Child Protection and Other Acts Amendment Bill 2010

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Child Protection and Other Acts Amendment Bill 2010.

Policy Objectives of amendments to the *Child Protection Act 1999*

The proposed amendments aim to enhance the capacity of non-government services to intervene earlier and more effectively with at-risk families and to improve outcomes for children in out-of-home care. Queensland's child protection system is comprised of statutory services (child abuse investigation and response, out-of-home care), non-statutory secondary services (intervention with families with identified problems to prevent child abuse and neglect) and non-statutory primary services (universal prevention services available to all families such as parenting programs). The proposed amendments will target both the statutory and non-statutory secondary services.

Queensland is experiencing a significant increase in reports to statutory child protection services. The majority of allegations of harm and risk of harm to children reported to the Department of Communities (Child Safety Services) (the department) do not meet the threshold for statutory intervention under the *Child Protection Act 1999* (the Act). Presently, referral to the department does not necessarily link the child or family with support services or other assistance until the child's need of protection reaches the threshold for statutory intervention.

The department has identified the "Helping Out Families" initiative to provide the right type of support, through non-statutory secondary services, to vulnerable children, young people and their families as early as possible.

The intention is to ensure children and young people have the opportunity to remain in a stable, functioning family environment without the need to enter the statutory child protection system before they can receive support. Non-statutory secondary services that can support "at risk" families include: intensive family support, home visiting for new mothers, domestic and family violence, mental health, drug and alcohol, disability and homelessness services.

The three key elements of the Helping Out Families initiative are:

(a) A more effective Regional Intake Service model and method for referring families who are the subject of Child Concern Reports, and both substantiated and unsubstantiated child protection notifications, but who do not meet the threshold for statutory intervention, to non-government (b)services for effective intervention.

(b) Strengthened non-government early intervention and family support capacity through the establishment of a Family Support Alliance non-government organisation, and a network of service providers.

(c) Work with partner agencies to develop strategies to change the referral patterns and, in the medium term, development of new models to facilitate referral pattern change.

The department's Regional Intake Services will refer, to a Family Support Alliance non-government organisation, following an investigation and assessment where the outcome is:

— *Unsubstantiated Child Not in Need of Protection* but the family is at high risk of entering the statutory system if they do not receive support; or

— *Substantiated Child Not in Need of Protection* and high risk factors are present.

Child Concern Reports will also be prioritised for referral to the Family Support Alliance non-government organisation when one or more of the following factors are present:

— the subject child/ren is under 3 years old;

— multiple Child Concern Reports including domestic violence and family violence;

— previous statutory involvement (e.g. Notification).

Policy objectives of changes to the *Commission for Children and Young People and Child Guardian Act 2000*, *Disability Services Act 2006, Family Services Act 1987, Community Services Act 2007* and *Public Service Act 2008*

The amendments seek to remove anomalies and ambiguities identified during implementation of the *Criminal History Screening Legislation Amendment Act 2010.* The policy objectives of the amendments include:

- clarifying fee requirements for when a blue card holder moves from volunteering or carrying on a regulated business for no financial reward to paid regulated employment or carrying on a regulated business for financial reward
- clarifying fee requirements for when a yellow card holder moves from volunteering to paid engagement
- reinstating the screening powers under the *Commission for Children and Young People and Child Guardian Act 2000* (the CCYPCG Act) of the Commissioner for Children and Young People and Child Guardian (the Commissioner) to assess the suitability of persons engaged or proposed to be engaged at the Commission for Children and Young People and Child Guardian (the Commission)
- clarifying the requirements under the CCYPCG Act for a prescribed person sighting an employee's proof of identity documents
- clarifying under the CCYPCG Act notification requirements between the Commission to the Queensland College of Teachers regarding teacher registration applicants who have their blue card recognised.

Reasons for the Bill

The Bill includes amendments to the Act to implement the Helping Out Families initiative, to improve the operation of court orders, to enhance the ability of the department to secure children's safety by providing for a new temporary custody order, to recognise the role of suitable person long-term guardians and to improve decision making.

The new temporary custody order will enhance the ability of the department to secure the safety of children at risk, where an assessment of whether the child is in need of protection is not required, while the department decides the appropriate action to take to meet the child's protection and care needs. The temporary custody order differs from the existing temporary assessment order. Both orders will secure the

protection of a child at immediate risk of harm. In addition, a temporary assessment order may only be made by the Court when the Court is satisfied there is a need to investigate whether a child is in need of protection and the investigation cannot be properly carried out unless the order is made. The new temporary custody order will apply when an investigation is not necessary and the department's view is that the child is in need of protection. The department could apply for a temporary custody order in circumstances when a parent or child is already known to the department. For example, because another child of the family is in the custody or guardianship of the chief executive, or a child is already the subject of a child protection care agreement with the parents but an unacceptable risk to the child becomes immediate and the child needs to be taken into the chief executive's custody.

Long-term guardianship can be made for a relative of a child or another suitable person (other than the chief executive) to care for a child until the child is 18 years old. The role of a long-term guardian and the relationships the order creates will be recognised by amendments that will include long-term guardians in the definition of "parent" so that they will be treated as parents, for example, if concerns arise about their care of a child subject to a long-term guardianship order or if an application is made to revoke the order.

Amendments to improve decision-making will promote children's safety and wellbeing by:

- creating a legislative framework of matters to be considered to guide the exercise of powers or decision making under the Act in accordance with the principle that the safety, wellbeing and best interests of a child are the paramount consideration; and
- recognising the cumulative nature of harm, reinforcing that multiple events of harm, which do not individually meet the threshold for statutory intervention, are to be considered collectively in determining whether a child has been harmed.

The Bill also amends a number of other Acts, including amendments to achieve the policy intent of the *Criminal History Screening Legislation Amendment Act 2010*. Certain provisions commenced on 29 March 2010 and 1 April 2010, with the remaining provisions to commence on 1 July 2010. During implementation, a number of drafting anomalies were identified which require legislative amendment. The proposed amendments will correct drafting anomalies to achieve the original policy intent.

Achieving the objectives of amendments to the *Child Protection Act 1999*

The objectives will be achieved by amendments to the Act in the following ways.

Helping Out Families initiative:

- providing a legislative framework to enable information sharing including to allow the department to refer families to support services.

Paramount principle and decision-making framework:

- strengthening the paramount principle to reflect the department's focus on children's immediate safety and long-term wellbeing as well as their best interests;
- providing a legislative framework to guide those exercising powers or making decisions under the Act in applying the paramount principle; and
- requiring the Childrens Court to consider certain parts of the framework and give reasons for its decisions.

Case planning and working with families:

- adjusting case planning and family group meeting processes to enhance the department's ability to work with families and facilitate children's long-term stability and wellbeing through:
  - making discussions and agreements in family group meetings inadmissible in criminal proceedings without the agreement of the parties to the family group meeting so that full and frank discussions with a child's family about what actions are in the best interests of the child can occur without concern that statements may be used in subsequent criminal proceedings; and
  - providing that, in relation to children subject to long-term guardianship orders (other than to the chief executive):
    - contact is to be made with the child/young person every 12 months;
    - a case plan for the child is not required to be reviewed unless;

- — the child/young person or guardian requests a review at any time;
- — the department's decision to refuse that request is to be a reviewable decision; and
- — the chief executive has a statutory right to have contact with the child/young person to assist in reviewing the case plan.

Court orders and proceedings, subject to the paramount consideration for the Court being the child's safety, wellbeing and best interests:

- extending the term of a temporary assessment order from three days to three business days;
- empowering the Children's Court to make a temporary custody order, for up to three business days while the department decides the appropriate action to meet the child's protection and care needs and the temporary custody order is necessary to protect the child in the interim;
- providing for the department to make a submission about supervised family contact when the Court is considering making a court assessment order with supervised family contact;
- clarifying that the Court may make concurrent child protection orders as appropriate;
- providing that when the Court is considering making a child protection order it may consider an individual's contravention of, or non-compliance with, a previous order;
- requiring the Court, when considering an extension of a short-term order or a new short-term order, to have regard to the child's need for stability;
- adding matters for the Court to take into account when considering an application for revocation of a long-term guardianship order;
- giving the Court the power, when it does not make a custody order during an adjournment of a hearing for a court assessment order or a child protection order, to make an order for the department to have contact with a child;
- clarifying when an application is made to the Court for the extension of an order, the existing order continues pending the Court's decision unless the Court orders an earlier end;

- including a specific discretionary power for the Court, when it does not extend or renew a short term order, to set a future end date of an existing child protection order to provide a period of time for the department to prepare and assist a child to return to the care of their parents; and
- clarifying a separate representative for a child will be treated as a party to a proceeding.

Child protection concerns about long-term guardians:

- clarifying the rights of long-term guardians to be treated as parents in the event that:
  - — a notification is made about their care of a child, including notifying the long-term guardian about the notification; or
  - — an application is made for a temporary assessment order, a temporary custody order; a court assessment order or a child protection order for the child; and
  - — specifying that long-term guardians will have the same rights as a parent who has been the subject of a notification to be a respondent to any Court hearings about these matters.

Assessment care agreements:

- allowing the department to enter into an assessment care agreement (maximum period 30 days) with only one parent of a child.

General amendments:

- extending the definition of "harm" so that it is clear that harm can be the cumulative result of a number of incidents of abuse or neglect and can include a series or combination of acts, omissions or circumstances over an extended period of time;
- clarifying the department's obligation to notify the Queensland Police Service if the chief executive becomes aware of an allegation of harm to a child and reasonably believes it may involve a criminal offence whether or not the chief executive suspects the child is in need of protection;
- extending the involvement of Recognised Entities in decision making about Aboriginal or Torres Strait Islander children to include decisions about pregnant women and their unborn children;

- extending the power of the chief executive to obtain criminal histories of parents of a child, their adult household members and adults against whom an allegation of harm to a child has been made at any time action is being taken under the Act in relation to the child;
- expanding the service criteria for applications for a licence to provide services to children in the custody or guardianship of the chief executive;
- limiting the liability of nominees of licensed care services so that, instead of the individual person who is the nominee being liable, the corporation who is the licensee will be liable and the individual nominee will be responsible for ensuring the licensee corporation provides the required standard of care to children, engages suitable persons to provide care and complies with Chapter 8 of the *Commission for Children and Young People and Child Guardian Act 2000* (blue card provisions);
- providing a basis in the Act for the chief executive to provide financial support for the care of children on long-term guardianship orders to a relative or another suitable person;
- clarifying the status of provisionally approved carers when a new spouse begins living with them;
- clarifying the ability of prescribed entities and service providers to share information with the department in order to determine whether an allegation of harm to a child constitutes a notification under the Act;
- extending information sharing about unborn children between prescribed entities and service providers;
- enhancing protection against breaches of confidentiality for officers of other agencies who provide information to the chief executive for a child death review; and
- amending the definition of "member, of a person's household" to remove the frequency test for overnight stays and to add a category of person who, because of the nature of their contact with a child in need of protection and the context in which that contact happens, may create an unacceptable level of risk to the child.

Amendments to the Dictionary regarding definitions for:

- Carer

- Charge
- Criminal history
- Disqualifying event (removal of definition)
- Long-term guardian
- Member, of a person's household
- Parent (for specified sections of the Act)
- Prohibiting event
- Spent conviction
- Temporary custody order
- Transition order

Achieving the objectives of amendments to the *Commission for Children and Young People and Child Guardian Act 2000*, *Disability Services Act 2006, Family Services Act 1987, Community Services Act 2007* and *Public Service Act 2008*

The Bill amends the CCYPCG Act, *Disability Services Act 2006, Family Services Act 1987, Community Services Act 2007* and *Public Service Act 2008* to:

- require a blue card holder to pay the current prescribed fee at the time they move from volunteering or carrying on regulated business for no financial reward to paid regulated employment or carrying on a regulated business for financial reward;
- require a yellow card holder to pay the current prescribed fee at the time they move from volunteering to paid engagement;
- reinstate the Commissioner's powers for assessing the suitability of persons engaged or proposed to be engaged at the Commission;
- ensure the Commissioner can provide updated advice to the Queensland College of Teachers where there is a change in the person's blue card status or police information in relation to persons who have their blue card recognised for teacher registration or permission to teach applications

- allow for certification by a prescribed person that they have sighted documents relating to proof of the employee's identity to be attached to rather than part of the approved form; and
- make other minor and/or technical amendments such as removing incorrect terminology and ensuring an exemption operates consistently across the regulated employment and regulated business categories under the CCYPCG Act.

Administrative Costs

The costs of impletmenting the Helping Out Families initiative are outlined in the 2010-11 Budget.

The costs of implementing the further amendments will be met from existing departmental and court resources.

There will be no additional costs as part of the implementation of the *Criminal History Screening Legislation Amendment Act 2010*.

Fundamental Legislative Principles – amendments to the *Child Protection Act 1999*

- *Transition order*

When the department applies for an extension of a short-term child protection order or for a new successive order, the Court may decline to make the order and, in that case, the child will return to live with their parents on the day of the Court's decision. The Bill will amend the Act to include a specific discretionary power, in these cases, for the Court to set a future end date for an existing child protection order, no more than 28 days after the order would otherwise have ended. This would provide a period of time for the department to assist a child to return to the care of their parents. This will infringe the rights of a child's parents to have their child returned to them when the Court has decided a further order is not justified. However, the child may have been in out-of-home care for some years and formed an attachment to a carer and a community. A transition period may be necessary to limit additional trauma to the child, for example, in circumstances where no preparation has been made to return the child home. The department will have to justify to the Court in each particular case the need for, and the term of, the transition period.

- *Temporary assessment order*

The Bill will increase the term of a temporary assessment order from three days to three business days. The temporary assessment order may be used after a child has been removed from a family to secure the child's immediate safety and the Court may make a temporary assessment order without notice to the parents. The amendment will mean that the period of time a child can be removed and kept from his or her family, without the parents having an opportunity to be heard by the Court, will be increased. However, the Court will only make the temporary assessment order if it is satisfied that an investigation is necessary to assess whether the child is in need of protection and the assessment cannot be carried out without the order. If the current three-day term of a temporary assessment order includes a weekend or public holiday it may not be possible to conduct the assessment in that time.

- *Temporary custody order*

The Bill will introduce a new order, the temporary custody order, which the Court may make for up to three business days and, similar to the temporary assessment order, it may also be made by the Court after a child has been removed and without notice to the parents. The order will only be made when an authorised officer provides the Court with sufficient evidence that a child is at an unacceptable risk of harm and likely to suffer harm if the order is not made and, within the term of the order, the chief executive will decide, and begin taking, appropriate action to meet the child's care and protection needs. In these circumstances, a temporary custody order for three business days will secure the child's safety. The parents' rights will then be preserved in relation to the processes for the actions to be undertaken by the chief executive which may include applying for the child protection order which requires parents to be notified and heard by the Court.

- *Assessment care agreement*

Section 51ZD of the Act requires the chief executive to obtain the agreement of both parents of a child before entering into an assessment care agreement in relation to their child. The agreement allows the department, for a maximum period of 30 days, to place the child in out-of-home care and work consensually with a family on terms which are less intrusive than a court order. The agreement can be terminated by either parent upon giving two days notice, which need only be verbal, to the other parent and the chief executive. Under the current provision, if agreement is not reached with both parents, the department may instead consider applying to the Court for an order for the child. The amendment will allow

the chief executive to enter into an assessment care agreement with only one of the child's parents. This will mean that the rights of the other parent will be infringed. However, the amendment will enable the department to enter an agreement with a residential parent in crisis immediately without the delay that may be caused by the difficulty locating and then negotiating with the non-residential parent to enable this to occur. If an agreement is entered into with one parent only, the department must take reasonable steps to give a copy of the agreement to the other parent and obtain their consent. If the non-residential parent does not give consent at this stage, the department may still need to consider applying to the Court for an order for the child.

- *Obtaining criminal histories of parents, their adult household members or an adult against whom an allegation of harm to a child has been made*

Section 95(3) of the Act enables the chief executive, only when investigating a notification alleging harm to a child, to obtain the criminal histories of the parents of the child, adult members of the parents' household or an adult against whom an allegation of harm to a child has been made. The amendment will allow the chief executive to obtain criminal histories about these persons at any time the chief executive is taking action under the Act in relation to the child. As a matter of practice, the chief executive will be required to inform the individual that they are undertaking a criminal history check. This will enhance decision-making in the best interests of a child, for example, when the chief executive is considering unsupervised contact between a child and parent, or reunification of a child with the family and the chief executive requires up-to-date information about the criminal histories of parents or their adult household members.

- *Contact order for the department during adjournment*

Section 67 of the Act allows the Childrens Court to make a custody or contact order to operate during an adjournment of a proceeding for a court assessment order or a child protection order. If the Court does not grant a custody order to the chief executive, the child will remain with their parents during the adjournment period. In that case, there is no statutory capacity for the department to have access to the child to monitor their safety. The amendment will allow the Court to make an interim order empowering the department to have contact with the child and to authorise entry and search, if necessary, to enable the contact to occur. This amendment would align s 67 with s 45(1)(a) of the Act which provides for a court assessment order to

include departmental contact with a child during the investigation and assessment stage. The amendment will allow the child to remain living with their parents while providing for the department to monitor the child's safety during an adjournment.

- *Revocation of long-term guardianship*

Section 65 of the Act enables the chief executive, the child or the parent of a child to apply for revocation of a long-term guardianship order, including an order to a relative of the child or another suitable person. Before an order can be revoked, the Court need only be satisfied the order is no longer necessary to protect the child. The amendment will require the Court also to consider the child's need for emotional security and stability. This will reduce the right of parents seeking the return of their child, but will allow other important factors to be taken into account in the best interests of the child. A child the subject of a long-term guardianship order may have been living in a stable and secure home for many years and may have formed an attachment to their guardian. It may be in the child's best interests for this arrangement to be maintained, regardless of whether the order is still necessary to protect the child from harm.

The amendments will infringe the rights and liberties of the parents (or household members) of a child about whom the department is taking protective action. However, the imposition on rights and liberties is considered justified because the amendments will provide safeguards for the care, protection and best interests of the child.

Fundamental Legislative Principles – amendments to the *Commission for Children and Young People and Child Guardian Act 2000*

Whether legislation has sufficient regard to the rights and liberties of individuals – Legislative Standards Act, section 4(2)(a)

- *Overriding the Criminal Law (Rehabilitation of Offenders) Act 1986*

The amendments propose to reinstate a previous power which allowed for the assessment of the suitability of persons who engage or propose to engage in employment at the Commission. The amendments override the *Criminal Law (Rehabilitation of Offenders) Act 1986* enabling a broader range of criminal history related information to be disclosed. As well, it is proposed that investigative information regarding serious offences which did not result in a charge or conviction be disclosed to the Commissioner for the purpose of suitability assessments.

This information will be able to be disclosed in relation to persons who have already obtained a blue card and have been subjected to intense scrutiny and for persons who are not engaging directly with children. The overriding of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and the disclosure of investigative information may breach the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals. This breach is considered to be justified on the basis that the Commission is an independent statutory oversight body with the primary purpose of promoting and protecting the rights, interests and wellbeing of children and young people. Therefore it is in the public interest, and particularly in the best interests of children and young people that persons proposing or continuing to be engaged by the Commission undergo a high level of screening, whether or not they directly engage with children and young people.

Consultation

Community

The following non-government organisations have been consulted in the formulation of legislative proposals other than those related to the Helping Out Families initiative:

- PeakCare Queensland
- Foster Care Queensland
- Create Foundation
- Queensland Aboriginal and Torres Strait Islander Child Protection Peak
- Queensland Aboriginal and Islander Health Council
- South West Brisbane Community Legal Service
- Aboriginal and Torres Strait Islander Legal Service
- Historical Abuse Network
- Save the Children
- NAPCAN
- Queensland Law Society

The following non-government organisations have been consulted in the formulation of legislative proposals specifically related to the Helping Out Families initiative:

- PeakCare Queensland
- Foster Care Queensland
- Create Foundation
- Queensland Aboriginal and Torres Strait Islander Child Protection Peak
- Queensland Council for Social Services

Community consultation previously occurred in relation to the *Criminal History Screening Legislation Amendment Act 2010.*

Government

The following agencies have been consulted during the development of the amendments:

- Department of the Premier and Cabinet
- Queensland Health
- Department of Education and Training
- Department of Community Safety (Corrective Services)
- Queensland Police Service
- Department of Justice and Attorney-General, including Magistracy and Legal Aid Queensland
- Commission for Children and Young People and Child Guardian
- Queensland Civil and Administrative Tribunal (former Children Services Tribunal)

The following agencies have been consulted in relation to amendments to the *Commission for Children and Young People and Child Guardian Act 2000, Disability Services Act 2006, Family Services Act 1987; Community Services Act 2007 and Public Service Act 2008:*

- Department of Communities
- Department of Education and Training
- Department of the Premier and Cabinet

- Public Service Commission
- Department of Community Safety.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states that the short title of the Bill is the Child Protection and Other Acts Amendment Bill 2010.

Commencement

Clause 2 states that section 119 commences on the day this Act is assented to or 1 July 2010, immediately after the *Criminal History Screening Legislation Amendment Act 2010*, section 129 commences, whichever is the later.

Clause 2 also states that sections 121 and 122 commence on the day this Act is assented to or 1 July, immediately after the *Criminal History Screening Legislation Amendment Act 2010*, section 156, to the extent it inserts part 16, division 5, subdivision 4 commences, which ever is the later.

Clause 2 also states that the remaining provisions of this Act commence on a day to be fixed by proclamation.

Part 2 Amendment of *Child Protection Act 1999*

Act amended

Clause 3 states that Part 2 of the Bill amends the *Child Protection Act 1999*.

Omission of s3A (notes in text)

Section 3A provides that a note is part of the Act. *Clause 4* omits section 3A which is unnecessary as s 14(4) of the *Acts Interpretation Act 1954* provides that notes included in legislation form part of the relevant Act.

Amendment of ch 1, pt 2 hdg

Chapter 1, Part 2 of the Act states the purpose of the Chapter. The Bill restructures Chapter 1, Part 2 with two new Divisions within Part 2 to accommodate the new framework to be considered by persons making decisions or exercising powers under the Act. *Clause 5* amends the heading of Chapter 1, Part 2 of the Act by inserting the word "principles" into the heading.

Insertion of new ch 1, pt 2, div 1 hdg

Clause 6 inserts a new heading for Chapter 1, Part 2, "Division 1 Purpose of Act and principles for its administration".

Replacement of s 5 (Principles for administration of the Act)

Clause 7 replaces section 5 with new provisions 5, 5A to 5E setting the framework of principles to be considered by persons making decisions or exercising powers under the Act.

5 Safety, wellbeing and best interest of child paramount

The new section 5 states that the Act is to be administered under the principles stated in Chapter 1, Part 2 of the Act and that all other principles stated in the Act are subject to the paramount principle stated in section 5A.

5A Paramount principle

The new section 5A states that the safety, wellbeing and best interests of a child are paramount. The section makes clear the paramount importance of a child being safe.

5B Other general principles

The new section 5B sets out the matters which a court or person exercising a power or making a decision under the Act must have regard to, where relevant to a particular child and the power to be exercised or decision to be made.

5C Additional principles for Aboriginal or Torres Strait Islander children

The new section 5C provides principles to be considered, in addition to the principles in new section 5B, when a person is exercising a power or making a decision about an Aboriginal or Torres Strait Islander child.

5D Principles about exercising powers and making decisions

The new section 5D sets out other principles to be taken into account in the process of exercising powers or making decisions under the Act. These principles relate to fair process, the participation of relevant persons who may be affected by a power or decision and, as far as possible, protection of the child's privacy. Relevant persons' views are to be sought and taken into account, assistance given to participate if necessary, and they are to be advised of their rights to have legal representation or a support person. The section stipulates that the relevant persons are a child about whom a power is to be exercised or decision made, the child's parents or siblings and, if applicable, a person who has been granted long-term guardianship of the child pursuant to an order under section 61(f)(i) or (ii) (a long-term guardian) to care for the child. Section 5D will not apply to a court.

5E Obtaining child's views

In addition, to section 5D, there are other provisions of the Act that specifically require a decision-maker to obtain the views of a child. The new section 5E provides principles for obtaining the views of a child including communication and assistance to be offered to the child.

However, it stipulates that a child cannot be required to express a view. Section 5E will not apply to a court.

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

Clause 8 amends the heading of section 6 by omitting "Provisions" and inserting "Recognised entities and decisions".

Insertion of new ch 1, pt 2, div 2 hdg

Pursuant to *clause 8, clause 9* inserts a new heading for Chapter 1, Part 2, "Division 2 Administration".

Amendment of s 9 (What is *harm*)

Clause 10 amends section 9, which defines harm and explains how harm can be caused, by inserting a new subsection (4). Subsection (4) clarifies that harm can be caused by a single act, omission or circumstance or multiple different acts, omissions or circumstances. The acts, omissions or circumstances may apply at particular point in time or over an extended period, as well as the same acts, omissions or circumstances being repeated over time.

Amendment of s 11 (Who is a parent)

Clause 11 amends the editor's note to insert "chapter 2, part 3AA, (see section 51AA)," after "(see section 37)". This amendment has been made to include in the editor's note reference to new section 51AA, Meaning of parent in pt 3AA.

Amendment of s 13 (What is effect of guardianship)

Clause 12 replaces the word "welfare" with the word "wellbeing". Removing the concept of welfare and replacing it with wellbeing reflects a more holistic approach to the child.

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

Clause 13 amends s14(2). Section 14(2) obliges departmental officers who receive information about harm to a child, and who believe the harm has

involved the commission of a criminal offence, to notify the police. The amendment clarifies that the obligation to inform police arises whether or not the statutory threshold that requires departmental officers to investigate allegations of harm to the child under section 14(1) has been met and whether an allegation has been investigated.

Replacement of s 15 (Child's parents to be told about allegation of harm and outcome of the investigation)

Clause 14 omits section 15 and inserts a new section 15. The new section 15 will maintain in subsection (2) the obligation, when an allegation of harm or risk of harm to a child is investigated or a child's need for protection is assessed, to contact at least one of the child's parents and give them details of the alleged harm and the outcome of the investigation.

However, the new subsection (3) extends the obligation where there is in place a child protection order under the Act appointing a suitable person (including a relative) as a long-term guardian of a child. In this case, the allegation of harm investigated relates to the long-term guardian's care of the child. The obligation will be satisfied where the department has contacted the child's long-term guardian, or at least one of the long-term guardians and made reasonable efforts to contact at least one of the child's parents.

The new subsection (3) requires the officer to advise, on completion of an investigation, the long-term guardian, or at least one of the long-term guardians, about the outcome of the investigation. The section also obliges the officer to tell or make reasonable efforts to tell at least one of the child's parents, in addition to the long-term guardians or at least one of the long-term guardians. However, because the parents of a child with a long-term guardian may not be involved in their child's life, the obligation in new subsection (3) to tell the parents is subject to whether that would be in the child's best interests having regard to the child's connection with their parents, the evidence in support of the allegation of harm to the child and any other relevant matters.

Subsection 15(4) limits the obligation to provide information to a parent or a long-term guardian under section 15(2) or (3) if someone may be charged with a criminal offence for the harm to the child and providing information may jeopardise an investigation into that offence. In that case, the obligation to provide information will be limited to what the officer investigating the allegation of harm or assessing the child's need of

protection considers reasonable and appropriate in the particular circumstances.

The new subsection (5) will oblige the officer to document in detail any efforts by the officer to contact the child's parents under subsection (3)(a) where they are unable to advise them of the allegations or the outcome of the investigation into those allegations.

The effect of the amendment is that where a notification of harm or risk of harm is made concerning a child subject to a long-term guardianship child protection order to a suitable person (including a relative), the guardian should be treated as a parent for the investigation and assessment phase as the investigation specifically concerns the long-term guardianship arrangement and directly arises out of the relationship between the guardian and the child.

The amendment reflects the reality that parents of children on child protection orders may not have had ongoing contact with the department and in some cases (e.g child abandonment) may never have engaged with the department. Further, in the case of children on long-term guardianship child protection orders, parental contact with the department may cease entirely. The amendment balances the department's obligations to parents under the Act and the constraints upon the department contacting parents in such situations against the preservation of parental rights. The amendment extends the department's obligations to parents to include long-term guardians without eroding the obligations to natural parents.

Amendment of s 17 (Contact with children in school, child care centre, family day care etc.)

Clause 15 amends section 17. Section 17 provides for the situation where authorised officers or police who are investigating an allegation of harm have contact with the child at their school or place where they are receiving child care and parents have not given prior consent. The officer is required to tell at least one of the parents of the contact and the reasons for the contact as soon as practicable after the contact.

The amendment, which includes a long-term guardian as a parent, recognises that, when a long-term guardian is appointed under the Act, it is they who have day to day responsibility for the child. In that case, a concern which gives rise to contact with the child at school etc, without prior notice to, or consent of, a parent would be a concern about the long-term guardian. Therefore, the long-term guardian, instead of the

natural parents, should, where appropriate, be informed of the exercise of investigative power by police or authorised officers. Note that section 15 provides for the parents and long-term guardians to be informed about the allegation of harm and outcome of an investigation.

Amendment of s 18 (Child at immediate risk may be taken into custody)

Section 18 empowers an authorised officer or a police officer who is investigating an allegation of harm to take a child into the chief executive's custody when the officer believes the child is at risk and likely to suffer harm if not taken into custody immediately. The officer must apply for a temporary assessment order for the child as soon as practicable.

Clause 16 amends section 18 so that a child may be taken into custody at any time by an authorised officer or a police officer, but only if the officer believes the child is at risk of harm and likely to suffer harm if not taken into custody immediately. Section 18 will require the officer to apply, as soon as practicable, for either a temporary assessment order or a temporary custody order. The custody of the child ends when the application for a temporary assessment order or a temporary custody order is decided or after eight hours elapses after the child is taken into custody, whichever occurs first.

Replacement of s 20 (Officer's obligations on taking child into custody)

Clause 17 omits section 20 and inserts a new section 20 and a new subsection (4). The section sets out the chief executive's obligations to the parents of a child when the child has been taken into custody under section 18.

Under new section 20, an authorised officer or police officer who takes a child into custody under section 18 will be required to tell at least one of the parents of the child that the child has been taken into custody, the reasons and when the custody ends. If there is a long-term guardian for the child, the requirement will differ in that the officer will be required to take reasonable steps to tell the same information to at least one long-term guardian of the child and make a reasonable attempt to tell, at least one of the child's parents.

The current obligation to tell the child about his or her being taken into the chief executive's custody remains under the new subsection 20(2) and (3).

The current obligation to tell the chief executive that the child has been taken into custody and where the child has been taken remains, but under new subsection 20(2)(c), the officer will also be required to tell the chief executive the reasons the child has been taken into custody.

New subsection (4) specifies that neither subsection (2) nor (3) require the officer to tell the child's parents or long-term guardians in whose care the child has been placed.

New subsection (5) refers to the officer's obligation, under new subsection 20(3)(b), to make a reasonable attempt to tell at least one of the child's parents that the child has been taken into custody, the reasons and when the custody ends. New subsection (5) applies when the officer, making reasonable attempts, has been unable to tell the parents the information required to be told under subsection 20(3)(b) and subsection (6) requires the officer to document full details of the actions taken in making the reasonable attempts.

The impact of new section 20 is similar to the amendment in section 15 in *clause 14* to the extent that the guardian will be treated as a parent.

The amendment reflects the reality that parents of children on child protection orders may not have had ongoing contact with the department and in some cases (e.g child abandonment) may never have engaged with the department. Further, in the case of children on long-term guardianship orders, parental contact with the department may cease entirely. The amendment balances the department's obligations to parents under the Act and the constraints upon the department in contacting parents in such situations against the preservation of parental rights. The amendment extends the department's obligations to parents to include long-term guardians without eroding the obligations to natural parents.

Amendment to s 21A (Unborn children)

Clause 18 amends s 21A of the Act which provides that if, before the birth of a child, the chief executive reasonably suspects the child may be in need of protection after birth, the chief executive must take appropriate action. The amendment inserts new subsections (3) and (4) and renumbers the current subsection (3) as subsection (5). New subsection (3) requires the department to consult with the appropriate Recognised Entity when assessing the likelihood an unborn Aboriginal or Torres Strait Islander child will be in need of protection after birth and in offering help and support to the pregnant woman. In keeping with the stated purpose of

section 21A, expressed in the renumbered subsection (5), of not interfering with the rights and liberties of the pregnant woman, new subsection (4) will specify that the obligation to consult with the Recognised Entity will be subject to the agreement of the pregnant woman to such consultation taking place.

The appropriate Recognised Entity is the Recognised Entity for the unborn Aboriginal or Torres Strait Islander child and, accordingly, the pregnant woman's cultural identity is not determinative. For example, the obligation to consult will arise where the unborn child is identified as an Aboriginal or Torres Strait Islander even though the mother may not identify as Aboriginal or Torres Strait Islander (i.e. where the father is Aboriginal or Torres Strait Islander).

Amendment to s 23 (Meaning of *parent* in pt 2)

Clause 19 amends section 23 which defines "parent" for the purposes of Part 2 of Chapter 2 of the Act dealing with temporary assessment orders. The effect of the amendment is that long-term guardians who are either relatives of the child or other suitable persons against whom allegations of harm are made regarding the child in their guardianship, have the same rights and protections as those afforded to a parent in relation to court proceedings under the Act.

The amendment clarifies the status of the suitable person appointed as the long-term guardian, pursuant to section 61(f)(i) or (ii), when a temporary assessment order is made in respect of a child in their care by specifically including the long-term guardian in the definition of "parent".

The current section 23(d)(i) and (ii) are unnecessary because each of the persons listed in subsections (a),(b) and (c) are parents. Sections 23(d)(i) and (ii) have been omitted and a new subsection (d) has been inserted which refers only to persons who are long-term guardians of a child [see *clause 92*, Amendment of Sch 3 (Dictionary) for definition of "long-term guardian"].

Amendment to s 25 (Making of application for order)

Clause 20 amends section 25 to be consistent with the omission of section 30 and insertion of a new section 30 and the insertion of new section 51AI (both of which set out procedures for special orders). Section 25 sets out the requirements for an application for a temporary assessment order. *Subclause (1)* omits the words "application must be sworn and state" and

inserts "officer must prepare a written application that states." Subsection (3) is renumbered as subsection (4) and a new subsection (3) is inserted which provides that the written application must be sworn.

Amendment to s 27 (Making of temporary assessment order)

Pursuant to section 27(2) the making of a temporary assessment order is contingent on the Court being satisfied that reasonable steps have been taken to obtain the consent of at least 1 of the child's parents or that it is not practicable to take steps to obtain the consent. *Clause 21* amends section 27(1) to remove "the consent of at least 1 of the child's parents" and inserts the words "appropriate parental consent". A new subsection 27(3) is inserted to provide that "appropriate parental consent" means either the consent of at least 1 of the child's parents or if there is a long-term guardian for the child, the consent of at least one of them.

The effect of the amendment is that, where there is a long-term guardian, provided reasonable steps have been taken to obtain the consent of at least one of the long-term guardians and the guardian has refused to consent to the department taking actions sought to be authorised by the temporary assessment order, then section 27(2) will be satisfied. There will be no requirement to obtain the consent of any other parent as defined in section 23. The Court's power to order that a parent not have contact with the child during the time the order is in effect, will extend to a long-term guardian.

Amendment to s 29 (Duration of temporary assessment orders)

Under section 29(2) of the Act, the duration of a temporary assessment order must not be more than 3 days after the day the order is made. *Clause 22* amends section 29 to make the duration of a temporary assessment order not more than 3 business days after the day the order is made.

Replacement of s 30 (Special orders)

Clause 23 omits section 30 and inserts a new section 30. Section 30 provides for an application for a temporary assessment order (under section 25) to be made by particular forms or communication where the circumstances are urgent or there are other special circumstances such as remoteness. The intent of new section 30 is the same as the section 30 to be replaced. The new section is being inserted for consistency, with updated language, with a similar new provision (new section 51AK) to be inserted for the temporary custody order.

Amendment of s 31 (Order – procedure before entry)

The amendment to section 31 is consequent to the insertion of the new section 30 to provide consistency of language. *Clause 24* omits the words, "facsimile order or order form mentioned in section 30(6)" and inserts "duplicate order under section 30(5), a copy of the duplicate order".

Amendment of s 32 (Explanation of temporary assessment orders)

Section 32 requires an applicant for a temporary assessment order, immediately after the order has been made, to give a copy of the order to at least 1 of the child's parents, explain the terms and effect of the order and inform the parent of their right to appeal.

Clause 25 amends section 32 so that, if the child has a long-term guardian, the applicant must, immediately after the order has been made, give a copy of it to at least one of the long-term guardians that a temporary assessment order has been made in respect of a child under their guardianship, explain the terms and effect of the order and inform them of their right to appeal.

Further, the amendment establishes that, where there is a long-term guardianship order in place, the department's obligations to give at least one of the parents a copy of the temporary assessment order, an explanation of the order and advice of appeal rights will be satisfied where the department has made reasonable efforts to comply. If they are unsuccessful full details about their efforts must be documented. References to parent/s in the current section 32(1)(a) are taken to be references to parent/s other than a long-term guardian.

The amendment reflects the reality that parents of children on child protection orders may not have had ongoing contact with the department and in some cases (e.g child abandonment) may never have engaged with the department. Further, in the case of children on long-term guardianship orders, parental contact with the department may cease entirely. The amendment balances the department's obligations to parents under the Act and the constraints upon the department contacting parents in such situations against the preservation of parental rights. The amendment extends the department's obligations to parents to include long-term guardians without eroding the obligations to natural parents.

Clause 25 amends section 32(c)(ii) by amending the editor's note from 3 days to qualify 3 business days.

Amendment of s 34 (Extension of temporary assessment orders)

Section 34 relates to the Court's power to grant an extension to a temporary assessment order until the end of the next business day after it would have otherwise ended, but only if the magistrate is satisfied the authorised officer applying for the extension intends to apply for a court assessment order or a child protection order within the extended term. Otherwise, section 34(5) provides that the temporary assessment order may not be extended beyond 3 days after it was made. *Clause 26* amends section 34(5) to provide that, in the same circumstances, the temporary assessment order may not be extended beyond 3 business days after it was made. This is consistent with the amendment to section 29(2).

Amendment of s 37 (Meaning of *parent* in pt 3)

Section 37 defines "parent" for the purposes of Part 3 of Chapter 2 of the Act dealing with court assessment orders. *Clause 27* amends the definition of parent to include a relative or another suitable person appointed as a long-term guardian under the Act. The effect of the amendment is that long-term guardians (excluding the chief executive) against whom allegations of harm are made regarding the child in their guardianship, have the same rights and protections afforded to a parent in relation to court proceedings under the Act.

The amendment clarifies the status of the suitable person appointed as the long-term guardian when a court assessment order is taken out in respect of a child in their care by specifically including the long-term guardian in the definition. Section 37(c) is amended to clarify that persons granted custody or guardianship under the *Child Protection Act 1999* are not captured as parents under that paragraph.

Section 37(d)(i) and (ii) are unnecessary because each of the persons listed in sections 37(a), (b) and (c) are parents, regardless of whether the child is in a person's custody or guardianship, and those sections have been removed and replaced so that section 37(d) refers only the long-term guardians.

The definition is consistent with the definition of "parent" for the purposes of granting a temporary assessment order, temporary custody order and child protection order. See *clause 19* which amends the definition of "parent" in section 23 in relation to temporary assessment orders, *clause 39* which amends the definition of "parent" in section 52 in relation to child

protection orders and *clause 30* which inserts the definition of "parent" in section 51AA in relation to temporary custody orders.

Amendment of s 38 (Purpose of pt 3)

Section 38 of the Act provides the purposes for the making of court assessment orders. *Clause 28* amends the editor's note in section 38(2)(b) from 3 days, to qualify '3 business days'. This is consistent with the amendment to section 29 in *clause 22*.

Amendment of s 41 (Notice of application)

Section 41 of the Act requires that applicants for court assessment orders must serve a copy of the application on each of the child's parents. That obligation will remain. *Clause 29* amends section 41 to omit subsection (1) and insert a new subsection (1) which provides for applications when there is a long-term guardian of the child. In that case, new subsection (1)(a) retains the obligation personally to serve the application on at least one of the child's parents.

New subsection (1)(b) provides for the circumstance where there is a long-term guardian for the child and requires that the applicant must personally serve each long-term guardian (excluding the chief executive) for the child, and they will also have to serve or make a reasonable attempt to serve each of the child's parents.

The effect of the amendment is that long-term guardians are served with applications for court assessment orders in relation to children under their guardianship in situations where it is alleged the long-term guardian has failed in their obligations to protect the child.

Further, new subsection (2) provides that if the applicant is unable to serve the parents personally (other than the long-term guardian), by making reasonable attempts, the applicant must fully document the actions taken to effect service. The effect of the amendment is that where there is a long-term guardianship order in place, the department's obligations to serve a copy of the application for the court assessment order on parents (other than the long-term guardian) will be satisfied where the department has made reasonable efforts to locate the parents, which efforts must be documented.

The amendment reflects the reality that parents of children on child protection orders may not have had ongoing contact with the department

and in some cases (e.g child abandonment) may never have engaged with the department. Further, in the case of children on long-term guardianship orders, parental contact with the department may cease entirely. The amendment balances the department's obligations to parents under the Act and the constraints upon the department contacting parents in such situations against the preservation of parental rights. The amendment extends the department's obligations to parents to include long-term guardians without eroding the obligations to natural parents.

Amendment of s 45 (Provisions of court assessment order)

Clause 30 amends section 45 of the Act. Under section 45(1)(d) of the Act, the Court, as part of a court assessment order, may make provision about a child's contact with the child's family during the chief executive's custody of the child and may require the chief executive to supervise the family contact with the child. *Clause 30* inserts new subsection 45(2) which provides that, before making an order under s 45(1)(d), the Court must consider the views of the chief executive about the child's contact with the child's family, including whether any contact should be supervised and the duration and frequency of any contact with the child.

Insertion of new ch 2, pt 3AA

Clause 31 inserts a new "Part 3AA Temporary custody orders", into Chapter 2 to provide for an authorised officer to apply to the Court for, and for the Court to make, a temporary custody order. Part 3AA comprises new sections 51AA to 51AB in Division 1, new sections 51AC to 51AJ in Division 2 and new sections 51AK to 51AM in Division 3 which provide the framework for the granting of temporary custody orders.

Division 1 Preliminary

51AA Meaning of *parent* in pt 3AA

Section 51AA provides a definition of "parent" for the purposes of granting a temporary custody order. The definition is consistent with the definition of "parent" for the purposes of granting a temporary assessment order, court assessment order and child protection order. See also *clause 19* which amends the definition of "parent" in section 23 in relation to temporary assessment orders, *clause 27* which amends the definition of "parent" in

section 37 in relation to court assessment orders and *clause 40* which amends the definition of "parent" in section 52 in relation to child protection orders.

51AB Purpose

Section 51AB sets out the purpose of Part 3AA which is to provide for the making of temporary custody orders. The order is to authorise the applicant to take actions necessary to secure the immediate safety of a child pending a decision by the chief executive of what further action is necessary to meet the child's protection and care needs.

Division 2 Applications for, and making and effect of, temporary custody orders

51AC Making of application for order

Section 51AC, subsection (1), provides that an authorised officer may apply to a magistrate for a temporary custody order. Under subsection (2), the application must be sworn and state the grounds for the order, the nature of the order being sought and the proposed arrangements for the child's care during the term of the order. Subsection (3) allows the magistrate to refuse to consider the application until the applicant has given the magistrate all of the information the magistrate requires in the way the magistrate requires it.

51AD Deciding application

Section 51AD empowers the magistrate to make a temporary custody order without notifying the child's parents about the application or hearing them on the application. At the point an authorised officer applies to the Court for a temporary custody order, the applicant may have taken the child into the custody of the chief executive under section 18 of the Act within the previous 8 hours in the belief that the child was at risk and likely to suffer harm if the officer did not immediately take the child into custody.

51AE Making of temporary custody order

The circumstances for making a temporary custody order are in section 51AE and are that the magistrate is satisfied that the child is at risk of harm

and likely to suffer harm if the order is not made and that during the term of the order, the chief executive will be able to decide the most appropriate action to meet the child's ongoing protection and care needs and start taking the action.

51AF Provisions of temporary custody order

Section 51AF, subsection (1), sets out the provisions which a magistrate may consider appropriate to include in a temporary custody order. The provisions include authorising an authorised officer to have contact with the child, to take into, or keep the child in, the chief executive's custody during the term of the order, authorising medical examination or treatment for the child, directing a parent not have contact or unsupervised contact (direct or indirect) with the child. Under subsection (2), a temporary custody order may also authorise an authorised officer or police officer to enter and search any place they reasonably believe the child is to find the child if the magistrate is satisfied entry to a place is likely to be refused or entry and search is otherwise justified and it is necessary for the effective enforcement of the order. Subsection (3) authorises an authorised officer or police officer, on entering a place, under section 51AF(2) to remain in the place as long as necessary for exercising the office's powers under the section. Subsection (4) empowers an authorised officer or police officer to exercise powers under the order with the help and using the force that is reasonable in the circumstances.

51AG Duration of temporary custody orders

Under section 51AG, subsection (1), a temporary custody order must state the time when it ends. Subsection (2) sets the term for the order at not more than 3 business days after the order is made. Subsection (3) provides that the order ends unless it is extended. Subsection (4) specifies that, in any case, the order ends when the child turns 18 years of age.

51AH Extension of temporary custody orders

Section 51AH, subsection (1) provides for an authorised officer to apply for an extension of a temporary custody order and under subsection (2) the application for an extension is, with all necessary changes, treated as if it were an application for a temporary custody order. Subsections (3)-(5) provides that the order may be extended only once and only if it has not expired, that it may be extended if the magistrate is satisfied that, within the

extended term, the officer intends to apply for a child protection order for the child otherwise the order may not be extended to a time more than three business days after it was made.

51AI Application by particular forms of communication and duplicate order

Section 51AI allows for temporary custody orders to be made under special circumstances and sets out the process to be followed. This section contemplates a case where a child has been taken into the chief executive's custody under section 18 to secure the child's immediate safety and the custody will end when an application for a temporary custody order is decided or 8 hours after taking the child into custody whichever is the earlier.

Section 51AI empowers an authorised officer to apply for an order by telephone, fax, radio or another form of communication when the officer considers it is necessary because of urgent circumstances or remote location. This may be necessary in many circumstances when an officer is unable to go to the magistrate to obtain the order, eg when the application must be made over the weekend to a magistrate on call, or when the officer is in a location some distance from the courthouse.

Section 51AI sets out the process to be followed including the officer preparing the application, the magistrate making the original order only if satisfied it was necessary to make the application in the particular form. After the magistrate makes the order, if there is a reasonable practicable way of immediately giving a copy to the applicant officer, the magistrate must immediately do so. Otherwise, the magistrate must advise the officer of the time, date and terms of the order and the officer must complete a form of the order, which will be the duplicate order effectual as the original order, with the magistrate's name and the date and time the magistrate made the order. The officer must, at the first reasonable opportunity, send to the magistrate the sworn application and the duplicate order, if there is one. When the magistrate receives the duplicate order and application form, the magistrate must attach these documents to the original order and provide them to the clerk of the relevant magistrates court. If an issue arises in a proceeding about the exercise of a power under the order and the original order is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove the order authorised the power.

51AJ Order – procedure before entry

Section 51AJ provides the procedure to be followed by an authorised officer or police officer intending to enter a place under the authority of a temporary custody order. Before entering a place, the officer must, or make a reasonable attempt to, identify himself or herself to the occupier including by producing an identity card, give the person a copy of the order so far as it relates to the entry and search powers, and inform them that the order permits the officer to enter and search the place to find the child who is the subject of the order. The person must be given an opportunity to allow the officer entry. The officer need not follow this procedure if the officer reasonably believes that immediate entry is necessary to ensure the powers granted under the order are not frustrated.

Division 3 Other provisions about temporary custody orders

51AK Explanation of temporary custody orders

Section 51AK(2) requires the applicant for the order, as soon as it is made, to provide at least one of the child's parents with a copy of the order, explain the terms and effect of the order and rights of appeal, including how to appeal.

Section 51AK(3) applies if there is a child protection order in force for the child granting long-term guardianship to a relative of the child or another suitable person. In the case, the applicant must provide them with a copy of the order, explain the terms and effect of the order and rights of appeal, including how to appeal. The applicant must also provide, or make a reasonable attempt to provide, the child's parents with the same information. If the applicant makes a reasonable attempt to provide the information to the parents but is unable to do so, the applicant must document full details of the actions taken in making the attempt.

In every case, the officer must tell the child who is the subject of the order about the order.

51AL Variation of temporary custody orders

Section 51AL empowers an authorised officer to apply to a magistrate for a temporary custody order to be varied. An application will be made and decided as if it were an application for a temporary custody order.

51AM Effect of temporary custody order on existing child protection orders

Under section 51AM, if a temporary custody order is made for a child who is already the subject of a child protection order, and there is any inconsistency between the orders, the temporary custody order prevails. For example, there may be in place a supervision order under section 61(c) for the child to live with his or her parents while the chief executive supervises the child's care. The temporary custody order may order, under section 51AF(1), that the child be taken into the chief executive's custody and it may direct a parent not to have contact with the child. The terms of the temporary custody order will prevail.

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

Clause 32 amends section 51D to omit the Editor's note.

Amendment of s 51F (Meaning of parent in Part 3A)

Clause 33 amends the definition of parent in s 51F to align the definition with sections 23, 37, 51AA and 52.

Amendment of s 51Q (Dealing with a case plan developed at a meeting)

Clause 34 amends section 51Q of the Act. Presently, section 51Q provides that within 7 days after a case plan is developed at a case planning meeting, the chief executive must endorse the plan unless section 51R of the Act applies. *Clause 34* amends section 51Q by omitting "7 days" and inserting "10 business days" to extend the period within which a case plan developed at a case planning meeting must be endorsed unless section 51R applies.

Amendment of s 51V (Plan must be reviewed)

Clause 35 amends section 51V of the Act by omitting the heading and inserting a new heading, "Review of plan – no long-term guardian".

Currently, section 51V(3) provides that all case plans must be reviewed at least every 6 months. *Clause 35* renumbers subsections 51V(1) to (4) as 51V(2) to (5). A new subsection (1) is inserted which specifies that section 51V applies if the child does not have a long-term guardian (other than the chief executive). *Clause 36* inserts a new section 51VA to deal with case plan reviews for long-term guardians to someone other than the chief executive.

Insertion of new s 51VA

Clause 36 inserts a new section, "51VA Review of plan – long term guardian", which applies when a child has a long-term guardian. As case plan reviews under s51V will no longer apply for a child who is the subject of a long-term guardianship order to someone other than the chief under, section 51VA requires the chief executive to make contact with the child at least every 12 months so that the child can comment on or make a request for a review of their case plan and the guardian must allow such contact. The nature and duration of the contact will depend on the particular circumstances of the individual case. At any time, the child or the guardian may ask the chief executive to review the child's case plan. However, the chief executive may decide not to review the case plan if it would not be appropriate in all the circumstances. Situations where the chief executive may decide that a case plan review is not appropriate include, for example, when a case plan review has recently been conducted and the child's circumstances have not changed significantly since the plan was finalised. Otherwise, the chief executive must review the case plan and prepare a revised case plan and a report about the review under section 51X.

The decision of the chief executive not to conduct a case plan review upon request by the child or guardian will be a reviewable decision under Schedule 2 of the Act and the chief executive must give written notice of the decision to the person who made the request and, if the child made the request, the long-term guardian. The notice must comply with section 157(2) of the *Queensland Civil and Administrative Tribunal Act 2009* which defines what the notice must include.

Insertion of new ch 2, pt 3A, div 6

Clause 37 inserts a new division, "Division 6 Particular evidence inadmissible in criminal proceedings", into Chapter 2, Part 3A to provide for particular evidence to be inadmissible in criminal proceedings. Part 3A, division 6 comprises sections 51YA and 51YB.

51YA Evidence of anything said or done at family group meetings

New section 51YA aims to ensure, that in the interests of the care and protection of their child, parents can hold open discussions at family group meetings without fear of what they say being used in any criminal proceedings before a court. This is subject to two exceptions, specifically, that evidence will be admissible in criminal proceedings with consent of all persons participating in the meeting or in a proceeding for an offence committed during the meeting.

51YB Evidence of anything recorded in a case plan

New section 51YB aims to ensure, that in the interests of the care and protection of their child, parents can hold open discussions at a family group meeting without fear of what is recorded in a case plan being used in any criminal proceedings before a court, other than with the consent of all persons mentioned in the case plan.

Amendment of s 51ZE (Entering an agreement)

Section 51ZE provides that parents can enter into an assessment care agreement with the chief executive to allow their child to be placed in out-of-home care for up to 30 days. *Clause 38* amends section 51ZE by inserting new subsections (4), (5) and (6). The amendment allows the chief executive to enter into an assessment care agreement with the consent of only one of a child's parents if it is impractical to obtain the consent of both parents or the chief executive has made reasonable attempts to obtain the consent of the other parent. If the chief executive enters an assessment care agreement with one parent with the consent of the other parent, the chief executive must make a reasonable attempt to give a copy of the agreement to the other parent and to obtain their consent after the agreement is made. However, the chief executive may not enter an assessment care agreement with the consent of only one parent if another parent has refused consent.

The effect of the amendment is that the signature of the parent with whom the child resides is sufficient to support an assessment care agreement, provided the department has made diligent efforts to obtain the consent of the other parent prior to accepting one parent's signature or, in the event this is not practicable, attempts to obtain the consent of the other parent as soon as practicable after the agreement has been entered into and gives them a copy of the agreement. As with any action undertaken pursuant to

the Act, the best interests of the child will be the paramount consideration in determining practicability of obtaining the consent of the other parent, e.g., if the other parent cannot be contacted immediately and the child's best interests require that they be removed temporarily from the parent with whom they reside.

Amendment of s 51ZI (Ending an agreement)

Clause 39 amends section 51ZI by inserting a new subsection (2) which gives the non-signatory parent to an assessment care agreement capacity to end the agreement. This will enable a parent, for example who does not reside with the child, has not had contact with the department prior to the agreement being entered into, and who is willing and able to care for the child to terminate the agreement and take the child to reside with them.

Amendment of s 52 (Meaning of *parent* in pt 4)

Section 52 defines "parent" for the purposes of Part 4 of the Act dealing with child protection orders. *Clause 40* amends the definition of parent to include long-term guardians appointed under the Act. The effect of the amendment is that long-term guardians who are relatives of a child or other suitable persons (excluding the chief executive) against whom allegations of harm are made regarding the child in their guardianship, have the same rights and protections afforded to a parent in relation to court proceedings under the Act.

The amendment clarifies the status of the suitable person appointed as the long-term guardian when a child protection order is taken out in respect of a child in their care by specifically including the long-term guardian in the definition. Section 52(c) is amended to clarify that persons granted custody or guardianship under the *Child Protection Act 1999* are not captured as parents under that paragraph.

Section 52(d)(i) and (ii) are unnecessary because each of the persons listed in sections 52(a),(b) and (c) are parents, regardless of whether the child is in a person's custody or guardianship, and have been removed and replaced so that section 52(d) refers only to long-term guardians (other than the chief executive).

The definition is consistent with the definition of "parent" for the purposes of granting a temporary assessment order, temporary custody order and court assessment order. See also *19* which amends the definition of "parent" in section 23 in relation to temporary assessment orders, *clause 27*

which amends the definition of "parent" in section 37 in relation to court assessment orders and *clause 31* which inserts the definition of "parent" in section 51AA in relation to temporary custody orders..

Amendment of s 59 (Making a child protection order)

Clause 41 amends section 59 of the Act by inserting a new subsection (2) which provides that the Childrens Court may have regard to any contravention of the Act or an order made under the Act when deciding whether to make a child protection order.

A new subsection (3) is also inserted. The Court may only make a child protection order if, in addition to the other criteria in section 59, it is satisfied that there is a case plan for the child that has been developed or revised under Part 3A and is appropriate for meeting the child's assessed protection and care needs. The process for developing a case plan includes obtaining input at a family group meeting from the child, their parents and significant persons (including legal representatives). Case plans form the basis for ongoing intervention and guide what needs to occur to address the child's protection and care needs. The case plan includes key information about the child and records the roles and responsibilities of all participants in addressing the child's protection and care needs during ongoing intervention. New section 59(3) provides that when the Childrens Court is deciding whether a case plan is "appropriate", it is not relevant whether or not all persons who participated in the development or revision of the plan agreed with the plan.

A new subsection (8) is also inserted into section 59. The effect of this amendment is that where a short-term child protection order has been made under section 61(d) granting custody to the chief executive or a suitable person or (e) granting short-term guardianship to the chief executive and the Court is considering extending the order or making a further short-term order, the Court will be required to take into account in making its decision how the order will affect the child's need for security and stability. This requirement applies in any situation where the Court is deciding whether to extend the existing order or make a new short-term order, including where the Court is considering such action of its own accord irrespective of what orders the department or other parties are seeking. The amendment reflects the department's focus on children's need for stability and permanency.

Amendment of s 61 (Types of child protection orders)

Section 61 of the Act sets out the types of child protection orders the Court may make. *Clause 42* amends section 61 to clarify that the Court may make one or more child protection orders in respect of the same child protection application that it considers appropriate in the circumstances. This enables the Court to make orders which combine in the best way to ensure the safety of a child, for example, by making a directive order requiring a parent to perform a stated task, such as attending counselling or rehabilitation services while their child continues living with them, as well as a supervision order allowing the department to supervise the parent's compliance with the directive order.

Amendment of s 65 (Variation and revocation of child protection orders)

Section 65 provides that a child, their parent or an authorised officer may apply to the Court for a variation to, or revocation of, a child protection order.

The Court may revoke an order if it is satisfied the order is no long necessary to protect the child. If the order is a long-term guardianship order the child and the guardian may have formed a strong attachment over time and, while stability is important for a child, section 65 does not provide for their relationship to be taken into account when the Court is considering revoking the order. *Clause 43* inserts a new subsection (7) which will require the Court to have regard to the child's need for emotional security and stability when it is considering a application for revocation of a long-term guardianship order to a relative or another suitable person.

The question of whether the child is in need of protection will not be solely determinative of the revocation application but rather is one of the factors to be balanced by the Court. Requiring the Court to consider the child's need for emotional security and stability, even where a parent considers their rights have been over-ridden, will enhance the stability of long-term guardianship arrangements.

The new subsection (7) also provides that when deciding an application for revocation of an order the Court may have regard to a contravention of the child protection order or the Act.

Insertion of new ch 2, pt 4, div 4

Clause 44 inserts a new division, "Division 4 Transition orders", into Chapter 2, Part 4 to provide for an authorised officer to apply to the Court for, and for the Court to make, a transition order. Part 4, division 4 comprises sections 65A to 65D which provide the framework for the granting of transition orders.

65A Court may make transition order

Subsection (1) sets out when the section applies. Subsection (1)(a) provides the section applies if a court in relation to a child protection order made under section 61(d) granting custody to a suitable person who is a relative of the child or (e) granting short-term guardianship to the chief executive, refuses to extend the order or grant a further order before the order ends, or revokes the order, or decides an appeal against the making of the order in favour of a person other than the chief executive. Subsection (1)(b) provides the section may also apply where, in relation to a child protection order under section 61(f) granting long-term guardianship to a suitable person or the chief executive, the Court revokes the order or decides an appeal against the making of the order in favour a person other than the chief executive.

Subsection (2) provides the Court with the power to make a transition order that the existing child protection order ends on a later day stated in the transition order. If the Court decides to make a transition order, the Court must state in the order the new end date of the existing child protection order.

Subsection (3) provides that the Court may make a transition order on the Court's own initiative. Alternatively, a party to the proceeding may apply for a transition order either orally or in the approved form.

Subsection (4) provides that when a court adjourns the proceeding before deciding an application for a transition order, the child protection order continues in force for the period of the adjournment until the application is decided, despite the Court's decision in subsection (1) to end the child protection order.

Subsection (5) provides that the day stated in the transition order as the day on which the child protection order ends may not be more than 28 days after the day of the Court's decision under subsection (1). Accordingly, the maximum period of a transition order is 28 days. This includes any

adjournment period the Court may grant before deciding an application for a transition order.

Subsection (6) provides that the Childrens Court may make a transition order in a proceeding only once. This clarifies that a transition order may not be extended and may be made only once in respect of the one proceeding.

65B Grounds for making transition order

Section 65B sets out the circumstances in which the Court may make a transition order. Subsection (1) provides that the Court must be satisfied the order is necessary to allow for the gradual transition of the child into the care of the child's parents in a way that supports the child and may reduce any disruption or distress experienced by the child. The Court must also be satisfied the order is in the best interests of the child.

Subsection (2) provides when the Court is deciding whether to make the order, the Court must have regard to the child's wishes and views, if able to be ascertained and the parent's readiness to care for the child. A parent may have moved from the family home and may not have the immediate ability to house the child.

The Court may also have regard to any other information it believes is relevant to the circumstances.

65C Effect of stay of decision about child protection order

Section 65C provides for the automatic revocation of a transition order in the event a party appeals to the appellate court against a decision mentioned in section 65A(1) and the appellate court decides to stay the decision appealed against under section 119 of the Act. A transition order made in relation to the decision in section 65A(1) ends on the day the decision is stayed under section 119 of the Act.

65D Transition plans

Section 65D provides that if the Court makes a transition order, the chief executive must prepare a plan for the period of the order that states how the chief executive intends to provide for the support and gradual transition of the child into the care of the child's parents. For example, the plan might specify that the child is to be reunified with the family in a staged manner starting with daily contact and the progressive return of the child's personal

belongings to the home. The plan must also include any matters prescribed under a regulation for inclusion in the plan.

Amendment of s 67 (Court's powers to make interim orders on adjournment)

Section 67 provides for the orders the Court may make on adjournment of an application for a court assessment order or a child protection order for a child. If the application is for a child protection order, the Court may grant temporary custody of the child to the chief executive or a suitable person who is a member of the child's family. The Court may also make an order directing a parent of the child not to have contact or unsupervised contact with a child.

Clause 45 amends section 67(1) of the Act by providing that a court may make any one or more of the interim orders provided in section 67 on the adjournment of the proceeding.

Clause 45 further amends section 67 of the Act by inserting a new subsection 67(1)(c), renumbering subsections (2) and (3) as (5) and (6) and inserting new subsections (2), (3) and (4). New subsection (1)(c) provides for a new interim order authorising an authorised officer or police officer to have contact with a child on adjournment. This new order could be made by the Court when it does not make an order granting custody of the child to the chief executive. It will allow the department to monitor the child's safety during an adjournment when the child continues to reside with their parents or with another relative.

New subsection (2) will allow the court also to make an interim order authorising an authorised officer or police officer to enter and search any place they reasonably believe the child is, to find the child. The order may be made if the Court is satisfied entry to a place has been, or is likely to be, refused or it is otherwise justified in the particular circumstances, and it is necessary for the effective enforcement of the order under section 67(1)(c). This power is consistent with the entry and search powers granted under sections 28 and 45 of the Act.

New subsection (3) authorises an authorised officer or police officer, on entering a place, under section 67(2) to remain in the place as long as the officer considers necessary for exercising the officer's powers under the section. New subsection (4) empowers an authorised officer or police officer to exercise powers under the order with the help, and using the force, that is reasonable in the circumstances.

Subsection (6), as renumbered, is inserted [in place of the existing subsection 67(3) to amend the definition of "parent" so that it includes long-term guardians appointed under the Act. The amendment will have effect when the chief executive is making an application for a child protection order with respect to a child already subject to a long-term guardianship child protection order, for example because allegations of harm have been made against the long-term guardian. The Court will be able to make the same interim orders under section 67, pending final determination of the application, against the long-term guardian as it would be able to make against a parent, e.g., an order not to have contact with the child. The Court will be able to safeguard the child by ensuring the long-term guardian is subject to the operation of interim orders.

Insertion of new s 67A

Clause 46 inserts a new section, "67A Order – procedure before entry", which provides the procedure to be followed by an authorised officer or police officer intending to enter a place under an authority granted by the Court as an interim order under section 67(2). New section 67A requires that an officer using a power of entry under the new interim order authorising contact with a child must follow the procedure generally required for the exercise of power of entry under a warrant.

Before entering a place, the officer must identify himself or herself to the occupier including by producing an identity card, give the person a copy of the order so far as it authorises the entry and search, and inform them that the order permits the officer to enter and search the place to find the child who is the subject of the order. The person must be given an opportunity to allow the officer immediate entry, but the officer need not follow this procedure if the officer reasonably believes that immediate entry is necessary to ensure the effective exercise of the powers granted under the order are not frustrated.

Insertion of new s 80A

Clause 47 inserts a new section, "80A Obligations if child is no longer cared for by long-term guardian", which provides new obligations for a long-term guardian. If a child subject of the long-term guardianship order, leaves the care of the guardian, section 80A will oblige the guardian to advise the chief executive in writing and to advise where the child is living, if the long-term guardian knows. This may arise where the relationship breaks down and the child is unable to live with the guardian. In the event

of being advised by a guardian that a child or young person has left their care, the chief executive must review the child's circumstances to determine what further action would be appropriate. This may include considering how the department can best support the young person's transition to independent living or, if the child is regarded as still being in need of protection, applying to the Court for revocation of the long-term guardianship order and seeking a further child protection order. The new obligation is an important aspect of ensuring children and young people continue to be cared for in the way anticipated by the Court when the order was made and, ensuring accountability for payments of carer allowances to long-term guardians.

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

Clause 48 amends section 95 to remove reference to "an individual, other than an approved carer, who has agreed to be the child's carer (the proposed carer)" and replaces it with "an individual other than an approved carer, who has agreed to care for the child (the proposed individual)". This will not change the application of the section, but it will avoid confusion between who would be included in the meaning of "proposed carer" and a person who is within the definition of "carer" (see note for *clause 93*, amendment to Sch 3 Dictionary, definition of "carer"). "Carer" refers (as amended) to a person "in whose care the child has been placed under section 82(1)". It is not intended that a person with whom a child might be placed as referred to in section 95(1)(b) would necessarily be a "carer". Therefore, "proposed individual" is more appropriate terminology.

Section 95(1)(b) is also amended to include an example of a person who may be a "proposed individual". A "proposed individual" may be used when the department is considering reunification of a child into the care of their parents and it may be helpful for the child to be cared for by another relative as an interim step. A proposed individual may also be used so that the child can have contact with family, or to provide respite to a child and carer. The example of a "proposed individual" inserted is a member of a child's family who will care for the child as part of a plan for the child's reunification with parents.

Sections 95(2)(a)(ii) and 95(2)(b) will also be amended to replace the "proposed carer" with the "proposed individual".

Section 95(3) enables the chief executive to obtain the criminal histories of a parent of a child, an adult member of the parents' household or an adult

against whom the allegation of harm or risk or harm to a child has been made. It also enables the chief executive to obtain the traffic infringement history of a parent. However, these powers only apply if an authorised officer is investigating an allegation of harm or risk of harm to the child or assessing the child's need of protection under section 14. Section 95(3) is amended to allow the chief executive to obtain a report about the criminal histories of those persons and about the traffic infringement history of a parent at any time a decision is being made about the child under the Act. For example, the information may be obtained when the chief executive is conducting an investigation of a notification about a child, or considering whether to allow the parents of a child in out-of-home care to have unsupervised or overnight access with their child (if it is not prohibited by an order), or whether a child should be reunited with his or her parents.

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

Clause 49 omits "section 18(6)" from the editor's note in section 97(1)(a)(ii) and inserts "section 18(7)". This amendment has been made to align with new sections numbers in section 18.

Amendment of s 99 (Custody or guardianship of child continues pending decision on application for order)

Clause 50 amends section 99 by omitting section 99(2) and inserting a new subsection (2) to clarify that it is the order granting the custody or guardianship of the child which continues until the application is decided, unless the Childrens Court orders an earlier end to the order.

Clause 50 also amends section 99 by inserting a new subsection (3) which clarifies the relationship between section 99 and interim orders under section 67 of the Act to make clear that orders under these two sections may operate concurrently.

Amendment of s99D (Principles for tribunal in matters relating to this Act)

Clause 51 amends section 99D to be consistent with the replacement of section 5 (see *clause 7*) to omit reference to "section 5" and insert "sections 5A to 5C'. The Queensland Civil and Administrative Tribunal will be required to have regard to the principles to the extent they are relevant.

Amendment of s99H (Constitution of tribunal)

Clause 52 amends section 99H(4)(a) to be consistent with the replacement of section 5 (see *clause 7*) to omit reference to "section 5" and insert "sections 5A to 5C'.

Replacement of s 104 (Court's paramount consideration)

Clause 53 replaces section 104 to be consistent with the replacement of section 5 (see *clause 7*). The Court in exercising its jurisdiction or powers will be required to have regard to the principles stated in new sections 5A to 5C to the extent they are relevant.. New subsection (2) will require the Court to state its reasons for its decisions.

Amendment of s 110 (Separate legal representation of child)

Clause 54 amends section 110 of the Act regarding separate legal representation for a child by inserting new subsections (4), (5) and (6).

Subsection (4) clarifies that the lawyer is not a party to the proceeding on the application but must do anything required to be done by a party and may do anything permitted to be done by a party.

Subsection (5) provides that the parties to the proceeding must act in relation to the proceeding as if the lawyer were a party to the proceeding.

Subsection (6) provides that the lawyer's role as the child's separate legal representative ends when the application is decided or withdrawn or, if there is an appeal in relation to the application, when the appeal is decided or withdrawn.

Amendment of s 113 (Court may hear submissions from non-parties to proceeding)

Section 113 provides that in an application for an order for a child, the Childrens Court may hear submissions from individuals who are not parties to the application. For example, the Court may hear submissions from a member of the child's extended family or another person the Court considers is able to inform it on any matter relevant to the proceeding. *Clause 55* amends section 113(1) and (2) to clarify that persons from whom the court may hear submissions under this section are non-parties.

Clause 55 also inserts a new subsection (3) to give the Court discretion, when it decides to hear a submission from a non-party, to grant the

non-party access to a document or other information before the court on the application being heard. As the material may contain sensitive information about children and their families, safeguards are included to protect the child's best interests and the privacy of any individual to whom the information on the court file relates. The Court must be satisfied that the document or information is relevant to a submission the non-party may make, and the non-party needs to view the document or information in order to make the submission, and it is in the child's best interests for the non-party to view the document or information, and that the person to whom the document or information relates has been informed that it may be viewed by the non-party and the person has been given a reasonable opportunity to make submissions to the Court about the non-party being allowed to view the document or information.

Amendment of s 117 (Who may appeal)

Clause 56 amends section 117(1) to include the new temporary custody order as an order in respect of which an appeal may be lodged by a child, parent or applicant. The definition of "parent", in subsection (3), is also amended to include long-term guardians. The definition is consistent with the definition of "parent" for the purposes of the provisions dealing with temporary assessment orders, court assessment orders and child protection orders (refer to *clauses 19, 27 and 40*)

Amendment of s 120 (Hearing procedures)

Clause 57 amends section 120(1) to include reference to the new temporary custody order so that, if an appeal is lodged against the granting of a temporary custody order, the appeal is not restricted to the material before the magistrate.

Amendment of s 122 (Statement of standards)

Clause 58 amends section 122(1) by omitting "section 82" and inserting "section 82(1). The effect of this amendment is that the statement of standards regulating the way a child must be cared for will apply to placements of children by the chief executive under section 82(1) and not section 82(2).

Amendment of s 126 (Restrictions on granting application)

Section 126 sets out the matters about which the chief executive must be satisfied before granting a licence to a corporation to provide care services to children in the custody or guardianship of the chief executive. *Clause 59* amends section 126 by omitting subsection (e) and inserting a new subsection (e) so that the requirement for grant of a licence will include that the standard of care provided by the applicant complies, and will continue to comply, with the statement of standards (section 122).

New subsections (g) and (h) are also inserted to create new additional requirements for granting a licence. Subsection (g) requires that the applicant corporation has a primary function which relates to the care of children in need of protection who are in the custody or guardianship of the chief executive. Subsection (h) requires that any accommodation provided to children in need of protection by the applicant corporation is, and will continue to be, at a place the applicant has a suitable right to occupy. The effect of the amendment is that the applicant corporation will provide suitable accommodation with appropriate tenure of premises. Examples are provided of a place that an applicant has a suitable right to occupy and a place that an applicant does not have a suitable right to occupy.

Insertion of new 129A

Section 130 of the Act places on the nominee of a licensed care service responsibility for ensuring that the service complies with the statement of standards, that persons engaged in relation to the provision of care services by the service are suitable, and that the licensee complies with Chapter 8, Screening for regulated employment and regulated businesses, of the *Commission for Children and Young People and Child Guardian Act 2000*.

Clause 60 inserts a new section, "129A Licensee's obligations", into the Act to place on the licensee (instead of the nominee) the responsibility for ensuring the service provided by the licensee complies with the standards of care in the statement of standards, that each person engaged by the licensee to provide care services is a suitable person, and that the licensee complies with Chapter 8, Screening for regulated employment and regulated businesses, of the *Commission for Children and Young People and Child Guardian Act 2000*.

Amendment of s 130 (Nominees)

Clause 61 amends section 130 by omitting subsection (1) and inserting a new section 130(1) whereby the nominee's responsibility is qualified. The nominee is responsible for ensuring the licensee complies with section 129A unless:

- if the nominee is in a position to influence the conduct of the licensee in relation to the licensee compliance, the nominee took reasonable steps to ensure the licensee complied with its obligations; or
- the nominee was not in a position to influence the conduct of the licensee in relation to the licensee's compliance with its obligations.

Amendment of s 136D (Issue of certificate)

Section 136B(3) of the Act specifies that a provisionally approved carer "living with his or her spouse may only hold a certificate (of approval to be a provisionally approved carer) jointly with the spouse." The period of provisional approval is up to a maximum of 90 days. Section 136D, Issue of certificate, sets out the process for issuing a certificate of approval for a provisionally approved carer. Subsection (4) requires the certificate to include the day on which it is due to expire. *Clause 62* amends section 136D by inserting a new subsection (7) which provides that if a provisionally approved carer begins living with a spouse after the issue of the certificate, but before the day it expires, the provisionally approved carer certificate continues to hold the certificate as an individual (despite section 136B) until the earlier of the expiry day or the day the provisionally approved carer is either issued with a certificate of approval as a foster carer or a kinship carer, or is refused a certificate as a foster carer or kinship carer.

Amendment of s 140AB (Definition for sdiv 3)

Clause 63 omits the definition of "disqualifying event" in section 140AB, Definitions for sdiv 3, and inserts a definition of "prohibiting event". The meaning of "prohibiting event" is the same as the meaning of "disqualifying event". This will not affect the administration of Chapter 4, Part 2, Division 4, Subdivision 3 of the Act.

Amendment of s 140AC (Immediate suspension)

Section 140AC, subsections (1), (2) and (5), contain the term "disqualifying event". In accordance with *clause 63*, *clause 64* amends subsections (1), (2) and (5) to omit "disqualifying event" and insert "prohibiting event".

Amendment of s 140AF (End of suspension)

Section 140AF, subsection (2) contains the term "disqualifying event". In accordance with *clause 63*, *clause 65* amends subsection (2) to omit "disqualifying event" and insert "prohibiting event".

Amendment of s 159 (Payments for care and maintenance)

Clause 66 amends section 159 which provides for the payment of allowances to carers. Section 159(1) is amended by extending the chief executive's power to pay carer allowances so that allowances may be paid to a child's carer or to a long-term guardian appointed under the Act.

Sub clause (2) renumbers section 159(3) and (4) as section 159(4) and (5). The new subsection (3) provides that the chief executive may make a payment towards the expenses incurred in the care and maintenance of a person who has been a child in the custody or guardianship of the chief executive to the person or the person's carer to help the person with the transition from being a child in care to independence. New subsection 159(3) provides that a payment under subsection (2) may be made to the person or the person's carer whether the person is a child or an adult. It is the intention of the section that the chief executive is able to make payments directly to a young person who is not yet 18 and might still be the subject of a child protection order under the Act but who has made their own arrangements regarding their accommodation. That is, they are no longer living with a carer or in a care service but still require the department's support to transition to living independently.

Amendment of s 159A (Purpose)

Clause 67 amends section 159A by inserting after the words 'needs of children' the words 'and promote their wellbeing' to reflect the objects of the Chapter and a more holistic approach to the child. This is consistent with amendments elsewhere in the Bill to the paramount principle (see

clause 7) and others which omit the word "welfare" and replace it with "wellbeing".

Amendment of s 159B (Principles for coordinating service delivery and exchanging information)

Clause 68 amends section 159B to broaden the children for whom these principles are to apply to include children for which referrals have been made by the department for the child and child's family for preventative family support services by: inserting a new paragraph (aa) to broaden the principle for coordinating service delivery and exchanging information to include the State having responsibility for ensuring that children and families receive the family support services that they need in order to decrease the likelihood of the children becoming in need of protection; amending section s159B(d) by inserting after the words "protection" the words "and children who may become in need of protection".

Clause 68 amends section 159B(f) by replacing the word "welfare" with the words "safety, wellbeing" to reflect the objects of the Chapter and a more holistic approach to the child. This is consistent with amendments elsewhere in the Bill to the paramount principle (see *clause 7*) and others which omit the word "welfare" and replace it with "wellbeing".

Clause 68 then amends s159(aa) to (f) to be renumbered as s159B(b) to (g).

Clause 68 also amends section 159B(f) to omit the editor's note.

Insertion of new s 159BA

Clause 69 inserts a new section, "159BA Who is a *relevant child*", which defines who is a "relevant child" for the purpose of broadening the children for whom the definition of "relevant information" is to apply to include children for which referrals have been made by the chief executive for the child and child's family for preventative family support services. The new section 159BA ensures that information sharing under Chapter 5A of the Act remains focussed on "a child in need of protection" but is broadened where appropriate to enable referrals from the chief executive for the child and child's family for preventative family support services. Referrals by the chief executive for support services are aimed at decreasing the likelihood of the child becoming in need of protection and therefore the definition for "relevant child" has been inserted to include service delivery coordination and information exchange for "a child who may become a

child in need of protection if preventative support services are not given to the child or the child's family".

Amendment of s 159C (What is *relevant information*)

Section 159C(1) defines "relevant information" for the purpose of information sharing amongst the department, prescribed entities and service providers under Chapter 5A of the Act. Section 159C(1)(ii) includes in the meaning of "relevant information" in relation to giving information to the chief executive or an authorised officer, information which may help the chief executive to take action under section 14.

Clause 70 amends that part of the definition of "relevant information" in section 159C(1)(a)(ii) to add information which may help the chief executive to decide if he or she reasonably suspects a child is in need of protection under section 14. The effect of the amendment is that information held by a prescribed entity or service provider may be shared with the chief executive to help the chief executive to decide whether the threshold for taking action under section 14(1) of the Act has been met. This makes it clear that existing legal or professional barriers (including legislative confidentiality provisions such as section 426 of the *Education (General Provisions) Act 2006*) which may operate to prevent an agency or person from responding to the department's request for information are overcome by the operation of Chapter 5A of the Act with respect to information sharing at the pre-notification stage, that is, the stage where the department is determining whether the threshold in section 14(1) has been raised.

Section 159C(1)(a)(vi) and (vii) broadens the children for whom the definition of "relevant information" is to apply to include children for whom referrals have been made by the department for the child and child's family for preventative family support services, by replacing the words "child in need of protection" with the words "relevant child" as defined in the new section 159BA (see *clause 69*).

Section 159C(1)(b) defines "relevant information" for the purposes of service providers, including prescribed entities, sharing information with each other. *Clause 70* renumbers existing sections 159(1)(b)(ii) and (iii) to 159(1)(b) (iv) and (v). New subsections (ii) and (iii) are inserted into section 159C(1)(b) to include as "relevant information" information about pregnant women and unborn children. The effect of the amendment is that prescribed entities and service providers will be able to share information

with each other where the holder of the information reasonably believes the information may:

- help the receiver decide whether information about an unborn child who may be in need of protection after birth should be given to the chief executive; or
- help the chief executive to offer help and support to a pregnant woman under s 21A.

This overcomes any existing legal or professional barriers which may operate to prevent service providers, including prescribed entities, from sharing information about a pregnant woman notwithstanding the woman has given her consent.

Clause 70 also inserts a new section 159C(1)(c) under the meaning of 'relevant information' to include the chief executive giving information to a service provider under new s159M(4) for the service provider to assess or respond to the health, educational or care needs of a relevant child (a child for which a referral has been made by the chief executive for the child and child's family for preventative family support services) or otherwise make plans or decisions relating to, or provides services to, a relevant child or the child's family.

Section 159C(2) is omitted and a new subsection (2) inserted which clarifies that "relevant information" can include information about a pregnant woman or her unborn child or a "relevant child" (child for which a referral has been made by the chief executive for the child and child's family for preventative family support services), the child's family or someone else.

Clause 70 also inserts new subsection (5).

New subsection (5) relates to the scope of "relevant information" for the purposes of service providers, including prescribed entities, sharing information with each other. Subsection (5) provides that the sharing of "relevant information" about a pregnant woman or her unborn child is subject to the holder of the information obtaining the pregnant woman's consent prior to providing the information to another entity.

However, the definition of "relevant information" in section 159C(1)(a)(iii) and (iv) is unchanged meaning there remains no obligation on a service provider, including a prescribed entity, to obtain the woman's consent prior to sharing information about an "at risk" unborn child with the department.

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

Clause 71 amends the definition of "service provider" in section 159D to include recognised entities for Aboriginal or Torres Strait Islander children. This clarifies that recognised entities may participate in the information sharing regime under chapter 5A.

Amendment of s 159F (Service providers' responsibilities)

Clause 72 amends section 159F to broadening the children for whom the service providers' responsibilities apply to include children for whom referrals have been made by the chief executive for the child and child's family for preventative family support services by changing the word "children" to "relevant children" as described in section 159BA see *Clause 69.*

Amendment of s 159G (Chief executive's responsibilities)

Clause 73 amends section 159G(1)(a) by replacing the words "child protection services" with "child protection services and family support services" to broaden the children for whom the chief executive's responsibilities apply to ensure ways exist to coordinate the roles and responsibilities of service providers in promoting preventative support services.

Clause 73 also amends section 159G(1)(b)(ii), by replacing the term "welfare" with "wellbeing" reflecting a more holistic approach to the child.

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

Clause 74 amends sections 159M, by inserting a new subsection (4) to enable the chief executive to give relevant information as described in s159C(1)(c) to any other service provider for the service provider to assess or respond to the health, educational or care needs of a relevant child (a child for which a referral has been made by the chief executive for the child and child's family for preventative family support services) or otherwise make plans or decisions relating to, or provides services to, a relevant child or the child's family.

Amendment of s 159O (Release of information by a health services designated person)

Clause 75 amends sections 159O(1)(a) and (2), by replacing the archaic term "welfare" with "wellbeing" reflecting a more holistic approach to the child.

Amendment of s 159R (Interaction with other laws)

Clause 76 amends section 159R to extend the list of examples of statutory confidentiality provisions which are overridden by Chapter 5A of the Act to include section 288 of the *Juvenile Justice Act 1992*. (Note: the list of examples is not exhaustive and other statutory confidentiality provisions not included in the list will also be overridden.)

Amendment of s 171 (Application for warrant for apprehension of child)

Clause 77 amends section 171 to be consistent with the omission of section 30 and insertion of a new section 30 and the insertion of new section 51AI (both of which set out procedures for special orders). Section 171 sets out the requirements for an application for a special warrant for apprehension of a child. *Subclause* (2) omits the words "application must be sworn and state" and inserts "officer must prepare a written application that states." Subsection (3) is renumbered as subsection (4) and a new subsection (3) is inserted which provides that the written application for the warrant must be sworn.

Replacement of s 173 (special warrants)

Clause 78 omits section 173 and inserts a new sectio 173 for consistency with the omission of section and the insertion of a new section 30 and the insertion of section 51AI (both of which set out procedures for special orders). The intent of the new section is the same as the omitted section 173.

Amendment of s 174 (Warrants – procedure before entry)

Clause 79 amends section 174 consequent to the insertion of the new section 173. Wording referring to a "facsimile warrant or warrant form mentioned in section 173(6)" has been omitted and new wording "give the person a copy of the warrant or, if the entry is authorised by a duplicate

warrant under section 173(5), a copy of the duplicate warrant' has been inserted.

Amendment of s 186 (Confidentiality of notifiers of harm or risk of harm)

Clause 80 omits "welfare" from subsection (5)(a) and inserts "wellbeing". This is consistent with amendments to other sections of the Act which omit the word "welfare" and replace it with "wellbeing".

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

Section 187 imposes an obligation of confidentiality on various categories of persons in relation to information about another person that they have obtained under the Act. *Clause 81* amends section 187(1)(a) to include a person who has been allowed to view a document or information under section 113, as amended by *Clause 55.* This will ensure that those persons will be prohibited from disclosing the information to anyone else.

Clause 81 amends s187(3)(b) by removing the word "welfare" and replacing it with the word "wellbeing". This is consistent with amendments to other sections of the Act which omit the word "welfare" and replace it with "wellbeing".

Clause 81 also amends s187(3)(c)(ii) to provide clarity that the person may, subject to s 186, use or disclose the information or give access to the document to someone else if the disclosure or giving access is otherwise required or permitted under this Act and provides the example of this division or section 159M to enable the chief executive to give relevant information as described in s159C(1)(c) to any other service provider for the service provider to assess or respond to the health, educational or care needs of a relevant child (a child for which a referral has been made by the chief executive for the child and child's family for preventative family support services) or otherwise make plans or decisions relating to, or provides services to, a relevant child or the child's family.

Amendment of s 188 (Confidentiality of information given by persons involved in administration of Act to other persons)

Clause 82 amends section 188(3)(a) by removing the word "welfare" and replacing it with the word "wellbeing". This is consistent with amendments

to other sections of the Act which omit the word "welfare" and replace it with "wellbeing".

Clause 82 amends section 188(3)(a) to (c) to renumber the sections as s188(3)(b) to (d) to allow the insertion of a new s188(3)(a) as per *Clause 82*.

Clause 82 amends section 188(3) by inserting subsection (a). New section 188(3)(a) provides a new exception to the confidentiality penalty to ensure that a receiver of confidential information or document will not breach the confidentiality provision under s188(2) for a matter regarding research as identified in new s189B see *Clause 84*.

Amendment of s 189A (Making information available for Youth Justice Act 1992)

Clause 83 amends section 189A(1) and (5) by omitting the word "juvenile"' and inserting the word "youth". The intent of the amendment is to make amendments omitted from the *Juvenile Justice and Other Acts Amendment Act 2009*. The *Juvenile Justice and Other Acts Amendment Act 2009* changed the name of the *Juvenile Justice Act 1992* to the "*Youth Justice Act 1992*". The change meant references in other legislation, including the *Child Protection Act 1999*, were changed from "juvenile" to "youth". Two references in the *Child Protection Act 1999* were not captured and are being amended by *Clause 83* under s189A(1) and (5).

Insertion of new section 189B

Clause 84 inserts a new section, "189B Research", which sets out a process for the approval of research projects that access child protection data in the custody of the department. It is important that researchers can access child protection information, the department staff, carers and clients in order to strengthen the evidence base for developing policy, programs and practice in child protection.

There are currently no legislative provisions specifically to regulate this research. The current procedure is that the department appoints researchers as honorary officers under the *Family Services Act 1987*. Research may be carried out for the department or another institution. Research approval is required in all cases to ensure sensitive information about clients is appropriately protected. The ability to appoint researchers as honorary officers means that although they may not be actually employed by the department, they are deemed to be engaged by the department and can

therefore be screened for criminal history under the *Public Service Act 2008* to ensure they do not have a history which indicates a risk in their accessing sensitive child protection data or having contact with clients.

Clause 84 includes various safeguards, including that the chief executive must be satisfied information will be collected in a way that could not be reasonably expected to identify any of the individuals it relates to, before authorising a researcher to access information relating to the administration of the Act.

Clause 84 also transfers the provisions relating to the appointment of honorary officers from the *Family Services Act 1987* to the Act.

Amendment of s 195 (Compliance with provisions about explaining and giving documents)

Clause 85 amends section 195 to insert a new subsection (7) which clarifies that for the purpose of this section "parent includes a long-term guardian of the child". This is consistent with amendments elsewhere in the Bill which align the rights of long-term guardians with parents.

Amendment of s 199 (Further guiding principle)

Chapter 7, Interstate transfers of child protection orders and proceedings, provides for the transfer or orders and proceedings when a child who is the subject of an court order or proceeding moves from one state to live in another state. Transfers can occur between participating states. Section 199 requires chapter 7 to be administered under the principle that it is desirable for an order relating to the protection of a child to have effect and to be enforced in the state in which the child lives. The principle includes the Childrens Court's exercise of its jurisdiction under chapter 7 and does not limit the application of the purpose of the Act and principles for its administration in Chapter 1, part 2, division 1 or the Court's obligations under section 104.

Clause 86 amends section 199(3) to be consistent with the amendment to Chapter 1, part 2, division 1 The reference to "section 5 or 104" is omitted and "the application of chapter 1, part 2, division 1 or section 104" will be inserted.

Amendment of s 205 (Meaning of *parent* for ch 7)

Section 205 defines parent for the purposes of Chapter 7 Interstate transfers of child protection orders and proceedings. *Clause 87* amends the definition to align with sections 23, 51AA, 37, 51F and 52 as amended.

Amendment of s 210 (Notice of decision)

Section 210 of the Act relates to the chief executive's decision to transfer an order for a child to an interstate jurisdiction when the child moves interstate. It requires the chief executive to notify certain parties of the decision and their review rights within 3 days of the decision. *Clause 88* amends section 210 so that the period for giving notice of a decision is 3 business days.

Amendment of s 246A (Chief executive to review department's involvement with particular children)

Section 246A of the Act relates to the requirement of the chief executive to conduct a review about the department's involvement with a child who dies and within 3 years before the child's death the chief executive became aware of alleged harm or alleged risk of harm to the child or took action under this Act in relation to the child; or the child was born and before the child was born the chief executive reasonably suspected that the child might be in need of protection after he or she was born.

Clause 89 amends s246A(1)(b)(i)(A) by inserting after the word 'child' the words 'in the course of performing functions under or relating to the administration of this Act' to ensure that machinery of government changes which have resulted in the amalgamation of six government agencies into a strengthened Department of Communities does not affect the original intent of this section that the chief executive was the chief executive for the purposes of the *Child Protection Act 1999*.

Amendment of s 246C (Chief executive may seek information from entities)

Clause 90 amends section 246C by removing the word "welfare" and replacing it with the word "wellbeing". This is consistent with amendments to other sections of the Act which omit the word "welfare" and replace it with "wellbeing".

Amendment of s 246E (Protection from liability for giving information to chief executive)

Under section 246C of the Act, the chief executive may request an entity to provide information about a child who is the subject of a child death review required under section 246A. Section 246E provides certain protections to persons who provide the information for a review of the death of a child. *Clause 91* amends section 246E by omitting subsections (2) and (4) and inserting new subsections (2) and (4). New subsection (2) provides protection specifically from civil and criminal liability and lability under an administrative process. Subsection (4) provides the person with a defence of absolute privilege in a proceeding for defamation and specifies that, if the person would otherwise be required to maintain confidentiality of information under an Act, oath or rule of law or practice, the provision of information by the person does not contravene the Act, oath, rule of law or practice and the person is not liable to disciplinary action for providing the information.

Amendment of sch 2 (Reviewable decisions and aggrieved persons)

Clause 92 amends Schedule 2, to include that a refusal of the chief executive to conduct a case plan review on request of the child or guardian under new section 51VA (see *clause 36*) is a reviewable decision by inserting the reviewable decision "refusing a request to review a case plan under section 51VA" and inserting the aggrieved person as "the person making the request", namely the child or guardian.

Amendment of sch 3 (Dictionary)

Clause 93 amends Schedule 3, Dictionary, to update terms and to insert terms used in the new provisions. *Subclause (1)* omits definitions of "criminal history" "disqualifying event", "member, of a person's household" and "parent". *Subclause (2)* inserts definitions for "charge", "criminal history", "long-term guardian", "member, of a person's household", "parent", "prohibiting event", "relevant child", "spent conviction", "temporary custody order" and "transition order".

Subclause (3) amends the definition of "carer" to limit its meaning to entities in whose care the child has been placed under section 82(1).

Part 3 Amendment of Commission for Children and Young People and Child Guardian Act 2000

Clause 94 provides that part 3 amends the *Commission for Children and Young People and Child Guardian Act 2000.*

Clause 95 replaces section 36. New Chapter 8A will provide for the screening of persons engaged or proposed to be engaged by the Commission. An editor's note has also been inserted.

Clause 96 amends section 62 by inserting "Coroners" in place of "Coroner's".

Clause 97 amends section 107 by inserting a note referring to Chapter 8A in relation to the appointment of a community visitor.

Clause 98 amends section 156 to provide that Schedule 1, Part 3 provides for employment or the carrying on of a business to which Chapter 8 does not apply.

Clause 99 amends section 176 to insert terms in relation to alternative certifications and proof of identity documents. These terms are defined in the dictionary in schedule 7. Section 176 is also amended to remove the requirement that the approved form must include provision for certification by a prescribed person. This certification will be required to accompany the notification given under part 4.

Clause 100 amends section 178 to make terminology changes.

Clause 101 amends section 200 to insert terms in relation to alternative certifications and proof of identity documents. These terms are defined in the dictionary in schedule 7. Section 200 is also amended to remove the requirement that the approved form must include provision for certification by a prescribed person. This certification will be required to accompany the approved form.

Clause 102 amends section 212 to make terminology changes.

Clause 103 amends section 249 to insert terms in relation to alternative certifications and proof of identity documents. These terms are defined in the dictionary in schedule 7. Section 249 is also amended to remove the requirement that the approved form must include provision for certification

by a prescribed person. This certification will be required to accompany the notification given under part 5.

Clause 104 amends section 261 to insert terms in relation to alternative certifications and proof of identity documents. These terms are defined in the dictionary in schedule 7. Section 261 is also amended to remove the requirement that the approved form must include provision for certification by a prescribed person. This certification will be required to accompany the approved form.

Clause 105 amends section 273 to make terminology changes.

Clause 106 amends section 343 to remove reference to approved teacher and clarify requirements for the Commissioner giving information to the Queensland College of Teachers about an applicant for teacher registration or permission to teach where:

- the Queensland College of Teachers has already been advised the applicant holds a positive notice, and
- the Commissioner reasonably believes the person is still an applicant for teacher registration or permission to teach.

Clause 107 amends section 345 by inserting new subsection (2) to provide that the Commissioner may use information to determine whether to obtain further information under section 357P about a person who is engaged or seeks to be engaged by the Commission for Children and Young People and Child Guardian (the Commission).

Clause 108 amends section 349 by replacing subsection (2) to require that the section does not apply if the holder of a positive notice is or was, during the term of the positive notice employed in regulated employment as a volunteer or carrying on a regulated business other than for financial reward and a relevant change within the meaning of section 350(7) happens for the holder. A note is also inserted referring to section 350 in relation to the holder of a positive notice to whom circumstances mentioned in section 349(2) apply.

Clause 108 also amends section 349 by replacing subsections (4) to (6) to provide that the Commissioner may issue a replacement positive notice, a replacement positive notice blue card or a replacement positive exemption notice. If the Commissioner issues a replacement notice or card to holders of positive notices, positive notice blue cards or positive exemption notices, the holder must return the replacement notice or card to the Commissioner

within 14 days and the Commissioner must cancel the previously held notice or card.

Clause 109 amends section 350 to provide:

- that the requirements under this section also apply to the holder of a positive notice who during the term of the positive notice carries on a regulated business other than for financial reward, as well as positive notice holders who are employed in regulated employment as a volunteer, and the holder:
    - becomes employed in regulated employment other than as a volunteer; or
    - starts carrying on a regulated business for financial reward
- the notice under section 350(2) about a relevant change must be accompanied by the prescribed application fee if the application for the positive notice was made on the basis the holder was employed, or to be employed, in regulated employment as a volunteer or carrying on, or proposing to carry on, a business other than for financial reward
- the Commissioner must issue to the holder a new positive notice and if the holder also has a positive notice blue card, a new positive notice blue card, if under subsection (7), the notice under subsection (2) is accompanied by the prescribed application fee and either:
    - the Commissioner is not aware of any change in police information or disciplinary information about the person since the Commissioner last made an employment-screening decision about the person; or
    - the Commissioner is aware of a change in police information or disciplinary information about the person since the commissioner last made an employment-screening decision about the person and after considering the change, decides not to suspend or cancel the person's positive notice
- the Commissioner is not required to issue the new positive notice or positive notice blue card if the Commissioner is deciding to cancel the positive notice under section 237 (1) (a)
- if the Commissioner issues to the holder a new positive notice or positive notice blue card, the holder must return the previously held notice or card to the Commissioner within 14 days and the

Commissioner must cancel the previously held positive notice of positive notice blue card

- the prescribed application fee is:
  - the prescribed fee for a prescribed notice application about a person employed in regulated employment other than as a volunteer if the relevant change is that the holder becomes employed in regulated employment other than as a volunteer
  - the prescribed fee for a prescribed notice application about a person carrying on a regulated business for financial reward if the relevant change is the holder starts carrying on a regulated business for financial reward.

Clause 110 inserts a new Chapter 8A after section 357 to provide for criminal history checks and assessing suitability of persons engaged or proposed to be engaged by the Commission.

New section 357A sets out the purposes of Chapter 8A. One of the purposes is to enable the Commissioner to obtain a prescribed notice or exemption notice for persons who are to be engaged, or continue to be engaged by the Commission in regulated employment. Another purpose is to require persons who are to be engaged, or to continue to be engaged, by the Commission in child-related duties to have a positive prescribed notice or positive exemption notice, and to enable the Commissioner to obtain a prescribed notice or exemption notice for the person. The other purpose is to enable the Commissioner to obtain the criminal history of, and related information about, a person who proposes to be, or is, engaged by the Commission, so that the Commissioner can assess the person's suitability to be, or continue to be, engaged by the Commission.

New section 357B is similar to previous section 130 and prescribes that Chapter 8A applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986.*

New section 357C is similar to previous section 131 and requires that before a person is engaged by the Commission, the Commissioner must tell the person:

- of the person's duties of disclosure under Chapter 8A
- that the Commissioner may obtain information about the person mentioned in section 357P, and

- the guidelines for dealing with information obtained by the Commissioner under Chapter 8A are available from the Commissioner on request.

New section 357D is a similar provision to previous section 132. Section 357D requires a person seeking to be engaged at the Commission that they must disclose to the Commissioner, before being engaged, whether or not the person has a criminal history and if the person has a criminal history, the person must provide their complete criminal history.

New section 357E is a similar provision to previous section 133. Section 357E requires that persons engaged by the Commission must disclose to the Commissioner the details of a change in their criminal history. Acquiring a criminal history for a person engaged by the Commission who does not have a criminal history, constitutes a change in the person's criminal history, requiring the person to disclose a change in their criminal history.

New section 357F is a similar provision to previous section 134 and provides that in order to comply with section 357D or 357E, a person must give the Commissioner a disclosure in the approved form. The information disclosed by a person about a conviction or charge of an offence in the person's criminal history must include the existence of the conviction or charge; and when the offence was committed or alleged to have been committed; and the details of the offence or alleged offence; and for a conviction, whether or not a conviction was recorded and the sentence imposed on the person.

New section 357G is a similar provision to previous section 135 and prescribes that:

- a person must not give the Commissioner a disclosure for part 2 that is false, misleading or incomplete in a material particular; or fail to give the Commissioner a disclosure as required under section 357E, unless the person has a reasonable excuse. A maximum penalty of 100 penalty units or 2 years imprisonment is prescribed, and

- subsection (1)(a) does not apply to a person if the person, when making the disclosure, tells the Commissioner, to the best of the person's ability, how the disclosure is false or misleading, and if the person has or can reasonably obtain the correct information, gives the correct information to the Commissioner.

New section 357H applies in relation to a person who proposes to be, or is, engaged at the Commission; and is to start, or continue in, regulated employment in that capacity. The Commissioner may ask the person for written consent for the Commissioner to undertake employment screening of the person under Chapter 8. If the person does not give the consent, or withdraws his or her consent, the Commissioner must ensure the person does not start, or continue in, the regulated employment.

If the person gives the consent the Commissioner may:

- if the person is not a police officer or registered teacher, undertake employment screening of the person under Chapter 8 and issue a prescribed notice to the person, as if the Commissioner were deciding a prescribed notice application about the person
- if the person is a police officer or registered teacher, the Commission may undertake employment screening of the person under Chapter 8, and issue an exemption notice to the person as if the Commissioner were deciding an exemption notice application about the person.

The person's consent to employment screening may be withdrawn under sections 204 to 208 if the person is not a police or registered teacher or under sections 264 to 269 if the person is a police officer or registered teacher.

New section 357I provides that Part 4 applies to duties (child-related duties) to be performed in the Commission if, under a Part 6 directive under the *Public Service Act 2008*, the Commissioner decides:

(a) the duties—

  (i) are to be performed at a place at which services are provided only or mainly to a child or children; or

  (ii) are to be performed in a role involving providing services only or mainly to a child or children; or

  (iii) involve contact with a child or children that is of a kind, or happens in a context, that may create an unacceptable level of risk for the child or children; and

(b) it is necessary to conduct employment screening of a person engaged to perform the particular duties to ensure the person is suitable to perform them; and

(c) the particular duties are not likely to involve regulated employment.

New section 357J requires that the Commissioner must ensure a person does not perform child-related duties in the Commission unless:

- if the person is engaged by the Commission as a volunteer and is not a police officer or registered teacher, the person has a current positive notice;
- otherwise the person has a current positive notice, or current positive exemption notice; or
- the Commissioner has started to undertake employment screening under section 357K.

New section 357K requires that if the Commissioner proposes to engage a person to perform child-related duties in the Commission; and the person does not have a prescribed notice or exemption notice, the Commissioner must undertake child-related employment screening of the person with that person's written consent.

New section 357L requires that the Commissioner must ensure a public service employee does not continue to perform child-related duties if the Commissioner engages the public service employee to perform child-related duties on the basis the Commissioner has started to undertake employment screening of the person as mentioned in section 357K; and either:

- the person's consent to employment screening is withdrawn or taken to be withdrawn, under the CCYPCG Act; or
- the person is issued a negative notice or negative exemption notice.

New section 357M outlines the circumstances when the Commissioner must not confirm an appointment and may appoint or confirm an appointment of a person who the Commissioner engages to perform child-related duties on the basis the Commissioner has started to undertake employment screening of the person as mentioned in section 357K and the person is not a public service employee at the time they are engaged. The circumstances prescribed in subsection (2) do not limit section 126 of the *Public Service Act 2008* to have a longer probationary period or to terminate the person's employment.

New section 357N requires that the Commissioner must ensure a person does not perform child-related duties while their positive notice or positive exemption notice is suspended or if their positive notice or positive exemption notice is cancelled.

New section 357O is similar to previous section 136(1) and prescribes that division 1 applies in relation to a person who is engaged or seeks to be engaged at the Commission and has given the Commissioner a disclosure for the purposes of part 2. Section 357O also clarifies that Division 1 applies in relation to a person who is to start, or continue in, regulated employment or child-related duties only if the person has been issued a positive notice or positive exemption notice; and the Commissioner is aware the person has a criminal history or is aware of investigative information about the person.

New section 357P is similar to previous section 136(2) to (5) and prescribes that Commissioner may ask the Police Commissioner to give the Commissioner information about the person including, a written report about the person's criminal history; a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history; information about an investigation relating to the possible commission of a serious offence by the person. The Police Commissioner must comply with a request subject to the circumstances in sections 357P (3) and (4).

New section 357Q is similar to previous section 137 and requires notification by a prosecuting authority of certain information to the Commissioner where a person is charged with a relevant offence and the Police Commissioner or the Director of Public Prosecutions is aware that the person is engaged by the Commission. A relevant offence means an indictable offence or a disqualifying offence that is not an indictable offence.

New section 357R is similar to previous section 138. Section 357R prescribes:

- that the section applies to the Commissioner in considering information about a person received under Chapter 8A
- that the information must not be used for any purpose other than assessing the person's suitability to be, or continue to be, engaged by the Commission
- that when the Commissioner is making the assessment using information about the Commission or alleged or possible commission, of an offence by the person, the Commissioner must have regard to when the offence was committed, is alleged to have been committed or may possibly have been committed; the nature of the offence and its relevance to the person's proposed duties or duties at the

Commission and anything else the Commissioner considers relevant to the assessment of the person.

New section 357S is similar to previous section 139 which requires that prior to using information obtained from the Police Commissioner to assess the person's suitability to be, or continue to be, engaged by the Commission, the Commissioner must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Commissioner about the information.

New section 357T is similar to previous section 140 and requires the Commissioner to make guidelines, consistent with the CCYPCG Act, for dealing with information obtained by the Commissioner under Chapter 8A. The purpose of the guidelines is to ensure natural justice is afforded to the persons about whom the information is obtained; only relevant information is used in assessing the persons' suitability to be, or continue to be, engaged by the Commission and decisions about the suitability of persons, based on the information, are made consistently. A copy of the guidelines must be given, on request, to a person seeking to be engaged, or who is engaged, by the Commission on request.

Clause 111 amends section 384 by inserting "or chapter 8A" after "part 7" and inserting "Now see chapter 8A" in place of "from the commencement of this definition, screening of the commission's staff is undertaken under section 36 and the *Public Service Act 2008*, chapter 5, part 6".

Clause 112 amends section 501 by omitting the note in subsection (2) which refers to assessing a person's suitability to be, or continue to be, a staff member under the *Public Service Act 2008*.

Clause 113 inserts a new Chapter 11, Part 14, to provide for transitional provisions for the *Child Protection and Other Acts Amendment Act 2010.* These provisions provide that:

- the previous sections 349 and 350 apply if, before commencement of the amendments to section 349 and 350, a relevant change occurred under the previous sections 349 and 350 and the notice or blue card have not been cancelled
- section 350(7) does not apply to the holder of a positive notice if the holder paid the prescribed application fee in relation to the positive notice under section 350 as in force before the commencement.
- chapter 8A applies in relation to a person who, at the commencement, is being considered for engagement or is engaged by the Commission.

Clause 114 amends schedule 1, Part 3 to clarify that chapter 8 of the CCYPCG Act does not apply to:

- the employment of or carrying on a business by a registered health practitioner to the extent the services provided or duties undertaken relates to the person's functions as a registered health practitioner
- the employment of an ambulance officer under section 13 of the *Ambulance Service Act 1991* or an honorary ambulance officer under section 14 of the *Ambulance Service Act 1991* to the extent the employment relates to the person's functions under that Act.

Clause 115 amends the dictionary in Schedule 7.

Part 4 Amendment of Community Services Act 2007

Clause 116 provides that part 4 amends the *Community Services Act 2007*.

Clause 117 amends the note in section 144(2) by inserting "in relation to the engagement, or continued engagement, of the person by the department" in place of "for assessing the person's suitability to be, or continue to be, engaged by the department".

Part 5 Amendment of Disability Services Act 2006

Clause 118 provides that part 5 amends the *Disability Services Act 2006*.

Clause 119 amends section 107A in several respects.

Clause 119(1) amends section 107A(3) by inserting 'If, under subsection (6), the notice is accompanied by the prescribed application fee,' in place of 'After receiving a notice under subsection (2)'.

Clause 119(2) omits section 107A(6) and in its place inserts a provision requiring a notice under section 107A(2) to be accompanied by the prescribed application fee if the application for the positive notice was

made before 1 July 2010 or on the basis the holder was engaged, or to be engaged, in regulated engagement as a volunteer.

Clause 119(3) omits the definition of *prescribed application fee* in section 107A(7) and in its place inserts a provision defining *prescribed application fee* as, for a notice given under subsection (2), the prescribed fee for a prescribed notice application about a person engaged in regulated engagement other than as a volunteer.'

Clause 120 amends the note in section 256(2) by inserting "in relation to the engagement, or continued engagement, of the person by the department" in place of "for assessing the person's suitability for engagement, or continued engagement, by the department".

Clause 121 amends section 288(2) by inserting "Sections 275 to 278" in place of "Sections 89 and 275 to 277".

Clause 122 amends section 289(2) by inserting "Sections 275 to 278" in place of "Sections 89 and 275 to 277".

Part 6 Amendment of Family Services Act 1987

Clause 123 provides that part 6 amends the *Family Services Act 1987*.

Clause 124 amends the note in section 38(2) by inserting "in relation to the engagement, or continued engagement, of the person by the department" in place of "for assessing the person's suitability for engagement, or continued engagement, by the department".

Part 7 Amendment of *Juvenile Justice and Other Acts Amendment Act 2009*

Clause 126 amends the *Juvenile Justice and Other Acts Amendment Act 2009* schedule, part 4 to omit that part of the schedule which sought to amend s189A(1) and (5) by amending the reference to chief executive

(juvenile justice) and department (juvenile justice) to (youth justice). Part 4 is omitted as it is a redundant provision and the change in wording from 'juvenile' to 'youth' will now be effected by amendment to s189A(1) and (5) of the Act by *clause 83* of the Bill.

Part 8 Amendment of Public Service Act 2008

Clause 127 provides that part 8 amends the *Public Service Act 2008*.

Clause 128 omits the definition of *criminal history report* in section 150 and in its place inserts a provision defining *criminal history report* as a report given under section 154 for division 2; or a report given under section 165C for division 3A; or otherwise, a report given under section 154 or 165C.

Clause 129 amends section 151. *Clause 129(1)* amends the note in section 151(1) by inserting "in relation to" in place of "for assessing the suitability of".

Clause 129(2) inserts a new subsection which provides that Division 2 does not apply to duties to be performed in the CCYPCG commission. The new provision also inserts a note referring to Chapter 8A of the CCYPCG Act.

Clause 129(3) renumbers section 151(1A) to (3) as section 151(2) to (4).

Clause 130 amends section 156. *Clause 129(1)* amends the note in section 156 by inserting "in relation to" in place of "for assessing the suitability of".

Clause 130(2) inserts a new subsection which provides that Division 2 does not apply to duties to be performed in the CCYPCG commission. The new provision also inserts a note referring to Chapter 8A of the CCYPCG Act.

Clause 130(3) renumbers section 156(1A) and (2) to section 151(2) and (3).

Clause 131 relocates the definition of *CCYPCG commission* from section 157 to section 150.

Clause 132 amends section 158 in several respects by omitting application of the section in relation to the CCYPCG Commissioner and renumbering.

Clause 133 amends section 159(1)(a) by omitting "other than the CCYPCG commissioner".

Clause 134 omits section 160.

Clause 135 omits section 161(1)(a) and in its place inserts a provision clarifying that the chief executive of a department engages a person to perform child-related duties on the basis the chief executive has applied for a prescribed notice or exemption notice about the person as mentioned in section 158(1)(b)(ii).

Clause 136 amends section 162 in two respects.

Clause 136 (1) omits section 162(1)(a) and in its place inserts a provision clarifying that the chief executive of a department engages a person to perform child-related duties on the basis the chief executive has applied for a prescribed notice or exemption notice about the person as mentioned in section 158(1)(b)(ii).

Clause 136(2) replaces section 162(3) to clarify that subsection (2) does not limit the power under section 126 to have a longer probationary period or to terminate the person's employment.

Clause 137 inserts a new Chapter 9, Part 6 to provide for transitional provisions for the *Child Protection and Other Acts Amendment Act 2010.*

New section 264 provides that for the purposes of the new Part 6, *commencement* means the commencement of section 264.

New section 265 provides for circumstances where the Commissioner has made a request under section 154 or 165C and at the commencement, the Police Commissioner has not given the criminal history report to the Commissioner.

New section 266 provides for circumstances if before the commencement, the Police Commissioner gave the Commissioner a written report about a person's criminal history under section 154 or 165C; and at the commencement, the Commissioner has not, in relation to the report, made an assessment about the person's suitability for engagement, or continued engagement, by the Commission under section 155 or 165D. The Commissioner must immediately destroy a criminal history report obtained by the Commissioner before the commencement; and stop making the assessment. The new provision also inserts a note referring to the Chapter 8A of the CCYPCG Act.

New section 267 provides for circumstances that, if before the commencement, a person engaged by the Commission is charged with a relevant offence within the meaning of section 170(7); and at the commencement, the Police Commissioner or Director of Public Prosecutions has not given information about the charge to the Commissioner as required by section 170. The Police Commissioner or Director of Public Prosecutions is no longer required to give the information to the Commissioner.

Clause 138 amends the dictionary in Schedule 4.