Child Safety Legislation Amendment Bill 2005

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Child Safety Legislation Amendment Bill 2005.

Policy Objectives of the Legislation

The objective of the Bill is to implement the third stage of legislative reforms resulting from the Crime and Misconduct Commission's report *Protecting Children: An Inquiry into Abuse of Children in Foster Care*. The amendments seek to strengthen:

- the working relationship between the government and the Indigenous community in relation to Aboriginal and Torres Strait Islander children within the child protection system,
- requirements to ensure the unique cultural identity needs of Aboriginal and Torres Strait Islander children are met when they require placement away from their parents and family,
- the assessment and approval of carers, specifically relatives and other persons connected to a family, who provide care for children in need of protection under the *Child Protection Act 1999,*
- safeguards for children and families when children in need of protection under the *Child Protection Act 1999* are placed by the government with the agreement of their parents.

The Bill amends the *Child Protection Act 1999.* It makes consequential amendments to:

- Child Care Act 2002
- Children Services Tribunal Act 2000

- Commission for Children and Young People and Child Guardian Act 2000
- Coroners Act 2003
- Juvenile Justice Act 1992
- *Police Powers and Respo*nsibilities Act 2000

Reasons for the Bill

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

Achieving the Objectives

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

Enhancement of the current provisions dealing with the requirement of the Department of Child Safety to work together with the Indigenous community in relation to Aboriginal and Torres Strait Islander children in the child safety system. The provisions will now include:

- A new duty on the Department of Child Safety to ensure the recognised Aboriginal and Torres Strait Islander organisation is involved in the process of decision-making about a child, when a decision is likely to have a significant impact on the child's life.
- Examples of significant decisions which will provide additional guidance for the Department of Child Safety in its work with Aboriginal and Torres Strait Islander organisations.

Establishing a legislative framework to ensure the needs of Aboriginal and Torres Strait Islander children who are placed outside their family and community are met. The key components of this framework are:

- A requirement on the chief executive to ensure attempts are made to place an Aboriginal or Torres Strait child in a placement

located close enough to the child's family or community for the child to maintain contact with their family.

- A requirement on the chief executive to ensure that carers with whom Aboriginal and Torres Strait Islander children are placed can help meet the child's need to maintain their connection with their family, community and culture and their Indigenous identity.

Establishing a new legislative framework for the assessment and approval of relatives and other persons with whom children are placed. Key components of the new framework include:

- Extending the legislative processes of application, assessment, approval, amendment, suspension, cancellation and renewal of approvals which apply to foster carers to relatives with whom the Department of Child Safety will place or has placed children.
- Establishing a new category of provisionally approved carer, whose approval will be limited to 60 days. This will ensure children who are placed urgently by the chief executive with relatives or other members of their kin, are provided with safeguards about their care under the Act from the time of their placement.
- Limiting where the chief executive may place a child to carers or services that have been approved by the chief executive under the *Child Protection Act 1999.* The exception to this is when the special needs of a child require the child to be placed in another type of regulated service, such as a medical or disability facility.

Establishing a new legislative framework for the placement of children by agreement with their parents. Key components of this framework include:

- Guidance to the chief executive about the appropriate considerations to inform the decision to intervene with a family with their agreement and the way in which to work with the family with their agreement.
- Provision about what must be included in a care agreement between the chief executive and a parent. The agreement must be written, signed and address certain matters such as arrangements for contact and what types of decisions relating to the child the parents want to be consulted about.
- Extending and clarifying the chief executive's obligations and rights for a child who is placed under a care agreement.

- Time limits on the duration a child can be placed under a care agreement to ensure that children are not placed under these arrangements for ongoing periods without review.

Enhancements to the determination of persons suitability to provide care for children. The Bill will amend the Child Protection Act 1999 in the following ways:

- Require managers, directors and employees of licensed care services, and approved carers, including provisionally approved carers, to advise the department about a change in their criminal histories. Approved carers will also be obliged to advise the department when they become aware of a change in the criminal histories of other members of their households and of changes in the membership of their household.
- Enable the Police Commissioner to monitor the criminal histories of carers, adult members of their households and managers, directors and employees of licensed care services and to advise this information to the chief executive.
- Enable the Police Commissioner to give investigative information about carers and adult members of their household to the chief executive in circumstances where the investigated offence is a child related sexual offence and the police have been unable to proceed to a charge because the victim has died or the complainant has been unwilling to proceed.

Administrative Costs

The legislative amendments in this Bill are a fundamental component of implementing the reforms to the child protection system. The Government has committed additional funding in excess of $200 million per annum by 2006-07 to improve the delivery of child protection services in Queensland. Additional recurrent funding of $3 million has been allocated to cover the costs of administering the new legislation in terms of screening, assessment, training, respite and carer support to a range of new and existing carers.

Fundamental Legislative Principles

- *Criminal, domestic violence and traffic history checks*

Clause 51 inserts a new division 5 into chapter 4 part 2 of the *Child Protection Act 1999* to deal with new requirements on approved carers and

other persons involved in licensed care services to notify the chief executive of:

- changes in their personal history; and
- changes in the personal history of adult members of a carer's household; and
- changes in the membership of a carer's household.

The amendments to chapter 4 will enable the chief executive to monitor on a daily basis the criminal histories of carers, their adult household members, as well as managers, directors and employees of licensed care services. They also enable the chief executive to obtain investigate information from the police commissioner about carers, their adult household members and managers, and directors and employees of licensed care services.

While these amendments about screening and monitoring criminal histories adversely affect the rights and liberties of carers and their household members, they are considered justified taking into account: :

- the need for the Department of Child Safety to have all relevant information to ensure the ongoing safety of children who have been placed with approved carers; and
- the overriding need to safeguard the interests of vulnerable children;
- the risk of children being cared for by or having daily contact with persons who may have committed offences unknown to the department is reduced;
- appeal rights are included for a person whose investigative information is disclosed to the chief executive;
- where the person whose investigative information is released is not the applicant for or holder of a certificate or license, their privacy is protected by avoiding disclosure of the information to the carer or licensee.

- *Provisionally Approved Carers*

Clause 41 inserts a new division 3A in chapter 4, part 2 of the *Child Protection Act 1999* dealing with the provisional approval of carers. Provisionally approved carers will be unable to appeal a number of decisions within this provisional approval framework. These decisions are: the refusal to issue a certificate of approval, refusal to extend a provisional approval carer's certificate and cancellation of a provisional certificate of

approval. These amendments may adversely affect the rights and liberties of carers. However, they are considered justified on the basis that:

- A person does not apply to be a provisionally approved carer and there is no application process in relation to a provisional certificate of approval. The chief executive may issue a provisional certificate of approval if the need arises because of a particular child's need for a placement with a person. A certificate may only be issued to a person who is an applicant for approval to be an approved foster carer or approved kinship carer, for which there is a formal application process, including rights of review.
- A review of a decision to issue, extend or cancel a provisional certificate of approval would amount to a review of the pending application for approval as a foster or kinship carer.
- The cancellation of a provisional certificate of approval does not affect the holder's pending application for approval as an approved foster or kinship carer. If this application is subsequently refused, this decision is a reviewable.
- The time frame for a provisional certificate of approval is limited to 60 days, with a possibility for extension to a maximum period of 90 days.

- *Children placed under care agreements*

Clause 28 amends section 91 and establishes when and who has the right to appeal a decision to remove a child. When the chief executive decides to remove from a carer's care a child who is subject to a child protection order granting the chief executive custody or guardianship, this decision is currently a reviewable decision to the Children Services Tribunal. Amendments to section 91 will exclude carers from appealing a decision to remove from their care a child who is placed under a care agreement. This potential breach of fundamental legislative principles is considered reasonable taking into account:

- the child's placement with the carer is a consequence of an agreement between the chief executive and the parents; and
- if the circumstance leading to the removal of the child results in a cancellation, suspension or amendment of the approval, this is a reviewable decision; and
- the time frames of placements under care agreements are limited to an initial 30 days.

- *Police Commissioner's release of investigative information to the chief executive*

Clause 51 inserts a new division enabling the Police Commissioner to decide that certain information about an investigation into an offence alleged to be committed by a person associated with a licence or carer approval is investigative information. Once such a decision is made the Police Commissioner will provide the information to the chief executive and give notice to the investigated person, who may be the applicant or authority holder or someone in their household or in the case of a licence be someone employed by the licencee. The chief executive is entitled to act immediately on the information and make decisions that may affect the licence or the carer approval. The person affected by the chief executive's decisions is not necessarily the same person who has received a notice about investigative information. The use of untested investigative information in administrative decision-making affects the rights and liberties of persons. However, the breach of fundamental legislative principles is considered reasonable taking into account:

- Review rights exist for the person who has been investigated to contest the decision that the information is investigative information. For example, an appeal may be successful if the person was not formally informed of the investigation.
- The authority holder has the right to review in relation to any adverse decisions made on the basis of the investigative information.
- Investigative information relates only to the most serious of child-related sexual offences, and the reason for the investigation not proceeding to a charge are related to the wishes and capacity of the victim child and the child's guardian.
- The provisions seek to strike an appropriate balance between an individual's right to privacy and natural justice with the need for the department to be able to act on information indicating risk factors as soon as that information is made available.

- *Discretion to release information about a child to a person who is a member of the child's family*

Clause 64 inserts a new section 188B which provides for the disclosure of confidential information to family members. This breach of fundamental legislative principles is justified taking into consideration the following matters:

- The information may be released only to a member of the child's family group.
- The release of the information is subject to the welfare and best interests of the child, the current case plan for the child, and any adverse consequences resulting from the disclosure of the information.
- The views of the child must be taken into account when making the decision.

Consultation

Community

The following non-government organisations have been consulted in the formulation of legislative proposals:

- Foster Care Queensland
- PeakCare Queensland Inc
- CREATE Foundation
- Queensland Aboriginal and Islander Health Forum
- KinKare
- Central Queensland AICCA, Rockhampton
- Mackay ATSI Alternative Care, Mackay
- Wu Chopperen Health Service, Cairns
- Karbul Indigenous Placement Agency (KIPA), Caboolture
- Kalwun Development Corporation, Gold Coast
- Kambu Medical Service, Ipswich
- Barambah Aboriginal Child Care Agency, Cherbourg
- Townsville Aboriginal and Islander Health Service, Townsville
- Cape York Health Council

Government

The following agencies have been consulted on the amendments:

- Department of the Premier and Cabinet
- Queensland Treasury
- Department of Aboriginal and Torres Strait Islander Policy
- Children Services Tribunal
- Department of Justice and Attorney-General
- Queensland Police Service
- Commission for Children and Young People and Child Guardian
- Department of Housing
- Department of Education and the Arts
- Department of Corrective Services
- Queensland Health
- Department of Justice and Attorney-General
- Department of Communities

Notes on Provisions

Part 1 Preliminary

1 Short title

Clause 1 states the short title of the Bill.

2 Commencement

Clause 2 states that Part 2 heading and clauses 3, 30 (1) to (4), 31 and 58 will commence on assent and that the remainder of the Bill will commence on a date to be fixed by proclamation.

Part 2 Amendment of Child Protection Act 1999

Act amended in pt 2

Clause 3 states that this part amends the *Child Protection Act 1999*.

4 Amendment of s 5 (Principles for administration of Act)

Clause 4 amends section 5 of the *Child Protection Act 1999*, which sets out the principles for the administration of the Act. The amendment inserts a new principle that when making decisions about removing a child from his or her parents, the chief executive must consider placement with the child's kin in preference to other placement options. The new term "kin" is defined in amendments to the dictionary in schedule 3. It is not intended that this new principle will require review of existing, otherwise long-term placements with carers who are not kin to the child, for example placement of a child with an approved foster carer. Indeed, a long-term foster carer is likely to fall within the definition of "kin" by having become a person of significance to the child.

5 Amendment of s 6 (Provisions about Aboriginal and Torres Strait Islander children)

Clause 5 amends section 6 of the *Child Protection Act 1999*. It deletes and replaces section 6. Section 6 sets out provisions applying to the administration of the entire Act in relation to Aboriginal and Torres Strait Islander children and families. The amendment clarifies and strengthens the obligation for the chief executive to work with the Aboriginal or Torres Strait Islander entity when making decisions about an Aboriginal or Torres Strait Islander child. These changes reflect the importance of Aboriginal and Torres Strait Islander participation in decision-making, to ensure that Aboriginal and Torres Strait Islander children receive culturally appropriate and inclusive child protection services, and that these services are delivered in a collaborative manner with Aboriginal and Torres Strait Islander organisations. The new terminology of "recognised entity" for these organisations replaces the existing terminology of "recognised agency". See clause 65.

The amendments introduce new requirements on the chief executive when intervening with Aboriginal and Torres Strait Islander children.

New subsection 6(1) obliges the chief executive or authorised officer to give the recognised entity for the child the opportunity to participate in the

decision-making process when making a significant decision. The chief executive or authorised person must ensure that the recognised entity for the child is informed and invited to be involved in decision-making with the chief executive in relation to a decision likely to be significant for the child.

Two new concepts, "significant decision about an Aboriginal or Torres Strait Islander child" and "opportunity to participate in the decision-making process" are introduced by the amendments.

Significant decisions about an Aboriginal or Torres Strait Islander child may include for example:

- a decision made in the course of investigating an allegation of harm to the child
- a decision to enter a care agreement with the child's parents
- a decision made in the course of developing or reviewing the child's case plan
- a decision about placing the child in care
- a decision about the child's contact with family members and other persons of significance
- a decision relating to an application for an assessment order or child protection order for the child
- a decision made in the course of a court-ordered conference about the child
- a decision to remove the child from a carer's carer
- a decision about the child's transition from being a child in care to independence
- a decision about the transfer of an order applying to the child to another jurisdiction.

Opportunity to participate in the decision-making process may be illustrated by the following examples:

- Inviting the recognised entity for the child to participate in planning for and undertaking a child protection investigation and assessment.
- Inviting the recognised entity for the child to be involved in making decisions about the nature and frequency of contact between an Aboriginal or Torres Strait Islander child who is placed away from their parents with a relative and their community.

The new subsection 6(2) provides that decisions that are not significant for an Aboriginal or Torres Strait Islander child must only be made after the chief executive or authorised officer consults with the recognised entity for the child.

The new subsection 6(3) provides that when unable to comply with the requirements in new sections 6(1) and 6(2), the chief executive or authorised officer must consult with the recognised entity after making the decision. There may be limited circumstances where it is not possible to engage the recognised agency in the decision-making process because the needs of the child require immediate removal from the family.

The new subsection 6(4) now includes obligations that only apply to the Childrens Court in relation to an Aboriginal and Torres Strait Islander child. The amendments omit reference to the chief executive and authorised officer. This amendment clarifies confusion and ambiguity that existed between the chief executive's or authorised officer's decisions versus exercise of a power. This is important as subsection 6(4) provides for an alternative way of obtaining advice from the Aboriginal and Torres Strait Islander community. New subsection 6(4) now makes it clear that court must have regard to the views of the recognised entity for the child about the child and about the Aboriginal and Island customs relating to the child in exercising a power under the *Child Protection Act 1999.*

New subsection 6(6) defines a significant decision about an Aboriginal or Torres Strait Islander child as a decision which has a significant impact on a child's life. The list provided above is not an exclusive list, and other specific decisions may be significant decisions for a particular child.

6 Amendment of s 7 (Chief executive's functions)

Clause 6 amends section 7 of the *Child Protection Act 1999.* These are consequential amendments to reflect the new terms and concepts introduced by the amendments.

Subclause 6(1) omits the word "foster" in section 7(1)(g) of the *Child Protection Act 1999*, so that it now refers to approved carers, and hence incorporates both foster carers and kinship carers as well as provisionally approved carers. "Approved carer" is defined by amendments to the dictionary in Schedule 3.

Subclause 6(2) omits "foster care" in section 7(1)(h) and replaces it with "the care of children under this Act".

Subclause 6(3) omits "foster carers caring for children under this Act" in 7(1)(h) and replaces it with "approved carers".

Subclause 6(4) amends 7(1)(o) to reflect the new term of recognised entities.

Subclause 6(5) omits and replaces the definition of "child in care". This reflects the inclusion of the new division 3B into chapter 2 which deals with intervention with parental agreement, including placement in out-of-home care under a care agreement. The result of such placement is that the chief executive has custody of the child within the meaning of section 12 of the C*hild Protection Act 1999.*

7 Amendment of s 12 (What is effect of custody)

Clause 7 renumbers section 12(1)(b) as section 12(1)(c) and inserts a new section to apply to children for whom the chief executive has custody of under a care agreement.

8 Amendment of s 14 (Chief executive may investigate harm)

Clause 8 amends section 14(2) where it refers to commissioner of the police service to police commissioner.

9 Amendment of s 51C (Children for whom case plans are required)

Clause 9 amends section 51C note 1 to reflect inclusion of care agreements in the *Child Protection Act 1999.*

10 Amendment of s 51D (How case planning must be carried out)

Clause 10 amends section 51D(1)(c)(iv) to reflect the renumbering of section 6, affected by clause 5.

11 Amendment of s 51L (Who should be involved)

Clause 11 amends the example in section 51L(1)(d) by omitting the words "foster carer" and replacing them with "an approved carer". "Approved carer" is defined in amendments to the dictionary in schedule 3. Subclause (2) amends section 51 to reflect the new term "recognised entities"

provided for in the new section 246I of the *Child Protection Act 1999,* inserted by clause 64.

12 Amendment of s 51T (Distributing and implementing the plan)

Clause 12 amends the example in section 51T(c)(ii) by omitting and replacing "a foster carer" with "an approved carer". "Approved carer" is defined in amendments to the dictionary in schedule 3.

13 Amendment of s 51W (Who may participate)

Clause 13 amends the example in section 51W(1)(d) by omitting and replacing "A foster carer" with "An approved carer". "Approved carer" is defined in amendments to the dictionary in schedule 3.

Subclause (2) amends section 51W(1)(f) to reflect the new term "recognised entity", which replaces "recognised agency" in the *Child Protection Act 1999*. (See clause 65)

14 Insertion of new ch 2, pt 3B

Clause 14 inserts a new part 3B in chapter 2 of the *Child Protection Act 1999*. This new part establishes a framework to guide the chief executive's intervention with families and children, when the family agrees to work with the chief executive and the child is not subject to a child protection order granting custody or guardianship.

Part 3B Intervention with parents' agreement

Division 1 Preliminary

Division 1 deals with the concept of intervention with the parents' agreement and children for whom this intervention applies.

51Z Application of pt 3B

New section 51Z provides for the application for the new part 3B. Part 3B applies to children who are assessed to be in need of protection, needing ongoing help and who are not subject to a custody or guardianship order.

51ZA What is intervention

New section 51ZA defines the meaning of intervention in this Part. Intervention means action taken to give ongoing help that a child needs. Intervention with the parents' agreement may include the following examples:

- The child is placed with a carer under a care agreement between the chief executive and the child's parents.
- The parents' agree to the chief executive providing them with support to assist them to continue caring for and protecting their child.

Division 2 Preference for intervention with parents' agreement

The preferred way of protecting the wellbeing of children is through the provision of support services to families with their agreement. Officers are obliged to use reasonable means to gain the agreement and cooperation of parents in taking action to protect children. This division requires the chief executive to assess whether this type of supportive intervention is likely to ensure the child's safety in the short and long-term, and prescribes how the chief executive must work with parents when intervening with them with their cooperation.

51ZB Considering intervention with agreement

Consistent with the principles of the *Child Protection Act 1999* the chief executive must where possible work with the child and the child's family in a cooperative way, with their agreement.

New section 51ZB prescribes the matters which the chief executive must consider and determine, when deciding if it is appropriate to intervene with a family with the agreement of the parents.

In order to work together with parents without a court order, the chief executive must firstly determine the parents' capacity and willingness to work together with the chief executive to meet their child's needs.

Prior to intervening with parents in a cooperative way, the chief executive must determine whether it is likely that the parents will be able to meet the child's protective needs independent of the chief executive by the end of the proposed period of intervention. If this is not likely, another type of intervention may be more appropriate to meet the child's protective needs and should be considered. Also, the chief executive must consider the views and wishes of the child, if able to be ascertained. This provision will ensure that this type of intervention is child-focussed and that children are given the opportunity to express their views and wishes in relation to a proposed intervention.

51ZC Working with the child and parents

New section 51ZC prescribes how the chief executive must work with families when they agree to the chief executive's intervention and there is no child protection order mandating the chief executive's intervention. It requires the chief executive to involve the parents in decision-making about the intervention. In acknowledgment of the parents' primary role and responsibility for the child, the chief executive must also actively involve the parents in decisions relating to the child's life and care.

Division 3 Care agreements

Division 3 prescribes the requirements and procedures that must be followed when a child is placed by agreement between the chief executive and the parents. When parents agree to place the child under a care agreement with the chief executive, they remain the guardians of the child and retain the right to end the agreement at any time. Out-of-home placement under a care agreement is not the only type of intervention without an order. However, it is the most intrusive form of intervention and legislative safeguards are included to regulate this type of intervention with parental agreement.

51ZD What is a care agreement

New section 51ZD defines that a care agreement is an agreement for the short-term care of a child in out-of-home care. A care agreement for the

placement of a child is a formal agreement under the Act. The placement must conform with section 82, as amended by *clause 20.*

51ZE Entering an agreement

New section 51ZE enables the chief executive to enter into a care agreement for a child with the child's parent or parents. Importantly, before entering a care agreement, the CE must be satisfied about the matters outlined in section 51ZB. These are, that the parents are able and willing to work with the chief executive to meet the child's protection and care needs and that it is likely by the end of the intervention the child's parents will be able to meet the child's protection and care needs.

This section also places requirements on the chief exeuctive that specifically apply to care agreements. It requires the chief executive to determine that the temporary placement of the child under a care agreement is in the child's best interests. Consideration must be given to the implications for the child's safety that may be posed by the parents' right to end the agreement at any time and resume care of the child.

A care agreement should be entered into only if it is determined that should the parent or parents resume care of the child, it is unlikely that the risk to the child's safety will arise immediately.

The child may also be party to a care agreement concerning his or her care, if he or she is mature enough to understand and participate in the process. This provision ensures a child focus, and ensures that the child or young person has the right to a say in the care agreement and placement, where that is appropriate.

51ZF Requirements of an agreement

New section 51ZF prescribes what must be included in the formal written agreement between the chief executive and the parents. The agreement must be in writing, signed by the parties. The parties to the agreement are the people who have entered the formal agreement for the care of the child, including the child's parent or parents and the child. The core agreement must state where and with whom the child is placed, the period the child will be placed for, contact arrangements between the child and his or her parents and the types of decisions about the child which the parents must be consulted about during the child's placement. All decisions about guardianship matters must be made by parents. There is a need for officers to work with parents to determine the nature of parents' involvement in

different custody decisions. For example, a parent may wish to be consulted about:

- decisions relating to school sporting activities
- decisions about the child's appearance, such as haircuts.

51ZG Effect of an agreement

New section 51ZG provides for the chief executive to have custody of the child while a care agreement is in force. With the agreement of the child's parents, the chief executive has the right to the child's daily care and the right and responsibility to make decisions about the child's daily care. This clarifies the chief executive's role and responsibilities regarding the child during the period of agreement. As the chief executive has custody of the child under the *Child Protection Act 1999*, the chief executive may make decisions about the child's daily care, for example:

- Seeking necessary, routine medical attention for common childhood illnesses
- Recreational activities that are not dangerous.

Notwithstanding this, because it is a short-term placement of a child and the chief executive is working cooperatively with parents about their child, the chief executive must ensure that decision-making is inclusive and that parents remain actively involved with the decisions about the care of their child as required in division 2 of this part. However, if parents are unable to be consulted, perhaps because they are temporarily absent, the chief executive will not be restrained from seeking appropriate medical attention for the child.

For all decisions about the child's long-term care, welfare and development, the child's parents must be consulted and provide their consent. This includes decisions such as medical treatment involving general anaesthetic, blood transfusion or surgery.

Section 51ZG is complimented in this regard by amendments to section 97, affected by clause 30.

51ZH Period of an agreement

New section 51ZH limits the period of time a child may be placed with someone under a care agreement and defines the period for which a care agreement may be extended. Care agreements are intended to be a short-term, temporary intervention to help ensure a child's safety with the

purpose of rapid reunification with the child's family. A care agreement can only be for an initial 30-day period. It may be extended to a maximum period of 6 months.

This 6 month period is designed to be provide flexibility to enable placement time to be extended for children with whom the chief executive is working actively to return home in the short term. A care agreement should not be used and extended if it is determined that the child needs an ongoing and longer term placement.

Whilst a child may be placed for a maximum period of 6 months, a care agreement should only be extended if it is considered necessary and appropriate to respond to the needs of children and families.

An agreement may not be extended unless a case plan has been developed for the child and the chief executive has assessed both the child's developmental needs and the progress made under the case plan and has determined the extension would be in the child's best interests.

Important considerations such as a child's age and related developmental needs must inform the period a care agreement is entered into and extended for. For example:

- *The time an infant is placed away from his or her parent must be informed by the child's need to develop and maintain a relationship with their primary care provider and any impact the placement may have on this.*

51ZI Ending an agreement

New section 51ZI states that a party to a care agreement, either a parent, child or the chief executive, may end the agreement at any time by giving at least 2 days notice to the other parties. When an agreement ends, the parent resumes custody of the child.

If a parent or a child ends the agreement, the chief executive should immediately undertake an assessment to determine whether a child protection order is required to meet the child's protective needs.

A care agreement also ends automatically if an assessment order or child protection order is made that grants custody or guardianship of the child to the chief executive.

15 Amendment of s 70 (Attendance of parties)

Clause 15 omits and replaces section 70(4) to reflect the new term of recognised entity in the *Child Protection Act 1999,* affected by *clause 65* inserting section 246I.

16 Amendment of ch 2, pt 6, hdg (Obligations and rights under orders)

Clause 16 amends the heading of chapter 2 part 6 of the *Child Protection Act 1999* called "Obligations and rights under child protection orders". This amendment correlates with the new regulatory framework in the *Child Protection Act 1999* for placing children in out-of-home care with the agreement of their parents under care agreements with the chief executive. The intention is to extend the chief executive's obligations in chapter 2, part 6 to these children. For example, the charter of rights for a child in care will apply.

17 Amendment of ch 2, pt 6, div 1, hdg (Chief executive's obligations under child protection orders)

Clause 17 inserts the phrase "and care agreements" after the word "orders" in the heading of chapter 2, part 6, division 1.

18 Amendment of s 73 (Chief executive's obligations about meeting child's protection and care needs under certain orders and agreements)

Clause 18 provides for amendment of section 73, which sets out the chief executive's obligations about meeting a child's protection needs under a child protection order.

Subclause 18(1) amends the heading of section 73 by inserting the phrase "and agreements" after the word "orders". This change extends the chief executive's obligations to children placed under care agreements.

Subclause 18(2) omits subsection 73(1). The new subsection 73(1) states that this section now applies to a child for whom a care agreement is entered into and a child for whom a child protection order is made, other than a long-term guardianship order. It inserts a new section 73(1)(A) to state that the chief executive must take reasonable and practicable steps to help the child's family meet the child's protective needs.

Subclause 18(3) omits and replaces subsection (1) with subsection (2) to reflect the renumbering affected by subclause 18(4).

Subclause 18(4) renumbers subsection 73(1)(A) and (2) as section 73(2) and section 73 (3)

19 Amendment of s 74 (Character of rights for a child)

Clause 19 omits and replaces subsection 74(1) with new sections 74(1)(a) and (b) to extend the charter of rights to apply to children for whom the chief executive has entered into a care agreement.

20 Replacement of s 82 (Placing a child in care)

Clause 20 omits and replaces section 82. Section 82 limits the options, which the chief executive may consider when deciding where and in whose care a child should live. This amendment strengthens the obligations on the chief executive to ensure children who the chief executive places away from their parents are in appropriate and safe placements. It establishes the requirement for the chief executive to prioritise placing a child with a carer or service who is approved under the *Child Protection Act 1999.* A child can be placed with an approved kinship carer for the child, an approved foster carer, an entity conducting a departmental care service, or a licensee for a licensed care service. Only if it is in the child's best interests can a person be approved to care for the child as a provisionally approved carer. The new division 3A inserted by clause 41 provides the framework for provisional approval of carers

New subsection 82(1)(f) provides the chief executive with the flexibility to respond to the individual and particular circumstances of a child, whose special needs cannot be met by the range of care options approved by the chief executive. The new subsection 82(1)(f) is intended to enable the chief executive to place a child with an entity that is regulated by another state or Commonwealth government agency, if the chief executive determines that this entity can meet the child's particular needs. For example:

- *A child may have needs related to a particular disability or medical condition that are best met by placement in a facility regulated by another government agency or under state or Commonwealth legislation.*

The new subsection 82(1)(f) is not intended to be used as a means of circumventing the regulatory framework for approval of carers. Rather it is intended to avoid duplication of regulation of service providers by the Department of Child Safety where another government agency regulates the service for the benefit of its clients.

The new subsection 82(2) clarifies the ability of the chief executive to place a child in the chief executive's custody or guardianship with the child's parents. This will enable a child to be placed with his or her parents as a strategy for permanent return to the parents care, while the child retains the protection of being in the chief executive's custody or guardianship.

At all times, the chief executive must determine that the protective and care needs of the particular child will be most appropriately met by placing the child in the particular type of care arrangement.

82A Placement with more than 1 approved carer

Clause 20 also inserts a new section 82A. Subsection 82A(1) provides that a child may be placed in the care of more than one approved carer at the same time. This clarifies the ability of the chief executive to offer respite to carers without removing the child from the primary carer's care. While the child is placed with the respite carer, the child is placed with two carers.

Subsection 82A(2) clarifies that in the case of a child being placed with a married couple or with other people who are in a spousal relationship, the child is to be placed in the care of both of them. The purpose is to ensure that both spouses are properly assessed and approved to care for the child.

21 Amendment of s 83 (Additional provisions for placing Aboriginal and Torres Strait Islander children in care)

Clause 21 amends section 83 to deal with placements for Aboriginal and Torres Strait Islander children that cannot be made in accordance with the hierarchy of placement options. These amendments strengthen the chief executive's obligation to ensure that an Aboriginal or Torres Strait Islander child's cultural identity and relationships with their community are maintained when placed with a non-Aboriginal or Torres Strait Islander person.

Subclause 21(1) omits and replaces subsections 83(2) and (3). The changes to these subsections reflect the amendments made to section 6 (inserted by clause 5) regarding the chief executive's requirements to work together with the recognised entity, and reflect the change in terminology to "recognised entity" (see clause 65 inserting new section 246I). Subclause 21(2) amends subsection 83(5) to reflect the change in terminology to "recognised entity".

Subclause 21(3) adds new subsections 83(6) and (7). Subsection 83(6) establishes that when unable to place a child in accordance with the placement hierarchy, the chief executive is required to give proper

consideration to placing the child with an approved carer who lives near the child's family or community group on order to avoid dislocation of the child from their family or community group. The subsection expressly requires the chief executive to prioritise first placing the child with a person living near the child's family and secondly with a person living near the child's community or language group.

Subsection 83(7) strengthens the obligations on the chief executive to ensure that when placing a child with non-Indigenous carers proper consideration is given to the Aboriginal or Torres Strait Islander child's important identity and cultural needs. It obliges the chief executive to have assessed that the carer is committed to helping the child with these special needs. These considerations apply where the child is placed with the child's non-indigenous family or kin, or if the child is placed with a non-indigenous carer. Cultural competency training may be an important aspect in considering the carer's commitment.

22 Amendment of s 83A (Giving information to carers and children)

Clause 22 omits licenced care service in section 83A(3) and replaces it with "licencee" to reflect amendments to section 82.

Clause 22 omits and replaces section 83A(6) paragraphs (a) and (b) to reflect amendments made to section 82. Paragraph (a) now uses the new term "approved carer". "Approved carer" is defined by amendments to the dictionary in schedule 3 to mean an approved foster carer, approved kinship carer or provisionally approved carer. Paragraph (b) refers to a child placed in the care of another entity. This includes an entity mentioned in the new subsection 82(1)(f) inserted by clause 20.

23 Amendment of s 84 (Agreements to provide care for children)

Clause 23 omits the words "approved foster carer" in subsection 84(1) and replaces them with "approved carer" . The amended section reflects the inclusion of additional carer types under the *Child Protection Act 1999* and uses the new term "approved carer". "Approved carer" is defined by amendments to the dictionary in schedule 3 to mean an approved foster carer, approved kinship carer or provisionally approved carer.

24 Amendment of s 85 (Chief executive to tell parents of placing child in care—assessment order)

Clause 24 amends section 85 to clarify the application of this section. This amendment is consequential upon the amendment in clause 14, which inserts provisions about intervention with parents' agreement. In particular the new section 51ZG provides that the chief executive has custody of a child placed under a care agreement. The new subsection 85(1) clarifies that section 85 applies only when the child is in the chief executive's custody under an assessment order.

25 Amendment of s 86 (Chief executive to notify parents of placing child in care—child protection order)

Clause 25 amends section 86 to clarify its application. The new subsection 86(1) clarifies that section 86 applies only when the child is in the chief executive's custody under a child protection order.

26 Insertion of new s 88

Clause 26 inserts a new section 88 to oblige the chief executive to provide contact between Aboriginal and Torres Strait Islander children and appropriate members of their community and language group.

In determining who the appropriate members of the child's community or language group are, the chief executive should provide for the input of the child, the child's family and the recognised entity for the child.

27 Amendment of s 90 (Notice of removal from care)

Clause 27 amends section 90. Section 90 requires that the chief executive give notice to particular persons when a child is removed from a carer's care. These amendments extend application of this section to children who are placed under a care agreement and clarifies that when a child placed under a care agreement is removed, the carer has no review rights. The amendments also clarify that provisionally approved carers do not have the right of review in relation to removal of a child from their care. This reflects the time limited nature of a provisional approval.

Subclause 27(1) replaces the existing section 90(1) to ensure that section 90 applies to a child in the chief executive's custody under a care agreement in accordance with amendments inserted by clause 14.

Subclause 27(2) removes the word "foster" from subsection 90(2)(b). This amendment will ensure that any carer, be it a foster carer, a kinship carer, or

a provisionally approved carer, will receive the notice if the chief executive removes the child from their care.

Subclause 27(3) inserts a new subsection 90(5). The amendment reflects the lack of rights of review in relation to a decision by the chief executive to remove the child from the carer's care in two circumstances. If the child was placed with the carer under a care agreement or the carer is a provisionally approved carer, the carer cannot seek a review of the decision to remove the child with the Children's Services Tribunal.

28 Amendment of s 91 (Review of decision to remove child from carer's care)

Clause 28 amends section 91. These amendments clarify under what circumstances carers have the right to have a decision reviewed by the Childrens Services Tribunal. They reflect the new categories of kinship carer and provisionally approved carer and care agreements in the *Child Protection Act 1999*.

The amended section states that only decisions relating to children for whom the chief executive has custody or guardianship under a child protection order may be reviewed. Therefore, removal of a child placed under a care agreement is not reviewable, as the placement is based on agreement between the chief executive and the child's parents.

The amendments also exclude a provisionally approved carer from seeking a review of a decision to remove a child from their care. This lack of appeal right is because the intent of this type of approval is to meet the immediate placement needs of particular children, for a limited type of approval over a short time frame. Review rights in relation to this decision would pre-empt the decision in relation to the carer's application to be a foster carer or kinship carer which must be on foot for the carer to receive provisional approval.

A decision to remove the child from a provisionally approved carer does not impact on the determination of the provisional carer's application Clause 41 inserts the framework for approval of provisionally approved carers.

29 Amendment of s 95 (Report about person's criminal history etc.)

Clause 29 omits certain words in subsection 95(1)(b) to reflect the terminology "approved carer". "Approved carer" is defined by amendments to the dictionary to mean an approved foster carer, approved kinship carer

or a provisionally approved carer. It also omits and replaces reference to 'commissioner fo police' with "police commissioner".

30 Amendment of s 97 (Carrying out medical examinations or treatment)

Clause 30 amends section 97 to make it clear that the chief executive may seek a medical examination or treatment for a child who is in the chief executive's custody under the *Child Protection Act 1999.*

Subclause 30(1) renumbers subsection 97(1)(b) to 97(1)(c) to make way for insertion by subclause 30(2) of a new subsection 97(1)(b). This new subsection ensures that section 97 applies whenever a child is in the chief executive's custody under the *Child Protection Act 1999*. Section 97 will apply if the child is in the chief executive's custody under a court order or under a care agreement. Clause 14 inserts the framework for intervention with parental agreement, including placement of children under a care agreement with the parents. If the chief executive seeks medical examination of, or treatment for, a child in the chief executive's custody, a health practitioner will be able to comply with that request without concern for lack of parental consent. Of course it is intended that the chief executive will take reasonable steps to procure parental consent. However, the provision will enable medical treatment to be administered for the welfare of the child if, for example, the parents are non-contactable.

Subclause 30(3) makes a consequential amendment to subsection 97(6) by including a reference to the new subsection 97(1)(b).

Subclause 30(4) makes a consequential amendment to subsection 97(6) by amending the reference to (1)(b) to (1)(c).

Subclause 30(5) amends 97(6) where it refers to the commissioner of the police service to Police Commissioner.

31 Insertion of new s 108A

Clause 31 inserts a new section 108A. The purpose of this section is to ensure that the department's court coordinators have a right to appear in a proceeding in the Children's Court under the *Child Protection Act 1999*. Court coordinators and other persons will, with the written authorisation of the chief executive have a right to appear in court, even if they are not legal representatives.

Chapter 4, Regulation of care

The amendments to Chapter 4 incorporate into the *Child Protection Act 1999* a regulatory scheme for all carers providing care to children who have been assessed to be in need of protection by the chief executive and require placement out of their home. In addition to foster carers, it provides for regulation of kinship carers and provisionally approved carers so that all children who are placed by the chief executive with carers other than their parents are in the care of a carer who has been approved by the chief executive.

32 Amendment of s 122 (Statement of standards)

Clause 32 amends section 122(1) by omitting the words before paragraph (a) and replacing them with words that extend the application of the statement of standards. Section 122 has applied to care provided to children in care by foster carers, licensed care services and departmental care services. The amended section 122 will reflect the amendment to section 82 which expressly states the options for the chief executive in placing a child in care. Section 122 applies to an approved carer, departmental care service, licensed care service or other entity. The amendment to the dictionary in schedule 3 defines "approved carer" as an approved foster carer, an approved kinship carer or a provisionally approved carer. Therefore, each category of approved carer will be subject to the statement of standards. Other entities in whose care the chief executive may place a child pursuant to section 82(1)(f) (as amended by the Bill) will also be required to meet the statement of standards.

33 Amendment of ch 4, pt 2, hdg (Licensing of care services and approval of foster carers)

Clause 33 amends the heading of chapter 4, part 2 to remove the word "foster". The effect of this amendment is that chapter 4, part 2 will apply to any entity in whose care a child has been placed by the chief executive. This reflects the amended definition of "carer" in schedule 3. This definition defines carer as the entity in whose care the child has been placed under the amended section 82.

34 Amendment of s125 (Application for, or renewal of, licence)

Clause 34 amends section 125(2) to omit reference to section 142 and replace it with section 142A(a). This amendment is consequential upon the amendments inserted by clause 51 in replacing section 142 with new provisions for obtaining criminal histories and other information to decide a person's suitability.

35 Amendment of ch 4, pt 2, div 3, hdg (Approval of foster carers)

Clause 35 amends the heading of chapter 4, part 2, and division 3 to add the words "and kinship carers". Division 3 will regulate approval of foster carers and kinship carers.

36 Insertion of new s 130A

Clause 36 inserts a new section 130A, which specifies that division 3 regulates the approval of, and issuing of certificates to, both foster carers and kinship carers.

37 Amendment of s 131 (Only individuals may hold certificates of approval)

Clause 37 amends section 131.

Subclause 37(1) amends the heading of this section to "Holding a certificate", to reflect the content of section 131 which provides for individuals and spouses to hold certificates.

Subclause 37(2) amends section 131 to remove reference to "foster carers" so that it is consistent with the new scope of division 3 to apply to both foster carers and kinship carers as holders of certificates.

Subclause 37(3) adds a subsection (4) to provide that a person may hold more than one kinship carer certificate. This section is necessary to distinguish kinship carers, who will need separate certificates for each child they may care for, from foster carers whose certificates of approval will give them general approval to care for any children, and any number of children, who may be placed with them from time to time.

38 Replacement of ss 132—135

Clause 38 omits section 132-135 and replaces them with new sections 133-135. The new sections accommodate the inclusion of kinship carers in

the regulation of care and add requirements in relation to the issuing of certificates of approval.

133 Process for initial issue of a certificate

New section 133 deals with applications for certificates of approval as a foster carer or kinship carer.

Subsection 133(1) provides that a person may apply to the chief executive for a certificate of approval as a carer. Under subsection 133(2) the application must be made in the approved form. Subsection 133(3) provides that the approved form may require the disclosure of any criminal, domestic violence and traffic histories of the applicant and other members of the applicant's household.

Section 133(4) requires that the application form must be signed by the applicant and each adult member of the applicant's household so that each adult is aware that the chief executive may obtain information about them from the Police Commissioner and the chief executive of the Department of Transport.

Section 133 also sets out the process for issuing an initial certificate of approval. Subsection 133(5) obliges the chief executive to issue a certificate of approval to the applicant if the chief executive has decided to grant the application. Subsection 133(6) allows the chief executive to issue a certificate of approval subject to reasonable conditions the chief executive considers appropriate. Subsection 133(7) accommodates the regulation of kinship carers and a difference between foster carers and kinship carers, in that it specifies that a kinship carer certificate must relate only to the care of one child. (Note that a kinship carer may hold more than one certificate, to enable sibling groups to be placed with one carer. See clause 41, inserting section 136B). When a sibling group is placed with a person, the person should be assessed as suitable to be a kinship carer for each child of the sibling group and issued a separate certificate for each child. If the placement of a group of children occurs at the same time the person need only undergo one assessment process in relation to the placement, even though a kinship carer certificate must be issued in relation to each child. A kinship carer certificate is an approval but not, of itself, an entitlement for the carer to care for the particular child.

Subsection 133(8) lists the matters which must be included in the certificate and it includes, for a kinship carer, the name of the child for whom approval is given and, for foster and kinship carers, the day of issue and the expiry day. Subsection 133(9) stipulates that initial foster carer

approvals are for one year and initial kinship carer approvals are for not more than one year. Kinship carer approvals are for a specific child for a specific period which may be less than one year. Subsection 133(10) provides that, subject to this Act, the certificate has effect until the expiry day.

134 Process to renew a certificate

New section 134 provides for renewing a certificate of approval. Subsection 134(1) provides that, before the expiry day, the holder of a certificate may apply to the chief executive to have the certificate renewed. Under subsection 134(2) the application to renew a certificate must be in the approved form. Subsection 134(3) provides that the approved form may require the disclosure of any criminal, domestic violence and traffic histories of the applicant, a change in the membership of the applicant's household, as far as the applicant is aware or reasonably suspects, a change in the criminal, domestic violence and traffic histories of a member of their household. Subsection 134(4) requires that the application form must be signed by the applicant and each adult member of the applicant's household so that each adult is aware that the chief executive may obtain information about them from the Police Commissioner and the chief executive of the Department of Transport.

Section 134 also sets out the process for issuing a renewed certificate of approval. Under subsection 134(5), if the chief executive decides to grant the application, the chief executive must issue a new certificate and give it to the applicant. Subsection 134(6) lists the matters which must be included in the new certificate, including whether the carer is approved as a foster carer or a kinship carer, and for a kinship carer, the name of the child for whom the approval is renewed and, for foster and kinship carers any conditions of the certificate, the day of issue and the expiry day. Subsection 134(7) provides that conditions included in a new certificate may only include conditions applying immediately before the renewal of the certificate of approval as a carer. Subsection 134(8) stipulates that renewed foster carer approvals are for two years and renewed kinship carer approvals are for not more than two years. Subsection 134(9) provides that, subject to this Act, the certificate has effect until the expiry day.

135 Restrictions on granting application

Section 135 provides that the chief executive must not grant an application for, or to renew, a certificate of approval as either a foster carer or a kinship carer for a child unless the chief executive is satisfied of certain matters.

Section 135(a) contains the matters chief executive must be satisfied about in relation to a foster carer. They are that the applicant is a "suitable person" to be an approved carer, all members of the household are "suitable persons" to associate on a daily basis with children, the applicant is able to meet the statement of standards in section 122 and the applicant is able to help towards achieving plans for protecting children placed their care. For foster carers and their household members, their suitability has to be in relation to any child who may be placed in their care or household.

Section 135(b) contains the matters the chief executive must be satisfied about in relation to a kinship carer. They are that the applicant is kin to the child to whom the approval relates, the applicant is a "suitable person" to be an approved kinship carer for the child, all members of the household are "suitable persons" to associate on a daily basis with the chid, the applicant is able to meet the statement of standards in section 122 and the applicant is able to help towards achieving plans for the child's protection. For kinship carers and their household members, their suitability has to be in relation to the particular child who may be placed in their care or household.

The amendment to schedule 3, dictionary, (clause 68) contains a definition of "kin" in relation to a child. Clause 68(4) inserts additional parts to the definition of "suitable person", including a suitable person "for associating on a daily basis with children or a particular child". A consequential amendment will be made to section 9, "Suitable person", of the *Child Protection Regulation 2000.* Departmental child protection records may be considered in determining the suitability of persons.

39 Renumbering of ss 130A and 131

Clause 39 renumbers section 130A and 131 as section 131 and 132.

40 Amendment of s 136 (Refusal of application)

Clause 40 amends section 136 to make it clear that its provisions apply to decisions about applications for approval as a carer and applications for renewal of a certificate of approval. In both cases, section 136 will require the chief executive to give written notice, with reasons, of refusal within 10 days of the decision, advise the applicant of the review rights in relation to the decision and of how to apply for a review of the decision.

41 Insertion of new ch 4, pt 2, div 3A

Clause 41 inserts a new division into part 2, chapter 4 of the *Child Protection Act 1999*.

Division 3A Provisional approval of carers

Division 3A provides a legislative framework for assessment and approval of carers on a provisional basis. A child may be placed with a provisionally approved carer only if it is not possible, or not in the child's best interests, to be placed with an approved foster carer or kinship carer or licensed care service (See clause 20) inserting a new section 82). If seeking to place a child with kin, it is unlikely that the carer is already approved, and this division enables a person to be provisionally approved as a carer if also applying to be a foster carer or kinship carer. The chief executive is required to determine that a carer is suitable to care for a particular child in the specific circumstance, such as an emergency where there is no approved foster carer or approved kinship carer with whom the child can be placed. If the placement with this carer is to continue, the suitability of the carer to provide care to the child as an approved kinship carer or as an approved foster carer to care for children must be determined.

136A Application and purpose of div 3A

New subsection 136A(1) states the division applies to a certificate of approval as a provisionally approved carer. Under subsection 136A(2), the purpose of the division, which is to enable the chief executive to provide a carer with an approval is limited to a particular child to be placed. It states that the chief executive may only approve a person if the person has been provisionally assessed as suitable to care for the particular child to be placed and if it is not possible or in the child's best interest for the child to be placed in the care of any other approved carer or service.

This enables the chief executive to place children with their kin, in accordance with the new principle in the Act, inserted by clause 4 for the chief exeucutive to place children with their kin in preference to other placement options. It will minimise disruption to children's lives and ensure safeguards are extended to these children when they are removed from their parents' care.

Whilst an applicant to be an approved foster carer may be issued a provisional certificate of approval, it is not intended that this divisions be

used to circumvent the important requirements that foster carers need to meet in order to be approved to care for children.

136B Holding a certificate

New section 136B stipulates how certificates of approval as provisionally approved carers may be held. Subsection 136B(1) provides that only an individual may hold a certificate. Subsection 136B(2) allows two or more individuals to hold a certificate jointly. Subsection 136B(3) provides that a person living with his or her spouse may only hold a certificate jointly with the spouse. Subsection 136B(4) provides that a person may hold more than one certificate. This is because each certificate is to care for one child only [see new subsection 133(7) inserted by clause 38], and if a sibling group is placed with the carer a certificate must be issued for each child.

136C Basis for issuing a certificate

New section 136C sets out the circumstances in which the chief executive may issue a provisional approval certificate to a person. For the issue of this type of certificate, all of the following must be in place:

- The chief executive intends to place a particular child in care under this Act.
- The applicant has applied for a certificate as an approved foster carer or as a kinship carer for the child.
- The application is yet to be decided.
- The applicant agrees to being provisionally approved to care for the child.
- The applicant is found to be suitable to be a provisional carer for the child and all members of the applicant's household are suitable to associate on a daily basis with the child.
- It has been determined that the applicant can meet the standards of care in the statement of standards in section 122.

In assessing whether persons are suitable to be provisional carers of a child, the chief executive will consider criteria under a regulation, including information about the person's criminal and other histories. Any child protection records about the person held by the Department of Child Safety may also be taken into account. Clause 68(4*)* of the Bill amends schedule 3, dictionary, by inserting additional parts to the definition of "suitable person", including a suitable person "for associating on a daily basis with

children or a particular child". A consequential amendment will be made to section 9, "Suitable person", of the *Child Protection Regulation 2000.*

136D Issue of certificate

New section 136D sets out the procedure for issuing a provisional certificate. Subsection 136D(1) provides that if the chief executive makes a decision under section 136C, the chief executive must issue a certificate and give it to the applicant. Subsection 136D(2) allows the chief executive to issue the certificate subject to reasonable and appropriate conditions. Under subsection 136D(3), each provisional certificate is restricted to approval for only one child.

When a sibling group is placed with a person, the person should be assessed as suitable to be a provisional carer for each child of the sibling group and issued a separate certificate for each child. If the placement of a group of children occurs at the same time, the person need only undergo one assessment process in relation to the placement.

Subsection 136D(4) stipulates that the certificate must include the approved carer's name, that the certificate is for approval as a provisionally approved carer, the name of the child for whom the carer is approved, any conditions the chief executive considers reasonable and appropriate, the day the certificate is issued and the day on which it will expire.

Subsection 136D(5) provides that the expiry day must not be more than 60 days from the day of issue. Subsection 136D(6) sets out that the certificate has effect until the expiry day, or the day a carer is issued with a certificate as a foster carer or as a kinship carer for the child, or the day the carer is given notice that the carer's application for a foster carer certificate of kinship carer certificate for the child has been refused.

42 Amendment of s 137 (Amendment of authority on application of holder)

Clause 42 amends section 137 by adding a new subsection which states that a certificate of approval for either a provisional or a kinship carer may not be amended to change the child for whom the carer is approved. These certificates are issued following the assessment and approval of an applicant in relation to the needs of a particular child. If an additional child is to be placed with the provisional or kinship carer, they must be issued a new certificate if found suitable to care for the new child.

Subclause 42(1) renumbers subsections 137(2) to (5) as subsections 137(3) to (7) .

Subclause 42(3) inserts a new subsection (8) to clarify that a carer who is provisionally approved does not have the right of review of a decision not to amend their certificate.

43 Amendment of s 138 (Amendment of authority by the chief executive)

Clause 43 inserts a new subsection 138(8). This subsection clarifies that the chief executive cannot extend the period of a provisional or kinship certificate of approval under this section. The extension of these types of certificates is dealt with in new sections 138(A) and 138(B) inserted by clause 44.

The section also clarifies that it does not apply to other amendments to a provisional certificate of approval.

44 Insertion of new ss 138A—138C

Clause 44 inserts new sections 138A, 138B and 138C after the current section 138. These new sections provide for amendments to kinship carer certificates and provisional carer certificates.

138A Amendment of kinship carer certificate to extend its expiry day ‘

New section 138A provides for the chief executive to amend an approved kinship carer's certificate to extend its expiry day. Subsection 138A(1) provides that the section applies to a certificate of approval as an approved kinship carer. Under subsection 138A(2) the chief executive may amend the certificate to extend its expiry day if:

- The certificate is still in force;
- The chief executive is satisfied the extension will meet the needs of the child named on the certificate; and
- The holder agrees to the amendment.

Subsection 138A(3) restricts an extension of a certificate to not more than one year from when it was first issued if it is an initial certificate, and if it is a renewed certificate restricts extension to not more than 2 years from the day it was issued.

An extension to a certificate may be required if the child's original placement period is extended and the carer's certificate needs to be changed to reflect the new placement period.

The chief executive may only extend a certificate, after assessing the child's needs and determining that extending the child's time with the approved carer will help meet these needs.

Subsection 138A(4) defines "expiry day" to mean the day on which the certificate is due to expire.

138B Amendment of provisional certificate to extend its expiry day

New section 138B provides for the extension of a provisional certificate to extend its expiry day. The duration of a provisional certificate is 60 days. Under subsection 138B(2) the chief executive may extend the expiry day if:

- The certificate is current;
- The chief executive considers the holder's application to be approved as a foster carer or kinship carer is likely to be decided within the period of the proposed extension;
- The chief executive is satisfied that the extension is appropriate and desirable to meet the need of the child named on the certificate; and
- The holder agrees to the amendment.

Subsection 138B(3) enables the period to be extended beyond the initial 60 days. Subsection 138B(4) restricts the extension to not more than 30 days. Under subsection 138B(5) a provisional certificate of approval may be extended only once. Subsection 138B(6) defines "expiry day" to mean the day on which the certificate is due to expire.

The extension provided for in section 138B allows additional time for the person's application to be an approved carer to be determined. For example:

- *For an applicant who lives in a remote rural area, approval processes may not be finalised within 60 days due to the distance an officer needs to travel to undertak*e the necessary assessments.

138C Other amendment of provisional certificate by the chief executive

New section 138C enables provisional certificate of approvals to be amended by the chief executive. Under subsection 138C(1), the section applies to a certificate of approval as a provisionally approved carer. Subsection 138C(2) allows the chief executive to amend a certificate if:

- The holder agrees to the amendment; or
- The chief executive considers the amendment is necessary or desirable because;
    - the holder is not meeting the statement of standards or a condition of the certificate
    - the holder has contravened a provision of this Act
    - the certificate was issued because of a materially false or misleading representation or declaration, orally or in writing
    - the chief has further information about the holder's application to be a foster carer or kinship carer for a child; or
    - another circumstance arises which is prescribed under a regulation.

Subsection 138C(3) provides that if the chief executive decides to amend a certificate, the chief executive must give the holder written notice of the amendment and the reasons for the decision to amend the certificate.

Subsection 138C(4) clarifies that this section does not apply to a decision to amend a provisional approval certificate to extend its expiry day. Such amendment must be made under new section 138B, which places restrictions on the maximum duration of a provisional certificate.

The decision to amend a provisional certificate of approval is not reviewable. Amendment of a provisional certificate of approval does not affect the holder's pending application for approval as an approved foster or kinship carer. If that application is subsequently refused, this decision is a reviewable decision.

A review of a decision to amend a provisional certificate of approval would amount to the review of the pending application for approval as either an approved foster or kinship carer. The time frame for a provisional certificate of approval is limited to a maximum period of 90 days.

45 Amendment of s 139 (Authority may be suspended or cancelled)

Clause 45 amends amends section 139.

Subclause 45(1) amends 139(1)(b) to limit that subsection to foster carers.

Subclause 45(2) renumbers subsections 139(1)(c) to(f) as 139(1)(e) to(h).

Subclause 45(3) inserts subsections 139(1)(c) and (d) to extend the application of the section to include approved kinship carers and provisionally approved carers and also set out the grounds on which an approval may be cancelled or suspended. These new grounds reflect the inclusion of new categories of provisional and kinship carers in the *Child Protection Act 1999*. A kinship carer certificate may be cancelled or suspended if the carer is not suitable to be a carer for the child, or a member of the carer's household is not suitable to associate on a daily basis with the child. A provisional certificate may be cancelled or suspended on those grounds and also on the ground that the chief executive has refused the application to be an approved carer.

Subclause 45(4) renumbers section 139(2) to 139(5).

Subclause 45(5) inserts sections 139(2), (3) and (4) to reflect new obligations on authority holders to notify the chief executive of any changes relating their spousal relationships. (See new section 141G inserted by clause 55). It clarifies that the chief executive may cancel a certificate if the holders of a certificate held jointly have stopped being spouses or stopped living together, if the chief executive considers it inappropriate for them to continue to hold the certificate jointly. The new subsection 139(4) provides that if one or both of the joint certificate holders applies for another certificate, the chief executive must not cancel the current certificate until the new application is decided.

46 Amendment of s 140 (Procedure for suspension or cancellation)

Clause 46 amends section 140.

Subclause 46(1) amends section 140 to clarify that it relates to the suspension and cancellation of an authority under section 139.

Subclause 46(2) inserts subsection 140(7) to clarify that section 140 does not apply to a provisional certificate. A provisional certificate is suspended or cancelled in accordance with the new section 140AA to be inserted by clause 47.

47 Insertion of new s 140AA Procedure for suspension or cancellation of provisional certificate

Clause 47 inserts a new section 140AA to deal with the procedure for suspending or cancelling a provisional certificate.

New subsection 140AA(1) provides that section 140AA deals with a decision by the chief executive to suspend or cancel a provisional certificate of approval. Subsection 140AA(2) provides that if the chief executive decides to suspend or cancel a certificate, the chief executive must advise the holder by written notice of the decision including reasons. Subsection 140AA(3) requires the chief executive to record the particulars of the suspension or cancellation on the certificate. Subsection 140AA(4) clarifies that the cancellation, of itself, does not effect the holder's application for approval as a foster carer or kinship carer for a child. This application remains on foot until decided or withdrawn.

The holder does not have a right of appeal to the Children Services Tribunal because the provisional approval certificate is a temporary certificate and there will be a right of appeal if the holder's application to be a foster carer or kinship carer for a child is refused.

48 Amendment of s 140A (Chief executive may notify Commissioner for Children and Young People and Child Guardian about particular information)

Clause 48 omits and inserts section 140A(1) to clarify that section 140A applies to the amendment, suspension or cancellation of a certificate of approval as a foster carer, kinship carer for a child or provisionally approved carer for a child. This is required as the regulation of all carers has included kinship carers and provisionally approved carers in the *Child Protection Act 1999.*

49 Amendment of s 141 (Amendment, suspension and cancellation of authorities)

Clause 49 amends section 141.

Subclause 49(1) amends subsection 141(2) to remove the time period for return of an authority. The time periods are now dealt with by a new subsection 141(2A) inserted by subclause 49(2). Subsection 141(2A) specifies the different time periods for return of a provisional authority or another authority if the chief executive has decided to amend, suspend or cancel it. A provisional certificate must be requested to be returned not less than 2 days after the notice is given, whereas any other certificate may be requested to be returned not less than 7 days after notice.

Subclause 49(3) inserts subsection 141(6A) to exclude amendment of a certificate of approval which extends its expiry day from subsection 7(b) [6(b) renumbered as 7(b) by subclause 49(4)] which provides that, in the

case of other amendments, an amended certificate has effect for the remainder of the term of the old certificate.

Subclause 49(4) renumbers sections 141(2A) to (7) as sections 141(3) to (9).

50 Amendment of s 141A (Surrender of authorities)

Clause 50 omits and replaces section 141A(2), with section 141A(2)(a) and (b). These changes clarify the procedures and different timeframes when a certificate of approval as a foster carer is surrendered and when a provisional certificate of approval is surrendered. For a foster carer, a surrender takes effect 21 days after the notice is given to the chief executive or a later day stated in the notice. For a kinship carer or provisionally approved carer, a surrender takes effect on the day notice is given to the chief executive or a later day stated in the notice.

51 Replacement of chapter 4, part 2, division 5, heading and s 142

Clause 51 inserts new divisions 5, 6 and 7 in part 2 of chapter 4 of the *Child Protection Act 1999*. Division 5 deals with notification of changes relating to authority holders and associated persons. Division 6 deals with investigation information provided by the Police Commissioner to the chief executive as part of the information the chief executive will consider to decide the suitability of persons caring for children or associating with children on a daily basis. Division 7 deals with obtaining criminal histories and other information to decide a person's suitability.

Division 5 Notification of changes relating to authority holders and associated persons

Division 5 establishes a legislative framework, which requires authority holders to notify the chief executive of specified changes that are considered relevant to determining the ongoing suitability of a person to provide care for a child in need of protection. Carers and persons associated with a licence must notify the chief executive of a change in their "personal history" or that of a member of their household.

141B Personal history

Section 141B defines the term "personal history" and what is meant by a change in a person's personal history for the purpose of the obligation. "Personal history" comprises a person's criminal history, domestic violence history and traffic history. A change in "personal history" occurs if a person acquires a "personal history" or when a person's history previously known to the department changes.

141C Personal history change—nominee

New section 141C requires a nominee for a licence to notify the chief executive immediately if there is a change to his or her personal history. The notification must be in the approved form. A maximum penalty of 100 penalty units applies to a failure to notify.

141D Personal history change—other persons associated with a licence

New section 141D provides an obligation on persons associated with a licensed care service to notify a change in personal history. Subsection 141D(1) clarifies that the persons associated with a licence to whom Section 141D applies are the person responsible for managing the service, the director of the licensee and a person engaged to provide a care service. Subsection 141D(2) requires the persons listed in subsection 141D(1) to disclose a change in their personal histories to the nominee for the licence. Subsection 141D(3) requires the nominee to advise the chief executive immediately of the change. Subsection 141D(4) excludes a person from the obligation in subsection 141D(2) if immediately after the change they stop being a person associated with a licensed care service. This provision allows a person to resign from the service rather than advise the nominee of a change in the person's personal history. Subsection 141D(5) stipulates that a person associated with a licensed care service need only notify to the nominee is that there has been a change. The person is not obliged to disclose details of the change.

A maximum penalty of 100 penalty units applies if a person does not comply with subsections 141D(2) and (3).

141E Personal history change—approved carer

New section 141E places an obligation on approved carers to immediately notify the chief executive of a change in their personal history. "Approved carer" is defined by the amendment to the dictionary in schedule 3 to mean

approved foster carer, approved kinship carer or provisionally approved carer. For example, if the person is charged with an offence, they must notify the chief executive immediately about this. The notification must be in the approved form. A maximum penalty of 100 penalty units applies to a failure to notify.

141F Personal history change—other household members

New section 141F requires an approved carer to immediately notify the chief executive if they become aware of or reasonably suspect there has been a change in the personal history of a member of their household. The notification must be in the approved form. A maximum penalty of 100 penalty units applies to a failure to notify. Note that the notification requirement only arises if an approved carer becomes aware of, or reasonably suspects, that a member of the carer's household has had a change in their personal history. It does not involve a positive obligation on the carer to take steps to find out if there has been a change in the personal history of a member of their household.

141G Approved carer must notify other changes

New section 141G requires an approved carer to notify the chief executive in the approved form if there is a change to the carer's household membership, for example by someone moving in or out of the household or if the approved carer commences a new or ends an existing spousal relationship. the notification must be in the approved form. The form must also be signed by the adult about whom the carer is notifying the chief executive, to ensure that this person is aware that the chief executive is monitoring their suitablity. A maximum penalty of 100 penalty units applies to a failure to notify of a change in the carer's household membership.

If an adult moves into the household, he or she must sign the approved form. This is to ensure that the person is made aware that the chief executive will need to determine their suitability and will obtain police information about them to inform a decision about their suitability.

Division 6 Investigation information

Division 6 sets out the procedures for the police commissioner to make decisions about investigative information in relation to persons who

provide care for children in need of protection and for the release of this information to the chief executive. It establishes a framework to protect the rights of people who the police commissioner decides to release investigative information about to the chief executive. This acknowledges the sensitive nature of this type of police information.

141H Police commissioner may decide that information about a person is investigative information

New section 141H enables the Police Commissioner to decide what is investigative information about a person. It sets out the matters the Police Commissioner takes into account in making this decision.

Subsection 141H(1) states the police may decide information about a person is investigative information if:

- There is or was evidence that acts or omissions constituted a serious child-related sexual offence by the investigated person against a child or a person who was a child at the time of the offence (a complainant);
- The police investigated the alleged offence and formally notified the investigated person about the investigation, including;
    - participating or being asked to participate in an interview about the alleged offence; or
    - by otherwise being given an opportunity to respond to the allegation; and
- There was sufficient evidence to establish each element of the alleged offence but the person was not charged because the complainant died or because the complainant's parent or guardian decided that, in the interest of the complainant, the matter should not proceed.

Subsection 141H(2) provides that evidence of acts or omissions includes information provided by a third party if the complainant did not make a formal complaint at, or about, the time of the investigation. Subsection 141H(3) prohibits the Police Commissioner, for the purpose of this section, from delegating a decision that information is "investigative information". Subsection 141H(4) limits "serious child-related sexual offence" to those contained in section 99D of the *Commission for Children and Young People and Child Guardian Act 2000.*

141I Appeal from decision that information is investigative information

New section 141I sets out appeal rights for persons subject to a decision about investigation information.

Subsection 141I(1) states that the section applies if the Police Commissioner decides that information about a person (the investigated person) is investigative information and gives it to the chief executive under section 142C.

Subsection 141I(2) requires the Police Commissioner to give notice to the person about the Police Commissioner's decision that information about him or her is inviestgative information and that this information has been given to the chief executive.

Subsection 141I(3) provides for the person who is the subject of the investigative information to appeal to the Magistrates Court about the Police Commissioner's decision that information is investigative information. The person must appeal within 28 days after being given notice of the Police Commissioner's decision.

Under subsection 141I(4), the chief executive and the Police Commissioner must be given a copy of the notice of appeal lodged by the investigated person. Subsection 141I(5) specifies that the Children Services Tribunal does not have jurisdiction to review the Police Commissioner's decision that information is "investigative information" or that the information may be given to the chief executive.

141J Court to decide matters afresh

New section 141J sets out the procedure for the Magistrates Court to hear an appeal under section 141I against the Police Commissioner's decision that information given to the chief executive as investigative information is investigative information.

Subsection 141J(1) provides that the Magistrates Court hearing the is to make a fresh decision regarding whether the information the Police Commissioner gave to the chief executive is "investigative information". Under subsection 141J(2), during an appeal to the Magistrates Court, a complainant under section 141H must not be asked or called on by the investigated person to give evidence before the court. However, subsection 141J(3) provides that subsection 141J(2) does not prevent documentary evidence tendered or received in evidence by the court.

Subsection 141J(4) allows the court, after hearing the appeal, to confirm or set aside the Police Commissioner's decision. Subsection 141J(5) provides that in making the decision in subsection 141J(4) the court must have regard to the same matters the Police Commissioner was required, under this Act in section 141H to have regard to in making the Commissioner's decision.

Under subsection 141J(6), the clerk of the court must give notice of the Magistrates Court decision to the investigated person and to the chief executive, and to the Police Commissioner.

141K Consequence of successful appeal

New section 141K sets out the procedure to apply if the investigated person's appeal is upheld by the Magistrates Court.

Subsection 141K(1) states that section 141K applies if the Magistrates Court sets aside the Police Commissioner's decision made under section 141H that information given to the chief executive is "investigative information". Subsection 141K(2) requires that, if the chief executive has made an "authority decision", the chief executive must set that decision aside. In making a decision following a successful appeal, subsection 141K(3) prohibits the chief executive from having regard to the relevant information, which is the information previously given the chief executive by the Police Commissioner. . . Subsection 141K(4) defines an "authority decision" as a decision to refuse an application for an authority as an approved carer, or to refuse to renew an authority, or a decision to amend suspend or cancel an authority.

Division 7 Obtaining criminal histories and other information to decide persons' suitability

Division 7 establishes a framework for the chief executive to obtain information considered relevant to determine (in initial decision-making and in an ongoing way) a person's suitability in connection with the provision of care for a child or children in need or protection.

142 Definitions for div 7

New section 142 provides definitions for division 7. It defines "police information" as information about a person comprising a person's criminal history, investigative information and domestic violence history. "Criminal history" is currently defined in the dictionary in schedule 3 and investigative information is defined in section 141H.

142A Persons whose suitability may be investigated

New section 142A enables the chief executive to obtain particular information to help determine and monitor the suitability of particular persons associated with the issue of a licence and in relation to the suitability of a person who is an applicant for, or holder of, a certificate of approval as an approved carer and for the suitability of other adult members of the carer's household. The persons associated with the issue of a licence whose suitability may be investigated are a person responsible for directly managing the service, the directors of an applicant for a licence or the licensee, the nominee for the licence and persons engaged in the provision of care services by the service.. Note that police information cannot be obtained to investigate members of carer's household who are children.

142B Obtaining traffic information

New section 142B enables the chief executive to obtain traffic information about a person. Subsection 142B(1) enables the chief executive to request from the chief executive for transport a written report about the traffic history of a person mentioned in section 142A. Subsection 142B(2) requires the chief executive for transport to comply despite section 77 of the *Transport Operations (Road Use Management) Act 1995* which restricts the release of traffic history information.

142C Obtaining police information

New section 142C sets out the procedures for the obtaining and provision of police information to decide a person's suitability to provide care for a child.

Subsection 142C(1) enables the chief executive to ask the Police Commissioner for information about the persons mentioned in section 142A so that the chief executive knows what police information exists about a person Under subsection 142C(2), if there is police information about a person, the chief executive may ask the Police Commissioner for a brief description of the circumstances of a conviction, charge or

investigative information. Subsection 142C(3) requires the Police Commissioner to provide the information requested by the chief executive. However, subsection 142C(4) provides for circumstances when the Police Commissioner need not disclose investigative information about a person. Specifically, these reasons relate to any prejudice to an investigation, disclosure of a confidential source, danger to a person's life or safety or prejudice to a lawful method of investigation.

142D Notice of change in police information

New section 142D related to changes in a person's police information. Subsection 142D(1) states that the section applies if a person's police information changes and the Police Commissioner reasonably suspects that the person is a person mentioned in section 142A. Subsection 142D(2) enables the Police Commissioner to notify the chief executive about a change in a person's police information. The notice must state the person's name, and other names the person may have used, gender, date and place of birth, and that there has been a change in the person's police information. Subsection 142D(3) the chief executive may confirm that a person is a person mentioned in section 142A.

The chief executive may then ask the Police Commissioner for the new police information under section 142C.

142E Chief executive may enter into arrangement with police commissioner about giving and receiving information

New section 142E allows the chief executive and the police commissioner to enter into an arrangement for the exchange of information so that the department can receive police information to determine whether persons are suitable persons.

Subsection 142E(1) limits the arrangement so that it applies only to the extent that other provisions in the Act allow the chief executive and the police commissioner to exchange information. Subsection 142E(2) allows the chief executive and police commissioner to enter into a written arrangement for the exchange of information and subsection 142E(3) provides that the methods of exchange in the agreed arrangement may include the electronic transfer and that the transfer may occur on a daily basis.

Subsection 142E(4) recognises that the information to be exchanged may be subject to confidentiality or other restrictions under the Act in relation to access to it or its use. Accordingly, subsection 142E(4) requires that an

arrangement for electronic transfer of information must provide for any such limitation so that the information is only accessed by persons entitled under the Act to have access to it, or only used for the purpose intended under the Act.

52 Amendment of s 143 (Effect of failure to decide application for, or for renewal of, authority)

Clause 52 amends section 143(1) to clarify that it applies to both an application for an initial certificate and to an application to renew a certificate. While the heading includes application for and renewal of authorities, the section itself does not contain a reference to renewals. The amendment will insert the words "or to renew" within the section.

53 Amendment of s 148 (Obligation to report harm to children in residential care)

Clause 53 amends section 148 to extend its application to children who have been placed in a licensed care service. Subclause 53(1) omits “residential care” from the heading of section 148 and inserts “departmental and licensed care services”. Subclause 53(2) omits “child in residential care” from subsection 148(1) and inserts “child placed in the care of an entity conducting a departmental care service or a licensee”. Subclause 53(3) omits the definition of “child in residential care”. Subclause 53(4) “inserts departmental care service or” before “licenced care service” in section 148(6).

54 Amendment of s 159D (Other definitions for ch 5A)

Clause 54 amends the definition of prescribed entity in s159D by replacing the term “commissioner of the Queensland police service” with “the police commissioner”.

Amendment of s 159H (Chief executive may ask particular prescribed entities to provide a service)

Clause 54 amends the definition of prescribed entity in s159D by replacing the term “commissioner of the Queensland police service” with “the police commissioner”.

55 Amendment of s 159H (Chief executive may ask particular prescribed entities to provide a service)

Clause 55 omits section 159H(1)(c) and replaces it with new section 159H(1)(c) "the police commissioner".

56 Amendment of s 159K (Members)

Clause 56 omits and replaces section 159K(a). The amendment clarifies that the Police Commissioner and, in relation to an Aboriginal or Torres Strait Islander child, the recognised entity are core members of a SCAN team. In addition, it replaces the references to various departments to the chief executive's of those departments.

57 Amendment of s 159M (Particular prescribed entities givign and receiving relevant information)

Clause 57 amends the definition of prescribed entity in s159M by replacing the term "commissioner of the Queensland police service" with "the police commissioner".

58 Amendment of s 159P (Release of information for reporting or investigating under the Coroners Act)

Clause 58 amends section 159P. The amendments clarify and extend the application of the section to enable the chief executive to give the coroner or a police officer who is investigating a child's death or a police officer who is helping the coroner investigating a child's death, certain information for the purposes of their investigation.

Subclause 58(1) omits the existing heading and inserts a new heading to reflect the extended scope of section 159P.

Subclause 58(2) replaces the existing subsection 159P(1). The new subsection includes a police officer investigating a child's death as a person to whom the chief executive may give otherwise confidential information.

Subclause 58(3) clarifies that the information that may be released under subsection 159P(2) is any of the matters listed in the subsection.

Subclause 58(4) amends subsection 159P(3)(a)(i) to clarify that it refers to a coroner's investigation.

Subclause 58(5) renumbers subsection 159P(3)(a)(ii) as subsection 159P(3)(a)(iii) so as to enable subclause 58(6) to insert a new subsection 159P(3)(a)(ii) to cater for the uses to which a police officer may put

information received under the section, including assessing whether the death should be reported to the coroner and reporting the death or giving information to the coroner.

Subclause 58(7) amends section 159P(3)(b)(ii) to insert the circumstance of disclosure to a coroner.

59 Amendment of s 162 (Offence to remove child from carer)

Clause 59 amends section 162 to extend its application to children placed with someone under a care agreement. (Refer to the new part 3B inserted by clause 14)

Subclause 59(2) inserts a new section 162(4) to clarify that this offence does not apply to a party to the care agreement. For example, a parent who is party to the care agreement, will not commit an offence by removing the child from the carer.

60 Amendment of s 163 (Offence to remove child from carer—order made in another State)

Clause 60 amends section 163 to clarify that meaning of carer in this section is a person or entity a child has been placed with under a child protection order made in another State.

61 Amendment of s 175 (Interstate warrants—arrangements for apprehended child until magistrate is available)

Clause 61 amends the example in section 175 of the *Child Protection Act 1999*.

The clause omits the word "foster" from the example in section 175(2), so that it now refers only to carers and will thereby include all categories of carers provided for by the Bill. "Approved carer" is defined by the amendment of the dictionary in schedule 3 to mean an approved foster carer, approved kinship carer or provisionally approved carer.

62 Amendment of s 182 (Evidentiary provisions)

Clause 62 amends section 182(4)(h) of the *Child Protection Act 1999*.

The clause omits the words "recognised Aboriginal or Torres Strait Islander agency" and replaces them with "recognised entity". This is consistent with the provisions of the new section 246I inserted by clause 65

that stipulate that certain entities may be included on the list of recognised entities kept by the chief executive.

63 Amendment of s 187 (Confidentiality of information obtained by persons involved in administration of Act)

Clause 63 amends section 187 of the *Child Protection Act 1999.*

Subclause 63(1) omits "approved foster carer or other carer" in section 187(1)(a)(iv) of the *Child Protection Act 1999* and replaces it with "approved carer or other person" to extend the obligation of confidentiality to all persons with whom a child may be placed. In particular, the new categories of kinship carers and provisionally approved carers will be covered by this amendment, through the definition of "approved carer" inserted by amendment to the dictionary in schedule 3.

Subclause 63(2) renumbers section 187(a)(vi) to (ix) as section 187(a)(vii) to (x). This is to reflect the inclusion of a new section 187(1)(a)(vi) by subclause 63(3).

Subclause 63(3) inserts the new section 187(1)(a)(vi) to extend the obligation of confidentiality to "a recognised entity or member of a recognised entity".

Subclause 63(4) amends section 187(3)(b). It omits the word "directly" in the context of describing information, which may be disclosed if the disclosure is related to a child's protection or welfare. The interpretation of the exception to the confidentiality provision with the word "directly" has been unduly restrictive. This amendment will provide more latitude to disclose confidential information if related to a child's protection or welfare.

Subclause 63(5) amends section 187 (3) (b). It omits the word "foster" in the example in order to include all categories of carers that are provided for in the Bill.

Subclause 63(6) amends section 187(3)(c)(ii). The words "by law" are omitted and replaced with the words "under this division or another law". This is to clarify that information can be disclosed or access given to documents in accordance with the relevant provisions of the *Child Protection Act 1999* and other law in force in Queensland. This accords with the provisions of section 36 of the *Acts Interpretation Act 1954.*

Subclause 63(7) omits section 187(4) and 187(5). Section 187(5) currently provides for the disclosure of information by a police officer. This

situation will be clearly covered by the new section 187(3)(c)(ii), discussed above.

A new section 187(4) is inserted and provides for the disclosure of information in particular circumstances when the information given to a person is information about them and when information is given to chief executive or authorised officer to help them ensure carers and licenced services are providing adequate standards of care to children who are placed with them. This amendment will protect, for example, licensed care service employees making a disclosure to the chief executive about services provided by the care service, without risking breach of the confidentiality provision.

Subclause 63(8) renumbers subsection 187 (6) as subsection 187(5), as a result of the omission of subsection 187(5).

Subclause 63(9) clarifies that the recognised agencies referred to in this section are agencies that existed under the *Child Protection Act 1999* prior to the *Child Safety Legislation Amendment Act 2005.*

64 Insertion of new ss 188B

Clause 64 inserts new sections 188B after section 188A. These sections enable the disclosure and publication of information in particular circumstances.

'188B Disclosure of information to family members

This provision gives the chief executive and the authorised officer power to release information to a member of a child's family group. Family group is defined by the existing section 51E. Subsection 188B(1) makes it clear that the provision is restricted to the disclosure of information about the child and must be in the child's best interest.

Subsection 188B(2) sets out the matters to which the chief executive or authorised officer must have regard prior to making any disclosure under the section. These are:

- the views of the child (where the child has capacity to form and express a view);
- the likelihood that the disclosure will adversely effect the child's relationship with family group members;
- whether anyone else is likely to be adversely effected by the disclosure;

- any views expressed by the child's parents;
- any relationship between the child and the person to whom the information will be disclosed and any view expressed by that person;
- the child's case plan.

Section 188B applies subject to section 186 which protects the identity of notifiers of harm or risk of harm. Further, due to the application of s188, any person receiving information pursuant to s188B will be prohibited from using or disclosing that information.

65 Insertion of new s 246I

Clause 65 inserts a new section 246I before section 247 headed **Recognised entities.**

246I Recognised entities

When the Department of Child Safety intervenes with an Aboriginal or Torres Strait Islander child, it is required under the *Child Protection Act 1999* to work together with the recognised Aboriginal or Torres Strait Islander entity for the child. This section recognises the importance of these entities in decision-making for Aboriginal and Torres Strait Islander children and seeks to ensure that the Department of Child Safety works with appropriate organisations and individuals.

Subsection 246I(1) requires the chief executive to keep a list of entities with whom to consult regarding the protection and care of Aboriginal or Torres Strait Islander children.

Subsection 246I(2) provides that an entity cannot be included on the list unless it is:

- **an individual** who is an Aboriginal or Torres Strait Islander person, with knowledge of or expertise in child protection, and is not employed by the Department of Child Safety; **or**
- **an entity** whose members, include the above individuals and has the function of providing services to Aboriginal persons or Torres Strait Islanders.

The intention of the requirement that individuals are not employed by the Department of Child Safety is to ensure that the recognised entity is independent of the department and able to advise the department as an independent advisor.

Section 246I (3) requires the list of recognised entities to be available for public inspection.

The CMC report "*Protecting Children; An Inquiry into the Abuse of Children in Foster Care*" concluded that the involvement of community based Indigenous organisations is essential to ensure the Department of Child Safety delivers services to vulnerable Indigenous children in a culturally sensitive way and recognises the legitimate reservations Indigenous communities may have concerning government agencies.

The CMC identified a shortfall in the number of available organisations. If no organisation is available in a particular region, the only option may be to consult an individual who meets the criteria specified. It is intended that an individual would only be listed as an entity in these circumstances.

The provisions of section 246I accord with section 36 of the *Acts Interpretation Act 1954* which provides that an "entity" can be an individual, a corporation or an unincorporated body.

Amendments to schedule 3 now include definitions of recognised entities that reflect Section 246I.

66 Insertion of new ch 9, pt 5

Clause 66 inserts a new part 5 in chapter 9 of the *Child Protection Act 1999.* This new part provides for the transition of existing approved carers and certificates of approval and recognised agencies.

Part 5 Savings and transitional provisions for Child Safety Legislation Amendment Act 2005

263 Administrative approvals as carers

New section 263 provides that carers who have been approved administratively as relative and limited approval carers will be approved as kinship carers or as provisionally approved carers upon commencement of these amendments.

Subsection 263(2) sets time limits to the approvals made under this section. Approvals for relative carers, who have been approved for more than 2 years, end on the first anniversary of the day the approval was first given to the relative. Approvals for relative carers who have been approved two

years or less ends on the second anniversary of the day the approval was first given to the person.

For limited approval carers, their approval ends on the day stated in their administrative approval.

264 Current Applications relating to foster carer certificates

New section 264 provides the transitional arrangements for applications to be an approved foster carer made under the previous section 132 that have not been decided when the clause 38 in the Child Safety Legislation Amendment Act 2005 commences.

265 Recognised entities

New section 264 enables transitional arrangements for recognised entities. It provides that until a list is established under section 246I, an entity that was recognised agency immediately before the commencement day continues as a recognised entity.

67 Replacement of sch 2 (Reviewable decisions and aggrieved persons)

Clause 67 omits and replaces schedule 2 to reflect the inclusion of the new categories of carers under the Act.

Specifically, the schedule will include a decision refusing an application for, or renewal of, a certificate of approval as an approved foster carer or an approved kinship carer aas able to be reviewed on the motion of the applicant or certificate holder.

68 Amendment of sch 3 (Dictionary)

Clause 68 references and updates terms used in the new provisions. The term ‘carer’ is replaced with “approved carer”, a new term to encompass approved kinship carer, approved foster carer and provisionally approved carer. The amendment also expands the definition of suitable person to include the new approved carer categories.

The new term ‘kin’ is defined in schedule 3.

Part 3 Consequential amendments

69 Consequential amendments

Clause 69 sets out in the schedule the Acts consequentially amended by the Bill.

The following Acts are amended:

- *Child Care At 2002*
- *Children Services Tribunal Act 2000*
- *Commission for Children and Young People and Child Guardian Act 2002*
- *Coroners Act 2003*
- *Juvenile Justice Act 1992*
- *Police Powers and Responsibilities Act 2000*

The amendments to the *Coroners Act 2003* are linked to the existing section 81, the amendments to section 82 and the new section 51ZG. The consequential amendment to section 9(1)(d) omits the words "the care of a licensed care service, approved foster carer, or other person" and replace them with "care", so the subsection will read: "the person was a child placed in care under the *Child Protection Act 1999*, section 82." In addition, subsection 9(1)(e) is omitted. This section reads "the person was a child in a placement with the consent of a parent or guardian." The amendments may appear to embody a substantive policy change by excluding children placed by the chief executive without an order. However, no such change is intended; rather the amendments are consequential upon the changes to section 82 and the new section 51ZG.

Section 82 sits within part 6, division 4 of the *Child Protection Act 1999.* Division 4 deals with placing a child in care. Section 81 clarifies that the division applies where the chief executive has custody or guardianship of a child under the Act. The amendments to section 82 will expressly provide for the type of placement in which a child can be placed where the chief executive has custody or guardianship of the child. It should be noted that a child may be in the chief executive's custody under a child protection order, but also under a care agreement (see the new section 51ZG – Effect of care agreement). The change to subsection 9(1)(d), therefore, incorporates the intention of subsection 9(1)(e).