

Commission for Children and Young People and Child Guardian Amendment Bill 2004

EXPLANATORY NOTES

GENERAL OUTLINE

The Bill amends the *Commission for Children and Young People and Child Guardian Amendment Act 2004* (Act) by introducing a number of changes to the employment screening provisions of the Act more commonly known as the *Working with Children Check* or blue card scheme.

Objectives of the Bill

The main objective of the Bill is to implement recommendations resulting from the review of Part 6 of the *Commission for Children and Young People Act 2000* (as it was then known) required by section 164. These amendments:

- expand the categories of people who must hold a blue card to include:
 - school crossing supervisors (all);
 - supervisors overseeing cadets in the Emergency Services Cadet Program (all);
 - home stay providers;
 - staff of hostels for rural children;
 - providers of recreational activities such as sporting camps and programs; and
 - religious representatives employed before 1 May 2001 (those employed from that date are already screened);
- implement the four recommendations made by the Ministerial Taskforce on Sex Abuse of Children in Schools regarding non-teaching employees, which were to:

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- allow universities to verify the identity of student teachers and other students going on placements in regulated child-related employment, for the purposes of their blue card applications;
 - require non-teaching school staff employed before 1 May 2001 to hold a blue card (those employed from that date are already required to do so);
 - require non-teaching school staff employed before 1 May 2001 to declare a change of criminal history to the Commissioner for Children and Young People and Child Guardian (Commissioner); and
 - enable the Commissioner to notify the Non-State Schools Accreditation Board of the outcome of blue card applications of directors of governing bodies of non-State schools.
- provide for a new auditing/monitoring function for the Commissioner;
 - amend the serious offences list which affects a person's ability to successfully apply for a blue card to ensure the list includes only appropriate offences relevant to child protection;
 - enlarge the definition of serious offence to include reportable offences contained in the Australian National Child Offender Register (ANCOR);
 - remove the Commissioner's discretion about issuing a negative notice where a person is convicted of a specific serious offence called an "excluding offence" and a period of imprisonment or a "disqualification order" (a lifetime ban from holding or applying for a blue card) is made by the sentencing court;
 - prohibit volunteers from working in regulated employment until they have actually received their blue cards;
 - clarify the minimum threshold provisions for the blue card scheme;
 - enable the Commissioner to notify employers that employees are being reassessed in circumstances where the Commissioner considers this information to be relevant to child-related employment;
 - introduce positive obligations on employers to implement appropriate risk management strategies to ensure child-safe work environments;
 - clarify the process for deemed withdrawals of blue card applications;

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- enable the Commissioner to take into consideration certain disciplinary information when making an employment screening decision received from the Queensland Nursing Council (nurses and midwives), Health Registration Practitioner Boards (registered health practitioners), the Department of Child Safety (foster carers), and the Department of Communities (child care workers);
- enable the Police Commissioner to provide certain investigative information to the Commissioner about an alleged serious child-related sexual offence, where the investigation does not lead to a charge for that offence;
- enable an affected person to have the Police Commissioner's decision regarding providing investigative information to the Commissioner, reviewed by a Magistrates Court;
- enable the Queensland Police Service to use information received from the Commission for Children and Young People and Child Guardian (Commission) for police investigative purposes relevant to child protection; and
- amend a range of other provisions that have been identified by the Commission as current problems in the legislation.

In addition to the *Commission for Children and Young People and Child Guardian Act 2000*, other Acts amended by the Bill include:

- *Child Care Act 2002*;
- *Child Protection Act 1999*;
- *Education (Accreditation of Non-State Schools) Act 2001*;
- *Education (Teacher Registration) Act 1988*;
- *Health Practitioners (Professional Standards) Act 1999*;
- *Nursing Act 1992*; and
- *Transport Operations (Passenger Transport) Act 1994*.

Reasons for the objectives and how they will be achieved

Pursuant to Section 164 of the *Commission for Children and Young People Act 2000* (as it was then known), the Premier and Minister for Trade conducted a review of Part 6, which deals with the employment screening provisions. A report on the outcome of the review was tabled in the Legislative Assembly on 22 April 2004.

Administrative cost to Government for implementation

The Government has committed additional funding to the Commission to implement these amendments. The Commission will continue to monitor additional resources required as of increased workloads following implementation of these amendments.

Consistency with fundamental legislative principles

The Bill infringes a number of fundamental legislative principles:

— *Breach of s.4(3)(b) Legislative Standards Act 1992 – Consistency with principles of natural justice*

- Automatic suspension of a blue card and notification of employer

The automatic suspension of a positive notice blue card when a person is charged with an excluding offence will mean that the employment of some people will be affected without any ability for a charged person to appeal the suspension, until the charge has been dealt with. This means that a charged person may not continue to work in regulated employment while the blue card is suspended, although a suspension of the person's blue card does not prevent the person from being redeployed into non-regulated employment. This breach of fundamental legislative principles is justified given the nature of the offences (being serious child-related sexual offences and child pornography offences) and that a person may apply to have the suspension cancelled if the charge does not result in a conviction for an excluding offence, where the sentencing court does not order imprisonment or a lifetime ban on the person from applying for, or obtaining a blue card (disqualification order).

- Lifetime ban on applying for positive notice blue card (disqualification order)

Under the Bill, where a person is convicted of an excluding offence, and a custodial sentence is imposed by the court, the person will not only be issued with a negative notice but will also be prohibited from ever holding or applying for a blue card, i.e. an automatic lifetime ban. Likewise, where a person is convicted of an excluding offence that does not result in a custodial sentence, but the sentencing court makes a disqualification order about the person. There will be no right of appeal in relation to the cancellation of, or prohibition from holding, a blue card in these circumstances. This breach of fundamental legislative principles is justified on the basis of the nature of the offence (an excluding offence i.e. a serious child-related sexual offence or child pornography offence), and

that a court has determined that the circumstances of the offence warranted the person being sentenced to a period of imprisonment or the imposition of a disqualification order in relation to applying for or holding a blue card. Furthermore, the Bill provides that if a person successfully appeals the decision of the sentencing court, the person may apply to have the negative notice cancelled on the basis that the information upon which the Commissioner made the original decision, was wrong.

- Use of investigative information when assessing a blue card applicant or holder

The Commissioner will now be able to have regard to certain police investigative information even if the investigation did not result in a charge or subsequent conviction against the person. This may result in a person being refused a blue card and their employment terminated, even when they are not charged or convicted or the matter determined in court. However, this is justified on the basis that it is necessary to effectively protect the best interests and safety of children and adequate safeguards have been put in place.

- Use of disciplinary information when assessing a blue card applicant or holder

The Commissioner, when making an employment screening decision, will also now be able to have regard to certain disciplinary information about teachers, child care service providers, foster carers, nurses, midwives and certain health practitioners before the relevant review/appeal periods have expired for those disciplinary procedures. This breach of fundamental legislative principles is justified because there is a requirement in the Bill that the Commissioner must take into account the decision of the appellate body. If a review or appeal is successful, the affected person can apply to have the negative notice cancelled.

— *Breach of s.4(3)(d) Legislative Standards Act 1992 – Reversal of onus of proof in criminal proceedings*

- Liability of executive officers

The Bill provides that if a corporation is convicted of an offence against the Act each executive officer of the corporation is taken to have committed the offence of failing to ensure that the corporation complied with the Act. This is effectively a reversal of the onus of proof. However, it is justified on the basis of the two defences inserted; namely that the officer exercised reasonable diligence to ensure compliance, or was not in a position to influence the conduct of the corporation in relation to the offence.

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— *Breach of s.4(3)(g) Legislative Standards Act 1992 – Does not adversely affect rights and liberties, or impose obligations, retrospectively*

- Retrospective application of employment screening provisions to certain categories of employment

An extended range of people (religious representatives, non-teaching school staff, school crossing supervisors; Emergency Services cadet supervisors) will now be required to hold a blue card, despite being employed prior to the commencement of these provisions, i.e. effectively imposing an obligation on these people retrospectively, which will adversely affect their current employment if they are unable to obtain blue cards. This breach of fundamental legislative principles is justified as school crossing supervisors and Emergency Services cadet supervisors (as government employees), in addition to religious representatives, may be easily redeployed into non-regulated employment, and the decision to retrospectively screen non-teaching school staff was to ensure equity in the school setting between those employees who commenced from 1 May 2001 and those who commenced prior to 1 May 2001.

- Use of information gathered after issuing a blue card which may impact on whether a person may keep blue card i.e. investigative and disciplinary information

Current holders of blue cards will now be checked for a wider range of information beyond their criminal histories, namely certain investigative and disciplinary information, including such information that was available but not able to be taken into consideration by the Commissioner when their blue card applications were originally assessed. That is, retrospective use of information which may adversely impact on the current employment of these people if they lose their blue cards as a result of this information. This breach of fundamental legislative principles is justified on the basis of ensuring that the Commissioner has been provided with all relevant information in order to make the most well-informed employment screening decision about persons wanting to work with children. Furthermore, the onus will be on the Commissioner to demonstrate that a negative notice should be issued, as the Commissioner must issue a positive notice or blue card, unless satisfied it is an exceptional case in which it would not be in the best interests of children to do so.

- Use of information gathered prior to these amendments for police purposes

There are privacy implications arising from police use of blue card information, particularly for those people who have already provided their information to the Commission. This is because many of those people would have provided their information for blue card employment screening purposes without being aware that the information might be used for broader policing purposes. This issue will be addressed when people renew their blue card applications.

Consultation – Community

A draft Bill was distributed for consultation with key stakeholder groups, including parent groups, sport and recreation groups, church groups, employer and employee groups, universities and non-university providers, the Queensland Nursing Council, Office of Health Practitioner Registration Boards, the Children Services Tribunal, and the Queensland Council for Civil Liberties. Stakeholder consultations took place on 22, 23 and 24 of September 2004 through a series of workshops and involved approximately 40 representatives from these groups. Written feedback and proposals regarding the draft Bill were also received from a number of key stakeholders.

Consultation – Government

The following agencies have been consulted on the amendments:

- Commission for Children and Young People and Child Guardian;
- Department of Child Safety;
- Department of Communities;
- Department of Education and the Arts;
- Department of Emergency Services;
- Department of Employment and Training;
- Department of Industrial Relations;
- Department of Justice and Attorney-General;
- Queensland Health;
- Queensland Police Service;
- Queensland Transport; and
- Queensland Treasury.

NOTES ON PROVISIONS

Short Title

Clause 1 states the short title of the Act to be the *Commission for Children and Young People and Child Guardian Amendment Act 2004*.

Commencement

Clause 2 states the Act will commence on a day to be fixed by proclamation.

Act Amended

Clause 3 states that this Act amends the *Commission for Children and Young People and Child Guardian Act 2000* (Act).

Amendment of s 15 (Commissioner's functions)

Clause 4 inserts a new subsection (ra) into section 15(1) which outlines the Commissioner's functions. The new subsection states that it is a function of the Commissioner for Children and Young People and Child Guardian (the Commissioner) to audit and monitor compliance with the employment screening provisions under Part 6 of the Act.

Amendment of pt 6 hdg (Employment screening for child-related employment)

Clause 5 amends the heading of Part 6 from *Employment screening for child-related employment* to *Screening for regulated employment and regulated businesses*. This clarifies that the employment screening provisions only apply to employment and businesses that are regulated by the Act and not all child-related employment.

Replacement of s 95 (Purpose of pt 6)

Clause 6 replaces the existing section 95 to clarify that the main purpose of Part 6 is to ensure that persons employed in particular employment or carrying on particular businesses as prescribed under this Act undergo screening in accordance with this part. This change in language removes the terms "suitable" and "child-related employment". This is to ensure that

the purpose of the Act focuses on the screening of persons in those categories of employment and businesses prescribed by the Act and to indicate that the screening is not a general guarantee of suitability of persons to work in child-related employment.

Amendment of s 97 (Employment and businesses regulated by this part)

Clause 7 amends subsection (2) of section 97 with the effect that, although the employment screening provisions do not, generally speaking, apply to the unpaid employment of a child, where the child is a trainee student of an education provider and is undertaking employment as part of his or her course, that child will be subject to the employment screening requirements under Part 6, if the employment is regulated employment and the minimum threshold (as outlined in new sections 105, 106 and 106A – refer *Clauses 19, 20, and 21*) is met.

Insertion of new ss 98A and 98B and pt 6, div 1A hdg

Clause 8 inserts new sections 98A and 98B.

- **98A This part does not apply to person engaged in employment for the police service**

Section 98A provides that Part 6 of the Act does not apply to persons engaged by the Queensland Police Service within the meaning of section 5AA.3 of the *Police Service Administration Act 1990* whilst in the performance of their duties or performing a function of the service defined in section 2.3 of the *Police Service Administration Act 1990*.

Section 5AA.3 of the *Police Service Administration Act 1990* provides that the following persons are part of the Queensland Police Service:

- a police officer;
- a staff member;
- a recruit;
- a special constable;
- an external service provider;
- a person performing functions at a police station or police establishment under a contract for services; or

- a person working in the service as a volunteer or as a student on work experience.

Section 2.3 of the *Police Service Administration Act 1990* provides for a wide range of functions that are performed by those in the Queensland Police Service including the prevention of crime, the upholding of the law generally and the preservation of peace and good order.

This exemption ensures that both sworn and unsworn (or civilian) employees of the Queensland Police Service will not be required to hold or apply for a positive notice blue card under Part 6, where they are representing the Queensland Police Service in a recognised function of the service such as an Adopt-a-Cop program at a school or when working in the local Police Citizens Youth Club. The reason for this exemption is that all members of the Queensland Police Service already undergo a comprehensive screening process. Therefore applying for a blue card is an unnecessary duplication of processes.

However, if a Queensland Police Service employee undertakes regulated employment or runs a regulated business outside his or her Queensland Police Service functions, then that person would be required to have a positive notice blue card. For instance, if a police officer intended to coach the under-16 soccer team in his local neighbourhood and was not doing so in a capacity linked to the Queensland Police Service, then he would still be required to hold a positive notice blue card.

- **98B Declaration relating to exemption to category of regulated employment or regulated business**

Section 98B states that the “exemptions” that deem certain employment not to be regulated employment or certain businesses not to be regulated businesses, are category specific, and are not transferable across categories of regulated employment or businesses. That is, where an applicant is exempt under one category this does not necessarily mean that he or she is not required to hold a blue card under another category. There are two examples included to explain the operation of this new section in relation to regulated employment and regulated businesses.

- **Division 1A Interpretation**

Clause 8 also inserts a new heading *Division 1A Interpretation* before the amended section 99.

Amendment of s 99 (What is employment)

Clause 9 amends section 99 to clarify the present examples of what constitutes employment in subsection (2). A new subsection (e) is inserted into subsection (2), to clarify that it is immaterial for the purposes of determining if it is “employment” whether the agreement provides for a person to carry out work regularly or irregularly, once-off or on an ongoing basis. Note however, whilst the employment can be regular or irregular, once-off or on an ongoing basis to qualify as employment under this section, it is only regulated employment for the purpose of employment screening under Part 6 of the Act, if it falls within a specific category under Schedule 1 and if the employee meets the minimum threshold as set out in the newly amended sections 105 and 106 and the newly inserted 106A (refer Clauses 19, 20 and 21). Only when these conditions are met is the employee required to hold or have applied for a positive notice blue card.

Sub section (3) clarifies that the nature of the work is immaterial.

Subsection (4) states that section 99 as amended is subject to new section 99A (What is employment when education provider arranges trainee student to carry out work for someone else).

Example 3 in subsection (2) is amended to remove the reference to “in order to obtain work experience” as the reason for this arrangement is irrelevant. Example 4 in subsection (2) is deleted, and replaced with a new example.

Insertion of new ss 99A to 99 G and new pt 6, div 1B hdg

Clause 10 inserts sections 99A and 99B to explain what “employment” is under certain arrangements.

- **99A What is employment when education provider arranges trainee student to carry out work for someone else**

Section 99A outlines the employment relationship between education providers, trainee students, and student or industry placement employers. Despite the wide definition of employment under section 99, an education provider that arranges an industry placement for the trainee student as part of the student’s course work, is not the student’s employer for the purposes of Part 6 of this Act.

Section 99A(4) clarifies that in these situations, it is the student placement employer who is the employer for the purposes of Part 6 of this Act. This means that the student placement employer is responsible for ensuring

compliance with Part 6 of this Act, irrespective of the fact that the education provider made the application for the student's positive notice blue card, and that no direct agreement was made between this employer and the trainee student to carry out work (because the placement was arranged between the education provider and the employer).

- **99B What is employment in child care**

Section 99B is the relocation of section 126A under the current Act, which defines employment of a person as a carer or staff member of a child care service by reference to the *Child Care Act 2002*.

- **99C What is a serious offence**

Section 99C relocates and amends the serious offence definition currently located in the dictionary in Schedule 4 of the Act. A serious offence is defined as:

- an offence referred to in Schedule 2, which is a list of relevant current Queensland offences, including counselling, procuring, attempting or conspiring to commit those offences;
- an offence referred to in Schedule 2A, which is a list of relevant Queensland offences that have expired or been repealed;
- an equivalent offence in another jurisdiction (State, Territory, Commonwealth or foreign jurisdiction); or
- a class 1 or 2 offence as defined in the *Child Protection (Offender Reporting) Act 2004*, that is not otherwise a serious offence under this subsection. This limb of the definition links the offences for which there is mandatory registration on the Australian National Child Offender Register (ANCOR) to the list of serious offences, to ensure consistency across these regimes, particularly in relation to Commonwealth offences for which it may be argued that there are no equivalent Queensland crimes, such as child sex tourism offences under *Crimes Act 1914* (Cth), Part IIIA.

Subsection (2) of section 99C clarifies that it is immaterial if an offence provision in Schedule 2 or 2A has been amended from time to time or that the provision was previously numbered with a different number.

- **99D What is a serious child-related sexual offence**

Section 99D defines the new term "serious child-related sexual offence" as one of the following types of offences provided it was committed against a child, i.e. a person under 18, or if the offence otherwise specifies an age,

under that age (for example indecent treatment includes references to a complainant child being under 16 or under 12 years of age):

- an offence referred to in schedule 2B, which is a list of relevant current Queensland offences of a serious sexual nature;
- an offence referred to in schedule 2C, which is a list of relevant Queensland offences of a serious sexual nature, that have expired or been repealed. Due to changes in the elements of some of these offences since first introduced, they are also subject to certain limitations to ensure that they fulfil the requirement of being a “serious child-related sexual offence”.
- **99E What is an excluding offence**

Section 99E defines the new term “excluding offence” to be a serious child-related sexual offence, or offences of child pornography listed in Schedule 2 in relation to the *Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991* or *Classification of Publications Act 1991*.

- **99F Who is a volunteer**

Section 99F clarifies who is a “volunteer” for the purposes of Part 6 of the Act. It provides that a volunteer is a person who is employed by another person but does not carry out any work for the other person for a financial reward. Importantly, persons who are reimbursed for out-of-pocket expenses are still to be considered as volunteers for the purpose of the employment screening provisions under the Act.

Insertion of new pt 6, div 1B

- **Division 1B Risk management strategies**

Clause 11 inserts a new division 1B into Part 6 of the Act called *Risk management strategies*.

- **99G Risk management strategies about regulated businesses and persons employed in regulated employment**

New division 1B also includes new section 99G, which creates an obligation on people who carry out regulated businesses and on employers who employ persons employed in regulated employment to develop and implement a risk management strategy. The purpose of the risk management strategy is to implement employment practices and procedures to promote the wellbeing of a child affected by the regulated

business or employment and protect the child from harm. Matters to be contained in a risk management strategy may be prescribed by regulation.

Failure of an employer or person running a regulated business to comply with this obligation is an offence punishable by a maximum penalty of 20 penalty units.

New section 99(5) makes clear that the risk management strategy should cater for the following types of employees:

- A person who has commenced employment pending the outcome of his or her application for a positive notice from the Commissioner;
- A positive notice holder – to reinforce the point that constant vigilance is required and that the positive notice blue card is not a “guarantee” of a person’s safety around children;
- A person working in regulated employment who is not required to hold a positive notice blue card, i.e. a person who has yet to meet the minimum threshold; and
- A person about whom the employer has been advised that the Commissioner is reassessing.

Replacement of pt 6, div 2 hdg (Issue of suitability notices)

- **Division 2 Issue of prescribed notices for regulated employment or regulated businesses**

Clause 12 replaces the current heading *Issue of suitability notices* with *Issue of prescribed notices for regulated employment or regulated businesses* to reflect the change in terminology throughout the Act from the use of the word “suitability notice”, to “prescribed notice”.

Amendment of s 100 (Application for notice – regulated employment)

Clause 13 makes a number of amendments to section 100.

References to “suitability” and “child-related employment” are replaced with references to “prescribed notice” and “regulated employment”.

New subsection (1A) provides that an employer (in this case it would be a relevant industry placement for a trainee student) does not have to apply for a prescribed notice for the trainee student where an education provider has made such an application. New subsection (1B) goes on to provide that

where a trainee student is required to perform work in regulated employment as part of the course, the education provider can apply to the Commissioner for a prescribed notice.

These subsections implement a recommendation made by the Ministerial Taskforce on Sex Abuse of Children in Schools, to enable education providers (such as universities) to act as verifiers of the identification documents of trainee students for the purposes of positive notice blue card applications. This amendment will improve operational efficiency by allowing education providers to apply for positive notice blue cards on behalf of their students, who are required to undertake placements with industry employers as part of their curriculum. Often, students are not allocated to employers until shortly before the placement is due to commence. These amendments will streamline the administrative processes associated with the placements.

Subsection (3) is amended to require education providers in addition to employers, to use an approved form to verify the identity of the employee, i.e. the student, on whose behalf the application for a positive notice blue card is made. The approved form must contain identifying information about the person; a certification by the employer, education provider, or prescribed person, that the person's proof of identity documents have been sighted; and should outline the person's consent to employment screening under Part 6 of the Act.

Generally the employer or education provider will be able to sight the documents relating to a person's identity (as prescribed under regulation). However, these amendments recognise that in some instances, distance or disability may hinder a person's capacity to provide an employer or education provider with the opportunity to sight the original proof of identity documents.

Where an employee's usual place of residence is more than 50km from the employer's business address or a place used by the education provider for conducting courses, or where the employee is a person with a disability that affects his or her mobility, then the employer may delegate the sighting and certification of the employee's original proof of identity documents to a prescribed person. A prescribed person is defined in the new subsection (6) as a justice, commissioner for declarations, lawyer, or police officer.

As a safeguard, subsection (4) enables the Commissioner to request further details as to why it was not possible for the employer to sight the original proof of identity documents, and where necessary, may request additional information to establish the employee's or trainee student's identity. This

new subsection ensures that the Commissioner can satisfy him or herself of the veracity of the identifying information and the certification of the proof of identity documents.

Subsection (5) provides that if a relevant person is given a written request by the Commissioner under subsection (4), the relevant person is taken to have withdrawn the application for a prescribed notice, if:

- the person is warned by the Commissioner that non-compliance with the request within a stated time will constitute a withdrawal;
- the person does not comply with the request within the stated time; and
- the Commissioner gives the person a notice stating that he or she is taken to have withdrawn the application.

Subsection (6) defines relevant person to mean an employee or trainee student of an education provider for the purposes of this section.

Amendment of s 101 (Application for notice – regulated business)

Clause 14 amends subsection (1) of 101 to remove references to “suitability” and “child-related employment” and substitute them with “prescribed notice” and “regulated business” respectively.

Replacement of s 102 (Decision on application)

Clause 15 deletes the current section 102 and replaces it with new sections 101A, 102, and 102A.

- **101A Notice of change of employment, or name and contact details in application under ss 100 or 101**

New section 101A places an obligation on persons who have applied for a prescribed notice to advise the Commissioner if their names or contact details change, or if their employment ends with the employer who made the application on their behalf, whilst their applications are being processed. The persons must give written notice to the Commissioner within 14 days of any of these changes.

Failure of persons to comply with this obligation is an offence punishable by a maximum penalty of 10 penalty unit.

- **102 Decision on application**

New section 102 outlines the Commissioner's decision-making processes in relation to applications for prescribed notices for regulated employment under section 100, or regulated businesses under section 101.

Subsection (2) states that the Commissioner must decide the application for a prescribed notice, provided the application has not been withdrawn, by issuing to a person:

- a positive notice declaring that the application has been approved as a result of the Part 6 screening process; or
- a negative notice declaring that the application has been refused as a result of the Part 6 screening process.

Subsection (3) states that if the Commissioner is not aware of any police information, or disciplinary information, the Commissioner must issue a positive notice.

Subsection (3) also provides that if the Commissioner is not aware of a conviction for any offence but is aware:

- of investigative or disciplinary information;
- that the person has been convicted for an offence other than a serious offence;

then under subsection (4) the Commissioner must issue a positive notice unless satisfied it is an exceptional case in which it would not be in the best interests of children for the Commissioner to issue a positive notice.

Subsection (5) provides that in such instances where the Commissioner is satisfied that it is an exceptional case (under subsection (4), then the Commissioner must issue a negative notice.

Subsection (6) provides that if the Commissioner is aware of:

- a conviction for an excluding offence for which the sentencing court ordered imprisonment or a lifetime ban on the person from applying for or holding a positive notice; or
- a conviction for a serious offence, other than other than an excluding offence for which the sentencing court ordered imprisonment or a lifetime ban on the person from applying for or holding a positive notice;

then the Commissioner must issue a negative notice, if under subsection (7), the Commissioner determines that it is an exceptional case in which it

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would not harm the best interests of children, the Commissioner may decide to issue a positive notice.

Subsection (8) states that where the Commissioner is satisfied it is an exceptional case (under subsection (7), the Commissioner must issue a positive notice.

New sections 102(3) to (8) are summarised in the following table:

New Section	Information Commissioner aware of	Type of prescribed notice Commissioner must issue	Proviso
102(3)(a)	Nil information i.e. no police information and no disciplinary information	Positive notice	Nil
102(3)(b)(i)	Investigative information or disciplinary information	Positive notice	Unless an exceptional case in which it would not be in the best interests of children to issue a positive notice (102(4)) Where the Commissioner is satisfied of an exceptional case, the Commissioner must issue a negative notice (102(5))
102(3)(c)	Conviction for an offence other than a serious offence	Positive notice	Unless an exceptional case in which it would not be in the best interests of children to issue a positive notice (102(4)) Where the Commissioner is satisfied of an exceptional case, the Commissioner must issue a negative notice (102(5))

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102(6)(a)	Conviction for an excluding offence, where imprisonment or lifetime ban ordered	Negative notice	Nil
102(6)(b)	Conviction for a serious offence other than an excluding offence, where imprisonment or lifetime ban ordered	Negative notice	Unless an exceptional case in which it would harm the best interests of children to issue a positive notice (102(7)) Where the Commissioner is satisfied of an exceptional case, the Commissioner must issue a positive notice (102(8))

- **102A Decision-making under s 102 in relation to discretionary matters**

New section 102A(1) states that this section applies if the Commissioner is deciding whether or not there exists an exceptional case under new sections 102(4) and (7).

Subsection (2) sets out the range of considerations to which the Commissioner must have regard, where the person has been charged or convicted of an offence.

Subsection (3) sets out the range of considerations to which the Commissioner must have regard when the Commissioner is aware of investigative information about a person.

Subsection (4) sets out the range of considerations to which the Commissioner must have regard, when the Commissioner is aware of disciplinary information about a person.

- **102B Actions of commissioner after making decision on application**

New section 102B(1) specifies that after the Commissioner has made a decision about an application for a prescribed notice, the Commissioner must issue either a positive notice or a negative notice to the person about whom the application was made.

Subsection (2) states that if the prescribed notice is a negative notice, then it must be accompanied by a notice stating the reasons for the Commissioner's decision and information about rights of review. If the reasons do not include investigative information, section 102A(2)(b) states

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that the reasons must contain a statement that the person may apply to the Children Services Tribunal within 28 days of being served with the notice to have the Commissioner's decision about whether there was an exceptional case (as provided for in new sections 102(4) or (7)) reviewed.

If the reasons do include investigative information section 102A(2)(c) states that the reasons must contain a statement that the person may apply within 28 days of being served with the notice:

- to a Magistrates Court, in order to review the decision of the Police Commissioner that information is investigative information; or
- to the Children Services Tribunal, in order to review the Commissioner's decision regarding whether there is an exceptional case (as provided for in new sections 102(4) or (7)).

Subsection (4) authorises the Commissioner to notify other people of the outcome of the application in addition to the person about whom the prescribed notice relates.

The Commissioner must give written notice (stating whether the person received a positive or a negative notice), to the following people:

- the person's employer;
- the education provider where the person is a trainee student;
- the chief executive of the department responsible for the *Child Care Act 2002* where the person is a child care provider, that is, a licensee or nominee of a licensee;
- where the person is carrying on a regulated business as a religious representative, the entity responsible for supervising or disciplining that religious representative.

New section 102B(4) ensures that overseeing bodies for child care (currently the Department of Communities) and religious representatives are informed of the outcome of applications for prescribed notices of applicants in these categories, who are classified as running regulated businesses and thus have applied for the prescribed notices directly, rather than through an employer. This is particularly important if a negative notice is issued.

Subsection (5) provides that within 14 days of issuing a prescribed notice, if the person previously held another prescribed notice, it must be surrendered to the Commissioner. If it was a positive notice then any positive notice blue card held by the person must also be surrendered.

Failure of a person to comply with this obligation is an offence punishable by a maximum penalty of 10 penalty units.

Amendment of s 103 (Commissioner to invite submissions from person about particular information)

Clause 16 inserts a new subsection (1AA) which clarifies that this section applies if, in relation to an application under section 100 or 101, the Commissioner must decide about whether there is an exceptional case as mentioned in section 102(4) or (7). This means that the Commissioner does not comply with section 103 where a negative notice has been issued under new section 102(6)(a) or (c) in relation to an excluding offence.

Subsection (1)(a) is amended to provide that where the Commissioner proposes to issue a negative notice to a person, the Commissioner must give a written notice to the person stating the police information and disciplinary information about the person of which the Commissioner is aware, which reflects the additional information the Commissioner may now consider when making an employment screening decision. This subsection ensures that the person is fully informed of the information on which the Commissioner is relying regarding the decision to issue a negative notice, and to assist the person in determining the possible grounds for review of the decisions made by either the Police Commissioner or the Commissioner.

Police information is defined in the dictionary under Schedule 4 to include a person's criminal history (all charges and convictions notwithstanding application of the *Criminal Law (Rehabilitation of Offenders) Act 1986* i.e. including "spent" convictions) and investigative information (defined under new section 121A).

Disciplinary information is defined in the dictionary under Schedule 4 and includes information that is, or would be relevant to an employment screening decision made by the Commissioner under Part 6 of the Act, that relates to certain disciplinary decisions or orders about teachers, nurses, midwives, registered health practitioners, foster carers, and child care providers.

Subsection (1)(b) is amended and now provides that the person's submission should be in relation to why the Commissioner should not issue a negative notice rather than information about the person's suitability for child-related employment, to reflect the change in terminology throughout the Act away from the use of the words "suitability" and "child-related employment", which are misleading.

New subsection (4) is inserted to provide that a person may make his or her submission orally, or in a language other than English if the Commissioner considers it reasonable in the circumstances.

Amendment of s 104 (Currency of notice)

Clause 17 amends the heading of section 104 from *Currency of notice* to *Currency of prescribed notice and positive notice blue card* to reflect the usage of the positive notice blue card as a representation of the holder as a person whose application for a prescribed notice has been approved by the Commissioner.

New subsection (3) is also inserted into section 104, which provides that the positive notice blue card is current for the same period as the positive notice. This is necessary to ensure consistency in situations where a positive notice has been issued by the Commissioner (in the form of a letter notifying the person that the application has been approved), at a different time to the actual issue of the positive notice blue card.

Replacement of pt 6, div 3 hdg (Obligations and offences relating to suitability notices) and subdiv 1 hdg (regulated employment)

- **Division 3 Obligations and offences relating to prescribed notices**

Clause 18 replaces the current division 3 heading *Obligations and offences relating to suitability notices* and replaces it with *Obligations and offences relating to prescribed notices*. This is to reflect the change in terminology throughout the Act from the use of the word “suitability notice”, to “prescribed notice”.

- **Subdivision 1 Regulated employment as volunteers**

Clause 18 also replaces the current subdivision 1 heading *Regulated Employment* with *Regulated employment as volunteers* and inserts new sections 104A and 104B relating to the employment of volunteers.

- **104A Application of subdiv 1**

New section 104A provides that subdivision 1 applies to the employment of a volunteer.

- **104B Starting employment**

New section 104B states that an employer must not employ a volunteer who does not have a current positive notice. Failure of an employer to comply

with this obligation is an offence punishable by a maximum penalty of 10 penalty units.

- **Subdivision 1A Regulated employment other than as volunteers**

Clause 18 also inserts a new subdivision 1B *Regulated employment other than as volunteers* and inserts new section 104C relating to the employment of persons other than volunteers.

- **104C Application of subdiv 1A**

New section 104C provides that subdivision 1A does not apply to the employment of a volunteer.

- **Amendment of s 105 (Continuing employment of certain regular employees)**

Clause 19 replaces section 105(1)(b) with the intention of revising the frequency test or minimum threshold, which currently only considers days worked in the previous year. The amendments will oblige the employer to form a view about the likelihood of the employee's participation in regulated employment in the current year, where:

- an employee is currently working for an employer in regulated employment; and
- the employee has worked for that employer in regulated employment during the previous year.

The employer must not continue to employ that employee in regulated employment unless the employer has applied for a prescribed notice or a further prescribed notice (a renewal) for that employee, if the employer reasonably expects that during the coming year the employee is likely to carry out regulated employment that reaches the minimum threshold.

The minimum threshold is clarified in new section 105(1)(b) as meaning that the employee was or will be carrying out work for the employer for –

- i. at least eight consecutive days;
- ii. at least once a week for each week over the course of a four week period; or
- iii. at least once a fortnight for each fortnight over the course of an eight week period; or
- iv. at least once a month for each month over the course of six months.

To determine whether that employee is likely to work at least the minimum threshold during the coming year, the employer takes into account:

- any agreement made with that employee regarding employment, and
- whether that employee carried out work for at least the minimum threshold during the previous year.

Failure of an employer to comply with this obligation is an offence punishable by a maximum penalty of 10 penalty units.

This clause also amends subsection (2) and removes any reference to “suitability notice” by replacing it with a reference to “prescribed notice”.

- **Amendment of s 106 (Starting employment of certain regular employees)**

Clause 20 amends section 106 by deleting the current subsections (b) and (c) and replacing them with new subsections (b) and (c). The amendments clarify the obligation on employers to apply for prescribed notices regarding certain of their regular employees starting in regulated employment with the employers.

The section applies where an employee is not currently working for an employer in regulated employment but:

- the employee has previously worked for that employer in regulated employment; and
- the last time the employee worked in regulated employment for that employer was no more than a year ago.

In these circumstances, if the employer reasonably expects that during the coming year that employee is likely to carry out regulated employment for at least the minimum threshold, the employer must not employ that employee in regulated employment unless the employer has applied for a prescribed notice for that employee.

The minimum threshold is clarified in the new section 106(1)(c) as meaning that the employee was or will be carrying out work for the employer for –

- i. at least 8 consecutive days;
- ii. at least once a week for each week over the course of a four week period; or
- iii. at least once a fortnight for each fortnight over the course of an eight week period; or

- iv. at least once a month for each month over the course of six months.

To determine whether the employee is likely to work at least the minimum threshold during the coming year, the employer may take into account:

- any agreement made with that employee regarding the employment over the coming year, and
- when the employee last worked in regulated employment for that employer, whether that employee carried out work for at least the minimum threshold during that period of employment.

Failure of an employer to comply with this obligation is an offence punishable by a maximum penalty of 10 penalty units.

The clause also removes any reference to “suitability notice” in subsection (2) of section 106 and replaces it with “prescribed notice”.

- **Insertion of new s 106A**

Clause 21 inserts a new section 106A to clarify the obligations on employers to apply for prescribed notices regarding prospective employees starting in regulated employment with the employers and only applies if section 106 does not apply to the employment.

New section 106A applies where:

- an employer proposes to employ a person (prospective employee) in regulated employment; and
- the (prospective) employee is not currently working in regulated employment for that employer; and
- the (prospective) employee does not have a current positive notice.

This new section provides that if an employer reasonably expects that that employee is likely to carry out regulated employment for at least the minimum threshold, the employer must not employ that employee in regulated employment unless the employer has applied for a prescribed notice for that employee.

The minimum threshold means that the employee was or will be carrying out work for the employer for –

- i. at least 8 consecutive days;
- ii. at least once a week for each week over the course of a four week period; or

- iii. at least once a fortnight for each fortnight over the course of an eight week period; or
- iv. at least once a month for each month over the course of six months.

To determine whether that employee is likely to work at least the minimum threshold during the coming year, the employer may take into account any agreement made with that employee regarding employment.

Failure of an employer to comply with this obligation is an offence punishable by a maximum penalty of 10 penalty units.

- **Amendment of s 107 (Prohibited employment)**

Clause 22 amends section 107 by removing the reference to “suitability notice” and replacing it with a reference to “prescribed notice”.

The clause also amends section 107 relating to the obligations on an employer not to employ or continue to employ an employee in regulated employment under certain conditions, including when the person’s application is deemed to be withdrawn because the person has been charged with an excluding offence that has not been dealt with and the employer has been notified by the Commissioner that the application had been withdrawn. The clause deletes existing section 107(2)(b) thereby removing the responsibility from the employer not to employ or continue employing an employee in regulated employment where the employee does not have a current positive notice and the employer is aware that the employee has been convicted of a serious offence.

This removes an inconsistency with sections 105(2), 106(2) and new section 106A(2), which permit an employer to employ or continue employing an employee in regulated employment, provided the employer has applied for a prescribed notice or further prescribed notice about that employee. Without this amendment, the practical effect is that even if an employer has complied with sections 105(2), 106(2), or new 106A(2), the employer will be breaching obligations under existing section 107(2)(b), if aware that the employee has been convicted of a serious offence.

Furthermore, conviction for a serious offence does not necessarily preclude a person from being issued with a positive notice, if the Commissioner is satisfied that it is an exceptional case and would not harm the best interests of children for a positive notice to be issued to the person. It is therefore not appropriate to place such an obligation on the employer.

Replacement of s 108 (Unsuitable person not to apply for, or start or continue in, child-related employment)

- **Subdivision 1B Obligations if holder of negative notice or application for prescribed notice is withdrawn**

Clause 23 deletes existing section 108 and inserts a new subdivision heading *1B Obligations if holder of negative notice or application for prescribed notice is withdrawn* and a new section 108.

- **108 Person holding negative notice, or who has withdrawn consent to employment screening, not to apply for, or start or continue in, regulated employment**

New section 108(1) confirms that a person must not apply for, or start, or continue in regulated employment if the person has been issued with a negative notice which is still current. The maximum penalty for breaching this section is 500 penalty units or five years imprisonment.

Similarly, new subsection (2) provides that a person must not apply for, or start, or continue in regulated employment if the person's application was withdrawn. The maximum penalty for breaching this section is 100 penalty units or one year imprisonment.

Subsection (3) provides that where a person has had a positive notice that has subsequently been cancelled by the Commissioner and a negative notice substituted, the person cannot be found liable for breaching this section, unless a court is satisfied that the person was given written notice of a substitution by the Commissioner under section 119 (Cancellation of notice – wrong, incomplete or fresh information).

As the Act is silent on how notice is to be “given” to a person, the service provisions set out in sections 39 and 39A of the *Acts Interpretation Act 1954* apply.

Amendment of s 109 (Carrying on regulated business)

Clause 24 deletes the range of penalties under existing section 109 for persons carrying on regulated businesses without current positive notices. The section is now simplified by providing only one maximum penalty of 500 penalty units or five years imprisonment and leaving it to the discretion of a court to determine what is appropriate in individual circumstances.

This clause also inserts a new subsection (2) into section 109 to clarify who is carrying on a regulated business when that business is a corporation. Under the new subsection (2), each person who is an executive officer of

the corporation, and whose principal place of residence is in Australia, must have a current positive notice. An executive officer for a corporation is defined in the dictionary in Schedule 4 as meaning any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part, in the management of the corporation. As for individual employers, non-compliance is an offence punishable by a maximum penalty of 500 penalty units or five years imprisonment.

The practical application of this new subsection will mean that:

- i. a corporation cannot continue to operate as a regulated business unless each executive officer (whose principal place of residence is in Australia) has a current positive notice; or
- ii. a person cannot continue to act as an executive officer of a corporation operating as a regulated business unless and until holding a current positive notice.

Amendment of s 111 (Effect of conviction for serious offence)

Clause 25 amends the heading of section 111 to *Effect of conviction for serious offence or charge for excluding offence* to reflect that the section has been extended to include persons charged with excluding offences such that these persons are also prohibited from working in regulated employment or carrying on a regulated business. Again, the penalty provisions under subsection (2) have been simplified to provide for only maximum penalty of 500 penalty units or five years imprisonment. The rationale being that the serious offences list has been reduced to include only those offences relevant to child-related employment.

Amendment of s 112 (Change in criminal history of employee)

Clause 26 amends section 112 to reflect the change in terminology throughout the Act from the use of the word “suitability notice” to “prescribed notice”.

Amendment of s 113 (Change in criminal history of person carrying on regulated business)

Clause 27 amends section 113 to reflect the change in terminology throughout the Act from the use of the word “suitability notice” to “prescribed notice” and confirms that this section does not limit the

operation of section 111 (Effect of conviction for serious offence or charge for excluding offence). That is, a person who has been charged with an excluding offence may not continue to carry on a regulated business.

Amendment of s 114 (Change in criminal history of other persons)

Clause 28 amends section 114 to reflect the change in terminology throughout the Act from the use of the word “suitability notice” to “prescribed notice”.

Amendment of s 117 (Return of positive notice and any positive notice blue card)

Clause 29 amends the heading of section 117 from *Return of notice to commissioner* to *Return of positive notice or positive notice blue card to commissioner*. It also amends the current subsection (2) to provide that a person must return any positive notice blue card in addition to any positive notice.

Replacement of pt 6, div 4 hdg (Cancellation and replacement of suitability notices)

- **Division 4 Cancellation and replacement of prescribed notices**

Clause 30 replaces the current Part 6, Division 4 heading *Cancellation and replacement of suitability notices* to reflect the change in terminology throughout the Act from the use of the word “suitability notice” to “prescribed notice”.

Amendment of s 118 (Cancellation of suitability notice on application)

Clause 31 amends the heading of section 118 from *Cancellation of suitability notice on application* to *Cancellation of negative notice and issuing of positive notice* to reflect more accurately the purpose of the section and the change in terminology throughout the Act from the use of the word “suitability notice” to “prescribed notice” and deletes any references to “suitable” or “child-related employment”.

Replacement of ss 119 and 120

Clause 32 deletes the current sections 119 and 120 and replaces them with new sections 119, 119A, 119B, 119C, 119D, and 120.

- **119 Commissioner may cancel a prescribed notice and substitute another prescribed notice**

Subsection (1) provides that the Commissioner may cancel a positive notice and substitute a negative notice if satisfied about either of the following:

- that the original decision on the application for the positive notice was based on wrong or incomplete information and based on the correct or complete information the Commissioner should issue a negative notice; or
- having regard to disciplinary information or police information, it is appropriate to cancel the positive notice.

Subsection (2) provides that the Commissioner may cancel a negative notice and substitute it for a positive notice if satisfied about either of the following:

- the original decision on the application for the negative notice was based on wrong or incomplete information and based on the correct or complete information the Commissioner should issue a positive notice; or
- an order of the sentencing court relating to an excluding offence that resulted in a penalty of imprisonment or a disqualification order has made that was not upheld on appeal.

Subsection (3) outlines that when making a decision under subsection (1) or (2) the Commissioner must make that new decision as if it were a decision to which sections 102, 102A, and 102B apply.

Subsection (4) states that the Commissioner must consider whether notice must be given under new section 126B(2) which provides for the notification to the Non-State Schools Accreditation Board about the cancellation of a positive notice and the issuing of a negative notice with respect to a director of the governing body of a non-State school.

Subsection (5) clarifies that if the Commissioner proposes to cancel a positive notice and issue a negative notice, then the Commissioner must first comply with section 103 (Commissioner to invite submissions from person about particular information). This ensures that the person is given

notice of all the police information and disciplinary information that the Commissioner has relied on, and is invited to make a submission. The Commissioner has to consider any submission received from the person within the stated time where the Commissioner proposes to cancel a positive notice and substitute a negative notice under this section.

Subsection (6) states that the Commissioner may reconsider a person's status and substitute a notice either:

- on application by the person; or
- on the Commissioner's own initiative.
- **119A Cancellation if conviction for excluding offence and order for custodial sentence or disqualification order**

Clause 32 also inserts a new section 119A, which outlines that where a current positive notice holder, including a person whose positive notice has been suspended, is convicted of an excluding offence and the court imposes a period of imprisonment or makes a disqualification order, the Commissioner must issue a negative notice.

Subsection (3) states that after the Commissioner cancels a positive notice and substitutes a negative notice under this section, the Commissioner must give the person the negative notice and a further written notice stating that:

- there is no appeal or review under this Act against a decision of the Commissioner to cancel the positive notice and issue a negative notice; and
- there are no appeal or review rights available under this Act except if an order of the sentencing court relating to an excluding offence that resulted in a penalty of imprisonment or a disqualification order, was not upheld on appeal.

Subsection (4) provides that the Commissioner must give written notice stating that the person was given a negative notice, because they have been charged or convicted of an excluding offence, to the following people:

- the person's employer;
- the education provider where the person is a trainee student;
- the chief executive of the department responsible for the *Child Care Act 2002* where the person is a child care provider, that is, a licensee or nominee of a licensee;

- where the person is carrying on a regulated business as a religious representative, the entity responsible for supervising or disciplining that religious representative.

Subsection (5) states that the Commissioner must consider whether a notice must be given under new section 126B(2) which provides for the notification of the Non-State Schools Accreditation Board about the cancellation of a positive notice and the issuing of a negative notice with respect to a director of the governing body of a non-State school.

- **119B Cancellation if conviction for excluding offence but no order for custodial sentence and no disqualification order**

Clause 32 also inserts a new section 119B, which outlines that where a current positive notice holder, including a person whose positive notice has been suspended, is convicted of an excluding offence but the court does not order a period of imprisonment or a lifetime ban on applying for or holding a blue card, the Commissioner must cancel the person's positive notice and substitute a negative notice unless it is an exceptional case in which it would not harm the best interests of children not to cancel the positive notice.

- **119C Effect of charge for excluding offence pending charge being dealt with**

Clause 32 also inserts a new section 119C, which outlines that where a current positive notice holder is charged with an excluding offence, the person's positive notice must be suspended until the charge is finalised. If the Commissioner suspends a person's positive notice, the Commissioner must advise the person of the suspension, including the reason for the suspension, how long the suspension lasts, how the person may apply for a cancellation of the suspension, the effect of the suspension – namely, a person cannot apply for, start or continue to work in regulated employment or start or continue to run a regulated business – and that the person must return the positive notice and positive notice blue card within seven days. Failure to comply with this provision is punishable by a maximum penalty of 100 penalty units.

The Commissioner is also required to notify other relevant persons that the person's positive notice blue card has been suspended, including the employer, education provider (trainee student), Department of Communities (child care worker), governing body of a religious representative, Non-State Schools Accreditation Board (director of a non-State school governing body). In the notice to the employer, the

Commissioner must advise that the employer may not terminate the person's employment or continued employment, solely or mainly because the person's positive notice has been suspended.

- **119D Cancellation of suspension and issue of further prescribed notice**

Clause 32 also inserts a new section 119D, which stipulates that if the Commissioner suspends the notice under new section 119C, the suspension remains in force until the charge is dealt with or the Commissioner cancels the suspension and issues a further prescribed notice. A person may only apply to have the suspension lifted if the charge has been dealt with. The Commissioner must cancel the suspension and issue a further positive notice unless satisfied that it is an exceptional case in which it would harm the best interests of children to issue a positive notice.

- **120 Replacement of positive notice or positive notice blue card**

- **120A Change of details for prescribed notice or positive notice blue card**

The clause deletes existing section 120, which relates to the cancellation of a prescribed notice on application by a person for a further prescribed notice and the subsequent issue of a new notice, and replaces it with new sections 120 and 120A.

These new sections explain the circumstances under which a person who holds a current positive notice or positive notice blue card must apply for a replacement positive notice or positive notice blue card.

These circumstances are limited to where a positive notice or positive notice blue card is lost or stolen (under new section 120) or when a person changes his or her name from that which the person has previously given to the Commissioner (under new section 120A).

New sections 120 and 120A place obligations on current positive notice holders or current positive notice blue card holders to notify the Commissioner in the approved form, within 14 days, if their positive notice or positive notice blue card is lost or stolen (under new section 120(2)), or if the name or contact details they previously gave the Commissioner changes (under new section 120A(2)).

If the Commissioner is notified that the positive notice or positive notice blue card has been lost or stolen, the Commissioner must cancel the notice and/or card and issue a replacement. Whereas for a change of name, it is

the Commissioner's decision whether or not it is appropriate in the circumstances to cancel the notice or card and issue a replacement.

The sections also place obligations on the person to return the original positive notice or positive notice blue card to the Commissioner within 14 days of receiving the replacement notice or card, if:

- i. the original positive notice or blue card is returned or otherwise recovered after being reported to the Commissioner as lost or stolen (under section 120(5)); or
- ii. there has been a change of name and the Commissioner has decided to replace the original positive notice or blue card (under new section 120A(4)).

Failure of a holder of a positive notice or positive notice blue card to comply with any of these obligations is an offence punishable by a maximum penalty of 10 penalty units.

Subsection (6) of section 120 stipulates that the Commissioner must give written notice to the Police Commissioner about the fact that a current positive notice or current positive notice blue card has been lost or stolen.

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

Clause 33 makes a number of amendments to section 121 regarding a person's ability to apply for a review of the Commissioner's decision about a blue card.

Subsection (1) is amended to clarify that the Commissioner's decision about which a person may apply for review, is whether or not there was an exceptional case under sections 102(4) and 102(7), 119B(2) or 119D(3) of the Act.

Subsection (3) confirms that there is no appeal or review of the Commissioner's decisions to issue or refuse to cancel a negative notice except as referred to in subsection (1) above.

Subsection (4) provides that amended section 121 is subject to new section 121C (Decision by police commissioner that information is investigative information). The effect of this qualification to section 121 is to allow for a person to have the Police Commissioner's decision about investigative information reviewed by a Magistrate, before having the Commissioner's decision to issue a negative notice reviewed by the Children Services Tribunal. In this way, the Children Services Tribunal remains "untainted" in relation to information which a Magistrate determines was not

investigative information and therefore should not have been taken into account by the Commissioner.

Subsection (5) clarifies that the expression to “issue a negative notice” also includes where a negative notice is substituted after cancelling a positive notice.

Insertion of new s 121A to 121E

Clause 34 inserts new sections 121A, 121B, 121C, 121D, and 121E, which relate to investigative information.

- **121A Police commissioner may decide that information about a person is investigative information**

New section 121A sets out the matters of which the Police Commissioner must be satisfied, in order to decide that information is investigative information.

Investigative information is information gathered by the Queensland Police Service as part of an investigation into an alleged offence, which did not result in the matter proceeding to a charge against a person. Because of the highly prejudicial nature of the information, strict parameters have been set around the type of investigative information that may be forwarded by the Police Commissioner to the Commissioner.

The parameters are set out in new section 121A as follows:

- that there is or was evidence of acts or omissions that constituted a serious child-related sexual offence;
- that the police investigated the alleged offence;
- that the applicant was formally notified by being asked to participate in an interview, by participating in an interview, or otherwise being given the opportunity to answer the allegations;
- that there was sufficient evidence available capable of establishing each element of the alleged offence; and
- despite the above criteria, a decision was made not to charge the person because the complainant died before the charge was brought, or the complainant was unwilling to proceed, or the complainant’s parent or guardian decided that in the interests of the complainant, the matter should not proceed.

- **121B Police commissioner not to delegate power under s 121A**

New section 121B prevents the Police Commissioner from delegating the decision regarding whether information is investigative information. This does not prevent the Police Commissioner from obtaining assistance from appropriate personnel such as the Queensland Police Service's Child Safety Director (who will be of the rank of Superintendent or higher), but does ensure that it is the Police Commissioner who is ultimately responsible for the final decision.

- **121C Decision by police commissioner that information is investigative information**

New section 121C provides for a right of appeal to a Magistrates Court, in relation to the Police Commissioner's decision that information is investigative information in the event that a negative notice is issued to a person. A person has 28 days after receiving a negative notice, to appeal this decision. Subsection 121C(4) provides that the Commissioner and Police Commissioner are to be given a copy of the notice of appeal.

To preserve the integrity of the Magistrate's decision, where the Police Commissioner's decision has been upheld, or the Police Commissioner's decision where the period for appealing this decision to the Magistrates Court has elapsed, new section 121C(5) prohibits the Children Services Tribunal from reviewing the decision of the Police Commissioner regarding investigative information. In effect, this means that the Children Services Tribunal does not have jurisdiction to examine whether information is or is not investigative information.

- **121D Court to decide matters afresh**

New section 121D sets out the manner in which the Magistrates Court is to hear an appeal made by a person under new section 121C. Pursuant to section 121D(1), the Magistrates Court is to decide afresh whether the information provided by the Police Commissioner is investigative information.

Subsection (2) states that an investigated person is not permitted to call on the complainant to give evidence in a court in relation to the complaint.

Subsection (3) clarifies that subsection (2) does not prevent documentary evidence being tendered and received in evidence by the court.

Subsection (4) provides that the Magistrates Court may confirm or set aside the Police Commissioner's decision that information is investigative information under new section 121A.

Subsection (5) clarifies that the Magistrates Court must have regard to the same matters that the Police Commissioner had regard to when making the decision that the information was investigative information.

- **121E Consequence of decision on appeal**

New section 121E outlines the processes to be undertaken depending on the outcome of the appeal to the Magistrates Court.

If the appeal is successful, the person may apply to the Commissioner for the negative notice to be cancelled under amended section 119 (Commissioner may cancel a prescribed notice and substitute another prescribed notice), on the ground that the Commissioner made the decision to issue the negative notice based on wrong information. However, if the appeal is unsuccessful, that is, the original decision of the Police Commissioner is confirmed, the person may appeal the Commissioner's decision to issue the negative notice as per the normal course through the Children Services Tribunal. Section 121E(2) ensures that the time within which a person may apply for a review of this decision by the Children Services Tribunal, does not commence until after the decision of the Magistrate has been made. Furthermore, the notice containing the Magistrate's decision given to the person must include this advice.

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

Clause 35 amends section 122, which relates to the information the Commissioner may request from the Police Commissioner about an applicant for a prescribed notice.

Subsection (1)(b) is amended to reflect the change in terminology throughout the Act from the use of the word "suitability notice" to "prescribed notice".

Subsection (1)(c) is amended to include where a person is applying to have a suspension lifted in relation to a positive notice blue card.

Subsection (2) is amended by changing the reference to "criminal history" to "police information" to reflect the additional (investigative) information obtained from the Police Commissioner, which the Commissioner may now take into consideration when assessing an application for a prescribed notice.

Subsection (2A) lists what information the Commissioner may provide to the Police Commissioner when requesting information about a blue card applicant or holder.

This includes:

- any name the person uses or has used;
- the person's date and place of birth;
- the person's gender – this is relevant when a person has a gender-neutral name, for example, Chris Smith;
- any number or date relevant to the prescribed notice or positive notice blue card – this is to ensure accurate cross-checking;
- whether the person is a volunteer – this is to more readily ascertain the cost to Government for employment screening, particularly as the cost for volunteers is currently wholly subsidised; and
- the status of the application, i.e. if the person holds a blue card, has applied for a blue card, has been issued with a negative notice, or has asked the Commissioner to cancel a negative notice.

The clause deletes the current subsection (3) and replaces it with a new subsection (3) which provides that the Commissioner, if there is police information about a person, may ask the Police Commissioner for a brief description of the circumstances of a conviction, charge or investigative information. This amendment acknowledges the additional inclusion of investigative information and the expansion of information from criminal history to police information history.

Subsection (4) is amended to provide that the Police Commissioner must comply with a request made by the Commissioner under this section unless the Commissioner notifies the Police Commissioner that the information is no longer required under subsection (8) (e.g. an applicant or blue card holder has died).

Subsection (6) outlines certain instances where the Police Commissioner may decide that investigative information is exempt and therefore need not be disclosed to the Commissioner. That is where the Police Commissioner is reasonably satisfied that the release of the information may:

- i. prejudice the investigation of a contravention or possible contravention of the law in a particular case;
- ii. enable the existence or identity of a confidential source of information to be ascertained;

- iii. endanger a person's life or physical safety; or
- iv. prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.

Subsection (7) states that when the Police Commissioner is providing any investigative information about a person to the Commissioner, the Police Commissioner must notify that person in an approved form of that information exchange.

Subsections (9) and (10) stipulate limitations on the use of information that is received by police during the blue card screening process. In practice, the Commissioner collects information from applicants for the purpose of conducting police information checks of applicants. This information is provided to the Police Commissioner (as the head of the Queensland Police Service) to enable the Service to conduct these checks, which include an initial police information check and regular updates to ensure that any changes are brought to the attention of the Commissioner. The Queensland Police Service also uses this information to monitor compliance with Part 6 of the Act. In order to enable the Service to effectively monitor compliance, specific employment screening information will be placed on the Service's general database and will be accessible to all police officers. However, the Service will include a direction in its Operational Procedures Manual directing police officers that this blue card information is to be used only for law enforcement purposes related to child protection (refer also new section 164 Commissioner may enter into arrangement about giving and receiving information with police commissioner).

Importantly, information that a person's application for a positive notice (blue card) has been withdrawn, may only be used for purposes under Part 6 of the Act and not for any wider policing purposes as this information has no value other than to stop police from providing any further information about that person to the Commissioner.

Amendment of s 122A (Notice of change in criminal history)

Clause 36 amends section 122A by deleting the references to person's "criminal history" and replacing it with the new term of "police information" in the heading, so that it now reads *Notice of change in police information about a person*. Subsection (1) is similarly amended. This reflects the use by the Commissioner of information other than the criminal history of a person for employment screening purposes.

The clause deletes current subsections (2)(a) to (e) and replaces them with new subsections (2)(a) to (c). Subsection (2) now provides that a notice about a change in the person's police information must include details of:

- any name the person uses or the Commissioner believes has used;
- the person's gender and date and place of birth;
- whether the change in the police information includes a change in the person's criminal history, the offence the person is charged with, and the particulars and date of the charge.

The clause also inserts a new subsection (5) into section 122A. Subsection (5) provides that where the Police Commissioner provides notice to the Commissioner about a change in the person's police information that relates to new investigative information then the police Commissioner must give notice to the person to whom the investigative information relates, in an approved form, about the provision of that information to the Commissioner. This ensures that a person will be informed anytime there is the provision of investigative information by the Police Commissioner.

Insertion of new s 122B

Clause 37 inserts new section 122B to provide an additional power to the Commissioner to notify an employer if a person is to be reassessed under the employment screening provisions.

- **122B Commissioner to give notice to employer about making employment-screening decision about employee**

New section 122B applies when the Commissioner becomes aware that the police information about a positive notice blue card applicant or holder has changed. If the Commissioner is satisfied the information may be relevant to child-related employment (i.e. serious offences or other relevant non-serious offences), the Commissioner must give written notice to the employer stating that the Commissioner is making an employment-screening decision in relation to the employee. Furthermore, where the police information is criminal history (not investigative information), the Commissioner must also tell the employer whether it is a charge or a conviction and the category of offence for which the charge or conviction relates i.e. serious offence; non-serious offence; etc.

Other than the above information, the notice will not provide any details as to what the change of information might be that has prompted this reassessment.

Subsection (5) specifies that upon receipt of this notice, the employer is not entitled to dismiss the employee solely or mainly because of the notice given by the Commissioner. Instead, the employer may use the risk management strategy developed pursuant to 99G of this Act.

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

Clause 38 amends the current subsection (1) to reflect the change in terminology throughout the Act by removing the term “suitability notice” and replacing it with the term “prescribed notice”.

It inserts a new subsection (3A) into section 123. This subsection provides that a person is deemed to have withdrawn their consent to employment screening under this part where:

- the employer gives written notice that the person is no longer employed with them; or
- the Commissioner can not obtain written information confirming that the person is still employed by the employer; and
- the employee has not given written notice to the Commissioner that their employment with the employer has ended; and
- the Commissioner gives the employee and the employer a notice of deemed withdrawal relating to the employee.

This reinforces the obligation on the person who is applying to the Commissioner for a prescribed notice to ensure that they keep the Commissioner informed of their current employment details including when their employment ends.

New subsection (3B) is also inserted into section 123. This subsection deems an employee to have withdrawn his or her consent to employment screening if the person, as a new applicant for a prescribed notice, is charged with an excluding offence. In effect this means the person's application for a prescribed notice cannot be decided by the Commissioner until the charge for an excluding offence is dealt with. Under new section 123(3B), the Commissioner must issue the employee and the employer with a notice of the deemed withdrawal.

This clause also inserts a new subsection (4A) that clarifies for the purposes of new subsection (3A), where an employer may give written notice to the Commissioner that a stated person is employed, continues to be employed, or is no longer employed by the employer.

Amendment of s 124 (Compliance with requirement to end, or not start, a person’s regulated employment)

Clause 39 amends section 124 to clarify that the term “employ” includes “continue to employ”. This section provides that a person whose positive notice is suspended may be employed in non-regulated employment pending the outcome of the charge for the excluding offence.

Amendment of s 126 (Use of criminal history information)

Clause 40 amends the heading of section 126 to *Use of information obtained under this part about a person*, and the section itself to refer to any information about a person obtained under Part 6, thereby incorporating the wider types of information the Commissioner will now receive under this part, namely disciplinary and investigative information.

Replacement of s 126A (What is employment in child care)

Clause 41 deletes existing section 126A by relocating it to new section 99B, and inserting new sections 126A, 126B, and 126C.

- **126A Commissioner must give police commissioner a person’s current address**

New section 126A applies where the Police Commissioner is required to give a notice to a person that investigative information is being passed on to the Commissioner. In order to ensure that this notice is sent to the correct address, the Police Commissioner may apply in writing to the Commissioner to check the correct address. Where the Commissioner has a different address to that held by the Police Commissioner, it must be provided to the Police Commissioner. The Police Commissioner can only use this address for the purpose of giving notice under Part 6 of the Act, not for any other policing activity or law enforcement purpose.

- **126B Commissioner may give information to accreditation board about director of school’s governing body**

New section 126B enables the Commissioner to give information to the Non-State School Accreditation Board as to whether a director holds or has applied for a blue card after receiving a written request from the Board. However, if the Commissioner issues a negative notice, including where a positive notice is cancelled and a negative notice substituted, or suspends the positive notice, the Commissioner must notify the Board of this automatically.

- **126C disqualification order**

New section 126C provides a mechanism by which a sentencing court may make a disqualification order about a person who is convicted of an excluding offence even though the person wasn't sentenced to a period of imprisonment for the offence. A disqualification order means that a person about whom such an order is issued, may never apply to have his or her negative notice cancelled. New section 126C specifies that the Court may make such an order of its own motion or upon an application by a Crown Prosecutor.

Amendment of s 127 (Initial application of this part)

Clause 42 amends the heading of this section so that it now reads *Application of this part* and deletes subsection (1) in recognition that the one-year transitional period for the current sections of the Act is no longer necessary.

Amendment of s 128 (Application for suitability notice for current employee)

Clause 43 amends the heading of section 128 so that it now reads *Application for prescribed notice for current employee* and amends subsection (2) to remove the reference to "suitability notice" and replace it with "prescribed notice" to reflect the change in terminology throughout the Act. It also amends the references in subsection (5)(b)(i) and (ii) to "criminal history" and replaces them with "police information" to reflect the additional information which the Commissioner may now take into consideration when assessing an application for a prescribed notice.

Insertion of new s 144A

Clause 44 inserts new section 144A which clarifies the legal status of a positive notice blue card.

- **144A Positive notice blue card is evidence of holding positive notice**

New section 144A clarifies the status of a blue card by stating that the holding of a current positive notice blue card is evidence that the person has a current positive notice.

Amendment of s 146 (Indictable and summary offences)

Clause 45 clarifies that certain offences under the Act are indictable offences which are crimes, rather than misdemeanours.

Insertion of new s 151A

Clause 46 inserts a new section 151A, which establishes the legal responsibility of executive officers in relation to breaches of the Act by their corporation.

- **151A Executive officers must ensure corporation complies with Act**

Clause 46 inserts a new section 151A(1), which establishes the legal responsibility of executive officers to ensure a corporation complies with the Act.

Subsection (2) states that if the corporation commits an offence under this Act, the executive officers are also taken to have committed the offence.

Subsection (3) states that the fact that a corporation has been convicted of an offence is also evidence that each of the executive officers failed to ensure the corporation's compliance with the Act.

However, subsection (4) provides that it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure the corporation's compliance, or that the officer was not in a position to influence the conduct of the corporation.

Replacement of s 164 (Review of pt 6)

Clause 47 replaces the previous section 164 which expired upon the completion of the review of Part 6 of the Act within three years of the employment screening provisions commencing (the report on the outcome of the review was tabled in the Legislative Assembly on 22 April 2004). New section 164 outlines the extent to which the Commissioner may exchange information with the Police Commissioner.

- **164 Commissioner may enter into arrangement about giving and receiving information with police commissioner**

This new section allows the Commissioner and the Police Commissioner to enter into a written arrangement for information sharing, where that information sharing is allowed for in the Act. Section 164(3) specifies that this arrangement can include daily electronic transfer of information.

Importantly, subsection (4) provides that if the information is to be electronically transferred and there is a limitation on who may access the information or the purposes that the information may be used, the arrangement must provide for such limitation. For an example of such a limitation, see new section 122(10).

Amendment of s 167 (Regulation-making power)

Clause 48 amends the current regulation-making power under section 167 by inserting new subsection (2) which permits a regulation to be made about fees, including refunding or waiving fees, for the purposes of this Act.

Insertion of new pt 9, div 7

- **Division 7 Transitional provisions for the Commission for Children and Young People and Child Guardian Amendment Act 2004**

Clause 49 inserts a new division 7 into Part 9 of the Act, outlining a range of transitional provisions.

- **188 Volunteers**

This section applies to a person who is a volunteer under new section 104B. It provides that section 104B is to operate retrospectively to those volunteers whose agreements to carry out work were entered into before the commencement of this section.

However, subsection (3) provides that where an employee under section 104B i.e. a volunteer, has started carrying out work and the relevant employer has already applied for a prescribed notice before the commencement of this section, that employee may continue volunteering and the employer may continue to employ the volunteer until whichever of the following happens first:

- i. one year since this section commenced;
- ii. a negative notice is issued to the volunteer; or
- iii. the volunteer's application is withdrawn

(In the case of the employer, it is when the Commissioner gives notice to the employer that ii or iii has occurred.)

• **189 Application of amendment of sch 1 to particular employment**

This section applies to a person who, immediately before the commencement of this section, was employed or was continuing to be employed:

- by a school (other than a registered teacher or volunteer parent of a child attending that school);
- as a religious representative;
- as an adult member of the Emergency Services Cadet Program;
- as a school crossing supervisor within the meaning of section 138 of the *Transport Operations (Road Use Management) Act 1994*.

Subsection (2) states that the section 127(2) does not apply to employment outlined under this section. Section 127(2) provided that when the original Act commenced there was to be no retrospective application of the Act to those employed under agreements entered into before the commencement of Part 6 or to the unpaid employment of an adult. This will not be the case in relation to the categories of regulated employment provided for under new section 189. In other words, there is to be retrospective application of the employment screening provisions under the Act in relation to these specific categories of regulated employment.

However, subsection (3) provides a transitional period of up to 12 months. Section 189(3) states that the provisions dealing with the requirements of employers to ensure that employees in regulated employment under Part 6 have a positive notice blue card does not apply to these categories of regulated employment until the earlier of the following:

- i. one year after the commencement of this section;
- ii. a prescribed notice has been issued; or
- iii. the application is withdrawn.

This does not prevent an application for a positive notice blue card being made to the Commissioner but clarifies that no penalty provisions will apply until one year after commencement of section 189 unless ii or iii happen first.

Subsection (4) makes clear that employment under this section is to include continuing employment.

- **190 Employment that becomes regulated employment other than employment mentioned in s 189(1)**

This section clarifies that section 127(2) will apply to new categories of regulated employment other than those set out in section 189. That is, there is no retrospective application of the employment screening provisions to those types of employment that prior to the commencement of this amending Bill were not categories of regulated employment but became categories of regulated employment subsequently..

- **191 Carrying on regulated business**

Subsection (1) states that this section applies to the new categories of regulated businesses of religious representatives, child accommodation services including home stays, sport and active recreation, hostels for children other than residential facilities.

Subsection (2) clarifies that the current provisions in the Act that require someone carrying on a regulated business to have a current positive notice blue card (section 109) will not apply until one year after the commencement of this section. It also provides that the requirement under existing section 113 for a person who carries on a regulated business to apply for a further prescribed notice after there is a change in his or her criminal history, will not apply until the earlier of the following happens:

- i. one year after the commencement of this section;
- ii. a prescribed notice has been issued; or
- iii. the application is withdrawn.

This ensures that once persons carrying on regulated businesses have applied for blue cards that they are subject to all relevant requirements under Part 6 of the Act.

- **192 Provision because of the definition *serious offence***

This section provides that where a decision was made before the commencement of this section that an offence was a serious offence as defined in the original Act, and a negative notice was issued as a result of a person being convicted of a serious offence as it was then defined, then that decision to issue the person with a negative notice stands. Subsection (3) clarifies that a person can not apply to have the negative notice cancelled until at least two years after the negative notice was issued as per section 118(3).

- **193 Issue of positive notice blue card before commencement**

This section formally recognises the colloquial term “blue card”. Subsection (1) provides that it applies to “blue cards” or suitability notices (now prescribed notices) that have been issued before commencement and have not yet expired or been cancelled. Subsection (2) provides that a “blue card” is a positive notice blue card for the purposes of this Act. Subsection (3) clarifies that if the expiry date on the “blue card” was a day later than the expiry day for the suitability notice, then the “blue card” and suitability notice remain current until the date stated in the “blue card”. Subsection (4) provides that (3) applies despite section 104 (Currency of prescribed notice and positive notice blue card).

- **194 Charge for excluding offence not to apply to particular holders of positive notices**

This section applies to a person who immediately before the commencement of the section was the holder of a current positive notice and had been charged with an offence that had not been finalised and upon commencement, became an excluding offence. In these limited circumstances, the person’s positive notice is not to be suspended under new section 119C. However, if the person is subsequently convicted of an excluding offence after the commencement of the section, (i.e. regardless of when the person was charged with an excluding offence or whether the offence was an excluding offence when the person was charged), a sentencing court may make a disqualification order about the person (where a period of imprisonment is not ordered). Additionally, new sections 119A or 119B, which relate to the cancellation of the person’s positive notice and positive notice blue card as a result of convictions for excluding offences, may apply depending on the actual sentence imposed by the court.

- **195 References to suitability notices**

This section states that where in an Act or in a document a reference has been made to a “suitability notice”, if appropriate in the context it should now be taken to be a reference to a “prescribed notice”.

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

Clause 50 amends the current categories of regulated employment and businesses located in Schedule 1 parts 1 (regulated employment) and 2 (regulated businesses) of the Act. The clause also inserts new categories of

regulated employment 6B (Child accommodation services including home stays), 6C (Religious representatives), 6D (Sport and active recreation), 6E (Emergency services cadet program) and 6F (School crossing supervisors).

- **Regulated employment**
- **1 Residential facilities**

This existing category provides that employment is regulated if it is carried out, or is likely to be carried out inside a residential facility or another place which is a child accommodation service under funding provided by the Commonwealth or by the department that administers the *Education (General Provisions) Act 1989* (currently the Department of Education and the Arts). In addition to the existing exemption in relation to employees of government service providers, the section also clarifies that licensed care service providers under the *Child Protection Act 1999* are exempt, as they are already screened under comparable employment screening processes by the Department of Child Safety (as it is now known). The Bill then rewords the existing section to clarify what is and is not regulated employment for the purposes of the Act.

- **3 Schools – employees other than teachers and parents**

This existing category provides that employment where the person providing services at a school directed mainly to children or conducting activities at a school that mainly involve children, is regulated employment, if the person is not a registered teacher or a volunteer who is a parent of a child attending the school. The Bill merely rewords the existing section to clarify what is and is not regulated employment for the purposes of the Act.

- **5 Counselling and support services**

This category provides that counselling or a similar support service to a child is regulated employment, whether the person is in the physical presence of the child or not. An example clarifies that “not physically present” includes where the service is provided over the telephone or via the Internet. In addition to the existing exemption in relation to employees of employees of government service providers which carry on a business that includes providing counselling or a similar support service, and registered health practitioners, the section also clarifies that licensed care service providers under the *Child Protection Act 1999* are exempt, as they are already screened under comparable employment screening processes by the Department of Child Safety (as it is now known). The Bill then rewords the existing section to clarify what is and is not regulated employment for the purposes of the Act.

- **6 Private teaching, coaching or tutoring**

The Bill merely rephrases the definition of prescribed teaching in this existing category of regulated employment so that it now reads “teaching, coaching, or tutoring one child or more than one child at the same time, on a commercial basis”. Therefore the category is clarified so that it applies to one-on-one and group teaching, coaching, and tutoring for a financial reward. Subsection (2) of this category provides that it is not prescribed teaching where the employee is a registered teacher or where the employer is an education provider (as defined in the dictionary in Schedule 4).

- **6A Education programs conducted outside of school**

The redrafted category 6A does not alter the content of the existing category 6A but merely restructures the category so that its application is set out in subsection (1) and the relevant exemptions are set out in subsection (2).

- **6B Child accommodation services including home stays**

Category 6B creates a new category of regulated employment that applies to employees of child accommodation services that are outside the redrafted category 1 residential facilities. This new category applies to home stay providers. Subsection (2) provides that the category extends to any adult who resides in the home, although they are treated as unpaid employees and so are not required to pay the prescribed fee for a positive notice. Of course, this fee relief does not extend to the adult home stay provider who is the primary care giver unless the home stay is provided voluntarily. Subsection (4) defines home to include a principal place of residence or any holiday home of the home stay provider.

Subsection (3) provides that employment is not regulated employment if the home stay provider is:

- a relative of the child who receives the child accommodation service;
or
- the employer is a government service provider, and its business includes arranging a child accommodation service..

- **6C Religious representatives**

Category 6C creates a new category of regulated employment for religious representatives whose usual functions include, or are likely to include, providing services directed mainly towards children or conducting activities mainly involving children, as a religious representative. Religious representative is defined in the dictionary in Schedule 4 as

someone who is a member of an organised religion or religious group even if the group is not a part of, or does not consider itself to be a part of an organised religion.

- **6D Sport and active recreation**

Category 6D creates a new category of regulated employment for sport and active recreation that applies where the usual functions include or are likely to include the provision of services directed mainly towards children or conducting activities mainly involving children, and those services or activities are part of sport or active recreation. Subsection (2) outlines what is not regulated employment under this category for the purpose of the Act, namely:

- if the employment takes place at an amusement park – defined in the dictionary in Schedule 4 as a permanent or temporary park but not an amusement arcade;
- if the employer is a government entity;
- if the employee is unpaid and a parent of a child engaged in the sport or active recreation; and
- if the services or activities are conducted by or within an entity already covered under existing category 4, section (1)(b), i.e. a church, club, and association, or similar entity.

- **6E Emergency services cadet program**

Category 6E creates a new category of regulated employment that applies to adult members in the cadet program managed by the department responsible for emergency services where those persons are teaching, coaching, or tutoring one child or more than one child at the same time. Therefore supervisors in the Emergency Services Cadet Program, formerly the SES cadet scheme, will be required to undergo screening under Part 6 of the Act.

- **6F School crossing supervisors**

Category 6F creates a new category of regulated employment that applies to persons whose usual functions of employment include, or are likely to include providing services as a crossing supervisor within the meaning of section 138 of the *Transport Operations (Road Use Management) Act 1994*. This category applies to road crossing supervisors who assist children to safely cross roads. In most instances these children's crossings are located near schools.

- **Regulated businesses**
- **12 Religious representatives**

This new category of regulated business recognises that religious representatives might provide services or conduct activities in their capacity as religious representatives, as regulated businesses, e.g. if they are self-employed, rather than in the context of regulated employment. If this is the case, they will still be required to hold a blue card.

- **13 Child accommodation services including home stays**

This new category of regulated business is designed to ensure that people who are running businesses that provide child accommodation services in their homes are required to hold positive notice blue cards. This includes situations where the service has been organised through an arrangement with a government service provider. To avoid any possible overlap of categories in Schedule 1 of the Act, subsection (2) specifically excludes child accommodation services that are conducted at a boarding facility, residential facility or another place of the type mentioned in category 1 (residential facilities), subsection (1)(b).

- **14 Sport and active recreation**

This new category of regulated business ensures that people, who are running businesses where the usual activities include sport or active recreation activities for children, are required to hold positive notice blue cards, unless:

- the business takes place at an amusement park – defined in the dictionary in Schedule 4 as a permanent or temporary park but not an amusement arcade; or
- the activities are conducted by, or within, an entity already covered under existing category 4, section (1)(b), i.e. a church, club, and association, or similar entity.

- **15 Hostel for children other than residential facility**

This new category of regulated business ensures that persons who are running businesses that provide child accommodation services, other than at residential facilities (defined in Schedule 1, part 1, section 1 of the Act), and are funded by it wholly or in part by the Commonwealth Government or through the Queensland department which administers the *Education (General Provisions) Act 1989* (currently the Department of Education and the Arts), must hold positive notice blue cards. Subsection (2) clarifies that such a business is not a regulated business under the Act if the employer is

a government service provider, in order to align with the existing exemption under the residential facilities category of regulated employment.

Replacement of sch 2 (Other serious offence provisions of the Criminal Code)

Clause 51 deletes the current Schedule 2 and replaces it with *Schedule 2 Current serious offences* and inserts new *Schedules 2A Repealed or expired serious offences*, *2B Serious child-related sexual offences*, and *2C Repealed or expired serious child-related sexual offences*.

- **Schedule 2 Current serious offences**

This schedule contains a list of offences referred to in the section 99C definition of *serious offence*. The amended list now includes only those offences for which a person convicted of such offence could, *prima facie*, be regarded as unsuitable to work with children. Accordingly, if a person's criminal history indicates a conviction for a serious offence, the Commissioner must issue a negative notice unless it is an exceptional case in which it would not harm the best interests of children to issue a positive notice. However, if a person has only been charged with a serious offence, the Commissioner must issue a positive notice unless it would not be in the best interests of children to do so.

That is, the onus of proving an exceptional case shifts from the person (for a conviction) to the Commissioner, for a charge of a serious offence (refer new sections 102(4) and (7)).

- **Schedule 2A Repealed or expired serious offences**

This schedule contains a list of offences referred to in the section 99C definition of *serious offence*. These are offences for which a person was charged with in the past, but which have subsequently expired or been repealed. Although these offences no longer exist, they still appear on some criminal histories of applicants for prescribed notices. Therefore, to provide certainty for both applicants and the Commissioner, the relevant offences, which if still current would be classified as serious offences under Schedule 2, are listed in new Schedule 2A.

Accordingly, a conviction for a Schedule 2A offence would mean that unless a person could demonstrate to the satisfaction of the Commissioner that it was an exceptional case in which it would not harm the best interests of children to issue a positive notice, a negative notice must be issued.

- **Schedule 2B Serious child-related sexual offences**

This schedule contains a list of offences referred to in the section 99D definition of *serious child-related sexual offence*, for which a person would have been charged but for the criteria outlined in new section 121A. In addition to the offences listed in Schedule 2C, these are the offences to which the Police Commissioner may have regard when determining what is investigative information under new section 121A.

The offences listed in new Schedule 2B are also *excluding offences* as defined in new section 99E.

- **Schedule 2C Repealed or expired serious child-related sexual offences**

This schedule contains a list of offences referred to in the section 99D definition of *serious child-related sexual offence*, for which a person may have been charged with in the past, but for the criteria outlined in new section 121A and which have since expired or been repealed. In addition to the offences listed in Schedule 2B, these are the offences to which the Police Commissioner may have regard when determining what is investigative information under new section 121A.

The offences listed in new Schedule 2C are also *excluding offences* as defined in new section 99E.

Amendment of sch 4 (Dictionary)

Clause 52 deletes the current definitions under the Act of the following terms: *current*, *employing*, *employment-screening decision*, *negative notice*, *positive notice*, *serious offence*, *serious offence involving a child*, *suitability notice*, and *work*.

The clause inserts new definitions relevant to the amendments made to Part 6 by the Bill for the following terms: *active recreation*, *amusement park*, *business*, *current*, *dealt with*, *disciplinary information*, *education provider*, *employment*, *employment-screening decision*, *excluding offence*, *executive officer*, *investigative information*, *jurisdiction*, *negative notice*, *police information*, *positive notice*, *positive notice blue card*, *prescribed notice*, *religious representative*, *serious child-related sexual offence*, *serious offence*, *sport*, *trainee student*, *volunteer*, and *work*.

Amendment of other Acts

Clause 53 is the schedule of consequential amendments to the following Acts: *Child Care Act 2002*, *Child Protection Act 1999*, *Education (Accreditation of Non-State Schools) Act 2001*, *Health Practitioners (Professional Standards) Act 1999*, *Nursing Act 1992*, and *Transport Operations (Passenger Transport) Act 1994*.

- ***Child Care Act 2002***

Sub clause 1 amends section 26(2) to reflect the change in terminology throughout the *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 2 amends the heading of section 27 to reflect the change in terminology throughout the *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”. The heading of section 27 of the *Child Care Act 2002* which reads *Suitability notices for carers and staff members* is amended so it now reads *Prescribed notices for carers and staff members*.

Sub clause 3 inserts new section 50A into the *Child Care Act 2002*, which allows the chief executive to provide the Commissioner with written notice of certain disciplinary information in relation to licensed child care service providers in certain circumstances. These are, where the chief executive has amended, suspended, or revoked a person’s licence and reasonably believes the information relating to this disciplinary action is relevant to the functions or powers of the Commissioner. The written notice to the Commissioner must state the person’s name, address, date of birth, the reasons for the revocation including the reasons for believing that the person did harm to a child, when the conduct happened and the nature of the conduct.

Sub clause 4 amends sections 54(7) and (8) to reflect the change in terminology throughout the *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 5 amends the heading of part 3, division 5 of the *Child Care Act 2002* to reflect the change in terminology throughout the *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

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Sub clause 6 amends sections 74, 80(1) and 97(1), (4), and (5) to reflect the change in terminology throughout the *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 7 inserts new section 107A into the *Child Care Act 2002*. New section 107A allows the chief executive to provide the Commissioner with written notice of certain disciplinary information in relation to the issuing of a prohibition notice. Prohibition notices prohibit a person from providing child care services, being engaged as a carer or staff member of a child care service, or providing care of a child for reward where they are not the child’s parent or guardian. Subsection (3) provides that the written notice must state the person’s name, address, date of birth, the decision and reasons of the chief executive, when the conduct that resulted in the cancellation happened and the nature of the conduct but should not contain identifying information about a particular child.

This consequential amendment ensures that relevant disciplinary information with respect to foster carers can be provided to the Commissioner.

Sub clause 8 amends sections 137(1)(d) and 139(1), (2), (3) and (5) to reflect the change in terminology throughout *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 9 amends section 140 to reflect the change in terminology throughout *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 10 amends the heading of section 165A to reflect the change in terminology throughout *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 11 amends section 165A(1)(b) to reflect the change in terminology throughout *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”. Under this section, reference is now made to a positive prescribed notice.

Sub clause 12 amends section 165A(1)(c) to reflect the change in terminology throughout *Commission for Children and Young People and*

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Child Guardian Amendment Act 2000 from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 13 amends the heading of section 166 to reflect the change in terminology throughout *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 14 amends sections 166(1)(a), (b), and (2) to reflect the change in terminology throughout *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 15 amends section 166(3) to clarify that there is no fee for adult occupants in relation to obtaining a prescribed notice either under the *Child Care Act 2002* or the *Commission for Children and Young People and Child Guardian Act 2000*.

Sub clause 16 amends the heading of section 166A to reflect the change in terminology throughout *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 17 amends section 166A(1)(a) to reflect the change in terminology throughout *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”. Under this section, reference is now made to a positive prescribed notice.

Sub clause 18 amends section 166A(1)(b) and (2), and 184(2) to reflect the change in terminology throughout *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word “suitability notice”, to “prescribed notice”.

Sub clause 19 amends Schedule 2 by replacing the existing definitions of *apply for a suitability notice, disqualified person, negative suitability notice, positive suitability notice, and suitability notice* under the *Child Care Act 2002*, with *apply for a prescribed notice, disqualified person, negative prescribed notice, positive prescribed notice, and prescribed notice* respectively, to reflect the change in terminology in the *Commission for Children and Young People and Child Guardian Amendment Act 2000*.

- ***Child Protection Act 1999***

Sub clause 1 inserts new section 140A into the *Child Protection Act 1999*.

- **140A Chief executive may notify Commissioner for Children and Young People and Child Guardian about particular information**

New section 140A deals with the procedure for transferring information about certain disciplinary actions, namely amendment, suspension, or cancellation of a foster carer's authority by the chief executive of the Department of Child Safety to the Commissioner.

New subsection (2) permits the chief executive to give written notice to the Commissioner about the disciplinary action if the chief executive considers it is relevant to the functions and powers of the Commissioner under Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000*.

Under new subsection (3), the written notice must state the person's name, address, date of birth, the decision, and reasons of the chief executive, when the conduct occurred that resulted in the disciplinary action, and the nature of the conduct but must not contain identifying information about a particular child.

This consequential amendment ensures that relevant disciplinary information with respect to foster carers can be provided to the Commissioner.

- ***Education (Accreditation of Non-State Schools) Act 2001***

Sub clause 1 amends sections 146(2) and 168 of this Act to reflect the change in terminology throughout the *Commission for Children and Young People and Child Guardian Amendment Act 2000* from the use of the word "suitability notice", to "prescribed notice".

- ***Education (Teacher Registration) Act 1988***

Sub clause 1 amends sections 71B(3) of this Act, which permits the Board of Teacher Registration to notify the Commissioner of any relevant disciplinary information, to remove the reference to "suitability" and "child-related employment". This is to ensure consistency with the change in terminology in the *Commission for Children and Young People and Child Guardian Amendment Act 2004* as a result of the amended purpose of Part 6 outlined in the new section 95 which now ensures that the focus of Part 6 is on the screening of persons in employment and businesses prescribed under the Act and indicates that the screening is not a general guarantee of suitability of persons to work in child-related employment.

- ***Health Practitioners (Professional Standards) Act 1999***

Sub clause 1 inserts new section 384A into this Act.

- **384A Board may notify Commissioner for Children and Young People and Child Guardian about particular information**

New section 384A permits the 13 Health Practitioner Boards to provide certain information regarding disciplinary actions taken by the Board, Professional Conduct Review Panel, or the Health Practitioners Tribunal, to the Commissioner. Only information which a Board considers to be relevant to the functions and powers of the Commissioner under Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000* may be provided. Disciplinary actions include suspension, cancellation, or imposition of conditions on registration including similar actions taken under foreign law.

- *Nursing Act 1992*

Sub clause 1 inserts new section 139A into this Act.

- **139A Executive officer or council may notify Commissioner for Children and Young People and Child Guardian about particular information**

New section 139A permits the Queensland Nursing Council and Executive Officer of the Council to provide certain information regarding disciplinary actions taken by the Council, Executive Officer, or the Nursing Tribunal, to the Commissioner. Only information which is considered to be relevant to the functions and powers of the Commissioner under Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000* may be provided. Disciplinary actions include suspension, cancellation, or imposition of conditions on registration or enrolment, including similar actions taken under foreign law.

- *Transport Operations (Passenger Transport) Act 1994*

Sub clause 1 amends schedule 3, paragraph (a) of the definition of *category B driver disqualifying offence* under this Act to cross-reference it to new Schedules 2 (Current serious offences) and 2A (Repealed or expired serious offences) under the *Commission for Children and Young People and Child Guardian Act 2000*.