

Child Safety (Carers) Amendment Bill 2006

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Child Safety (Carers) Amendment Bill 2006.

Policy Objectives of the Legislation

The transfer of criminal history screening

The objective of the Bill is to transfer criminal history screening of certain people involved in providing care services to children under the *Child Protection Act 1999* from the Department of Child Safety (the Department) to the Commission for Children and Young People and Child Guardian (the Commission). The Bill expands the categories of regulated employment and regulated businesses currently subject to the Commission's employment screening (blue card) regime so as to include the following "relevant persons":

- foster and kinship carers and their adult household members (regulated employment);
- nominees and directors of licensed care services (regulated business);
- persons whose functions of employment are carried out inside a licensed residential facilities (regulated employment);
- persons employed by licensed care services supporting placements with approved carers (regulated employment);
- persons whose usual activities of their business involve, or are likely to involve providing services inside a licensed residential facility (regulated employment).

The Bill preserves the role of the Department as being responsible for other stages of assessment and final approval of carers and licensed care services. The blue card represents the benchmark for determining the appropriateness of individuals to engage in child related employment. The application of the blue card regime, as a minimum screening threshold for relevant persons will enhance consistency between employment screening for persons providing care to children on behalf of the chief executive of the Department and persons engaged in other child related employment.

On 24 August 2005, Parliament passed the *Child Safety Legislation Amendment Act 2005* amending the *Child Protection Act 1999*. The amendments included provisions for the regulation of all carers and aligned the powers of the chief executive to obtain police information about potential carers with the information obtained by the commissioner in the blue card screening process. The Bill repeals those amendments which will be made redundant with the transfer of criminal history screening of relevant persons to the Commission.

Part 3B, Division 3 of the *Child Safety Legislation Amendment Act 2005* allows the chief executive to enter into a care agreement with parental agreement to place a child for a short time in out-of-home care. This may occur if the child is assessed as a child in need of protection and needs ongoing help under the *Child Protection Act 1999*. The Bill extends the new Part 3B to allow the chief executive to enter into a care agreement with parental agreement to place a child in out-of-home care for no more than thirty days, during the assessment and investigation phase. The extension of Part 3B allows the department to place a child in out-of-home care with parental agreement to ensure the child's immediate safety, while the child's protective and care needs are being assessed. The amendment does not have the effect of transferring custody of the child to the chief executive.

The Bill amends the *Child Safety Legislation Amendment Act 2005* to include a further period of time between the commencement date, when administratively approved relative carers become approved kinship carers under the Act, and the time at which these approvals will begin to expire. The objective of the amendment to the transitional provisions is to allow for a further period of two months before the department is required to assess applications from kinship carers for renewal of their approvals.

The Bill amends the *Child Protection Act 1999* to include the principal of a non-state school as 'prescribed entity' which can give and receive relevant information under Part 4, chapter 5A of the Act. Currently non-state schools and other non-government organisations are not able to share information directly with each other, as both are service providers for the

purpose of the Act. The amendment will allow non-state schools to share relevant child protection information with other non-state schools and non-government organisations.

The Bill also amends the *Commission for Children and Young People and Child Guardian Act 2000* to introduce categories of regulated employment and regulated business to include “relevant persons”. Amendments are also made to accommodate the chief executive's necessity to be notified in certain circumstances relating to nominees and directors of licensed care services. Additional notifications by the commissioner are also provided for in light of the fact that adult members of carers' households will also be able, in specified circumstances, to commence regulated employment as volunteers after applying for a blue card but before a prescribed notice is issued by the commissioner. All relevant persons will be retrospectively screened but transitional provisions will allow these persons 6 months to make application for a blue card.

Miscellaneous Amendments to the Commission for Children and Young People and Child Guardian Act 2000

Due to an oversight the *Commission for Children and Young People and Child Guardian Amendment Act 2004* did not include a transitional provision to outline the effect, if any, of the amendments in relation to:

- (a) applications for suitability notices received by the Commissioner prior to 17 January 2005, which were undecided at that date (“undecided applications for a suitability notice”); and
- (b) assessments and applications as to whether or not a suitability notice (issued prior to 17 January 2005) should be cancelled, where the application or assessment relevant to the cancellation of the suitability notice was commenced prior to 17 January 2005 and undecided at that date (“undecided assessments and applications as to whether a suitability notice should be cancelled”).

Consequently the Bill aims to:

1. clarify the circumstances in which the amendments inserted by the Commission for Children and Young People and Child Guardian Amendment Act 2004 will apply to:
 - (a) applications for suitability notices received by the Commissioner prior to 17 January 2005, which remain undecided at commencement of this Bill (“outstanding applications for a suitability notice”); and

- (b) assessments and applications as to whether or not a suitability notice (issued prior to 17 January 2005) should be cancelled, where the application or assessment was commenced prior to 17 January 2005 and remained undecided at commencement of this Bill (“outstanding assessments and applications as to whether a suitability notice should be cancelled”) and;
2. give certainty through validation to decisions made by the Commissioner between 17 January 2005 and commencement of this Bill, in relation to undecided applications for a suitability notice and undecided assessments and applications as to whether a suitability notice should be cancelled.

In addition the Bill also seeks to achieve the following objectives:

- to provide for the Commissioner to provide a report to the Minister in relation to employment screening issues, including the provision of details about individuals and their criminal history, without being in breach of confidence; and
- to ensure that persons who are privy to such information shared between the Commissioner and the Minister are bound by the confidentiality provisions prescribed by the *Commission for Children and Young People and Child Guardian Act 2000*; and
- to rectify current drafting anomalies in the Act to ensure clarity in the Act.

The Acts amended are:

- *Child Protection Act 1999*
- *Child Safety Legislation Amendment Act 2005*
- *Commission for Children and Young People and Child Guardian Act 2000*

Reasons for the Bill

The transfer of criminal history screening

During 2004-05 the Department of the Premier and Cabinet conducted an employment screening review of child-related services and activities delivered by government entities, with the objective of establishing a minimum threshold for screening employees for government child-related services.

The Government decided to implement consistent criminal history screening for child-related employment in government services and risk management strategies for child-related and child-associated employment in government services. Given the status of blue cards in the community as the minimum requirement for working with children, Government decided to transfer criminal history screening of relevant persons for the purposes of carer approval and licensing of care services under the *Child Protection Act 1999* to the Commission.

During the development of the supporting policies for the *Child Safety Legislation Amendment Act 2005* a need was identified to extend the ability of the chief executive to remove a child from their home with the parent's agreement under a care agreement while the child's ongoing protective needs are still being assessed. Without the amendment the department would have to place a child who may be at risk of harm with parental agreement in out-of-home care during the assessment and investigation phase, under administrative policy. The Crime and Misconduct Commission's Recommendation 7.11 (*Protecting Children: An Inquiry Into Abuse of Children in Foster Care*) stipulated that voluntary placement of children in care with the agreement of their parents, be regulated. The amendment provides legislative requirements and safeguards for children and families, when parents consent to a care agreement, and their children are placed in out-of-home care without a court assessment order.

The transitional provisions in the *Child Safety Legislation Amendment Act 2005* provide that carers who have been approved administratively as relative carers will become kinship carers upon commencement of these amendments. The transitional provision provides that as of the commencement date, the approvals of all kinship carers who were approved administratively more than two years before the commencement date, will expire on the first anniversary of the day the approval was first given, and the approvals of carers approved less than two years before the commencement date will expire on the second anniversary of the day the approval was first given to the relative carer. The transitional provisions do not allow for the administratively approved relative carer to make a renewal application before the kinship provisions have commenced. The amendment to the transitional provision will set a fixed date in the *Child Safety Legislation Amendment Act 2005* as the date by which approvals, for relative carers who have been administratively approved, will start to expire.

Section 159M of the *Child Protection Act 1999* allows relevant child protection information to be shared among prescribed entities and between prescribed entities and non-government organisations. The amendment will

include the principal of a non-state school to be a 'prescribed entity' to allow the direct sharing of relevant child-protection information between a non-state school and non-government organisations. The amendment will allow principals to improve responses and services for children and young people enrolled in their schools who are in need of protection and to fulfil their duty of care to these children.

Miscellaneous Amendments to the Commission for Children and Young People and Child Guardian Act 2000

The amendments to the *Commission for Children and Young People and Child Guardian Act 2000* are necessary to:

- address current drafting anomalies; and
- address the lack of transitional provisions inserted by the *Commission for Children and Young People and Child Guardian Amendment Act 2004*

Achieving the Objectives

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

The transfer of criminal history screening

Establishing a legislative framework for the transfer of the criminal history screening of relevant persons to the Commission. Key components of this framework include:

- New categories of regulated employment and regulated businesses under the *Commission for Children and Young People and Child Guardian Act 2000* will be created which will require the following persons to undertake a working with children check and be issued with a blue card:
 - foster and kinship carers and adult members of their households;
 - nominees and directors of licensed care services;
 - persons whose usual functions of employment are carried out, or likely to be carried out inside a licensed residential facility;
 - persons whose usual functions of employment with a licensed care service include, or are likely to include, supporting a placement of a child with an approved carer; and
 - persons carrying on businesses whose usual activities include, or are likely to include, providing services or activities inside a licensed residential facility;

- The holding of a current positive prescribed notice (blue card), for relevant persons will be a condition of approval as a foster or kinship carer and for the licensing of care services under the *Child Protection Act 1999*.
- Licences issued under the *Child Protection Act 1999* will be conditional upon relevant persons maintaining current blue cards that are not suspended. In addition, the chief executive will need to be satisfied, in order to grant a licence, that a nominee for a licence will ensure compliance with all requirements of a regulated business and employer of persons in regulated employment under the *Commission for Children and Young People and Child Guardian Act 2000*.
- The chief executive will be the "employer" of foster and kinship carers and adult members of their household for the purposes of the *Commission for Children and Young People and Child Guardian Act 2000*.
- The chief executive will be notified of the issue of a prescribed notice, the suspension of a blue card or the withdrawal of an application in respect of a nominee or director of a licensed care service.
- The chief executive will continue to access the criminal histories of persons approved as provisionally approved carers, members of their households and new household members joining the household of either carer applicants or already approved carers (foster and kinship). New household members of foster and kinship carers will be required to apply for and be issued with a blue card, but a check of their criminal history initially by the chief executive will allow them to join the household while their blue card application is being processed.
- To distinguish between the information the chief executive will obtain from the police commissioner in relation to different groups of people "police information" will be defined differently. For provisionally approved carers, their household members and new household members of foster and kinship carers, "police information" will be criminal history and domestic violence history. For other relevant persons, "police information" will be domestic violence history only.
- For the limited group of people about whom the chief executive seeks criminal history information, there will no longer be an obligation on the police commissioner to notify the chief executive if there is a change in their "police information". This function of the police commissioner will be covered by the *Commission for Children and Young Person and Child Guardian Act 2000* in relation to applicants

for, or holders of, blue cards. As soon as the application for a blue card is lodged with the commissioner and the commissioner has requested information from the Queensland Police Service (QPS), the daily monitoring by the QPS will ensure that information about changes can be acted upon appropriately. The commissioner will be obliged to notify the chief executive of particular changes, namely charges for serious offences, so that the chief executive can then take action to protect the child in the placement.

- The chief executive is required to suspend the authority of a foster or kinship carer if the commissioner suspends the carer's blue card, withdraws an application for a blue card or issues a negative notice. The suspension of the carer's authority will continue until the commissioner makes a decision about the suspension of the blue card and/or a decision has been made following exercise of the person's review (and appeal) rights in relation to the commissioner's decision. If the person does not seek a review (or appeal) within the statutory period, or the commissioner's decision is affirmed, the chief executive *must* cancel the carer's authority.
- If the Commissioner withdraws an application for a blue card or suspends or cancels the blue card of a member of a carer's household, the chief executive will be required to suspend the carer's authority if the person remains in the household. The suspension of the carer authority continues until the commissioner makes a decision about the suspension of the blue card and/or a decision has been made following exercise of the person's review (and appeal) rights in relation to the commissioner's decision. If the person does not seek a review (or appeal) within the statutory period, or the commissioner's decision is affirmed, the chief executive *may* then cancel the carer's authority. However, the chief executive retains the ability to lift the suspension on the carer authority if the person leaves the carer's household, i.e. is no longer an adult household member.
- The chief executive is required to suspend the authority of a foster or kinship carer if the commissioner issues a negative notice in relation to an adult member of a carer's household under either section 102(6)(a) or section 119A of the *Commission for Children and Young People and Child Guardian Act 2000*. The chief executive *may* subsequently cancel the carer's authority. This would occur if the adult member of the household has not left the household. However, the chief executive must not suspend or cancel the carer's authority if the adult member leaves the carer's household. If the chief executive

suspends a carer's authority under this requirement, the chief executive may lift the suspension if the person leaves the household.

- In the case of licensed care services, the chief executive must suspend the licence if the commissioner suspends a nominee's or director's blue card, withdraws an application for a blue card for a nominee or director or issues a negative notice to a nominee or director and the person continues to carry on a regulated business. The suspension of the licence continues until the commissioner makes a decision about the suspension of the blue card and/or a decision has been made following exercise of the person's review (and appeal) rights in relation to the commissioner's decision. If the person does not seek a review (or appeal) within the statutory period, or the commissioner's decision is affirmed, the chief executive *may* cancel the carer's authority. However, the chief executive retains the ability to lift the suspension on the licence if the nominee or director ceases carrying on a regulated business.
- There will be additions to the existing grounds for the chief executive's discretion to suspend or cancel an authority. A suspension or cancellation may occur where the chief executive receives information, either under the provisions requiring nominees and carers to notify the chief executive about certain changes to a relevant person's blue card status or, under provisions of the *Commission for Children and Young People and Child Guardian Act 2000* other than information which will give rise to suspensions or cancellations already described. The chief executive may also suspend or cancel an authority if a relevant person required to have a blue card, does not have a blue card.

Including notification obligations and information sharing provisions. Elements of the provisions include:

- All persons engaged in regulated employment under the *Commission for Children and Young People and Child Guardian Act 2000* are obliged to notify their employer (in this case either the chief executive or the licensed care service) of any changes to their criminal histories. Likewise, persons carrying on a regulated business (in this case licensed care services) are obliged to notify the commissioner if they have a change in their criminal histories.
- Provisionally approved carers and foster and kinship carers who have "new" adult household members (persons who join the household after the application is made or after an authority is

issued) will be obliged under the *Child Protection Act 1999* to notify the chief executive of relevant changes in criminal history.

- In addition all approved carers (foster, kinship and provisionally approved) are required to notify the chief executive about any changes to their domestic violence or traffic history or those of their adult household members (which they are aware of or reasonably suspect). Likewise persons engaged in relation to the provision of care services by a licensed care service and directors of a licensed care services are obliged to report changes in their domestic violence or traffic information to the nominee who in turn must provide this information to the chief executive.
- Nominees will retain an obligation under the *Child Protection Act 1999* to notify the chief executive of changes in their domestic violence and traffic histories. Additionally, under the *Child Protection Act 1999* they will now be required to notify the chief executive of certain changes in their criminal history requiring their blue card to be reassessed. Likewise, a director of a licensed care service will be obliged to notify their nominee of changes in their domestic violence and traffic histories or of certain changes in their criminal history requiring their blue card to be reassessed. The nominee will, in turn, be required to provide this information to the chief executive.
- Nominees will also be required to notify the chief executive if they become aware that an application for a blue card lodged on behalf of a manager or employee engaged in regulated employment is withdrawn or is made because of a change in the person's criminal history. Further, nominees will be required to notify the chief executive if they become aware a manager or employer is charged with an excluding offence, convicted of a serious offence or issued with a negative prescribed notice.
- Provision will be made for the chief executive and the commissioner to establish an arrangement for the administrative exchange of information held by the commissioner about applicants for, or holders of, certificates of approval or licensed care services as far as that exchange is permitted by the *Commission for Children and Young People and Child Guardian Act 2000* and the *Child Protection Act 1999*. It is anticipated that this arrangement will be in the form of a memorandum of understanding.

Enabling extension of the period allowed for the chief executive to make a decision to approve a carer and licensed care service to ensure applications are not deemed to be refused, for example, because the blue card application takes longer than usual to process:

- The *Child Protection Act 1999* provides that an application for an authority is deemed to be refused if the chief executive has not made a decision within 90 days. The Bill will allow for the chief executive to agree with the applicant prior to the end of the 90 days for this period to be extended if required. This will allow for those cases where the chief executive has not been able to complete the decision-making process or is awaiting the outcome of an application for a blue card. If a decision is not made by the end of the extended period the deemed refusal provision will then apply.

Include transitional provisions for the new screening regime:

- The new screening regime will include retrospective screening of current carers and licence holders under the *Commission for Children and Young People and Child Guardian Act 2000*. However transitional provisions are inserted into the Bill to provide a six-month period for applications to be lodged and for persons to be able to continue engaging in regulated employment or carrying on regulated business until their application is withdrawn or decided.
- Applications for authorities under the *Child Protection Act 1999* made, but not decided, before commencement will not be subject to the new blue card requirements for a decision to grant or refuse an authority. However, persons who are adult members of the applicant's household when approved will become subject to a transitional provision and will have to lodge an application for a blue card within six months of commencement.

Provide legislative requirements and safeguards for children and families, when parents consent to a care agreement, and their children are placed into out-of-home care without a court assessment order.

- Limited intervention through a voluntary arrangement with a child's parents occurs during the investigation and assessment phase under current administrative policy. This type of intervention is limited to taking any action that is necessary to ensure the child's immediate safety while a notification is investigated and the child's protective needs are assessed, and

may include placing a child in out-of-home care with a carer under an agreement with the child's parents.

- Part 3B to be inserted into the *Child Protection Act 1999* by the *Child Safety Legislation Amendment Act 2005* regulates intervention with parental agreement only when the investigation and assessment are completed and a determination has been made that a child is "a child in need of protection" and requires ongoing help under the Act. It does not regulate interventions, including out-of-home placements during the investigation and assessment phase.
- Extending Part 3B to allow intervention with parents' agreement during the investigation and assessment phase for the purpose of ensuring a child is safe will ensure that all interventions with parental agreements are regulated. This intervention includes entering into a care agreement with a parent of the child that the child be placed in out-of-home care for no longer than 30 days.

Include a fixed date by which transitioned kinship carer approvals will begin to expire.

- Administratively approved relative carers will become approved kinship carers from the commencement date. Under the transitional provision in the *Child Safety Legislation Amendment Act 2005*, their kinship carer approval will expire in accordance with the initial date of approval. Some approvals will thus expire as soon as they are transitioned. A period of time is needed to allow for applications for renewal of the approvals to be received and assessed after the commencement day and before the approvals begin to expire.
- Prior to the commencement day, there is no provision for an administratively approved relative carer to apply for, or for the chief executive to accept an application for, the person's approval to be renewed after the commencement day as a kinship carer.
- The amendment will fix the 30 June 2006 for kinship carer approvals to begin to expire so that they must be renewed progressively as the anniversaries of the approvals occur.

To allow the direct sharing of relevant child-protection information between the principal of a non-state school and non-government organisations.

- The amendment will include the principal of a non-government school as a ‘prescribed entity’ within section 159M so that non-state schools can be permitted to share relevant child-protection information directly with other non-state schools and non-government organisations, and vice versa.

Miscellaneous Amendments to the Commission for Children and Young People and Child Guardian Act 2000

The objectives of the Bill will be achieved by the insertion of provisions which will:

- clarify the application of the *Commission for Children and Young People and Child Guardian Amendment Act 2004*, in relation to outstanding applications for suitability notices. The Bill provides that where an application for a suitability notice was made under s 100 or 101 of the *Commission for Children and Young People and Child Guardian Act 2000* as it was in effect immediately before 17 January 2005 (“pre-amended Act”) and was received by the Commissioner prior to 17 January 2005 (a “relevant application”) the application will, after commencement, be assessed and decided in accordance with the pre-amended Act. The one exception to this is where the Commissioner has been notified of police information or disciplinary information on or after 17 January. In this case *Commission for Children and Young People and Child Guardian Act 2000* as amended by the *Commission for Children and Young People and Child Guardian Amendment Act 2004* and this Bill (“the amended Act”) will apply to the assessment and determination of the relevant application; and
- clarify the law to be applied in relation to outstanding assessments and applications in relation to whether a suitability notice should be cancelled. The Bill provides that where the Commissioner received information, before 17 January 2005, about the holder of a suitability notice (which would result in the Commissioner being able to exercise a power under s 119 (1) or (1A) of the pre-amended Act) or an application (under either s 118 or s 119 of the pre-amended Act) to cancel a suitability notice the pre-amended Act will continue to apply to all matters relevant to the suitability notice despite the fact that the relevant action or decision takes place after 17 January 2005. The one exception to this is where the Commissioner receives further information on or after 17 January 2005, which is relevant to the

decision whether or not to cancel the suitability notice (i.e. would allow the Commissioner to exercise a power under s 119 (1) or (2) of the amended Act). In this situation, the amended Act must be applied in relation to the application or assessment, regardless of the fact that the original information or application was received before 17 January 2005; and

- allow information sharing between the Commissioner and the Minister which will ensure the Minister has the necessary information to make informed decisions about the legislation; and
- clarify the legislation by correcting drafting anomalies; and
- give certainty to the decisions of the Commissioner by validating those decisions made between 17 January 2005 and the commencement of this Bill, in relation to undecided applications for a suitability notice and undecided assessments and applications as to whether a suitability notice should be cancelled. The Bill will validate these decisions regardless of whether the pre-amended or amended Act was applied in making the determination.

Administrative Costs

The transfer of criminal history screening

The legislative amendments in this Bill are a further step in reforms to the child protection system and will enhance the process of approving carers and ensuring that persons who care for, or associate with, children in the custody of the chief executive do not pose a danger to children. To implement the amendments relating to carer approvals made to the *Child Protection Act 1999* in both the *Child Safety Legislation Amendment Act 2005* and the *Child Safety (Carers) Amendment Act 2006*, the chief executive will establish a central unit to manage personal history screening of relevant persons and to liaise with the commissioner about relevant persons' applications for blue cards and continued compliance with the *Commission for Children and Young People and Child Guardian Act 2000*.

The commissioner will experience an increase in applications for blue cards to be processed and notification obligations under the *Commission for Children and Young People and Child Guardian Act 2000*.

Miscellaneous Amendments to the Commission for Children and Young People and Child Guardian Act 2000

There is no anticipated cost to the Government to implement the miscellaneous amendments to the *Commission for Children and Young People and Child Guardian Act 2000*.

Fundamental Legislative Principles**Transfer of criminal history screening**

Legislative Standards Act 1992, section 4(3)(a)—whether legislation makes rights or liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review

- The lack of review rights in relation to refusal of applications for a certificate of approval or a licence, and in relation to a suspension or cancellation of the certificate as a result of a person's lack of a blue card breaches section 4(3)(a) of the *Legislative Standards Act 1992*. However, the breach is reasonable taking into account that the real reason for the refusal, suspension or cancellation, namely that a blue card has been refused under the *Commission for Children and Young People and Child Guardian Act 2000*, continues to be subject to review under that Act.

Legislative Standards Act 1992, section 4(3)(g) — does not adversely affect rights and liberties, or impose obligations, retrospectively

- The Bill requires current carers and adult members of their households as well as persons carrying on a licensed care service and those engaged within licensed residential facilities or supporting approved carers to obtain a blue card. This will affect their rights and liberties retrospectively. Their current employment or business will be adversely affected if they are issued with a negative prescribed notice. This imposition of an obligation retrospectively is considered justified on the basis that screening is an important tool in providing a safer environment for children in the custody and guardianship of the State.

Legislative Standards Act 1992, section 4(2)(b) — sufficient regard to the institution of Parliament

- While the amendment to section 159 of the *Child Protection Act 1999* removes the possibility for payments to be made in accordance with amounts fixed by regulation, and instead enables such payments to be made under departmental policy, it is considered justified on the basis that:

- the amounts to be paid for carers will frequently require amendment and the inclusion of the amounts in a regulation would be inefficient and impractical;
- no regulation is, at present, prescribed and a regulation is considered too inflexible for the myriad of payments made to carers for child related costs;
- it is preferable to align the chief executive's exercise of authority to make payments with the specific *Child Protection Act 1999* provision rather than relying on the general provisions of the *Financial Administration and Audit Act 1977*; and
- the nature of the payments made to carers is such that they are reimbursement for the costs associated with caring for a child placed with them by the chief executive. There is, accordingly, no impact on the rights of the general public in relation to the payment amounts.

Miscellaneous Amendments to the Commission for Children and Young People and Child Guardian Act 2000

The Bill, as it amends the *Commission for Children and Young People and Child Guardian Act 2000*, infringes a number of fundamental legislative principles:

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

- Retrospective application of the *Commission for Children and Young People and Child Guardian Act 2000* in its amended form to:
 - (a) outstanding applications for suitability notices; and
 - (b) outstanding assessments and applications in relation to whether a suitability notice should be cancelled.

In certain circumstances, the Commissioner will be able to apply the amended Act in determining outstanding applications for suitability notices and outstanding assessments and applications in relation to whether a suitability notice should be cancelled despite the fact that the application or assessment was commenced prior to 17 January 2005.

The amended Act will apply to the determination of an outstanding application for a suitability notice where police or disciplinary information is received after 17 January 2005. Likewise the amended Act will apply to the determination of outstanding assessments and applications as to whether to cancel a suitability notice where information which would

invoke s 119 (1) or (2) of the amended Act is received on or after 17 January 2005.

In some cases this will result in a breach of a fundamental legislative principle. For example, an applicant who has been convicted of an excluding offence (where imprisonment was ordered or a disqualification order was made by a Court) will not have a right to provide submissions to the Commissioner before a decision is made in relation to the application or assessment. This is a right they would otherwise have had if the pre-amended Act were to apply to the application or assessment.

This breach of a fundamental legislative principle is justified on the basis that:

- (a) the applicant has been convicted of an excluding offence and a court has determined that the circumstances of the offence warranted the person being sentenced to a period of imprisonment or a disqualification order being imposed. This approach is necessary to protect the best interests and safety of children;
- (b) if the applicant had been issued with a positive notice before 17 January 2005 and the Commissioner received information after that date which was relevant to a determination of whether or not the positive notice should be cancelled the Commissioner would have applied the amended Act in deciding whether or not the positive notice should be cancelled; and
- (c) the *Commission for Children and Young People and Child Guardian Act 2000* requires that a further application for a prescribed notice must be made where a change in criminal history has occurred, even if a prescribed notice has not been issued at that time. A further application for a prescribed notice made on or after 17 January 2005 would result in the amended Act applying to an assessment of that application. The result is that in some cases the legislation would already require an applicant to take steps which would bring them within the scope of the amended Act.

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

- Taking into account investigative information when determining:
 - (a) outstanding applications for suitability notices; and
 - (b) outstanding assessments and applications in relation to whether a suitability notice should be cancelled.

The Commissioner will in specified circumstances apply the amended Act to outstanding applications for a suitability notice and outstanding assessments and the applications as to whether a suitability notice should be cancelled.

Accordingly where the amended Act applies to the application or assessment the Commissioner would be able to take into account any investigative information provided by the police Commissioner after 17 January 2005 despite the fact that that the application for a suitability notice or the assessment or application relevant to the cancellation of the suitability notice was commenced prior to 17 January 2005.

This will result in a breach of a fundamental legislative principle in some cases as an applicant will no longer have the right to have the application or assessment determined on the basis of the pre-amended *Act*. In effect, the applicant will lose the right to have the application or assessment determined without any investigative information forming part of the assessment process.

This breach of a fundamental legislative principle is justified on the basis that:

- (a) if an applicant was issued with a positive notice before 17 January 2005 and the Commissioner then received investigative information on or after this date, the Commissioner would have been able to consider this information when deciding whether or not to cancel the positive notice and substitute another prescribed notice; and
 - (b) it is necessary for the Commissioner to take this information into account in order to make a decision which protects the best interests and safety of children as far as possible.
- Taking into account disciplinary information when determining:
 - (a) outstanding applications for suitability notices; and
 - (b) outstanding assessments and applications in relation to whether a suitability notice should be cancelled.

The Commissioner will in specified circumstances apply the amended Act to outstanding applications for a suitability notice and outstanding assessments and applications as to whether a suitability notice should be cancelled. Accordingly where the amended Act applies to the application or assessment the Commissioner will be able to have regard to disciplinary information about child care service providers, carers under *Child Protection Act 1999*, nurses, midwives and certain health practitioners, in

determining the assessment or application. Accordingly the application or assessment will be determined taking into account any disciplinary information received by the Commissioner despite the fact that application for the suitability notice or the assessment or application relevant to whether the suitability notice should be cancelled, was commenced prior to 17 January 2005.

This will result in a breach of a fundamental legislative principle as in some cases an applicant will no longer have the right to have the application or assessment determined on the basis of the pre-amended *Act*. In effect, some applicants will lose the right to have an application or assessment determined without disciplinary information (as defined in the amended *Act*) being considered as part of the assessment process.

This breach of a fundamental legislative principle is justified on the basis that:

- (a) if the applicant was issued with a positive notice before 17 January 2005 and the Commissioner received disciplinary information on or after this date the Commissioner would have been able to consider this information when deciding whether or not to cancel the positive notice and substitute another prescribed notice; and
 - (b) it is necessary for the Commissioner to take this information into account in order to make a decision which protects the best interests and safety of children as far as possible.
- Retrospective application of the *Commission for Children and Young People and Child Guardian Act 2000* in its amended form to:
 - (a) outstanding applications for suitability notices; and
 - (b) outstanding assessments and applications in relation to whether a suitability notice should be cancelled.

In specified circumstances, the Commissioner will be able to determine an outstanding application for a suitability notice or an outstanding assessment or application relevant to whether a suitability notice should be cancelled on the basis of the amended *Act* despite the fact that the application or assessment or application in relation to the cancellation of a suitability notice was commenced prior to 17 January 2005.

This will result in a breach of a fundamental legislative principle in some cases have the following effects:

- (a) the Commissioner will be able to consider information that the applicant would not have anticipated would be considered in assessing an application for a suitability notice (namely investigative and disciplinary information (other than Board of teacher registration information));
- (b) an applicant who has a conviction for an excluding offence (where imprisonment was ordered or a disqualification order made) will no longer have a right of review to the Children Services Tribunal. This is a right the applicant would otherwise have had if the pre-amended Act was applied to the application or assessment;
- (c) an applicant who has a conviction for an excluding offence (where imprisonment was ordered or a disqualification order made) will no longer have a right to provide submissions to the Commissioner before a decision is made. This is a right the applicant would otherwise have had if the pre-amended Act was applied to the application or assessment;
- (d) an applicant who has a conviction for an offence which is now a serious offence but which was not previously a serious offence under the pre-amended Act will no longer have a right to have the application or assessment determined on the basis that they do not have a conviction for a serious offence. This is a right the applicant would otherwise have had if the pre-amended Act was to be applied, to the application or assessment.

This breach of a fundamental legislative principle is justified on the basis that:

- (a) if the applicant was issued with a positive notice before 17 January 2005 and the Commissioner received information on or after this date which invoked s 119 (1) or (2) of the amended Act, the Commissioner would have applied the amended Act in deciding whether or not to cancel the positive notice and substitute another prescribed notice;
- (b) it is necessary for the Commissioner to take this information into account in order to make a decision which protects the best interests and safety of children as far as possible;
- (c) the *Commission for Children and Young People and Child Guardian Act 2000* requires that a further application for a prescribed notice must be made where a change in criminal history has occurred, even if a prescribed notice has not been

issued at that time. A further application for a prescribed notice made on or after 17 January 2005 would result in amended Act applying to that application. The effect is that in some cases in which a breach of a fundamental legislative principle will occur the legislation already requires an applicant to take steps which would bring them within the scope of the amended Act.

Consultation

Community

Transfer of criminal history screening

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

- Peakcare Queensland
- Foster Care Queensland
- Queensland Aboriginal and Islander Health Council

Government

Transfer of criminal history screening

The following agencies have been consulted on the amendments:

- Queensland Treasury
- Queensland Police Service
- Department of Justice and Attorney-General
- Commission for Children and Young People and Child Guardian
- Office of Public Service Merit and Equity

Miscellaneous Amendments to the Commission for Children and Young People and Child Guardian Act 2000

The following agencies have been consulted on the miscellaneous amendments to the *Commission for Children and Young People and Child Guardian Act 2000*:

- Commission for Children and Young People and Child Guardian;

- the Crown Solicitor;
- Department of Child Safety;
- the Department of Justice and Attorney-General (which in turn consulted with the Child Services Tribunal);
- Queensland Police Service; and
- Queensland Treasury.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states the short titles of the Bill.

Commencement

Clause 2 states that clause 40 (Amendment of s 121) and clause 42 (Amendment of s 122A) are declared to have commenced on 17 January 2005. The retrospective commencement of clause 40 ensures that the appeal rights of applicants are safeguarded under section 121 as they were inadvertently misrepresented through a typographical error in the *Commission for Children and Young People and Child Guardian Act 2000* (which commenced on 17 January 2005). The retrospective operation of clause 42 ensures that the drafting anomaly contained in the current s 122A does not prevent the police commissioner from notifying the Commissioner of a change in a relevant persons criminal history and/or that a decision has been made that there is investigative information about a relevant person where such a change has occurred or such a decision has been made since 17 January 2005 and before the commencement of this section.

Clause 2 also states that the following provisions commence on 30 April 2006:

- part 2

- sections 30 to 39, 41, 43, 44, 46, 47, 53, 55 to 57
- the schedule.

Part 2 Amendment of Child Protection Act 1999

Act amended in pt 2 and schedule

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

Amendment of s 125 (Application for, or renewal of, licence)

Clause 4 amends section 125 by including an additional requirement that applications for, or renewal of, a licence to provide care services, must be accompanied by a notice signed by the nominee which states whether or not the nominee and directors of service have a current positive prescribed notice (blue card), including the expiry date, or a current negative prescribed notice. If a person does not have a prescribed notice, either negative or positive, the nominee's notice must indicate whether the person has a current application for a prescribed notice and if the application is current.

Amendment of s 126 (Restriction on granting application)

Clause 5 amends section 126 to provide that the chief executive cannot grant a licence unless satisfied that the nominee for, and directors of, the applicant each has a current blue card and that the applicant will comply with Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000*.

Amendment of s 129 (Refusal of application)

Clause 6 amends the requirements of the notice to be given if an application for a licence is refused. Where one of the reasons an application is refused is because the nominee or a director does not have a current blue card then the applicant will have no right of review to the Children Services Tribunal. The notice will only include the process for applying for review in cases where the reason or reasons for refusal do not include a failure of a nominee or director to hold a blue card. Appeal rights for persons

aggrieved by decisions of the commissioner with respect to blue cards will be those provided under the *Commission for Children and Young People and Child Guardian Act 2000*.

Amendment of s 130 (Nominees)

Clause 7 amends section 130 to make nominees responsible for ensuring that the licensee complies with Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000* in respect of either carrying on a regulated business or employing persons associated with the service in regulated employment.

Amendment of s 136 (Refusal of application)

Clause 8 amends the requirements of the notice to be given if an application to become an approved carer is refused. Where one of the reasons an application is refused is because the carer or an adult household member does not have a current blue card then the applicant will have no right of appeal to the Children Services Tribunal. The notice will only include the process for applying for review in cases where the reason or reasons for refusal do not include the failure of a carer or adult household member to hold a blue card. Appeal rights for persons aggrieved by decisions of the commissioner with respect to blue cards will be those provided under the *Commission for Children and Young People and Child Guardian Act 2000*.

Insertion of new ch 4, pt 2, div 4, sdiv 3 and sdiv 4, hdg

Clause 9 inserts new subdivisions 3 and 4 into division 4 of part 2 in chapter 4.

Subdivision 3 Immediate suspension or cancellation of particular authorities

140AB Definition for sdiv 3

The term clarifies the use of the terms throughout the subdivision, including:

- “application for a review” – applications under sections 121B or 121E of the *Commission for Children and Young People and Child Guardian Act 2000* to the Children Services Tribunal;

- “disqualifying event” – the issue of a negative notice (other than pursuant to section 102(6)(a) or section 119A of the *Commission for Children and Young People and Child Guardian Act 2000* or after a card has been suspended), the suspension of a positive notice or the withdrawal of an application for a prescribed notice;
- "prescribed provision" - 102(6)(a) (negative prescribed notice because of an excluding offence) or section 119A (conviction for excluding offence) of the *Commission for Children and Young People and Child Guardian Act 2000*.

140AC Immediate Suspension

This new provision requires the chief executive to suspend a foster carer's or kinship carer's certificate if the carer or a member of their household is issued with a negative notice, including under section 102(6)(a) or section 119A, or on cancellation of a positive notice that has been suspended, or has their blue card suspended or their application for a prescribed notice withdrawn. Similarly, the chief executive is required to suspend a licensed care service's licence if the nominee or director is issued with a negative notice, including under section 102(6)(a) or section 119A, or on cancellation of a positive notice that has been suspended, or has their blue card suspended or their application for a prescribed notice withdrawn. This provision does not compel the chief executive to take action where a manager or employee of a licensed care service is issued with a negative notice or if their blue card is suspended, as the employer licensee is responsible for taking appropriate action in such instances. The suspension must take place as soon as practicable after the chief executive becomes aware of the commissioner's actions.

However, if (in the case of a certificate of approval) an adult member of a carer's household, or (in the case of a licence) a nominee or director of the licensee is issued with a negative prescribed notice under 102(6)(a) (negative prescribed notice because of an excluding offence) or section 119A (conviction for excluding offence) of the *Commission for Children and Young People and Child Guardian Act 2000*, the chief executive need not suspend the authority if the chief executive has instead decided to cancel the authority under section 140AG(3) or 140AH(1). Further, the chief executive must not suspend the certificate or licence if satisfied that the relevant person (household member or nominee or director) has left the household or the licensed care service.

Suspension of an authority following a negative notice issued to a member of a carer's household or a nominee or director of a licensee is an interim measure prior to cancellation if the chief executive considers the household member or nominee or director is not likely to leave the household or licensed care service.

140AD Notice of suspension

This new provision obliges the chief executive to notify the person immediately of the suspension of an authority under section 140AC including the reason for the suspension. It also specifies that the suspension of the authority has effect on the day the notice is given.

140AE Period of suspension

This new provision allows for the suspension of an authority under section 140AC to remain in force until either the authority expires in accordance with the *Child Protection Act 1999*, the suspension is cancelled by the chief executive or the authority is cancelled by the chief executive (whichever is sooner).

140AF End of suspension

This new provision ends a suspension if the relevant person is issued with a positive prescribed notice. In addition, the chief executive is obliged to end the suspension where the authority was suspended because a household member, nominee or director was issued with a negative prescribed notice and the chief executive is satisfied the person is no longer a member of the household or, in the case of a licence, the chief executive is satisfied the person is no longer a nominee or a director. The chief executive must give the person written notice of the decision to end the suspension which takes effect on the day notice is given.

140AG Cancellation of certificate of approval

This new provision provides for the chief executive to cancel a certificate of approval which has been suspended under section 140AC and where the commissioner has issued a negative prescribed notice to a relevant person, that is a carer or household member, (including where a negative notice issues upon cancellation of a suspension of a positive notice by the commissioner). The cancellation is mandatory if the negative prescribed notice related to the carer. In relation to a negative prescribed notice for a household member, the cancellation is at the discretion of the chief

executive and is exercisable where the chief executive considers it is necessary in the best interests of the child in the placement. Where the carer or household member does not seek a review, then the chief executive cannot cancel the authority until the expiration of the period for seeking a review. If the person seeks a review of the commissioner's decision the chief executive cannot cancel the authority unless and until that review is decided and the commissioner's decision upheld.

Where the carer is issued with a negative notice under section 102(6)(a) (negative prescribed notice because of an excluding offence) or section 119A (conviction for excluding offence) of the *Commission for Children and Young People and Child Guardian Act 2000*, such decisions not being appealable, then the mandatory cancellation will only occur once the notice under section 102(6)(a) or section 119A is given to the carer. Where a household member is issued with a negative notice under 102(6)(a) (negative prescribed notice because of an excluding offence) or section 119A (conviction for excluding offence), the chief executive may cancel the certificate whether or not the chief executive has suspended the certificate under section 140AC. If the chief executive has suspended the carer's certificate of approval under section 140AC, the certificate would be cancelled, for example, if the household member had not left the household.

140AH Cancellation of licence

This new provision provides for the chief executive to cancel a licence suspended under section 140AC where the commissioner has issued a negative prescribed notice to a nominee or director, (including where a negative notice issues upon cancellation of a suspension of a positive notice by the commissioner). The cancellation is at the discretion of the chief executive, but it must not be exercised where the chief executive is satisfied the relevant person is no longer the nominee or director for the licensed care service. If a person seeks a review of the commissioner's decision the chief executive cannot cancel the authority until that review is decided. Where the relevant person does not seek a review then the chief executive cannot cancel the authority until the expiration of the period for seeking a review and the commissioner's decision is upheld.

Where the person is issued with a negative notice under section 102(6)(a) (negative prescribed notice because of an excluding offence) or section 119A (conviction for excluding offence) of the *Commission for Children and Young People and Child Guardian Act 2000*, such decisions not being appealable, then the chief executive may only cancel the license once the

notice under section 102(6)(a) or section 119A is given to the person. Where a nominee or director is issued with a negative notice under section 102(6)(a) or section 119A, the chief executive may cancel the licence whether or not the chief executive has suspended the licence under section 140AC. If the chief executive has suspended the licence under section 140AC, the licence would be cancelled, for example, if the nominee or director had not left the licensed care service.

140AI Notice of cancellation

This new provision obliges the chief executive to notify the person immediately of the cancellation of an authority under either section 140AG or section 140AH including the reason for the cancellation. If the cancellation is decided under sections 140AF(3) or (4) or section 140AH, the notice must include advice about how the authority holder can apply for a review by the Children Services Tribunal. The cancellation takes effect on the day the notice is given to the approved carer or the licensee.

Clause 9 also inserts a new heading for subdivision 4, Other matters about amendment, suspension or cancellation.

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

Clause 10 makes section 143(1), deemed refusal of applications not decided within 90 days, subject to section 143A.

Insertion of a new s 143A (Further consideration of application for authority)

Clause 11 inserts a new section 143A concerning the deemed refusal of an application for an authority not decided within 90 days. The new provision provides for the chief executive and the applicant to agree to extend the time for a decision to be made, thereby avoiding a deemed refusal. An agreement can only be entered into where the chief executive considers that more time is needed to decide the application. Such agreement must be reached prior to the expiry of the initial 90 day period after lodgement of the application and must state the term of the extension. Once an extension has been agreed to, the period for the chief executive to make a decision on the application cannot be further extended. If no decision has been made before the expiration of the extension period, the application will be deemed to have been refused. This provision will be available in exceptional cases where either the commissioner or the chief executive is

unable to make their decisions so that the process can be completed within the specified time frame. This will avoid a person being subject to the administrative process of applying again for an authority.

Insertion of new ss 148A and 148B and chapter 4, part 3

Clause 12 inserts new provisions, sections 148A and 148B dealing with notifications from the chief executive to the commissioner and the chief executive obtaining information from the commissioner. The clause also inserts a new Part 3 into Chapter 4, dealing with the application of the *Commission for Children and Young People and Child Guardian Act 2000* to licensed care services, and persons who become members of a foster or kinship carer's household.

148A Chief executive to notify children's commissioner about particular persons

The new section 148A provides for the chief executive to notify the commissioner where the chief executive has lodged an application for a blue card for a person and the chief executive becomes aware that the person no longer proposes to be a carer or a member of a carer household engaged in regulated employment. In addition, the chief executive must notify the commissioner where the chief executive has refused the application of approval to be a carer or where a person stops being a carer or a member of a carer's household engaged in regulated employment.

The notice must include details from which the commissioner can identify the person, including the registration number of any current blue card held by the person.

The provision applies only in respect of applications for blue cards which are sent from the chief executive to the commissioner, that is, persons applying to be approved carers and their household members. The notification will then allow the commissioner to terminate the blue card process in accordance with the relevant provision of the *Commission for Children and Young People and Child Guardian Act 2000*.

148B Obtaining particular information from children's commissioner

The new section 148B provides that the chief executive may ask the commissioner about whether a applicant for, or to renew, a certificate of approval, an adult household member or nominee for a licence or a director

of an applicant for, or holder of, a licence has been issued with a prescribed notice or has an outstanding application with the commissioner.

This section will apply in cases where any of those persons associated with applications for authorities under the *Child Protection Act 1999* presents with a blue card or has an outstanding application for a blue card. The chief executive will be able to confirm that the blue card is current and has not been suspended or whether there is a current application outstanding. The commissioner must comply with such a request.

Part 3 Application of Commissioner's Act

148C Application to licensed care service

The new section 148C clarifies that directors and nominees of licensed care services are carrying on the business of a licensed care service for the purposes of the *Commission for Children and Young People and Child Guardian Act 2000*.

148D Pending application for prescribed notice

The new section 148D (1) and (2) provides an exception to the "no ticket - no start" regime for volunteers under s 104B of the *Commission for Children and Young People and Child Guardian Act 2000*. The section relates to new adult household members of approved foster or kinship carers or applicants to be approved carers (ie those adult household members who join the household after an application for an authority is made to the chief executive), who do not have a current positive prescribed notice. Under section 148D, those persons may commence living in a home in which care is being provided on the condition that they have lodged an application for a blue card. The exemption from the prohibition in section 104B of the *Commission for Children and Young People and Child Guardian Act 2000* applies while their application for a prescribed notice is current.

Section 148D(3) and (4) provide an exception for new nominees and directors of corporations which hold a licence to provide care services from the general position that a person cannot carry on a regulated business without obtaining a blue card. This section allows a person to commence and continue carrying the business as a new nominee or director on a

condition that an application for a blue card is lodged. The exemption from the prohibition of s 109 continues while their application is current.

The new sections 148C and 148D recognise that turnover occurs in the membership of carer households and with nominees and directors of licensed care services. The exceptions being made to the relevant provisions of the *Commission for Children and Young People and Child Guardian Act 2000* overcome significant practical barriers to the continuity of placements of children and young people with either carers or in services which would arise if those persons were not able to join households or licensed care services until they had applied for and been issued with a positive prescribed notice by the commissioner.

Amendment of s 159 (Payments for care and maintenance)

Clause 13 amends section 159 to allow the chief executive discretion to make payments to carers in accordance with the Department of Child Safety's approved policy and schedule, removing reliance on a regulation prescribing amounts of payments. Payments made under this section are made to reimburse carers for the cost of caring for a child in care. This amendment works in conjunction with the amendment to section 99F in the *Commission for Children and Young People and Child Guardian Act 2000* to clarify that payments under section 159 are not "financial reward" for the purpose of the that Act, and hence preserves carers' status as volunteers.

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

Clause 14 amends section 159M(1) to include the principal of non-government schools as a 'prescribed entity'. This will enable non-state schools to share relevant child protection information directly with other non-government organisations under part 4, chapter 5 of the *Child Protection Act 1999*.

New chapter 9 part 6

Clause 15 inserts a new part 6 into Chapter 9 of the *Child Protection Act 1999*. This new part provides for the transition of applications for carer approval and licensed care services which are ongoing at the time of the commencement of the *Child Safety (Carers) Amendment Act 2006*.

Part 6 Transitional Provisions for Child Safety (Carers) Amendment Act 2006

266 Definitions for pt 6

For the purposes of this part the following definitions apply:

“Commencement” means the day the provisions in which the term is used commences.

“Post-amended Act” means the *Child Protection Act 1999* as in force after the commencement of the *Child Safety (Carers) Amendment Act 2006*.

Application for licence

This new section applies to applications, made under section 125 of the *Child Protection Act 1999* for, or renewal of, a licence, which had not been decided immediately before the commencement of *Child Safety (Carers) Amendment Act 2006*. This provision allows for these licences to be granted without the application of section 125(1)(d) and section 126(c) and (d). This means that, in order to be granted a licence, nominees will not need to provide information to the chief executive regarding the blue card status of themselves and any directors and will not need to satisfy the chief executive that they will comply with Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000* in order for a licence to be granted. In addition, it will not be a condition on the grant of a licence that each nominee and director have a blue card. The transitional provisions of the *Commission for Children and Young People and Child Guardian Act 2000* will, however, require such nominees and directors to have made an application for a blue card within six months of the date of commencement.

Application for particular certificate of approval

This new section applies to applications, made under section 132 of the *Child Protection Act 1999* to be an approved foster carer or to renew a carer certificate, which were made before the commencement of *Child Safety (Carers) Amendment Act 2006*, and remained undecided at that date. This provision allows for these authorities to be issued without the requirement of carers and adult household members to have blue cards under section 135(1)(a)(iii). Transitional provisions in the *Commission for Children and Young People and Child Guardian Act 2000* will, however, require carers,

when approved, and adult members of their households at that time, to make application for blue cards within six months of commencement.

Amendments of sch 3 (Dictionary)

Clause 16 includes definitions within the Dictionary for terms relevant to the role of the Commission in the new screening regime.

Part 3 Amendment of Child Safety Legislation Amendment Act 2005

Act amended in pt 3

Clause 17 states that part 3 amends the *Child Safety Legislation Amendment Act 2005*.

Amendment of s 14 (Insertion of new ch 2, pt 3B of Act No. 10 of 1999)

Clause 18 amends the new chapter 2 Part 3B, Intervention with Parental Agreement, to be inserted into the *Child Protection Act 1999* by section 14 of the *Child Safety Legislation Amendment Act 2005*.

51Z Application of Part 3B

Subclause 18 (1) replaces the previous section 51Z concerning the application of Part 3B. Under the initial section 51Z, Part 3B was to apply where a child is in need of protection and needs ongoing help and there are no order in force under the *Child Protection Act 1999* granting custody or guardianship of that child to anyone. The new section 51Z inserted by clause 18 clarifies that the Part applies also in cases where there is no assessment order in place but the chief executive reasonably suspects the child is in need of protection and considers an investigation is necessary to determine whether the child is in need of protection. The chief executive must also be satisfied that, while the investigation is ongoing, provision needs to be made for the child's protection. This means that intervention with parental agreement, including out of home placement can occur during the intake and assessment phase.

51ZA What is intervention

Subclause (2) amends the proposed section 51ZA to ensure that intervention includes help as well as ongoing help the child needs. The intervention during the assessment phase cannot, of its nature, be about giving on-going help.

51ZB Considering intervention with agreement

Subclause (3) replaces section 51ZB to provide a threshold for entering into an agreement with the parents during the assessment phase. The chief executive must consider the child's views and wishes if able to be ascertained and must be satisfied the child's parents are able and willing to work with the chief executive to meet the child's interim protection needs while the investigation is carried out.

51ZG Effect of Particular agreement

Subclause (4) and (5) amends the proposed section 51ZD to distinguish between an assessment care agreement during the assessment of a child's need of protection and a child protection care agreement entered into after the child has been assessed as a child in need of protection.

51ZG Effect of Particular agreement

Subclause (6) amends section 51ZG to clarify that it is only in the case of care agreements entered into in respect of children in need of care and protection (child protection care agreement), as opposed to those entered into where an investigation is being undertaken as to whether the child is in need of care and protection (assessment care agreement), that the chief executive has custody of the child.

51ZH Period of an agreement

Subclause (7) and (8) amends the proposed section 51ZH by inserting new subsections (2) and (3) and renumbering the existing subsections (2) to (7). The new subsections will provide that an assessment care agreement must be for no longer than 30 days and that it cannot be extended. If by the end of the 30 days the assessment has still not been completed and the child still cannot safely return to the parents, the chief executive must apply to the court for a temporary assessment order or court assessment order to enable the child to remain in the placement.

Subclause (9) clarifies that the extension provisions in the proposed sections 51ZH(4) to (8) apply only to child protection care agreements.

Amendment of s 38 (Replacement of ss 132-135 of Act No. 10 of 1999)

Clause 19 amends subsections 133(3) and 134(3) in relation to disclosure requirements in the approved forms for applying for an initial certificate of approval or for renewal of a certificate of approval respectively. The amendment will add that the approved forms may require the disclosure of whether the applicant and each adult member has a current positive or negative prescribed notice, the expiry date of a positive notice, or whether they have a current application for a prescribed notice. Adult member will be as defined in section 135.

Clause 19 also renumbers sections.135(1)(a)(iii) and (iv) as 135(1)(a)(iv) and (v) in the proposed section 135 inserted by section 38 of the *Child Safety Legislation Amendment Act 2005*. It also renumbers subsections 135(1)(b)(iv) and (v) as 135(1)(b)(v) and (vi) to insert a new section135(1)(b)(iv). The effect of the additional section. 135(1)(a)(iii) is to add a further restriction on granting either a foster or kinship carer certificate that the applicant and each adult member of the applicant's household must have a current blue card. Adult member of a household for this section includes only those persons who are members of the household at the time the application is made and who sign the application and are members of the household when the application is decided. Adult household members who become members after an application is lodged will be in regulated employment under the *Commission for Children and Young People and Child Guardian Act 2000* and will have to apply for, and be issued with, a blue card, but the decision whether to approve the carer does not depend on "new" household members having blue cards.

Amendment of section 42 (Amendment of s 137 (Amendment of authority on application of holder) of Act No. 10 of 1999)

Clause 20 amends section 137(5) which applies when the chief executive is considering an application from a licensee for amendment of a licence to change the nominee for the licence. The amendment to section 137(5) will require that the chief executive must be satisfied that, if the person proposed to be the nominee does not have a current positive prescribed notice, the person has a current application for a prescribed notice. This is consistent with the new section 148D (see clause 12) which allows a nominee for a licensed care service to become a nominee without having a

positive prescribed notice, provided the proposed nominee has a current application lodged with the commissioner.

Amendment of section 44 (Insertion of new ss 138A-138C) of Act No. 10 of 1999

Clause 21 amends 138B, Amendment of provisional certificate to extend its expiry day, which applies when the chief executive is considering extending the expiry date of a certificate of approval as a provisionally approved carer from 60 to up to 90 days. The amendment omits subsection 138B(2)(b) so that the certificate can be extended regardless of whether the holder's application for approval as a foster or kinship carer is likely to be decided within the period of the extension. The insertion of section 143A (see clause 11) allows for circumstances where the chief executive considers more time than 90 days is needed to decide whether to grant an authority to an applicant. In that case, while a provisional certificate of approval as a provisionally approved carer may be extended only to 90 days the period or deciding an application may be longer than 90 days.

Amendment of section 45 (Amendment of s 139 (Authority may be suspended or cancelled) of Act No. 10 of 1999

Clause 22 expands the grounds on which the chief executive may suspend or cancel an authority to include the situation where the chief executive is satisfied it is inappropriate for the holder to continue as a carer following information provided to the chief executive under Division 6. That is, that a nominee, director, manager or employee of a licensed care service withdraws their application for a prescribed notice, is charged with an "excluding offence", convicted of a "serious offence" or that a person must apply to the commissioner for a further prescribed notice because of a change in their criminal history. Grounds for suspending or cancelling may also arise from a carer or adult household member failing to apply for a blue card under a transitional provision (see clause 46) or for renewal of a blue card, or from other information provided by the commissioner, or because of a circumstance prescribed under a regulation. The meaning of "excluding offence" and "serious offence" are provided in the *Commission for Children and Young People and Child Guardian Act 2000*.

Amendment of s 49 (Amendment of s 142 (Amendment, suspension and cancellation of authorities) of Act No. 10 of 1999)

Clause 23 inserts a provision in section 141 so that it does not apply to an amendment, suspension or cancellation of an authority under subdivision 3. Section 141(4) provides for the time at which a suspension or cancellation takes effect and the amendment in clause 23 distinguishes suspension and cancellation in subdivision 3 which arise as a result of a notification from the commissioner and take effect at times provided for in the provisions of subdivision 3.

Amendment of s 51 (Replacement of ch 4, pt 2, div 5, hdg and s 142 of Act No. 10 of 1999)

Clause 24 amends section 51 of the *Child Safety Legislation Amendment Act 2005* which inserts a new division 5 into the *Child Protection Act 1999*. The proposed division is headed "Notification of changes relating to authority holders and associated persons" and provides compulsion for relevant persons to advise the chief executive of changes in their criminal, traffic and domestic violence (ie "personal") history. Section 141B defines "personal history" for that purpose.

Persons requiring blue cards under the *Child Safety (Carers) Amendment Act 2006* for approval of authorities will be screened and monitored for criminal history by the commissioner. Therefore, *subclause 24(1)* amends the definition of "personal history" to clarify that the chief executive will be screening provisionally approved carers, members of their households and "new" members of the household of a foster or kinship carer who does not have a blue card (such as persons who move into the household after the carer application has been made or approved) for criminal, domestic violence and traffic histories. This section defines "personal history" information for a nominee, director, manager or persons engaged in relation to the provision of care services by a licensed care service, an approved foster or kinship carer or adult household member of a foster or kinship carer as domestic violence and traffic history.

Section 51 of the *Child Safety Legislation Amendment Act 2005* inserted division 6 into the *Child Protection Act 1999* which provided for the chief executive to obtain investigative information from the police commissioner as part of a person's criminal history. *Subclause 24(2)* omits division 6 as investigative information will be obtained by the children's commissioner for those persons who require blue cards.

Subclause 24(2) also inserts a new division 6, Notification of other information relating to licences and associated persons.

New section 141H sets out the notification obligations of a nominee for a licence. The nominee is required to give written notice to the chief executive if:

- a nominee, manager or employee of a licensed care service applies for a prescribed notice and the application is withdrawn;
- the nominee is charged with an "excluding offence" or convicted of a "serious offence";
- the nominee must apply for a further prescribed notice under section 113 or section 114 of the *Commission for Children and Young People and Child Guardian Act 2000*;
- the nominee becomes aware that a manager or employee:
 - has an application for a prescribed notice has been withdrawn; or
 - has had to make application for a further prescribed notice under the *Commission for Children and Young People and Child Guardian Act 2000* because of a change in the person's criminal history; or
 - has been issued with a negative notice either on an initial application or following an application for a further prescribed notice.

The section does not include an obligation for the nominee to notify the chief executive if the nominee is issued with a negative notice as the chief executive will be a notifiable entity under the *Commission for Children and Young People and Child Guardian Act 2000* for that purpose. The section imposes a maximum penalty of 100 penalty units on the nominee for failure to provide the required notification. The notice must include, for identifying information, the person's name, date of birth and blue card registration number.

New section 141I obliges a director for a licensee to disclose to the nominee for the licence if the director has:

- applied for a prescribed notice and the application is withdrawn;
- been charged with an "excluding offence" or convicted of a "serious offence";

- must apply for a further prescribed notice under section 113 or section 114 of the *Commission for Children and Young People and Child Guardian Act 2000* because of a change in criminal history.

The section does not include an obligation for the director to notify the nominee or for the nominee to notify the chief executive if the director is issued with a negative notice as the chief executive will be a notifiable entity under the *Commission for Children and Young People and Child Guardian Act 2000* for that purpose. There is a maximum penalty of 100 penalty units for a director's failure to comply with this requirement. On receiving the disclosure, the nominee is required to notify the chief executive under a maximum penalty of 100 penalty units.

The *Child Safety Legislation Amendment Act 2005* inserted a provision, section 142, into the *Child Protection Act 1999* to define "police information" as criminal history, investigative information and domestic violence. The purpose of the definition is to specify the "police information" which the chief executive may obtain from the police commissioner for deciding on, and monitoring, the suitability of nominees, directors, managers and persons engaged by a holder of a licence; or for an applicant or holder of a certificate of approval and adult members of their household. Under the *Child Safety (Carers) Amendment Act 2006* criminal history screening of certain persons will be undertaken by the children's commissioner. The definition of "police information" in section 142 is, therefore, amended to clarify the information the chief executive can obtain from the police commissioner in relation to different persons. Investigative information is omitted from the definition in accordance with the omission of sections 141H to 141K in Division 6 from the *Child Safety Legislation Amendment Act 2005*. The chief executive will continue to have the power to screen for domestic violence and criminal history in certain circumstances. "Police information" will be limited to domestic violence history for applicants for, or holders of, certificates of approval, adult member of their households and for nominees, directors, managers and persons engaged in relation to the provision of care services by a licensed care service. For a person the chief executive proposes to approve as a provisionally approved carer, members of their households and persons who become a household member of an applicant after the application for a certificate of approval has been lodged, or become a household member of an approved carer, "police information" is defined as criminal history and domestic violence.

Subclauses 24(4) and (5) omit references to investigative information in section 142C(2) and all of section 142(5) which provides for the police

commissioner's decision about providing investigative information to the chief executive.

The *Child Safety Legislation Amendment Act 2005* inserted section 142D to allow the police commissioner to give the chief executive information about a change in a person's criminal history. *Subclause 24(6)* omits this section as this function is provided for in the *Commission for Children and Young People and Child Guardian Act 2000* for persons who require blue cards and will not be needed by the chief executive. *Subclause 24(7)* renumbers section 142 as section 142D following the omission of section 142D.

Omission of s 52 (Amendment of s 143 (Effect of failure to decide application for, or for renewal of, authority) fo Act No. 10 of 1999

Clause 25 omits section 52 of the *Child Safety Legislation Amendment Act 2005* which amended section 143(1) of the *Child Protection Act 1999*. Section 52 had the effect of including applications for renewal of an authority in section 143(1) which sets a time limit for processing an application. That created an inconsistency with section 143(2) which allows an authority to continue to have effect while an application to renew an authority is being considered.

Amendment of s 66 (Insertion of new ch 9, pt 5 of Act No. 10 of 1999

Clause 26 amends the transitional provision in section 263 for existing relative carers. The existing section 263 would mean that relative carers approvals transitioned to kinship carers approvals would potentially start expiring immediately on commencement, leaving no room or time for applications for renewals to be made and received. The relevant kinship carer provisions are intended to commence on 30 April 2006 and *clause 26* will provide that these approvals will not start expiring until 30 June 2006.

Replacement of s 67 (Replacement of sch 2 (Reviewable decisions and aggrieved persons) of Act No. 10 of 1999

Clause 27 omits section 67 of the *Child Safety Legislation Amendment Act 2005*. Section 67 replaced schedule 2 of the *Child Protection Act 1999*, Reviewable decision and aggrieved person. The amendment made by clause 27 removes from reviewable decisions those decisions made under section 129, Refusal of application, (for a licence), and section 136 Refusal

of application (for a certificate of approval) applications which are refused when a reason for the refusal is because a person has not been issued with a required blue card from the commissioner.

Amendment of s 68 (Amendment of sch 3 (Dictionary) of Act No. 10 of 1999

Clause 28 amends section 68 of the *Child Safety Legislation Amendment Act 2005* by omitting definitions of "approved carer", "investigated person" and "investigative information". Clause 28(2) inserts new definitions of "approved carer", "assessment care agreement", "child protection care agreement", "convicted", "excluding offence" and "serious offence". Clause 28(3) amends the definition of "care agreement" to accommodate the changes to Part 3B.

Clause 28(4) amends the definition of "kin" to correct the subsection numbers for the definition.

Part 4 Amendment of Commission for Children and Young People and Child Guardian Act 2000

Act amended in pt 4

Clause 29 notes that this part amends the *Commission for Children and Young People and Child Guardian Act 2000*.

Insertion of new s 99BA

Clause 30 inserts a new section 99BA, to clarify that the chief executive is, for the purposes of the *Commission for Children and Young People and Child Guardian Act 2000* only, the employer of foster and kinship carers and their adult household members and is engaging them in "regulated employment". The section also clarifies that a foster or kinship carer or adult household member must disclose any information they are required to disclose under the *Commission for Children and Young People and Child Guardian Act 2000* to the chief executive.

Amendment of s 99F (Who is a volunteer)

Clause 31 amends section 99F to clarify the definition of financial reward within the *Commission for Children and Young People and Child Guardian Act 2000*. The section clarifies that payments received by carers under the *Child Protection Act 1999* do not amount to financial reward for the purpose of the *Commission for Children and Young People and Child Guardian Act 2000*. Accordingly foster and kinship carers and adult members of their households will be considered volunteers for the purposes of the *Commission for Children and Young People and Child Guardian Act 2000*.

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

Clause 32 amends section 100 to insert new subsections (6) and (7), to clarify the issue of responsibility for payment of the blue card application fee. Until now, the legislation had been silent as to whether the employer or the employee was responsible for the fee, to enable negotiation of payment of the fee between employers and employees. Subsection (6) now provides that an employee is responsible to pay the application fee for a blue card. If the fee is paid by the employer, this amount becomes a debt payable by the employee to the employer. This reflects the *status quo* in most private and public sector employment relationships and is appropriate, as employees receive the benefit of the blue card through its transferability and (generally) tax deductible status.

However, whilst subsection (6) clarifies the *status quo*, subsection (7) provides that this position can be reversed by any written agreement between the employer and employee, an industrial instrument under the *Industrial Relations Act 1999*, or another document regulating wages and conditions of employment that is enforceable under the *Workplace Relations Act 1996 (Cth)*. The provision ensures that both existing and future enterprise bargaining arrangements are not affected, as the right to negotiate payment of the fee is retained. The provision is also considered broad enough to include union and non-union agreements, arbitrated outcomes, and State and Federal awards.

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

Clause 33 amends section 101 to insert subsection (7), which provides for a person's application for a blue card to carry on a regulated business to be

withdrawn where a person is charged with an excluding offence. This amendment achieves consistency with existing provisions of the *Commission for Children and Young People and Child Guardian Act 2000* which allow the commissioner to withdraw an application for a person who is engaged in, or proposes to engage in, regulated employment where they are charged with an excluding offence (s 123(3B)).

Amendment of s 102B (Actions of commissioner after making decision on application)

Clause 34 amends the existing section 102B (4) to allow the commissioner to notify the chief executive of the Department of the issuing of a prescribed notice to a person who is a nominee for, or an executive officer of, an applicant for, or a holder of, a licence under the *Child Protection Act 1999*. The clause also inserts a new subsection which specifies that where notification is provided to the chief executive in accordance with section 102B(4) the commissioner must specify if a negative notice was issued in accordance with section 102(6)(a). Where a negative notice is issued in accordance with section 102(6)(a), a person does not have a right of review. This is information relevant to the chief executive in exercising the new powers of suspension and cancellation contained in the *Child Protection Act 1999*.

In addition, the section clarifies that the commissioner can notify the chief executive of the Department of Communities of the issue of a prescribed notice to a nominee of a licensee or an adult occupant of a licensed home based service. This amendment rectifies a current inconsistency in the *Commission for Children and Young People and Child Guardian Act 2000* as under section 119C the commissioner can already notify the chief executive of the Department of Communities of the suspension of a nominee or adult occupants blue card. Accordingly the commissioner should also have the power to notify of the issue of the original prescribed notice.

Replacement of s 104B (Starting employment)

Clause 35 inserts a new section 104B to clarify existing provisions to the effect that a volunteer cannot commence in regulated employment until they have been issued with a positive prescribed notice. The provision also inserts a note regarding the application of this section to adult household members under the *Child Protection Act 1999*.

104BA Currency of prescribed notice for person continuing employment

Clause 35 also inserts a new section 104BA. The primary purpose of this section is to provide flexibility for volunteers who have previously been issued a positive prescribed notice and who are lodging an application for renewal of their blue card. On the condition that the application for a further prescribed notice is made by an employer 30 days prior to expiry of the previously issued blue card the employee's blue card will remain current (unless it is cancelled or suspended), despite its expiry, until the application is decided or withdrawn.

Amendment of s 108 (Person holding negative notice, or who has withdrawn consent to employment screening, not to apply for, or start or continue in, regulated employment)

Clause 36 amends existing section 108 (2) of the *Commission for Children and Young People and Child Guardian Act 2000* to clarify that persons who withdraw their consent to employment screening (pursuant to section 123(2)) or whose application is withdrawn because they have been charged with an excluding offence (pursuant to section 123 (3B)) will not be permitted to start or continue work in regulated employment until they receive a positive prescribed notice.

Insertion of new s 109A

Clause 37 adds new section 109A which provides that on the condition an application for a further prescribed notice is made by a person carrying on a regulated business 30 days prior to expiry of the previously issued blue card, the person's blue card will remain current (unless it is cancelled or suspended), despite its expiry, until the application is decided or withdrawn.

Amendment of s 119A (Cancellation if conviction for excluding offence and imprisonment or disqualification order)

Clause 38 amends existing subsections 119A(4)(c) and (d) to clarify that the commissioner is only obliged to notify entities specified in the Act of the issue of a negative notice where the commissioner is aware that a person fits within a specified group. This minor amendment will achieve consistency with existing section 102B which already requires the commissioner to be aware of a person's status within a specified group before being obliged to make notification to a prescribed entity.

The provision also amends existing section 119A(4) to allow the commissioner to give written notice of the cancellation of a positive notice and the issue of a negative notice to the chief executive of the Department of Child Safety, where the person whose card has been cancelled is the nominee for, or an executive officer of an applicant for, or the holder of a licence under the *Child Protection Act 1999*. The clause also inserts a new subsection which specifies that where such a notification is provided to the chief executive the commissioner must specify that the negative notice was issued in accordance with section 119A. Where a negative notice is issued in accordance with section 119A, a person does not have a right of review. This is information relevant to the chief executive in exercising the new powers of suspension and cancellation contained in the *Child Protection Act 1999*.

Amendment of s 119C (Effect of charge for excluding offence pending charge being dealt with)

Clause 39 amends existing subsections 119C(5)(c) and (d) to clarify that the commissioner is only obliged to notify entities specified by the Act of the suspension of a blue card where the commissioner is aware that a person fits within a specified group. This minor amendment will achieve consistency with existing s 102B and the proposed amendments to subsections 119A(4)(c) and (d).

The clause also amends existing section 119C (5) to allow the commissioner to notify the chief executive of the Department of Child Safety of the suspension of a blue card (and the effect of that suspension) of a nominee for, or an executive officer of, an applicant for, or the holder of, a licence under the *Child Protection Act 1999*.

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

Clause 40 amends subsection (1) of section 121 of the *Commission for Children and Young People and Child Guardian Act 2000* to clarify when an application to review a decision of the Commissioner can be made. The subsection now clarifies that a person may only apply for review of the following decisions of the Commissioner – a decision to issue a negative notice, a decision to refuse to cancel a negative notice and decision that a person has been charged with an excluding offence (where the person alleges that they are not the person charged with the relevant excluding offence). The reference in the current section 121 to the right to apply for review of the Commissioner's decision to refuse to cancel a suspension of a positive notice has been amended. The simplification of this section

merely clarifies and supports the current legislative provisions and intention that an applicant can only apply for the cancellation of a suspension when the charge resulting in the suspension has been finalised.

Once a charge has been finalised the legislation (pursuant to s 119A(2), 119B(2) & 119D(3)) prescribes that the suspension must be cancelled and a further positive or negative notice must be issued.

Accordingly the right to review a decision of the Commissioner to refuse to cancel a suspension does not need to be provided for in section 121, except in the case where the Commissioner suspends a positive notice on the basis that a person has been charged with an excluding offence and the person wishes to challenge that he or she is not in fact the person who has been charged with the relevant excluding offence.

Section 121 as amended provides a person with a right of review in the limited circumstances where the person claims that he or she is not in fact the person who has been charged with the relevant excluding offence.

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

Clause 41 amends the existing section 122 (1)(b), which relates to the commissioner's ability to obtain information from the police commissioner in respect of police information. The amendment is technical in nature and is made to achieve internal consistency within the Act, in relation to the concept of withdrawal of applications (specifically the amendment is made necessary by insertion of the new section 123 (5) which clarifies that where a person is taken to have withdrawn their consent under that section, or withdraws their consent, the application is also taken to be withdrawn).

Amendment of s 122A (Notice of change in police information about a person)

Clause 42 amends section 122A of the *Commission for Children and Young People and Child Guardian Act 2000*. The current wording of section 122A of the Act is unclear in that it requires a person to be charged with an offence in order for the section to operate but also refers to the provision of investigative information under the section. However, under the definition of investigative information, a person is not charged with an alleged offence.

Accordingly, this amendment inserts new subclauses (1) and (1A) into section 122A, to clarify that the Police Commissioner is permitted to provide the Commissioner with information about a change in a relevant

person's criminal history or that a decision has been made that investigative information exists in relation to a relevant person.

Subclause (1)(b) when read in conjunction with subclause (1A)(b) specifically provides that the Police Commissioner may notify the Commissioner that investigative information exists in relation to a relevant person regardless of when the act or omission occurred or is alleged to have occurred. This enables the Police Commissioner to provide investigative information to the Commissioner from 17 January 2005, regardless of the fact that the investigation in relation to the alleged act or omission may have occurred prior to this time.

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

Clause 43 inserts new section 123(5) to clarify that where an employee withdraws their consent, or is taken to have withdrawn their consent under the part, the application for a prescribed notice is also taken to be withdrawn. The amendment is technical in nature and clarifies the meaning of the term "withdrawal" in the Act.

The clause also renumbers current section 123 (5) as section 123 (6).

Insertion of new s 123A

Clause 44 inserts a new section 123A, to outline the persons and entities the commissioner must notify where an applicant for a prescribed notice has previously had a negative prescribed notice issued to them or their application is withdrawn. The section specifically provides that if notification is made regarding a negative notice the notification must contain the date that the negative notice was issued.

The section contains specific power for the commissioner to notify the chief executive of the Department of Child Safety where a negative notice was issued under section 102(6)(a) or section 119A of that fact. It is necessary for this information to be provided as it is relevant to the new suspension and cancellation powers of the chief executive.

Amendment of s 126 (Use of information obtained under this part about a person)

Clause 45 amends section 126 of the *Commission for Children and Young People and Child Guardian Act 2000* by including a cross-reference to a report to the Minister under (amended) section 163. In effect, this

amendment confirms that it is permissible for employment screening information about a person, which has been obtained under Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000*, to be used to inform that report.

Amendment of s 126B (Commissioner may give information to accreditation board about director of school's governing body)

Clause 46 amends existing section 126B(2), which provides for information to be given by the commissioner to an accreditation board, where a person has applied for a prescribed notice as a director of a school's governing body. New subsection 126B(2)(c) is inserted by this clause to allow the commissioner to notify an accreditation board where an application by a director of a school's governing body has been withdrawn.

Insertion of new s 126D

Clause 47 inserts a new section 126D. The purpose of this section is to allow the commissioner to notify the chief executive of the Department of Child Safety where an applicant for a prescribed notice (whose application is pending) has had a change in their criminal history after lodging their application for a blue card and has been charged with, or convicted of, a serious offence. The power of the commissioner to notify the chief executive under this section is limited to certain groups of applicants who may have children in their care pending the outcome of their blue card applications:

- provisionally approved carers;
- adult members of a provisionally approved carer's household;
- existing approved carers;
- adult members of an existing approved carer's household; or
- adult members of households who join the household after an application is made for a carer authority or where an authority has already been issued.

The section will apply only where the chief executive has notified the commissioner that a person is within one of these classes of persons listed above. The chief executive can, upon receiving this notification, act, subject to the provisions of the *Commission for Children and Young People and Child Guardian Act 2000* and the *Child Protection Act 1999*, to minimise any risk of harm to children in the care and custody of the state. This section will operate in conjunction with the existing section 122B,

which provides for notification of changes in the criminal history of blue card holders.

Amendment of s 152 (Confidentiality of information about criminal history)

Clause 48 amends section 152 of the *Commission for Children and Young People and Child Guardian Act 2000*. Subclause (1) inserts a new subsection 152(2A) to enable the Minister, in that capacity, to receive certain employment screening information (whether written or verbal) from the Commissioner, under section 163, without being in breach of the confidentiality requirements under section 152.

Subclause (2) inserts two new paragraphs 152(4)(ba) and (bb) to enable a person who is, or who has been the Minister or staff of the Minister, a public service officer of the department, Commissioner, or staff member of the Commission, to disclose information or give access to a document relating to a person's criminal history gained in that capacity, in order to obtain or provide advice to the Minister, relating to that employment screening information.

Subclause (3) amends subsection 152(4)(d) to clarify that disclosure of, or access to, confidential information, where it is authorised for a report to the Minister under section 163, is not an offence under section 152(3).

Subclause (4) then renumbers section 152(4)(ba) to (d) as 152(4)(c) to (f) as a consequence of inserting paragraphs (ba) and (bb).

Amendment of s 153 (Confidentiality of other information)

Clause 49 amends section 153 of the *Commission for Children and Young People and Child Guardian Act 2000*. Subclause (1) and (2) insert new paragraphs 153(3)(aa) and (ba) to provide that the Minister, staff of the Minister, or public service officer of the department are subject to a maximum penalty of 100 penalty units (\$7,500) if they make a record, intentionally disclose (unless authorised under section 153(4)), or recklessly disclose to anyone, confidential information that has been gained through the administration of the *Commission for Children and Young People and Child Guardian Act 2000*.

Subclause (3) renumbers paragraphs 153(3)(aa) to (d) as subsections 153(3)(a) to (f) as a consequence of the inserting paragraphs (aa) and (ba).

Subclause (4) inserts a new subsection 153(5). Subsection (5) makes clear that under subsection (4), an authorised purpose under the *Commission for*

Children and Young People and Child Guardian Act 2000 includes making a record or disclosing information to the Minister or staff of the Minister, public service officer of the department, Commissioner, or staff member of the Commission, in order to obtain or provide advice relating to a report to the Minister under section 163.

Amendment of s 161 (Protection from liability)

Clause 50 amends section 161 of the *Commission for Children and Young People and Child Guardian Act 2000*. Subclauses (1) and (2) insert new paragraphs 161(3)(aa) and (ba) to provide that the Minister, staff of the Minister, and public service officers of the department, are also afforded protection from civil liability for acts done or omissions made honestly and without negligence, under the *Commission for Children and Young People and Child Guardian Act 2000*.

Subclause (4) renumbers subsections 161(3)(aa) to (d) as subsections (a) to (f) as a consequence of inserting paragraphs (aa) and (ab).

Replacement of s 163 (Other reports relating to commissioner's functions)

Clause 51 deletes existing section 163 of the *Commission for Children and Young People and Child Guardian Act 2000* (Other reports relating to commissioner's functions) and replaces it with new section 163 (Other reports by commissioner).

This amendment enables the Commissioner to provide reports to the Minister in relation to the administration of the *Commission for Children and Young People and Child Guardian Act 2000*, including the Commissioner's performance, and exercise of functions and powers, both on request of the Minister, or on the Commissioner's own motion. The clause further clarifies the report to the Minister may include any employment screening information about a person, which is subject to the confidentiality requirements under sections 126, 152(1)(b) or 153.

Amendment of s 163A (Annual report by commission)

Clause 52 amends section 163A of the *Commission for Children and Young People and Child Guardian Act 2000* by inserting new paragraph (c) to provide that the annual report for the Commission for Children and Young People and Child Guardian must include the number of times the Minister asked the Commissioner to provide a report under section 163 during the year.

Insertion of new s 164A

Clause 53 inserts a new section 164A which provides for the commissioner and the chief executive to enter into an agreement about the administration of Part 6. New s 164(2) specifies that this agreement may provide for the daily electronic transfer of information. The provision contains the safeguard in subsection (3) that if information is to be transferred electronically, and there is a limitation on who may access the information and how it may be used, the arrangement should provide for the limitation.

Insertion of new pt 9, div 8

Clause 54 inserts after existing section 195 of the *Commission for Children and Young People and Child Guardian Act 2000*, a new part 9 division 8 (Further transitional provisions for the Commission of Children and Young People and Child Guardian Amendment Act 2004), comprising new sections 196 to 206.

New section 196 inserts definitions relevant to the transitional provisions for the following terms: *commencement*, *post-amended Act*, *pre-amended Act*, *relevant applicant*, *relevant application*, and *suitability notice*.

New section 197 states that the purpose of new division 8 of part 9 is to clarify and declare which legislation is to be applied in particular circumstances to:

- (a) outstanding applications for suitability notices received prior to 17 January 2005; and
- (b) outstanding applications and assessments relevant to whether or not a suitability notice should be cancelled, where the assessment or application was commenced before 17 January 2005.

Whether the application for a suitability notice or the assessment or application relevant to whether the suitability notice should be cancelled is determined under the pre-amended or amended Act, will depend on whether particular additional information has been received by the Commissioner on or after 17 January 2005.

New section 198 declares the law in relation to applications for suitability notices received by the Commissioner prior to 17 January 2005, which were outstanding at commencement, and in relation to which the Commissioner has not received any police information or disciplinary information on or after 17 January 2005. These applications are to be assessed and determined in accordance with the pre-amended Act. The section also provides that once a decision has been made in relation to the

outstanding application, a prescribed notice is to be issued under the amended Act and that the amended Act will apply to the prescribed notice from that time.

However, the exception to this is if a negative notice is issued, the applicant is only entitled to apply for a review of the Commissioner's decision under the pre-amended Act. The pre-amended Act will therefore apply to the application for review, the review, any decision on review, and any appeal in relation to the decision.

New section 199 declares the law in relation to applications for suitability notices received by the Commissioner prior to 17 January 2005, which were outstanding at commencement, and in relation to which the Commissioner has received police information or disciplinary information on or after 17 January 2005. These applications are to be assessed and decided in accordance with the amended Act.

The amended Act will then continue to apply to the prescribed notice, in particular in relation to any application for review, the review, any decision on review, and any appeal in relation to the decision.

New section 200 validates decisions made by the Commissioner in relation to applications for suitability notices received before 17 January 2005 but decided between 17 January 2005 and the commencement of this section. These decisions are deemed valid irrespective of whether the pre-amended or amended legislation was applied in deciding the application.

The section also provides that once a decision has been made by the Commissioner, irrespective of whether it was made under the pre-amended or amended legislation, the amended legislation applies. The only circumstance in which the pre-amended Act continues to apply is in relation to an application for review of a decision of the Commissioner made under the pre-amended Act to issue a negative notice. In this circumstance the pre-amended Act applies to any application for review, the review, any decision on review, and any appeal in relation to the decision.

Similarly, if the application was decided under the amended Act, the amended Act will apply to the application for review, the review, any decision on review, and any appeal in relation to the decision.

New section 201 clarifies the mechanism by which information is communicated between the Commissioner and Police Commissioner in relation to applications for suitability notices received by the Commissioner prior to 17 January 2005 but which are outstanding at commencement of this section.

This section clarifies that a relevant application as defined in section 196 is deemed to be an application for a prescribed notice that has not been withdrawn for the purposes of section 122 and section 122A. This ensures that the Commissioner can receive all police information from the Police Commissioner and take this information into account when assessing an outstanding application, regardless of when the application for a suitability notice was made.

New section 202 declares the law to be applied in relation to suitability notices about which the Commissioner received, prior to 17 January 2005, either an application to cancel the suitability notice (under sections 118 or 119 of the pre-amended Act), or information relevant to whether the suitability notice might be cancelled (pursuant to section 119 of the pre-amended Act), but no decision had been made at commencement in relation to the application or assessment. In these circumstances, the application or assessment relevant to the potential cancellation of the suitability notice was commenced prior to 17 January 2005 and accordingly the pre-amended Act will be applied in determining the application or assessment.

The exception to this is if further information relating to the suitability notice is received by the Commissioner on or after 17 January 2005 which would invoke the operation of section 119(1) or (2) of the amended Act. In this circumstance, the post-amended Act is to be applied in determining the application or assessment.

This section also provides that once a decision has been made by the Commissioner, irrespective of whether it is made under the pre-amended or amended legislation, the amended legislation applies. The only circumstance in which the pre-amended Act continues to apply is in relation to an application for review of a decision of the Commissioner made under the pre-amended Act to issue or refuse to cancel a negative notice. In this circumstance, the pre-amended Act applies to any application for review, the review, any decision on review, and any appeal in relation to the decision.

New section 203 validates decisions made by the Commissioner between 17 January 2005 and the commencement of this section, to cancel, or refuse to cancel, a suitability notice under sections 118 or 119, regardless of whether the pre-amended or post-amended legislation was applied in making this decision.

The section also stipulates that the amended Act now applies in relation to the cancellation or refusal, irrespective of whether the decision was based on the pre-amended or amended legislation. However an exception applies

where the Commissioner made a decision to cancel or refuse to cancel, a suitability notice under the pre-amended legislation. In this case, the pre-amended Act continues to apply to any application for review, the review, any decision on review, and any appeal in relation to the decision.

New section 204 declares that where the Commissioner made a decision prior to 17 January 2005 which resulted in an application for review being made before commencement of this section (“a previous application for review”) and in relation to which a final decision has not been made by the Tribunal as at commencement, the pre-amended Act will apply to the application for review, the review, any decision on review and any appeal in relation to the decision.

The section also provides that if before commencement the Tribunal had started to hear a previous application for review but had not made a final decision it may for the purposes of subsection (1) exercise its powers under the *Children Services Tribunal Act 2000* and issue directions in relation to the previous application for review and the hearing. The section also stipulates that if, as at commencement, the Tribunal has made a final decision in relation to a previous application for review, the pre-amended Act will apply in relation to any appeal arising from the decision. Likewise where the Tribunal has, before commencement, made a decision in relation to a previous application for review to set aside the decision of the Commissioner and return it to the Commissioner for reconsideration the pre-amended Act will apply to the reconsideration.

New section 205 declares that the amended Act applies in relation to suitability notices issued by the Commissioner:

- under the *Commission for Children and Young People and Child Guardian Act 2000* prior to being amended by the *Commission for Children and Young People and Child Guardian Amendment Act 2004*, which at 17 January 2005 were current; and
- prescribed notices issued between 17 January 2005 and before this Act commenced.

For these notices, the *Commission for Children and Young People and Child Guardian Act 2000* as amended by this Bill now applies, unless a provision in Part 9, division 8 states that the pre-amended legislation applies, or Part 9, Division 7 otherwise provides.

New section 206 states that where in an Act or in a document a reference is made to a “prescribed notice”, if appropriate in the context it should be taken to be a reference to a “suitability notice” under the *Commission for Children and Young People and Child Guardian Act 2000* prior to being

amended by the *Commission for Children and Young People and Child Guardian Amendment Act 2004*.

Reference is to be made to the following table regarding the application of the amendments.

Child Safety (Carers) Amendment Bill 2006

Circumstances	Law Commissioner to apply in making decision (about application / information)	Authority	Law Commissioner to apply post decision	Authority	Law to apply in relation to review of Commissioner's decision and any appeal in relation to a decision on review	Authority
OUTSTANDING MATTERS, I.E. NOT DECIDED, AS AT COMMENCEMENT OF THESE AMENDMENTS						
<ul style="list-style-type: none"> Application for suitability notice: <ul style="list-style-type: none"> received before 17/01/2005 not decided as at 17/01/2005 not decided at commencement of amendments no police or disciplinary information received on or after 17/01/05 (and before decision to issue positive or negative notice made) 	Pre-amended Act	198(1), (2)	Post-amended Act (except in relation to reviewing decision to issue a negative notice) Prescribed notice, whether positive or negative, is issued under the post-amended Act	198(5) 198(3), (4)	Pre-amended Act	198(6)
<ul style="list-style-type: none"> Application for suitability notice: <ul style="list-style-type: none"> received before 17/01/2005 not decided as at 17/01/2005 not decided at commencement of amendments police or disciplinary information received on or after 17/01/05 (and before decision to issue positive or negative notice made) 	Post-amended Act	199	Post-amended Act	199	Post-amended Act	199

Circumstances	Law Commissioner to apply in making decision (about application / information)	Authority	Law Commissioner to apply post decision	Authority	Law to apply in relation to review of Commissioner's decision and any appeal in relation to a decision on review	Authority
OUTSTANDING MATTERS, I.E. NOT DECIDED, AS AT COMMENCEMENT OF THESE AMENDMENTS						
Application to cancel negative notice (under s.118): <ul style="list-style-type: none"> • received before 17/01/2005 • not decided as at 17/01/2005 • not decided at commencement of amendments • no information received on or after 17/01/05 (and before decision whether or not to cancel suitability notice) which would allow a power under s 119 (1) or (2) of the amended Act to be exercised 	Pre-amended Act	202(1) & (2)	Post-amended Act (except in relation to reviewing a decision not to cancel a negative notice)	202(3)	Pre-amended Act	202(4)
Application to cancel negative notice (under s.118): <ul style="list-style-type: none"> • received before 17/01/2005 • not decided as at 17/01/2005 • not decided at commencement of amendments • information received on or after 17/01/05 (and before decision whether or not to cancel suitability notice) which would allow a power under s 119 (1) or (2) of the amended Act to be exercised. 	Post-amended Act	202(5) & (6)	Post-amended Act	202(6)	Post-amended Act	202(6)

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Circumstances	Law Commissioner to apply in making decision (about application / information)	Authority	Law Commissioner to apply post decision	Authority	Law to apply in relation to review of Commissioner's decision and any appeal in relation to a decision on review	Authority
OUTSTANDING MATTERS, I.E. NOT DECIDED, AS AT COMMENCEMENT OF THESE AMENDMENTS						
<p>Wrong, incomplete, or new information about a suitability notice (under s.119):</p> <ul style="list-style-type: none"> • received before 17/01/2005 • not decided as at 17/01/2005 • not decided at commencement of amendments • no information received on or after 17/01/05 (and before decision whether or not to cancel suitability notice) which would allow a power under s 119 (1) or (2) of the amended Act to be exercised 	Pre-amended Act	202(1) & (2)	Post-amended Act (except in relation to reviewing a decision to issue, or not to cancel, a negative notice)	202(3)	Pre-amended Act	202(4)
<p>Wrong, incomplete, or new information about a suitability notice (under s.119):</p> <ul style="list-style-type: none"> • received before 17/01/2005 • not decided as at 17/01/2005 • not decided at commencement of amendments • information received on or after 17/01/05 (and before decision whether or not to cancel suitability notice) which would allow a power under s 119 (1) or (2) of the amended Act to be exercised. 	Post-amended Act	202(5) & (6)	Post-amended Act	202(6)	Post-amended Act	202(6)

Circumstances	Law Commissioner to apply in making decision (about application / information)	Authority	Law Commissioner to apply post decision	Authority	Law to apply in relation to review of Commissioner's decision and any appeal in relation to a decision on review	Authority
OUTSTANDING MATTERS, I.E. NOT DECIDED, AS AT COMMENCEMENT OF THESE AMENDMENTS						
Application for review: <ul style="list-style-type: none"> made before commencement of this Bill in relation to a decision of the Commissioner made under pre-amended Act prior to 17 January 2005 no final decision has been made by the Tribunal as at commencement of this Bill 	N/A	N/A	Post-amended Act	205	Pre-amended Act	204
MATTERS DECIDED ON OR AFTER 17/01/05 AND BEFORE COMMENCEMENT OF THESE AMENDMENTS						
Application for suitability notice: <ul style="list-style-type: none"> received before 17/01/2005 not decided as at 17/01/2005 decided on or after 17/01/05 and before commencement of amendments decided under pre-amended Act 	Decisions made under pre-amended Act (to issue a positive or negative notice) are validated	200(1), (2)	Post-amended Act (except in relation to reviewing decision to issue a negative notice)	200(2)	Pre-amended Act	200(3)
MATTERS DECIDED ON OR AFTER 17/01/05 AND BEFORE COMMENCEMENT OF THESE AMENDMENTS						
Application for suitability notice: <ul style="list-style-type: none"> received before 17/01/2005 not decided as at 17/01/2005 decided on or after 17/01/05 and before commencement of amendments decided under post-amended Act 	Decisions made under post-amended Act (to issue a positive or negative notice) are validated	200(1), (4)	Post-amended Act	200(4)	Post-amended Act	200(4)

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OUTSTANDING MATTERS, I.E. NOT DECIDED, AS AT COMMENCEMENT OF THESE AMENDMENTS						
Circumstances	Law Commissioner to apply in making decision (about application / information)	Authority	Law Commissioner to apply post decision	Authority	Law to apply in relation to review of Commissioner's decision and any appeal in relation to a decision on review	Authority
<p>Application to cancel negative notice (under s.118):</p> <ul style="list-style-type: none"> • received before 17/01/2005 • not decided as at 17/01/2005 • not decided at commencement of amendments • no information received on or after 17/01/05 (and before decision whether or not to cancel suitability notice) which would allow a power under s 119 (1) or (2) of the amended Act to be exercised 	Pre-amended Act	202(1) & (2)	Post-amended Act (except in relation to reviewing a decision not to cancel a negative notice)	202(3)	Pre-amended Act	202(4)
<p>Application to cancel negative notice (under s.118):</p> <ul style="list-style-type: none"> • received before 17/01/2005 • not decided as at 17/01/2005 • not decided at commencement of amendments • information received on or after 17/01/05 (and before decision whether or not to cancel suitability notice) which would allow a power under s 119 (1) or (2) of the amended Act to be exercised. 	Post-amended Act	202(5) & (6)	Post-amended Act	202(6)	Post-amended Act	202(6)

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Circumstances	Law Commissioner to apply in making decision (about application / information)	Authority	Law Commissioner to apply post decision	Authority	Law to apply in relation to review of Commissioner's decision and any appeal in relation to a decision on review	Authority
OUTSTANDING MATTERS, I.E. NOT DECIDED, AS AT COMMENCEMENT OF THESE AMENDMENTS						
Wrong, incomplete, or new information about a suitability notice (under s.119):	Decisions made under pre-amended Act (to cancel a positive notice or refuse to cancel a negative notice or to cancel a negative notice and substitute a positive notice)	203(1)	Post-amended Act (except in relation to reviewing decision cancel a positive notice or refuse to cancel a negative notice)	203(3)	Pre-amended Act (application for review only applies in relation to decision to cancel a positive notice or refuse to cancel a negative notice – there is no right of review of a decision to cancel a negative notice and issue a positive notice).	203(2)
<ul style="list-style-type: none"> • received before 17/01/2005 • not decided as at 17/01/2005 • decided on or after 17/01/05 and before commencement of amendments • decided under pre-amended Act (to cancel a positive notice or refuse to cancel a negative notice or to cancel a negative notice and substitute a positive notice) 						
MATTERS DECIDED ON OR AFTER 17/01/05 AND BEFORE COMMENCEMENT OF THESE AMENDMENTS						
Wrong, incomplete, or new information about a suitability notice (under s.119):	Decisions made under post-amended Act (to cancel a positive notice or refuse to cancel a negative notice or to cancel a negative notice and substitute a positive notice)	203(1)	Post-amended Act	203(3)	Post-amended Act (application for review only applies in relation to decision to cancel a positive notice or refuse to cancel a negative notice – there is no right of review of a decision to cancel a negative notice and issue a positive notice).	203(3)
<ul style="list-style-type: none"> • received before 17/01/2005 • not decided as at 17/01/2005 • decided on or after 17/01/05 and before commencement of amendments • decided under post-amended Act (to cancel a positive notice or refuse to cancel a negative notice or to cancel a negative notice and substitute a positive notice) 						

Insertion of new pt 9, div 9

Clause 55 inserts transitional provisions into the *Commission for Children and Young People and Child Guardian Act 2000* with respect to the *Child Safety (Carers) Amendment Act 2006*.

The clause inserts sections 207 – 210, the purpose of which is to allow time for persons to comply with the new screening provisions where they are currently engaging in employment or carrying on businesses which will, after commencement, fall within schedule 1, sections 6G and 16.

Section 207 inserts a definition of commencement for the purposes of the division as the day on which the provision in the term commences.

The new sections 208 – s 210 will allow persons currently engaged in what will become regulated employment within the meaning of schedule 1, section 6G, and regulated business within schedule 1, section 16, to continue that employment or business, provided that an application is lodged for a prescribed notice within 6 months of the commencement of the Act. On the condition that an application for a prescribed notice is made within 6 months of commencement such persons will be able to continue in regulated employment or business until the earlier of a notice being issued or the application withdrawn. The provisions also clarify that persons to whom these transitional provisions apply and who are engaged in regulated employment are obliged to notify their employer of changes in their criminal history from when they first make application for a prescribed notice. Likewise persons carrying on a regulated business to whom these transitional provisions apply become subject to the obligations to make application for a further prescribed notice where they have a change in criminal history once they make application for a prescribed notice.

The clause also inserts new sections 211 and 212 which are transitional provisions to provide for applications for certificates of approval or licenses made to the chief executive before commencement under the *Child Protection Act 1999* which have not been decided as at the date of commencement. The new sections will allow these persons issued with an approval (and members of their households as at the time of approval) or a licence after commencement in these situations to continue in regulated employment or regulated business provided that an application for a prescribed notice is lodged within 6 months of the commencement of the Act. On the condition that an application for a prescribed notice is made within 6 months of commencement, such persons will be able to continue in regulated employment or business until the earlier of a notice being issued or the application withdrawn.

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

Clause 56 makes minor technical amendments to Schedule 1 section 1 (2)(b) and section 5 (2)(b) to reflect the new definition of “licensed care service” being added to the dictionary of the Act.

In addition the clause amends the existing Schedule 1 list of regulated employment and regulated business. The purpose of these amendments is to add a new section 6G category of "care of children under the *Child Protection Act 1999*" as a category of regulated employment, and a new section 16 category of "businesses relating to licensed care service under the *Child Protection Act 1999*" as a category of regulated business.

A new section 6G is inserted in the categories of regulated employment contained in schedule 1 which will have the effect of requiring the following persons to apply for a prescribed notice:

- approved foster and kinship carers;
- adult members (including persons who stay overnight the home regularly) of a foster or kinship carer’s household;
- persons whose employment is carried out inside a licensed residential facility; and
- persons who are employed by a licensed care service and provide support for an approved carer.

New section 16 in schedule 1 inserts a new category of regulated business. The section states that a business will be a regulated business if the usual activities include a licensed care service, or if any of the usual functions of the business includes carrying out activities or providing services inside a licensed residential facility.

Amendment of sch 4 (Dictionary)

Clause 57 amends the dictionary contained within schedule 4 of the Act, inserting new definitions of a technical nature and cross references terms to the *Commission for Children and Young People and Child Guardian Act 2000* or to provisions of the *Child Protection Act 1999*.