in relation to confidentiality of information and protection from liability in relation to disclosure of this information to the commissioner in certain circumstances.

- *Mandating registered nurses to report suspected harm to a child and requiring doctors and nurses to report suspected harm directly to the Department of Child Safety*

The Bill will amend the *Health Act 1937* to impose a mandatory notification obligation on all registered nurses and doctors operating in Queensland who, become aware, or reasonably suspect, that a child has been harmed or is at risk of harm. The amendments will require that the notification be made to the Department of Child Safety and that, if requested, the registered nurse or doctor must provide further information to assist with the proper assessment of the harm or likely harm to a child.

The Bill will also amend the *Health Act 1937* to ensure that registered nurses, doctors and persons who provide information to these health professionals are afforded the same level of protection as provided to those persons who make a notification or provide information under the *Child Protection Act 1999.* For example, to protect nurses, doctors and other

persons from liability if they have acted honestly when giving the information about a child who has been harmed or is at risk of harm.

Administrative Costs

This amendments contained 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 2006-2007 to improve the delivery of child protection services in Queensland. The costs of administering the new legislation are incorporated into the additional funding allocation to child protection.

Fundamental Legislation Principles

- *Criminal, domestic violence and traffic history checks*

Clause 21 amends section 95 of the *Child Protection Act 1999* to enable the chief executive to request the provision of charges, convictions, domestic violence and traffic history checks to assist in an assessment of a child's need for protection. This amendment will override current rights set out in the *Criminal Law (Rehabilitation of Offenders) Act 1986*. The section currently enables these checks to be performed when the chief executive intends to make an application to the Childrens Court. The proposed amendment will enable these checks to be done earlier in the child protection process. This potential breach of fundamental legislative principles is considered justified to ensure that the Department of Child Safety has all relevant information when assessing a child's need for protection and responding appropriately to ensure the child's safety.

- *Information sharing provisions*

The proposed amendments to the *Child Protection Act 1999* contained in clause 24 to enable sharing of information between agencies that is relevant to a child's protection and care may be seen as having an adverse impact on the rights and liberties of some members of the community to access normally confidential services and to expect that their personal information will not be provided to others without their knowledge or consent. The protection provided to persons who give this information to others excludes civil liability for the giving of the information, provided the information is given in good faith.

The purpose of these new provisions is to remove any legal impediments to the appropriate provision of information to ensure that a child is safe and that the protective and care needs of a child can be met. Numerous research and inquiry reports both in Australia and in other jurisdictions have

identified the failure of agencies to coordinate service delivery and share information about children in need of protection as a major contributing factor to child deaths. The Crime and Misconduct Commission's report "Protecting Children; an Inquiry into Abuse of Children in Foster Care" had a strong emphasis on the development of a whole of government approach to child protection and coordination of service delivery across government and non-government agencies. The ability to give relevant information about a child to another agency with responsibility for providing services to the child or the child's family is essential to ensuring the child's needs are met through planned integrated service delivery.

These provisions are considered justified, as the overriding consideration is the safety and care of children who have been harmed or at risk of harm.

- *New exception to confidentiality*

The proposed amendments to the confidentiality provisions of *the Child Protection Act 1999* to enable the Queensland Police Service to use and further disclose information it obtains under the *Child Protection Act 1999* for the purpose of general law enforcement may be seen as having an adverse impact on the rights and liberties of some members of the community. For example, a parent who, in the course of obtaining health treatment for an illicit drug habit, discloses to a health worker that they are selling illicit drugs, may expect their disclosure to be kept confidential and not passed on to the Department of Child Safety (and in turn, to the Queensland Police Service).

Child protection notifications that are passed on to the Department of Child Safety (and in turn, to the Queensland Police Service) do sometimes contain information about additional criminal offences (that have not been committed against children). This amendment makes it clear that the Queensland Police Service can act on such information but only after it has first consulted with the Department of Child Safety and, where relevant, the government agency from whom the information originated. The purpose of this consultation is to ensure that the Queensland Police Service is fully informed about possible adverse impacts on any child who would be affected by the use.

This amendment is considered justified because the Queensland Police Service cannot be expected to be in possession of information about a possible criminal offence and not act on it. In order for the Queensland Police Service to be able to fully carry out all of its functions under the *Police Service Administration Act 1990*, the Service needs to be able to use all information it receives (regardless of the reason why the information was originally given to the Service) for all law enforcement activities,

including the activity of investigating all potential offences (whether or not they are related to a child protection concern).

Consultation

Community

Create Foundation, PeakCare, Foster Care Queensland, the Queensland Aboriginal and Islander Health Forum, over 50 health peak bodies, Catholic Education Commission and the Association of Independent Schools of Queensland Inc. 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
- Department of Communities
- Department of Aboriginal and Torres Strait Islander Policy
- Education Queensland
- Department of Housing
- Department of Corrective Services
- State Coroner
- Director of Public Prosecutions
- Registrar-General for Births, Deaths and Marriages
- The Childrens Court President, Childrens Court Magistrate and the Chief Magistrate
- The Health Rights Commissioner
- Legal Aid Queensland

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states the short title of the Bill.

Commencement

Clause 2 states that parts 1, 2, 3, 7 and 9 are to commence on assent with the remaining provisions to commence on a day fixed by proclamation.

Part 2 Amendment to Births, Deaths and Marriages Registration Act 2003

Act amended in pt 2

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

Amendment of s48A (Registrar to give notice of registration of child death to commissioner)

Clause 4 amends section 48A(3)(b)(ii) to require the Registrar-General to give to the chief executive (child safety) information about a child's date of birth in the notice to the chief executive about a child's death. This amendment will ensure the chief executive has sufficient information to identify whether the child who has died was a child with whom the Department of Child Safety had had contact in the previous three years.

Part 3 Amendment of Child Care Act 2002

Act amended in pt 3

Clause 5 states that this part amends the *Child Care Act 2002*

Amendment of s26 (Suitability of licensee and related persons)

Clause 6 amends section 26, which outlines the requirements for licensees in respect of their suitability for the position. Suitability notices are issued through the Commission for Children and Young People.

Subsection (2) requires a licensee of a child care service and related persons to hold a current positive suitability notice to be suitable to conduct a child care service.

The clause inserts new subsection (2A) to provide that subsection (2) applies subject to the new section 165A of the *Child Care Act 2002*, that is, that subsection (2) does not apply to the individual until the application is decided, withdrawn or lapses.

Amendment of s97 (Suitability of other persons in a home)

Clause 7 amends section 97. Section 97(1) prohibits the carer in a licensed home based care scheme from providing care in the carer's home unless each adult occupant has a current positive suitability notice.

The clause inserts new subsection (1A) to provide that subsection (1) applies subject to the new section 166A of the *Child Care Act 2004*, that is, that subsection (1) does not apply to the individual until the application is decided, is withdrawn or lapses.

Insertion of new s165A

Clause 8 inserts new section 165A after section 165 of the *Child Care Act 2002*.

New section 165A applies if a corporation holds a licence and an individual who does not have a suitability notice becomes an executive officer of the corporation or nominee for the license and an application for a suitability notice is made for the individual.

The new section provides that section 26(2) of the Act does not apply to the individual until the application for the suitability notice is decided, withdrawn or lapses.

Insertion of new s166A

Clause 9 inserts new section 166A after section 166 of the *Child Care Act 2002*.

The new section applies to a carer in a licensed home based service if an occupant of the carer's home, who does not have a current positive suitability notice, becomes an adult and an application for a suitability notice is made for the occupant. Subsection (2) states that until the application for the occupant is decided, or withdrawn or lapses, the carer does not commit an offence against section 97(1) of the Act only by providing child care in the carer's home while the occupant does not have a current positive suitability notice.

Part 4 Amendment of Child Protection Act 1999

Act amended in pt 4

Clause 10 states that this part amends the *Child Protection Act 1999*.

Insertion of new s3A

Clause 11 inserts new section 3A to provide that notes in the text of the Act are part of the Act.

Amendment of s6 (Provisions about Aboriginal and Torres Strait Islander children)

Clause 12 omits and replaces the phrase 'family meetings' in section 6(4) with the phrase 'family group meetings.'

Amendment of s7 (Chief executive's functions)

Clause 13 amends section 7(l) to extend the chief executive's function of cooperating with government entities that have a function relating to child protection, to government entities that provide services to children in need of protection and their families. Section 7(m) is also amended to reflect the fact that the Community Visitor Program was extended to children in

foster care by amendments to the *Commission for Children and Young People Act 2000* contained in the *Child Safety Legislation Amendment Act 2004*.

Amendment of s22 (Protection from liability for notification of, or information given about, alleged harm or risk of harm)

Clause 14 amends section 22 by strengthening the protection from liability for notification of, or information given about, alleged harm. It omits and replaces subsection 2 to state that a person who notifies or gives information about alleged harm or risk of harm is not liable, civilly, criminally or under an administrative process, for giving the notification or information.

It adds a new subsection (4) that provides that without limiting subsections (2) and (3), in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information and that if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the giving of the information will not constitute a contravention of the Act, oath or rule of law or practice nor make the person liable to disciplinary action.

Insertion of new ch 2, pt 3A

Clause 15 inserts new part 3A in chapter 2 of the *Child Protection Act 1999*. This new part deals with the processes of developing and regularly reviewing case plans.

Part 3A Case planning

Division 1 Preliminary

Division 1 deals with the concepts of case planning, what is a case plan, children for whom case plans are required, and how the process of case planning must be carried out.

What is case planning

New section 51A states that case planning is a process of developing a case plan for a child and regularly reviewing the case plan.

What is a case plan

New Section 51B states that a case plan is a written plan for meeting the child's protection and care needs. The plan may address matters such as the goals of intervention, the child's living arrangements, services to be provided to the child, the responsibilities of the chief executive and the child's parents or a carer, arrangements to maintain and support the child's ethnic and cultural identity and contact with the child's family group or other persons with whom the child is connected, and a proposed review day for the plan.

Children for whom case plans are required

New section 51C requires the chief executive to develop a case plan for any child whom the chief executive considers is in need of protection and ongoing assistance under the *Child Protection Act 1999*. Ongoing assistance could involve the initiation of an application for a child protection order, provision of intensive family support or the placement of a child with parental consent.

How case planning must be carried out

New section 51D prescribes how case planning must be carried out. The process must be conducted in a way that enables timely decision-making, is consistent with the principles of the *Child Protection Act 1999*, prioritises a child's needs for long term stability and continuity of relationships, encourages and facilitates the participation of the child and other people within the child's system of support and allows appropriate entities an opportunity to input. The chief executive must provide the participants with the information they reasonably need and within a time frame that enables them to participate effectively in the process.

Who is a child's family group

New section 51E defines a child's family group for the purpose of the Part as including the members of a child's extended family, clan group, tribe or other similar group and anyone else recognised by persons within these groups as belonging to the child's family.

Meaning of parent in pt 3A

New section 51F defines the term "parent" for part 3A in the same way as parent as defined in part 4 of the *Child Protection Act 1999.* This ensures consistency between the case planning provisions and the provisions relating to children protection orders.

Division 2 Family group meetings

Division 2 deals with the purposes and functions of a family group meeting and when meetings may be convened. Family group meetings are central to planning and decision-making processes. Division 2 deals generally with family group meetings while those that are specifically convened for case planning are dealt with in Division 3.

Purposes

New 51G states the purposes of family group meetings. These are to provide family-based responses to children's protection and care needs and to ensure that planning and decision-making about children's needs and wellbeing are undertaken in an inclusive way.

Convening a meeting

New section 51H provides that the chief executive must convene or have a private convenor convene a family group meeting to develop a case plan. A family group meeting convened in this circumstance is a 'case planning meeting' specifically regulated by Division 3 of Part 3A. A family group meeting may be convened to review and revise a case plan or consider, make recommendations about, or otherwise deal with, another matter relating to a child's wellbeing and protection and care needs. A family group meeting may also be convened, pursuant to a Children's Court order under section 68, for the purpose of developing or revising a case plan.

Private convenors

New section 51I states that a 'private convenor' is a person other than the chief executive, or a delegate or other representative of the chief executive, who convenes a family group meeting under Part 3A by arrangement with the chief executive. The private convenor must be appropriately qualified. If the chief executive has a private convenor convene a family group

meeting, the chief executive must ensure the convenor complies with part 3A in relation to the meeting and for the purpose of the definition of "official" in section 197(3), a private convenor is a person acting under the direction of the chief executive.

Function

New section 51J states the functions of the family group meeting. These are to deal with matters relating to a child's protection and care needs and wellbeing and where a meeting is convened to develop a case plan, to consider the child's care and protection needs and agree on a plan to meet those needs and promote the child's wellbeing.

Division 3 Case planning at a family group meeting

Application of div 3

New section 51K states that division 3 applies to a case planning meeting.

Who should be involved

New section 51L requires the convenor of a case planning meeting to give the child, the child's parents, other members of the child's family group or persons within the child's system of support, any legal representative for the child and a member of a recognised Aboriginal or Torres Strait Islander agency for the child, a reasonable opportunity to attend and participate in a case planning meeting. The provision allows a convenor to invite anyone else who is considered likely to make a useful contribution to the plan's development. This may be a health, education or social service agency. As envisaged by section 51D, the participation of any such agency may involve providing information or another type of input that is different from the active engagement and participation of the child and child's family group in the process of developing an agreed case plan.

The convenor must allow the child or a parent of the child who attends a case planning meeting to have another person attend and participate to help and support the child or parent.

Subsection 3 clarifies that the obligation to involve the specified people applies whether or not the child's parents agree to any particular person's attendance or participation. This is because effective case planning needs to be child-focused and engage and build on the knowledge and strengths

within a child's system of support. However, subsection 4 states that the convenor is not required to allow a person who may be a child's parent, a member of the child's family group, another significant person or support person to attend or participate in the meeting if the convenor considers that this would be contrary to the purposes of the meeting or not in the child's best interests.

Preparing for the meeting

New section 51M requires a convenor to provide people invited to the case planning meeting with certain essential information. In particular, people should be informed of the chief executive's determination that the child is in need of protection and of the evidence supporting this determination including the chief executive's assessment of the risks to the child and the needs of the child. The convenor must also inform people of the proposed date, time and venue of the meeting, the purpose and functions of the meeting, the issues to be addressed and of the opportunity for attendees to identify and deal with particular issues.

Obtaining the views of persons not attending

New section 51N requires the chief executive to take reasonable steps to ascertain the views of certain persons and entities before a case planning meeting is held for the purpose of conveying these views, where relevant, to the meeting.

Recording the case plan developed at a meeting

New section 51O states that if a case plan is developed at a case planning meeting, the convenor must record the plan in the approved form and if the convenor is a private convenor, give it to the chief executive.

Development of plan at more than 1 meeting

New section 51P clarifies that a case plan may be developed at more than one meeting held under division 3.

Division 4 Other steps in the case planning process

Dealing with a case plan developed at a meeting

New section 51Q requires the chief executive to endorse a case plan developed at a case planning meeting within seven days unless section 51R applies.

Dealing with an inappropriate case plan

New section 51R deals with where a case plan is developed at a case planning meeting that contains something that is clearly impracticable or not in the child's best interests. In this circumstance, the case planning meeting may be reconvened or another case planning meeting held for the purpose of developing an amended case plan.

As a third option, the chief executive may amend the plan to the extent necessary to ensure the plan is practicable and in the child's best interests and then endorse the plan. In this case, the chief executive must make the amendment within seven days after the case planning meeting at which it was developed and if the meeting was convened by a private convenor, the chief executive must consult with that convenor before amending the plan. If the chief executive amends the plan, the chief executive must notify each person who attended the case planning meeting in writing of the amendment and the reasons for the amendment.

Preparing the plan if not developed at a meeting

New section 51S applies if a case plan is not developed at a case planning meeting or meetings held under division 3. It also applies where it has not been possible for the chief executive to convene or have a private convenor convene a family group meeting.

The chief executive must prepare a case plan in the approved form to meet the child's protection and care needs after obtaining and taking into account the views of specified persons and entities. This obligation also applies to where the Children's Court has ordered that a family group meeting be convened to develop a plan. If pursuant to a court order, a family group meeting is held but does not develop a case plan, the chief executive is therefore obliged to develop and file the case plan in court and that plan will be one to which the Court will have regard under amended section 59(1)(b).

Distributing and implementing the plan

New section 51T provides that after the chief executive has recorded and endorsed the case plan, the chief executive must give a copy of the plan to the child unless this would be inappropriate because of the child's age and ability to understand, and explain it to the child in an understandable way. The chief executive must also give copies of the plan to the child's parents and anyone else affected by the plan, for example, a child's relative carer or foster carer, or an elder within the child's cultural community who, because of the role of elder, is considered to have a degree of responsibility for the child and is therefore someone who is affected by the plan.

The chief executive must support the implementation of the case plan, for example, by providing a service to the child's family or by arranging for another entity to provide the service.

Division 5 Periodically reviewing the case plan

New division 5 deals with reviews of case plans. Reviews are the mechanism by which case planning for a child occurs in an ongoing and progressive way. The chief executive's accountability for conducting reviews is provided for through requirements to prepare a revised plan and report on each review.

Application of division 5.

New section 51U provides that Division 5 applies to a child for whom a case plan has been developed and where a child protection order is in force for the child or where that child is otherwise considered in need of protection and of ongoing help under the Act in terms of section 51C. This means that the obligation to review a case plan applies both where a child is on a child protection order as well as where no order has been obtained but there is a form of voluntary intervention occurring, such as the placement of the child with parental consent.

Plan must be reviewed

New section 51V provides that the chief executive must regularly review a child's case plan. The timing and frequency of reviews will depend on the child's age and circumstances, the nature of living arrangements in place for the child, whether the chief executive has become aware of any problems or potential problems with the case plan and, if a child protection

order is in force, the length of the order. In any case, however, a case plan must be reviewed at least once every 6 months. The chief executive must prepare a report on each review and a revised case plan.

Who may participate

New section 51W provides that the chief executive must give certain persons and any relevant service provider, a reasonable opportunity to participate in the review and preparation of a revised case plan. The persons may or may not be the same persons who participated in the initial development of the child's case plan and provision of the opportunity to participate is not dependent on the agreement of the child's parents. However, the chief executive does not have to provide an opportunity to participate to any parent, family member or other significant person or support person, if the chief executive considers that the particular person's participation would not be in the child's best interests or would be inappropriate for another reason.

A family group meeting may be convened to enable the specified persons and any relevant service provider to participate in the review of the case plan. If this occurs, or another type of meeting is held, the chief executive must allow any child or parent to have a support person present.

Report about the review

New section 51X states that the report about the review of the case plan, must include certain matters relating to the case plan goals, services provided to the child, the child's living and contact arrangements and who participated in the review process and how this participation was achieved.

The report must also address how the revised case plan gives priority to the child's need for long-term stable care. For this purpose, the chief executive must report on the progress of concurrent planning for a child where there is a short term custodial child protection order in place for that child, and the chief executive considers that there is a real risk that the child's long term stability needs will not be able to be achieved by the child's return to a parent's care within a time frame appropriate to the child's age and circumstances.

Concurrent planning involves planning for alternative long term arrangements for a child while continuing to work to achieve the child's return to a parent on a long term and stable basis. These alternative arrangements could involve, for example, long term guardianship of the child, the transition of an older child to independent living or the adoption

of a young child under the *Adoption of Children Act 1964* which provides processes for the giving and dispensing of parental consent to adoption, the selection of prospective adoptive parents and the making of adoption orders. Planning for alternative long term arrangements will reduce the length of time a child must spend in care where, and if, it is decided that a child's needs for long term stable care cannot be achieved by the child's return to the parent's care.

Distributing and implementing the revised case plan

New section 51Y applies after the chief executive has prepared the revised plan. The chief executive must give a copy of the plan to the child unless this would be inappropriate because of the child's age and ability to understand, and explain any changes to the case plan to the child in an understandable way. The chief executive must also give copies of the revised plan to the child's parents and anyone else affected by the plan or who the chief executive considers should receive a copy. The chief executive must support the implementation of the revised plan.

Amendment of s59 (Making of child protection order)

Clause 16 amends section 59 of the Act by omitting and replacing subsection (1)(b). The Childrens Court may only make a child protection order if, in addition to the other criteria in section 59, it is satisfied that there is a case plan for the child that has been developed or revised under Part 4A and is appropriate for meeting the child's assessed protection and care needs. A copy of the case plan must have been filed in court and if it is a revised case plan, a copy of the report about the last revision under section 51X must also have been filed.

Amendment of s68 (Court's other powers on adjournment of proceedings for child protection orders)

Clause 17 amends section 68 of the *Child Protection Act 1999*. It amends subsection 1(b) by adding 'or treatment' after 'medical examination' and enables the Childrens Court to make orders for a child's medical treatment during a period of adjournment on an application for a child protection order.

The clause also omits and replaces subsection 1(d) so that on an adjournment of a proceeding for a child protection order, the Childrens Court can make an order requiring the chief executive to convene a family group meeting to develop or revise a case plan and file the plan in court, or

order that a family group meeting be convened to consider, make recommendations about, or otherwise deal with, another matter relating to the child's wellbeing and protection and care needs.

Insertion of new s83A

Clause 18 inserts a new section 83A Giving information to carers and children in the *Child Protection Act 1999*. Subsection (1) provides that before placing a child in care under section 82, the chief executive must provide both information about the child to a proposed carer to enable the carer to make an informed decision about whether to agree to the placement and information to the child about the proposed carer and members of the proposed carer's household to enable the child to participate meaningfully in the decision about who will be the child's carer. If possible, the chief executive must give the child an opportunity to meet the proposed carer and members of the proposed carer's household.

Subsection (2) provides that once the child has been placed in care, the chief executive must give the carer information about the child that the carer reasonably needs in order to provide care for the child under the Act and to ensure the safety of the child, the carer and other members of the carer's household.

Subsection (3) imposes these information provision obligations on licensed care services and requires that for this purpose, the chief executive must give a licensee the information that the chief executive has in relation to the child which the licensee needs to provide to a carer in order to satisfy the obligations under this section.

Subsection (4) states that in deciding the information about a child that should be given to someone, the chief executive must have regard to the views and wishes of the child, the proposed length of time of placement and the child's right to privacy under the charter of rights.

Under subsection (5) the chief executive must, when giving information about a child to someone under this section, tell the child what information is being given and why it is being given.

Subsection (6) defines the word 'carer' for this section.

Amendment of s84 (Agreements to provide care for children)

Clause 19 inserts a note for section 84(1) stating that the provisions of an agreement between the chief executive and foster carer may be included in the child's case plan.

Omission of s88 (Chief executive to regularly review arrangements for a child's protection)

Clause 20 omits section 88 because the requirement to review case plans is now included in Division 5 of new part 3A.

Amendment of s95 (Report about person's criminal history etc)

Clause 21 amends section 95. It omits and replaces 'This section' with 'Subsection 2' and renumbers subsections (3) to (7) as subsections (4) to (8). It inserts a new subsection (3) that provides that if an authorised officer is investigating an allegation of harm or risk of harm to a child or assessing a child's need for protection under section 14, the chief executive may ask the Commissioner of Police for a written report about the criminal history and domestic violence history of a parent of the child, an adult member of a parent's household or an adult against whom the allegation of harm or risk of harm has been made . The chief executive may also ask the chief executive for Transport for a traffic history report on a parent of the child. This amendment enables criminal, domestic violence and traffic history checks to be obtained for the purpose of an investigation and assessment of a child's need for protection, that is at an earlier stage in the child protection process than is currently the case. The current provision only enables these checks to be done once a decision is made to apply for an order under the *Child Protection Act 1999*.

The term 'the request' in the renumbered section 95(4) is omitted and replaced by 'a request under subsection (2) or (3).' The renumbered provisions in the renumbered subsections (5) - (7) are amended to reflect the renumbering of the subsections.

Omission of s96 (Family meetings)

Clause 22 omits section 96 of the *Child Protection Act 1999.*

Omission of s158 (Coordination)

Clause 23 omits section 158 of the *Child Protection Act 1999.*

Insertion of new ch 5A

Clause 24 inserts a new chapter 5A –Service Delivery Co-ordination and Information Exchange.

Chapter 5A Service Delivery Co-ordination and Information Exchange

Part 1 Preliminary

Part 1 Preliminary deals with matters relating the purpose of the chapter, the principles for co-ordinating service delivery and exchanging information and definitions for this chapter.

Purpose

New section 159A states that the purpose of the chapter is to enable service providers to appropriately and effectively meet the protection and care needs of children by co-ordinating the delivery of services to children and families and exchanging relevant information, while protecting the confidentiality of that information.

Principles for co-ordinating service delivery and exchanging information

New section 159B states the principles for co-ordinating service delivery and exchanging information. These concern the state's responsibility for children in need of protection, the chief executive's role in responding to allegations of harm, recognition of service providers' contributions to the protection and care of children,

the importance of timeliness and effectiveness in coordinated service delivery and the paramountcy of children's best interests and welfare over people's rights to privacy. While it is expected that good practice will dictate that, wherever possible, personal information will be shared with the consent and knowledge of the person to whom the information relates, this will frequently not be possible or safe in situations where children are in need of protection. For this reason, the clause clearly states that children's needs are paramount over the privacy of any adult.

What is relevant information

New section 159C defines 'relevant information' for the purpose of the chapter. The information is categorised in terms of its use and different

categories of relevant information apply for the chief executive or an authorised officer on the one hand and for another service provider on the other hand.

For the information to be given to the chief executive or an authorised officer, relevant information is information that the holder of the information reasonably believes may:

i) help an authorised officer to investigate an allegation of harm or risk of harm or assess a child's need for protection or take other action under section 14 of the Act; or

ii) help an authorised officer to investigate or assess before the birth of a child, the likelihood that the child will need protection after birth or help the chief executive in offering help and support to a pregnant woman under section 21A; or

iii) help the chief executive to develop, or assess the effectiveness of, a child's case plan; or

iv) help the chief executive to assess or respond to the health, education or care needs of a child in need of protection; or

v) otherwise help the chief executive to make plans or decisions relating to, or provide services to, a child in need of protection or the child's family.

For another service provider, 'relevant information' is information that the holder of the information reasonably believes may help the service provider to –

i) decide whether information about suspected harm or risk of harm to a child should be given to the chief executive; or

ii) assess or respond to the health, educational or care needs of a child in need of protection; or

iii) otherwise make plans or decisions relating to, or provide services to, a child in need of protection or the child's family.

Subsection (2) states that relevant information may be information about a child in need of protection, the child's family or someone else. Subsection (3) provides that it may comprise facts or opinion. For this purpose, an 'opinion' would be a professional and informed opinion. Subsection (4) states that 'relevant information' does not include information about a person's criminal history to the extent to which it relates to a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived under that Act.

Other definitions for ch 5A

New section 159D defines key concepts for chapter 5A. The definition of the term 'service provider' includes 'prescribed entity' and extends to the chief executive of another entity that provides a service to children or families and to any person engaged by a prescribed or other entity that provides a service to children and families.

Reference to family services

New section 159E states that a reference in this part to providing a service to families includes proving a service to pregnant women.

Part 2 Service delivery co-ordination

Service providers' responsibilities

New section 159F makes it the responsibility of service providers to take reasonable steps to coordinate decision-making and the delivery of services to children and families, in order to appropriately and effectively meet the protection and care needs of children.

Chief executives' responsibilities

New section 159G states the chief executive's responsibilities to:

- ensure ways exist to co-ordinate the roles and responsibilities of services providers in promoting the protection of children and child protection services and;
- establish ways to co-ordinate investigating and assessing particular cases of harm to children and taking action to secure the protection of children. In this latter role, the chief executive must establish and participate in the SCAN system under new part 3 of the Act.

Chief executive may ask particular prescribed entities to provide a service

New section 159H applies to certain prescribed entities. Subsection (2)(a) provides that the chief executive may ask a prescribed entity to provide a service to a child in need of protection, or a member of the child's family to help meet the child's protection and care needs and promote the child's

wellbeing or to an individual before the birth of a child to help meet the child's protection and care needs and promote the child's wellbeing after the child is born.

Subsection (3) provides that the prescribed entity must take reasonable steps to comply with the request so far as the request is consistent with the entity's functions and does not unreasonably affect the discharge of the entity's functions in relation to other persons or matters.

Subsection (4) states that the chief executive must give the prescribed entity the information it needs to comply with the request.

Part 3 The SCAN system

New part 3 provides the legislative basis for the SCAN system, which has been operating on an administrative basis throughout Queensland since the 1980s. The SCAN system is the forum through which key government agencies co-ordinate assessment and responses to children's protection needs.

Establishment of system

New section 159I states that the chief executive must establish a SCAN system under the new part. The note clarifies that SCAN stands for Suspected Child Abuse and Neglect.

Purpose

New section 159J states that the purpose of the SCAN system is to enable a co-ordinated response to the protection needs of children. The purpose is to be achieved by facilitating - the sharing of relevant information between members of the system; the planning and coordinating of actions to assess and respond to children's protection needs; and a holistic and culturally responsive assessment of children's protection needs.

Members

New section 159K provides for the membership of the SCAN system. The membership consists of 'core members' defined as the Department of Child Safety, Queensland Health, Education Queensland, the Queensland Police Service and in relation to the protection needs of an Aboriginal and

Torres Strait Islander child, the recognised Aboriginal and Torres Strait Islander agency for the child. The membership also consists of 'invited members', which are other service providers that are invited from time to time, by core members, to contribute to the operation of the system.

Responsibilities of the core members

New section 159L states that the responsibilities of the core members are to contribute to the operation of the SCAN system through appropriate representation, to use their best endeavours to agree on recommendations to give to the chief executive about assessing and responding to the protection needs of particular children and, for that purpose, to share relevant information about children, their families and other relevant persons. Other responsibilities are to identify relevant resources, take action to implement and monitor and review the implementation of the recommendations and invite and facilitate contributions from other service providers with knowledge, experience or resources that would help achieve the purpose of the SCAN system.

Part 4 Information exchange

New part 4 provides for the exchange of information relevant to the protection and care needs of children who have been harmed or are at risk of harm. The purpose of the part is to enable and protect the exchange of this information between certain agencies that provide services to children and their families.

Particular prescribed entities giving and receiving relevant information

New section 159M applies to specified prescribed entities and provides that these entities may give relevant information to another service provider. A service provider may also give relevant information to this set of prescribed entities.

Information requirement made by chief executive or authorised officer

New section 159N provides that a prescribed entity must comply with a request from the chief executive or an authorised officer for relevant

information that is in the entity's possession or control. Information is not taken to be in the prescribed entity's control merely because of an agreement between the prescribed entity and another entity and which requires that other entity to give the information to the prescribed entity. Subsection (3) establishes circumstances when a prescribed entity does not have to comply with a request from the chief executive or an authorised officer for particular relevant information and subsection (4) states that a person does not commit an offence only by failing to comply with a request.

Part 5 Release of health information or information relevant to coronial investigation

Release of information by health service employees

New section 159O re-enacts old section 194 which is omitted by this bill. New subsection (3) clarifies that this section does not limit a power or obligation to give relevant information under this chapter. For example, this section does not affect the obligation of the chief executive of Queensland Health to give relevant information if requested by the chief executive Department of Child Safety or an authorised officer under new section 159N.

Release of information for an investigation under the Coroners Act

New section 159P applies if a coroner is investigating the death of a child. It allows the chief executive to give certain information to the coroner or a police officer helping the coroner to investigate a death. The coroner or police officer to whom the information is given, and anyone else to whom the information is subsequently given, must not use or disclose the information other than for a purpose of the investigation or as otherwise required or permitted under the *Child Protection Act 1999* or another Act. If the information includes information about the identity of the person who notified the chief executive about suspected harm or risk of harm to the child, this information cannot be disclosed unless the Coroner is satisfied that disclosure is of critical importance for the investigation. This reflects the requirements on a court set out in section 186, which deals with the confidentiality of notifier information. Subsection (4) states that the

phrase, "child in care", has the meaning mentioned in *Coroners Act 2003*, section 9(1)(d) or (e) and 'notifier' is referenced in section 186(1).

Part 6 Protection from liability and interaction with other laws

Protection from liability for giving information

New section 159Q applies if a person, acting honestly, gives information under this part. Subsections (2) and (3) provide that a person who gives information is not liable civilly, criminally, or under an administrative process, and cannot be held to have breached any code of professional ethics, or departed from accepted standards of professional conduct.

Without limiting subsections (2) and (3), subsection (4) confers protection in relation to civil proceedings and contraventions of any Act, oath, rule of law or practice.

Interaction with other laws

New section 159R clarifies that this chapter does not limit a power or obligation to provide information under another Act or law. This chapter applies despite any contrary law relating to the provision of information.

Amendment of s172 (Issue of warrant)

Clause 25 amends section 172(1) of the *Child Protection Act 1999* to enable a magistrate to issue a warrant for the apprehension of a child if the magistrate is satisfied that a child has been lawfully removed but kept beyond the allowed period. This amendment correlates to the offence provisions in sections 162, 163 and 165 of the Act.

Amendment of s182 (Evidentiary provisions)

Clause 26 amends section 182 by omitting and replacing 'family meeting' with 'family group meeting'.

Replacement of s187 (Confidentiality of information obtained by persons involved in administration of Act)

Clause 27 replaces section 187 to reflect the multi-agency provisions relating to the SCAN system and information exchange.

It extends the application of the current section 187 to include a person attending a case planning meeting or participating in another way in the development or revision of a child's case plan, a member of the SCAN system, or a representative of a member, and a prescribed entity or a person engaged by a prescribed entity performing functions under or in relation to chapter 5A, parts 3 and 4.

The new section establishes a further exception to the confidentiality requirements under the Act. Subsection (5) states that a police officer may use or disclose the information or give access to the document to someone else under new section 188A. Subsection (6) clarifies that for the purpose of authorised disclosure, a person who participates in the development, implementation and revision of a child's case plan is performing a function under the Act.

Amendment of s188 (Confidentiality of information given by persons involved in administration of Act to other persons)

Clause 28 amends section 188 to reflect the information sharing provisions.

Insertion of new s188A

Clause 29 inserts a new section 188A Police use of confidential information

The new section creates an exception to section 187 in relation to use of information by a police officer. It allows a police officer to use information to which section 187 applies, to the extent necessary to perform police functions.

Before using the information for an investigation or prosecution of an offence, however, a police officer must consult with the chief executive or if an officer acquired the information from a prescribed entity or a SCAN system member under chapter 5A, that prescribed entity or SCAN system member. The purpose of the consultation is to consider whether the proposed use of the information would be in the best interests of any child who would be affected by the use.

The obligation to consult does not apply if the information concerns an offence committed against a child or to the extent that an officer needs to

use the information immediately to perform the officer's functions as a police officer. For the obligation to consult with the chief executive in relation to an alleged offence against a child who is suspected to be in need of protection refer to clause 32, new section 248B.

Subsection (6) states that this section applies subject to section 186 (Confidentiality of notifiers of harm) and subsection (7) defines the terms 'information' and 'use', which are used in the provision.

Omission of ch 6, pt 6, div 4

Clause 30 omits chapter 6, part 6, division 4. This division contained section 94 (Release of information by health service employees) which has been re-enacted by clause 24 as new section 159O.

Amendment of s197 (Protection from liability)

Clause 31 extends the definition of 'official' in section 197(3) to a member of the SCAN system or a representative of a member.

Amendment of s214 (Court may transfer order)

Clause 32 amends section 214 to require an appropriate case plan to have been prepared under part 4A before a court can order that a child protection order is transferred to another state. The reference to 'family meeting' in section 214(c) is changed to 'family group meeting.'

Insertion of new s248B

Clause 33 inserts a new section 248B Consultation about investigations and prosecutions. The new section applies to an alleged offence committed against a child who a police officer knows or suspects is a child in need of protection. It requires a police officer, when investigating the alleged offence, to consult with the chief executive in order to plan the most appropriate way of conducting the investigation. Before starting any proceeding for the offence, the new section requires a police officer to consult with the chief executive in order to consider whether the proceeding would be in the best interests of the child.

Amendment of s249 (Regulation – making powers)

Clause 34 changes 'family meeting' to 'family group meeting' in section 249(2)(d) and inserts a new subsection (e) to enable a regulation to be made for or about the SCAN system.

Insertion of new ch9, pt4

Clause 35 inserts in chapter 9 a new part 4 that deals with transitional matters relating to the development of case plans and the holding of family meetings.

Transitional - case planning

New section 262 provides that if on the commencement of chapter 2, part 3A a child is a child mentioned in section 51C who has had a case plan developed, the plan will be taken to have been developed under the new part 3A of chapter 2. Similarly, a family meeting held before the commencement day will be taken to be a family group meeting.

Amendment of sch 3 (Dictionary)

Clause 36 references and updates terms used in the new provisions.

Part 5 Amendment of Commission for Children and Young People and Child Guardian Act 2000

Act amended in pt 5

Clause 37 states that this part amends the *Commission for Children and Young People and Child Guardian Act 2000.*

Amendment of s7A (Scope of Act relating to children in the child safety system)

Clause 38 amends the example in section 7A relation to the Commissioner for Children and Young People and Child Guardian's (the commissioner) power to review the handling of cases, even when a child is no longer in the child safety system. The amendment specifically refers to the Department of Child Safety and licensed care services, rather than "a particular service provider". This reflects the difference between the commissioner's ability

to monitor the individual handling of cases by the Department of Child Safety and by licensed care services, and the commissioner's inability to do so in relation to the extended range of service providers listed in section 31B.

Amendment of s15 (Commissioner's functions)

Clause 39 removes the detail of the Commissioner's monitoring functions from sections 15(1)(c) being the monitoring of the handling of cases and monitoring systems, policies and practices, and section 15(1)(f) being the monitoring of compliance with section 83 of the *Child Protection Act 1999*.

A new section 15AA (see clause 39 following) contains the monitoring functions of the commissioner.

Section 15(1)(c) has been amended to cross-refer to the section 15AA monitoring powers.

Section 15 (2) is amended to outline that the "child guardian functions" are: (a) the commissioner's monitoring functions in s15AA; (b) the functions to investigate matters relating to services provided to children in the child safety system and to seek to resolve disputes about reviewable decisions; and (c) other functions of the commissioner so far as they relate to children within the child safety system.

Insertion of new s15AA

Clause 40 creates a new section 15AA, which contains the monitoring functions of the commissioner.

The new subsection (1) sets out three areas of monitoring responsibility:

(a) to monitor, audit and review the systems, policies and practices that affect children in the child safety system, of the service providers listed in section 31B (being the Department of Child Safety, licensed care services and the departments mainly responsible for Aboriginal and Torres Strait Islander policy, administration of justice, adult corrective services, community services, disability services, education, housing services, public health, the Director of Public Prosecutions, Legal Aid Queensland, the Public Trust Office and the police service);

(b) to monitor, audit and review the individual handling of cases of children in the child safety system by the Department of Child Safety and licensees under the *Child Protection Act 1999*;

(c) to monitor compliance with the chief executive officer (child safety) with section 83 of the *Child Protection Act 1999* (which are the provisions for placing Aboriginal and Torres Strait Islander children in care).

The new sub-sections (2)-(4) clarify the practical distinction between the higher level systemic monitoring that the commissioner is empowered to undertake in relation to the wider range of government agencies listed in section 31B, and the additional ability of the commissioner to look at the handling of individual cases and decisions made by the Department of Child Safety and licensed care services only.

The higher level systemic monitoring of all service providers:

The higher level systemic monitoring of all service providers excludes the monitoring, auditing or reviewing of individual decisions made about individual cases. Section 15AA (4) declares that the monitoring functions under subsection (1)(a) do not include reviewing a decision taken in an individual case.

According to section 15AA (3), it does include the monitoring of systems polices and practices relevant to case handling. For example, a government department may have a policy about how certain cases involving children in the child safety system should be handled, having regard to the specific needs of these children, such as keeping them informed of matters affecting them. This is a policy that the commissioner could review to determine whether the policy is sufficient or whether the department is actually following the policy in practice.

Section 15AA (2) recognises that the commissioner, in undertaking that review (or any other monitoring) may need to request information or documents from the service provider. In the example outlined above, the commissioner may seek copies of the policies and supporting documents. The commissioner may also ask for information about individual cases in order to review whether the department is actually complying with its policy.

In this regard, the provisions of sections 18(2) and 31DA and DB are relevant. When requesting information and the way in which that information is to be provided, the commissioner must have regard to principles set out in section 18(2), particularly the service provider's capacity to comply with the request.

In responding to the request for information, section 31DA provides that service providers (excluding the Department of Child Safety), are obliged to provide the information, but not necessarily in the way sought by the

commissioner. To take the example above, the commissioner may request access to case files to ascertain whether the department is complying with its policy. The new subsection (3) of section 31DA provides that the service provider is not required to give the information or documents in the stated way outlined in the commissioner's notice. Instead it allows the department to provide the information sought in some other way. For instance the department could undertake its own review of the files and provide the commissioner with a report about this containing the relevant information sought.

Subsection (5) of section 15AA also specifically provides that it is not part of the higher level systemic monitoring to review the systems policies and practices that directly relate to:

(a) decisions of the Director Public Prosecutions or the police service about whether or not to institute, or continue with, a proceeding for an offence; or

(b) decisions of the police service about whether or not to apply for a protection order under the *Domestic and Family Violence Protection Ac 1989*; and

(c) the content of legal advice given by Legal Aid lawyers.

By way of example, an agency listed above may have a range of policies about prosecution or legal advice. Policies or parts of those policies may guide officers about prosecution decisions to be made, or the content of legal advice to be given, in particular cases. These policies or parts of policies will be exempted. Other policies or parts of policies may refer to how a child should be treated when they are a witness in the prosecution, or the manner in which legal advice should be given to a child, or referral options. These policies or parts of policies will not be exempted.

Note also section 31DB which provides for other exemptions in relation to the provision of information and documents to the commissioner.

<u>Monitoring the handling of cases by the child safety department and licensed care services</u>

In addition to being able to monitor, audit and review the systems, policies and practices of the Department of Child Safety and licensed care services, the commissioner can also monitor, audit and review the handling of individual cases of children in the child safety system, by the Department of Child Safety and licensed care services under the *Child Protection Act 1999*.

For example, the commissioner may wish to audit a case or a number of cases to see whether the Department of Child Safety is undertaking appropriate case planning, or appropriately responding to notifications that may be made in respect of a child or class of children.

The commissioner may review individual decisions that have been made or should have been made. The new section 31D provides that the Department of Child Safety must provide the commissioner access to individual files if requested, to enable the commissioner to undertake this monitoring function. The only limitation to this is due regard to the provisions of section 18(2).

Amendment of s18 (Way in which commissioner is to perform commissioner's functions)

Clause 41 inserts a new subsection (e) into section 18(2) which provides for an additional requirement regarding the way in which the commissioner must perform the monitoring functions.

The commissioner must now have sufficient regard to the sensitive nature of personal information and to access it only to the extent necessary to perform the functions. The types of relevant personal information may include personal health information, or information that a child may have provided to a school guidance officer in confidence.

Amendment of s31B (Service providers to which this part applies)

Clause 42 extends the list of service providers whose systems polices and practices can be monitored by the commissioner, in addition to the department of child safety and licensed care services. They are the departments mainly responsible for:

- Aboriginal and Torres Strait Islander policy;
- the administration of justice;
- adult corrective services;
- community services;
- disability services;
- education;
- housing services;
- public health.

The list also includes the Director of Public Prosecutions, Legal Aid Queensland, the Public Trust Office and the police service.

These are the agencies who provide services that may affect children in the child safety system.

Amendment of s31C (Power to require information or documents)

Clause 43 removes subsections (4)-(6) of section 31C, which distinguish between the way the Department of Child Safety must respond to a request for the commission to obtain information in a stated way, and the way in which a licensee may respond.

Sections 31D and 31DA will now set out the way the Department of Child Safety, the licensees and the other relevant service providers (i.e. the government departments added in the amendments to section 31B) will provide information to the commissioner.

Subsection 31C (4) clarifies the term "control" referred to in section 31C(1)(b). The relevant government agencies may hold some information and documents provided by non-government organisations through requirement under a service agreement, licensing requirement or some other arrangement. These documents may be relevant to the systems, policies and practices of the government agency itself and as such, may be requested by the commissioner as part of these monitoring functions.

However, the commissioner is not empowered to request the government agency to obtain information or documents from a non-government organisation for the purpose of the auditing and monitoring functions (i.e. to attempt to audit and monitor non-government agencies in a defacto way through the powers of a government agency) unless the relevant agreement, licensing scheme or some other arrangement between the government agency and the non-government agency provides for this.

Amendment of s31D (Access to information or documents of the child safety department)

Clause 44 amends section 31D to include a requirement in section 31D(2), previously set out in section 31(C), that a notice requiring access to information or documents from the Department of Child Safety, must state the way in which the information or documents must be given.

Section 31D(4) states that the Department of Child Safety must comply with the notice, meaning that they must provide the information or documents sought in the way required by the commissioner.

Insertion of new ss31DA and DB

Clause 45 inserts two new sections, 31 DA and DB, in relation to the commissioner's access to information and documents held by service providers, apart from the Department of Child Safety. The sections incorporate the provisions relevant to licensed care services, previously contained in section 31C.

Access to documents of a relevant service provider other than the child safety department

The new subsections 31DA (1) and (2) state that where the commissioner gives a notice seeking access to information or documents from a service provider (apart from the Department of Child Safety), the notice must state how the information is to be provided, for example by sending the information electronically, by receiving copies of documents or by allowing the commissioner direct access to files.

The new subsections 31DA (3) and (6) states that the service provider is required to comply with the notice and provide the information sought, but not necessarily in the way sought by the commissioner.

In particular, section 31DA (4) states that if the notice states that a document is required, the service provider may comply with that requirement by giving the information contained in the document (rather than the document itself).

By way of example, the commissioner may request information about whether a department is complying with one of its policies that affects children in the child safety system. The commissioner may state in the notice that the way they wish to do so is to directly access a number of documents on case files. In certain circumstances departments may agree to this, perhaps after taking any necessary actions to protect exempt information contained within the files.

In other circumstances however, a department will consider that this is not appropriate and the department is entitled to refuse to accommodate the commissioner‘s request for direct access to the files. Instead the department can provide the information sought in some other way. The department could undertake its own review of the files and provide the commissioner with a report about this containing the relevant information

sought. Whether this meets the commissioner's request for information may be a matter for further negotiation, but the commissioner cannot force direct access to the case files.

Subsection (5) states that for service providers (other than the Department of Child Safety), a number of specific exemptions apply, as detailed in section 31DB.

Subsection (6) states that apart from the specific provisions of subsections (3)-(5), the service provider must comply with the notice.

Subsection (7) states that the notice requesting information must contain details about the fact that service providers are not required to give information in the stated way, as per subsections (3) and (4), and that there are specific exemptions that apply, as per subsection (5).

Exempt information and documents

New section 31DB details the information that service providers (other than the Department of Child Safety) are not required to give to the commissioner. These exemptions are listed below.

The new subsection (3) exempts information that could reasonably be expected to:

(a) prejudice the investigation of a contravention or possible contravention of the law;

(b) enable the existence or identity of confidential source to be ascertained;

(c) endanger a person's life or physical safety; or

(d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.

However the new subsection (4) provides that the above exemptions do not apply if giving the information or document would, on balance, be in the public interest.

The new subsections (5) and (6) exempt information or a document that relates to an internal review (including an investigation) that is not completed (including periods for review and appeal) where the giving of information is likely to prejudice or interfere with the review.

The new subsection (7) exempts any information or documents mentioned in section 75 of the *Legal Aid Queensland Act 1997*- Application of legal professional privilege to Legal Aid and Legal Aid lawyers.

Insertion of new ss31EA-31EC

Clause 46 inserts three new sections 31EA-EC in relation to protection from liability for giving information to the commissioner and the restriction of the use of this information by the commissioner.

Protection from liability for giving information

New section 31EA subsections (1) and (2) state that where a service provider is required to give information to the commissioner, for the purpose of the commissioner performing the monitoring functions, they may give that information despite any other law to the contrary.

The new subsections 31EA (3) and (4) state that where a person provides that information honestly and in good faith, they will not:

- be liable civilly, criminally or under an administrative process for giving the information; or
- be held to have breached any code of professional etiquette or ethics or have departed from acceptable standards of professional conduct.

The new subsection (5) provides (without limiting subsections (3) and (4)) that:

- for defamation actions, the person has a defence of absolute privilege for publishing the information;
- where the person would, by any other Act, oath or rule of law or practice be required to maintain confidentiality, they are to be held not to have contravened that Act, oath or rule of law or practice; and
- are not liable to disciplinary action for the giving of that information.

Restricted use of confidential information accessed under this part

New section 31EB subsections (1)-(3) state that where the commissioner received confidential information in the course of the commissioner's

monitoring functions, the commissioner may only use or disclose the information as follows:

(a) to perform the commissioner's monitoring functions (this does not include providing confidential information to a community visitor, or the Community Visitor program);

(b) to refer a matter to the chief executive (child safety), the police commissioner or the Crime and Misconduct Commission under section 20 of this Act;

(c) to undertake an investigation under part 3 of this Act;

(d) if authorised under another Act or required by law; or

(e) with the written consent of the person to whom the information relates or, if the person is a child and is unable to consent, with the written consent of their parent or guardian.

Confidential information is defined in Schedule 4 of the Act to mean information (including documents) about a person's affairs. It does not include information has already been publicly disclosed, unless further disclosure is prohibited by law. The definition also excludes statistical or other information that could not reasonably be expected to identify the person to whom the information relates.

Commissioner to advise of on-disclosure

New section 31EC provides that if a service provider has given confidential information for the purpose of the commissioner's monitoring functions and the commissioner decides to on-disclose it, then the commissioner must advise the service provider of the intention to do so. This must be done before the commissioner on-discloses, unless the commissioner considers that it would not be in the child's best interests to do so. For example, as part of the monitoring function, a department may disclose information that the commissioner intends to refer to the department of child safety and the police. The commissioner must advise the department of this intention, unless he or she considers that to do so might involve a delay or might otherwise place the child at risk.

Amendment of s31G (Review of service)

Clause 47 amends section 31G to recognise the fact that the commissioner will be able to monitor the Department of Child Safety and licensed care services handling of individual cases as well as their systems, policies and practices. Accordingly this section allows the commissioner to request that

the department of child safety and licensed care services undertake reviews in relation to these matters.

The amendments to this section also clarify that the commissioner is only empowered to monitor the systems, policies and practices of other relevant service providers. Accordingly the commissioner can request those service providers to undertake a review only in relation to their systems, policies and practices not into the handling of individual cases.

Amendment of s31H (Recommendations)

Clause 48 inserts two new subsections into section 31H in relation to the recommendations that the commissioner may make.

The new subsection (2) states that before making recommendations, the commissioner must give the service provider a written copy of the proposed recommendations and a reasonable opportunity to comment on them.

The new subsection (3) states that the commissioner must give a copy of the recommendations to the Minister responsible for the service provider.

The new subsection (4) clarifies that the Minister responsible for a relevant service provider mentioned in section 31 B (b) (namely licensed care services) is the Minister responsible for the Department of Child Safety.

Amendment of s31I (Report to Minister about non-compliance)

Clause 49 replaces section 31I(2), so that reports by the commissioner about non-compliance will go to the Minister responsible for the relevant service provider, as well as the Minister responsible for the Department of Child Safety. Where the Minister for the service provider is not the Minister responsible for the Department of Child Safety, then the commissioner must also give the Minister for the Department of Child Safety a copy of the report.

Amendment of s46 (Identity of notifier under Child Protection Act 1999)

Clause 50 amends section 46 which provides a process for the commissioner to seek the identity of a notifier whose identity is otherwise protected by provisions of the *Child Protection Act 1999.* The amendment extends this process to notifiers mentioned in the *Health Act 1937*, whose identity is known the chief executive (child safety).

Amendment of s89ZA (Annual report)

Clause 51 inserts a new subsection (3) into section 89ZA so that when the Minister receives the report about the performance of the functions of the Child Death Case Review Committee, the Minister must table the report in the Legislative Assembly within 14 sitting days after receiving the report.

Amendment of s145 (Evidentiary provisions)

Clause 52 amends section 145 to include references to the assistant commissioner together with the existing references to the commissioner. The *Child Safety Legislation Amendment Act 2004* established the statutory office of the assistant commissioner. This provision makes a consequential amendment to include a reference to the assistant commissioner as well as the commissioner so that in relation to the evidentiary provisions the Assistance Commissioner's signature is evidence of that fact.

Amendment of s152 (Confidentiality of information about criminal history)

Clause 53 amends section 152 to include references to the assistant commissioner together with the existing reference to the commissioner. The *Child Safety Legislation Amendment Act 2004* established the statutory office of the assistant commissioner. This provision makes a consequential amendment to include a reference to the assistant commissioner as well as the commissioner to confirm that the assistant commissioner is also bound by the confidentiality provisions concerning information about criminal histories.

Amendment of s153 (Confidentiality of other information)

Clause 54 amends section 153 to include a reference to the assistant commissioner together with the existing reference to the commissioner. The *Child Safety Legislation Amendment Act 2004* established the statutory office of the assistant commissioner. This provision makes a consequential amendment to include a reference to the assistant commissioner as well as the commissioner to confirm that the assistant commissioner is also bound by the confidentiality provisions in relation to other information obtained under the Act .

Amendment of s161 (Protection from liability)

Clause 55 amends section 161 to include a reference to the assistant commissioner together with the existing reference to the commissioner. The *Child Safety Legislation Amendment Act 2004* established the statutory office of the assistant commissioner. This provision makes a consequential amendment to include a reference to the assistant commissioner as well as the commissioner to confirm that the assistant commissioner is protected from liability in performing the functions of the assistant commissioner under the Act.

Amendment of sch4 (Dictionary)

Clause 56 amends two definitions in sch 4:

"government entity" has been amended to specifically cover members of the police service who may not otherwise have been covered by section 21 of the *Public Service Act 1996.*

"monitoring functions" has been amended to refer to those functions now listed in s15AA, rather than the previous 15(3).

Part 6 Amendment of Coroners Act 2003

Act amended in pt 6

Clause 57 states that this part amends the *Coroners Act 2003*.

Amendment of s53 (Access to investigation documents for research purposes)

Clause 58 amends section 53 to restrict the Coroner from giving access to an investigation document obtained under new section 159P of the *Child Protection Act 1999* for research purposes. This amendment is to ensure that documents provided under new section 159P is treated in the same way as documents obtained under section 17 of the *Coroners Act 2003*, which sets out how confidential documents under other Acts should be treated at an inquest.

Amendment of s54 (Access to investigation documents for other purposes)

Clause 59 amends section 54(7) to provide that confidential information obtained under new section 159P of the *Child Protection Act 1999* may only be disclosed in accordance with section 159P(3) of that Act.

Amendment of sch 2 (Dictionary)

Clause 60 amends the definition of "confidential document" in schedule 2 to include a document obtained under new section 159P of the *Child Protection Act 1999*.

Part 7 Amendment of Family Services Act 1987

Act amended in pt 7

Clause 61 states that this part amends the *Family Services Act 1987*.

Insertion of new s30A

Clause 62 inserts new section 30A into the *Family Services Act 1987* to enable the Minister to delegate the Minister's powers to approve or refuse applications for grants, to approve applications for grants subject to conditions and to approve decisions to make cease payments of a grant.

Part 8 Amendment of Health Act 1937

Act amended in pt 8

Clause 63 states that this part amends the *Health Act 1937*.

Amendment of s5 (Interpretation)

Clause 64 omits the definition of parent from section 5 (Interpretation) of the Act. New section 76KA inserts a new definition of parent that is consistent with the definition of parent in section 11 of the *Child Protection Act 1999*.

Clause 64 also amends section 5 to include the following terms: chief executive (child safety), child, harm, professional, parent and registered nurse. These terms are defined under new section 76K for the purposes of part 3, division 6.

Replacement of pt 3, div 6, hdg (Maltreatment of children)

Clause 65 amends the heading for part 3, division 6.

Replacement of s76K (Notification of maltreatment)

Clause 66 replaces the existing section 76K, which imposes a statutory obligation on doctors to report cases, or suspected cases, of child abuse and neglect. Section 76K has been replaced with new sections 76K to 76KH.

As stated above, the following terms have been defined for the purposes of part 3, division 6: 'chief executive (child safety)', 'child', 'harm', 'professional' and 'registered nurse' by new section 76K and parent by new section 76KA.

New section 76KB clarifies that sections 22 and 186 of the *Child Protection Act 1999* will apply to a registered nurse or doctor who gives a notice, or provides other information, to the chief executive (child safety) under part 3, division 6. Section 22 will confer immunity from liability if a nurse or doctor honestly gives information to the chief executive (child safety) under division 6. Section 186 will prohibit the identity of nurse or doctor, who provides the chief executive (child safety) with information under division 6 from being disclosed, other than in a limited number of circumstances. For example, the section prohibits the questioning of a person in a court or tribunal proceeding about the identity of the notifier unless a court or tribunal grants leave to do so. The court or tribunal must have regard to the possible effects of the disclosure and the public interest in maintaining confidentiality of notifiers.

New section 76KB also clarifies that if an order is made under the *Child Protection Act 1999* and an order is made under section 76L of the *Health Act,* the order under the *Child Protection Act 1999* prevails to the extent of any inconsistency.

New section 76KC imposes a statutory duty on registered nurses and doctors to provide the chief executive (child safety) with specified information, if the nurse or doctor, during the practice of his or her profession, becomes aware or reasonably suspects that a child has been, is being, or is likely to be, harmed. In order to form a reasonable suspicion about the harm or likely harm to a child, subsection 76KC(4) clarifies that a

nurse or doctor may need to seek further information. Accordingly, new section 76KG will enable a registered nurse or doctor to share information with, and seek the advise of, colleagues to assist the nurse or doctor to decide if there are reasonable grounds for forming a suspicion that a child has been harmed or is at risk of harm.

It should be noted, however, that the obligation under section 76KC will not apply if the nurse or doctor is aware that a mandatory notification has already been made under section 76KC about the harm or likely harm of a child. For example, if a registered nurse in a children's ward of a hospital is aware that the admitting doctor has made a notification to the chief executive (child safety).

New section 67KD specifies that if a mandatory notice is given orally under section 76KC, a written notice must also be given to the chief executive (child safety) within 7 days of the original notification being made by the registered nurse or doctor.

New section 76KE specifies that it is an offence for a registered nurse or doctor to fail to comply with the requirements of sections 76KC and 76KD.

New section 76KF enables the chief executive (child safety) to require a registered nurse or doctor, who makes a notification under section 76KC or 76KD, to provide further information to properly assess the harm or likely harm to a child. A nurse or doctor must comply with a request for further information, unless he or she has a reasonable excuse. However, a nurse or doctor cannot be prosecuted for a breach of section 76KF, unless the chief executive (child safety), when making the request, warned the nurse or doctor that is an offence to fail to comply with a request for further information.

New section 76KG specifies that a person is not liable, civilly, criminally or under an administrative process for the giving of the information to a registered nurse or doctor about a child who has been harmed or who is at risk of harm, provided they have acted honestly. This provision will, for example, confer immunity on:

- a grandparent of a child, if the grandparent has taken the child to a doctor and provides information to the doctor which results in the doctor making a mandatory notification;
- a member of multi-disciplinary health team gives informs a registered nurse or doctor about their suspicions that a child may have been harmed or at risk of harm;

- a registered nurse or doctor seeks the advice of a more experienced member of staff about their concerns in relation to a child being harmed or at risk of harm, to assess what action may need to be taken.

New section 76KH protects the identity of a person who gives information to a registered nurse or doctor about a child who the person is aware or suspects has been harmed or is at risk of harm. This section has been modelled on section 186 of the *Child Protection Act 1999*.

Amendment of s76L (Temporary custody of children)

Clause 67 makes consequential amendments to section 76L, which enables a child to be temporarily held at a hospital for up to 96 hours, for the child's short-term protection. This clause also introduces a new requirement to enhance information sharing with the Department of Child Safety about children in need of protection. If a prescribed medical officer detains a child at hospital under section 76L, the officer will be required to notify the chief executive (child safety) about the order.

Omission of s76M (Meaning of child for division)

Clause 68 omits section 76M, which defines 'child' for the purposes of division 6. New section 76K inserts a definition of child, to mean an individual who is under 18, that is consistent with the definition of child in section 8 of the *Child Protection Act 1999*.

Part 9 Amendment of *Juvenile Justice Act 1992*

Act amended in pt 9

Clause 69 states that this part amends the *Juvenile Justice Act 1992*.

Amendment of s257 (Interpretation)

Clause 70 amends section 257 to clarify that the definition of "parent" includes the chief executive of the Department of Child Safety.

Amendment of s259 (Show cause hearing)

Clause 71 amends section 259(12) to clarify that the reference to "chief executive" in that subsection is a reference to the chief executive of the Department of Child Safety.

Amendment of sch 4 (Dictionary)

Clause 72 amends Schedule 4 to add a definition of "chief executive (child safety)".