

# Child Protection Reform Amendment Bill 2017

## Explanatory Notes

### Short title

The short title of the Bill is the Child Protection Reform Amendment Bill 2017.

### Policy objectives and the reasons for them

The objectives of the Bill are to:

1. promote positive long-term outcomes for children in the child protection system through timely decision making and decisive action towards either reunification with family or alternative long-term care
2. promote the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures
3. provide a contemporary information sharing regime for the child protection and family support system, which is focused on children's safety and wellbeing, and
4. support the implementation of other key reforms under the *Supporting Families Changing Futures* program (the reform program) and address identified legislative issues.

On 1 July 2013, the Queensland Child Protection Commission of Inquiry (the Commission of Inquiry) released its report, *Taking Responsibility: A Road Map for Queensland Child Protection*. The Commission of Inquiry made 121 recommendations to reform the child protection system over the next decade. The Palaszczuk Government committed to reform program arising from the Commission of Inquiry as part of the *Supporting Families Changing Futures* reforms.

The Commission of Inquiry recommended specific changes to the *Child Protection Act 1999* (the Act), including that:

- the Minister move amendments to forbid the making of consecutive short-term orders that together extend beyond two years, unless it is in the best interests of the child to make the orders (part of recommendation 13.4), and
- the Department of Communities, Child Safety and Disability Services (the department) review the existing information exchange and confidentiality provisions in the Act and propose that the Minister move any necessary amendments (recommendation 14.2).

The Commission of Inquiry also recommended that the department review the Act (recommendation 14.1). The Bill implements priority reforms arising from the review of the Act.

A comprehensive review of the *Child Protection Act 1999* was undertaken by the Department of Communities, Child Safety and Disability Services between 2015 and 2017. This included two stages of public consultation. Between September 2015 and March 2016, the department consulted with Queenslanders and insights were gathered through community forums, written submissions, meetings, focus groups and small group sessions.

A second stage of public consultation ran from October to December 2016. Community members had an opportunity to participate through face-to-face discussions, workshops and written submissions. Two hundred and fifty people participated in nine community forums in Ipswich, Beenleigh, Caboolture, Townsville, Mackay, Roma, Cairns, Brisbane and Rockhampton and one hundred and twenty eight written submissions were received. The review revealed that Queensland's child protection legislation is generally operating effectively, however, priority amendments and opportunities for broad legislative reform were identified.

On 30 May 2017, the Queensland Government launched *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families* (the *Our Way* Strategy). The strategy and its first three year action plan include strategies and actions to promote the self-determination of Aboriginal and Torres Strait Islander families and communities in the care and protection of their children. The Bill makes amendments that will support the *Our Way* Strategy and its first action plan, including action 4.2, "Enable statutory child protection functions and powers for Aboriginal and Torres Strait Islander children who are subject to a child protection order to be delegated to the chief executives of Aboriginal and Torres Strait Islander agencies".

The Queensland Child Protection Commission of Inquiry highlighted the importance of ensuring appropriate non-government service providers can effectively and efficiently share information to protect children. At the national level, work is underway through the National Framework for Protecting Australia's Children and to identify and address legislative, policy, and practice barriers to sharing child protection information across jurisdictions and to improve information sharing between child welfare authorities in Australia.

The improvement of permanency outcomes for children and young people in out-of-home care is a national priority. National collaboration is underway to drive improved permanency outcomes and consistency across jurisdictions.

In 2015, the Senate Community Affairs References Inquiry into out-of-home care report noted evidence that 'stability was one of the most important aspects contributing to positive outcomes for children and young people in care.'

In line with recent reforms in other Australian jurisdictions, the Bill proposes to amend the *Child Protection Act 1999* to better provide for improved permanency, including a focus on achieving relational, physical and legal permanency for children in out-of-home care, early planning for permanency, and permanent care arrangements for children and young people unable to be reunified with their family.

## **Achievement of policy objectives**

The Bill will achieve its objective of promoting positive long-term outcomes for children in the child protection system by:

- amending the paramount principle for administering the Act to refer to the safety, wellbeing and best interests of children *both through childhood and for the rest of a child's life*
- inserting new permanency principles for ensuring a child's best interests, with consideration of relational, physical and legal permanency in decision making for children who need ongoing intervention under the Act

- requiring all case plans to include goals and actions for achieving permanency
- preventing courts from making or extending short-term child protection orders where the combined total duration of an order or consecutive orders would be more than two years unless it is in the best interests of a child to do so
- introducing a permanent care order as a new type of child protection order that will grant the guardianship of a child to a suitable person until the child turns 18 years of age, and is more secure than a long-term guardianship order
- removing the need for a court to reconsider certain matters it has previously determined, when varying or revoking a long-term guardianship order for a child and making another long-term guardianship order or a permanent care order for the child, unless the court is satisfied that there are exceptional circumstances in the best interests of the child to do so
- requiring transition to independence planning to commence for a child in care from the age of 15 years, and for this to form part of the child's case plan from the next case plan review, and
- requiring the chief executive to make available, as far as practicable, to young people in their transition from care to independence up to the age of 25 years.

The Bill will achieve its objective of promoting the safe care and connection of Aboriginal and Torres Strait Islander children by:

- adding new principles that recognise the right of Aboriginal and Torres Strait Islander people to self-determination, and apply the five elements of the Child Placement Principle — prevention, partnership, placement, participation and connection — to the administration of the Act for Aboriginal and Torres Strait Islander children,
- requiring a case plan for an Aboriginal and Torres Strait Islander child to include details about how the child will be supported to develop and maintain connections with their family, community and culture,
- enabling greater flexibility in how the chief executive, litigation director and a court seek and consider cultural advice in decision-making for an Aboriginal and Torres Strait Islander child, by facilitating the participation of the child and the child's family in decision making, and
- enabling the chief executive to delegate one or more functions or powers in relation to an Aboriginal or Torres Strait Islander child to a suitable Aboriginal or Torres Strait Islander entity with certain safeguards.

The Bill will achieve its objective of providing a contemporary information sharing regime for the child protection system by:

- clarifying and simplifying the provisions in the Act that enable the sharing of relevant information while protecting the confidentiality of the information
- enabling 'specialist service providers' funded by the Queensland or Commonwealth Governments to share relevant information with each other for the purposes of:
  - supporting a child who may become in need of protection if preventative support is not provided to the child or the child's family,
  - helping a child who is in need of protection, and
- clarifying that information about a pregnant woman and her unborn child can be shared for the purposes of assessing whether the unborn child will be in need of protection after birth and to offer help and support to the pregnant woman.

The Bill will achieve its objective of supporting the implementation of other key reforms under the reform program and address identified legislative issues by:

- clarifying that an authorised officer can apply for a temporary custody order for a child to ensure a child's safety after the chief executive has referred a matter relating to the child to the independent litigation director
- amending the definition of 'medical treatment' to clarify that a medical practitioner can vaccinate a child in the chief executive's custody
- enabling the chief executive to share information with interstate and New Zealand child welfare authorities to enable them to perform functions under their child protection laws
- enabling the chief executive to provide information to adults who were previously children in care, about their time in care, including information about other people
- enhancing the chief executive's ability to share information for research and related purposes
- enabling the chief executive to provide information to the parents of children who died while the child was in care
- enabling the chief executive to provide information to the Police Commissioner when police are conducting an investigation following the death of a child
- extending the prohibition against publishing identifying information about a child witness in criminal proceedings to include knowingly publishing information about a child who is, or is reasonably likely to be, a witness in a proceeding for a sexual or violent offence, and
- clarifying that an intervention with parental agreement can only be considered if the child will not be placed at immediate risk of harm if the child's parent/s withdraw their agreement; that, under intervention with parental agreement, the case plan for the child must include details about what is expected of the child's parents and the chief executive in carrying out the intervention; and that a court may have regard to a decision to end an intervention with parental agreement when considering making a child protection order.

#### *Promoting positive long-term outcomes for children in the child protection system*

The Bill introduces a new permanency framework which introduces and defines the concept of 'permanency' as the experience of a child as having stable relationships, living arrangements and legal arrangements.

#### *The best interests of children through childhood and the rest of their lives*

Section 5A provides that the main principle for administering the Act is that the safety, wellbeing and best interests of a child are paramount.

To promote consideration of long-term wellbeing outcomes throughout a child's life, the Bill expands the principle to provide that the safety, wellbeing and best interests of a child, *both through childhood and for the rest of the child's life*, are paramount. This amendment focuses on the need to consider the long-term impacts, as well as the immediate implications, when determining the best interests of a child.

*New permanency principles*

Section 5B of the Act contains other general principles for ensuring the safety, wellbeing and best interests of a child, including: if a child does not have a parent willing and able to protect them in the foreseeable future, they should have long-term alternative care; and a child should have stable living arrangements that provide a stable connection with their family and community and meet their developmental, educational and other needs.

The Commission of Inquiry expressed concern at the number of children and young people subject to multiple short-term orders without achieving either reunification with their family or long-term out-of-home care.

To ensure children and young people have long-term stability in significant relationships and care arrangements, the Bill introduces the concept of ‘permanency’ by defining it to include the experience of the child of having ongoing relationships, stable living arrangements and legal arrangements that provide a sense of permanence and long-term stability. The Bill also provides dedicated principles to promote decision making that prioritises timely permanency outcomes for children. The principles specifically reference relational, physical and legal aspects of permanency, and establish a hierarchy of preferred care arrangements for best achieving permanency for a child to guide decision makers.

*Permanency planning*

Chapter 2, Part 3A of the Act provides a case planning framework for children who the chief executive is satisfied are in need of protection and require ongoing help under the Act. A case plan is the key document for outlining how the child’s care and protection needs will be met.

The current provisions require case planning to be carried out in a way that prioritises a child’s need for long-term stable care and continuity of relationships and is intended to ensure the department commences planning for alternative long-term care when there is a real risk that a child’s need for stability may not be able to be met by a parent within a timeframe that is appropriate for a child’s age and circumstances. However, the current provisions do not require positive action for permanency planning to occur as part of a case plan for a child — only that a report about a review of a case plan must detail progress made in planning for alternative long-term arrangements for a child.

The Bill introduces provisions that require a permanency goal to be in place for each child from the time a case plan is developed. In circumstances when reunification of a child with their family is the case plan goal, an alternative permanency goal will be required to be in place to meet the child’s need for long-term stable care in the event that timely reunification is not possible. These changes are designed to avoid the instability and uncertainty arising from a prolonged series of temporary care arrangements.

*Limiting the total duration of successive short-term child protection orders*

Section 62(2)(b) of the Act provides that, for a child protection order granting custody or short-term guardianship of the child, the order’s duration must not be more than two years after the day it is made. Section 64 allows a child protection order (other than a long-term guardianship order) to be extended and provides that an application for extension of an order will be treated as an application for a new order. Under this framework, a child may be subject to multiple short-term orders up to the age of 18 years.

To promote positive long-term outcomes and achieve permanency for children and young people, recommendation 13.4 of the Commission of Inquiry proposed introducing provisions to forbid courts from making one or more short-term orders that together extend beyond a period of two years from the making of the first application, unless it is in the best interests of the child to make the order.

To implement this recommendation, the Bill limits the amount of time a child can be subject to consecutive short-term orders, excluding interim orders, to a maximum of two years from the time the first order is made, unless there are circumstances that mean it is in the best interests of the child to make a further short-term order. This means, for example, that if a child is subject to a short-term order for a period of two years, no further short-term orders may be made by the court, unless it is in the child's best interests. If a child is subject to a short-term order for a period of one year, a further short-term order may only be made for a maximum of one year, unless it is in the child's best interests to make a longer order. If out-of-home care is required to meet a child's protection and care needs beyond this duration, a longer term order could be considered.

Limiting the making of successive short-term orders will complement other permanency amendments to support timely decision-making for children to promote positive long-term outcomes.

It is anticipated that, as the court work reforms introduced in July 2016 by the *Child Protection Reform Amendment Act 2016*; the court case management framework; and the revised *Childrens Court Rules 2016* are embedded in practice, combined with this amendment, the full intent of this recommendation will be achieved.

#### *Permanent care orders*

Child protection orders that grant long-term guardianship of a child are currently the most permanent long-term care option for children in out-of-home care. Under section 61, long-term guardianship orders may be made to: a suitable family member (other than a parent of the child); another suitable person nominated by the department (for example, a foster carer or a kinship carer who is not a family member); or the chief executive. Section 65 allows the litigation director, a child's parent or the child to apply to vary a long-term guardianship order or revoke it and make another order in its place.

The Commission of Inquiry heard that long-term guardianship orders, both in favour of the chief executive and others, were not having the intended effect of providing children with sufficient stability. It was argued that they do not offer the desired stability because they may be 'contested in court by birth families on an ongoing basis', causing disruption to the child's living arrangements and impeding a child's bonding with the child's carer or guardian. The Commission of Inquiry suggested that a new form of permanent order, somewhere on the continuum between a long-term guardianship order and adoption, could be in the best interests of a cohort of children in the child protection system.

The Bill introduces a new permanent care order to offer a more permanent arrangement than a long-term guardianship order, without permanently severing a child's legal relationship with their birth family. Importantly, children subject to a permanent care order will still be able to maintain an ongoing meaningful relationship with their birth parents, siblings and extended family members, where it is in their best interests to do so. The Childrens Court will be able to

grant a permanent care order only if it is satisfied that the proposed guardian will preserve the child's identity, relationships with their birth family and connection to their culture of origin.

To provide greater security, the Bill provides a permanent care order may be varied or revoked by the Childrens Court only on application by the litigation director upon a referral being made by the chief executive. A permanent care order may be varied or revoked only if concerns about the permanent guardian are received and it is determined that the guardian is not willing or able to protect the child or is not complying, in a significant way, with obligations under the Act. This will prioritise certainty and stability for a child who is the subject of a permanent care order, and will enable the chief executive to assess whether appropriate circumstances exist for a referral to be made to the litigation director to decide whether an application for variation or revocation should be made to the Childrens Court.

Under a permanent care order, guardianship of the child is granted to a permanent guardian who then has responsibility for meeting the child's daily care and long term needs. Specific safeguards will apply to promote the best interests of the child. The Bill places obligations on a permanent guardian to ensure the Charter of Rights for a child in schedule 1 of the Act is complied with; that the child is helped to transition to independence; that their identity and connection to their culture of origin is preserved; and their relationships with family and other significant people are retained. The permanent guardian will be obliged to notify the chief executive if the guardian reasonably believe their care of the child will end or if there is a change in the child's living arrangements. This would require the chief executive to review the child's protection and care needs and take appropriate action.

If a child is subject to a permanent care order, the Bill provides a process for the child or a member of the child's family to contact the department to make a complaint if they believe that the guardian is not complying with the guardian's obligations. The department may then work with all parties to resolve the concerns, which may involve reviewing the child's case plan. If it is not possible to resolve concerns through this approach, and the department believes the permanent care order is no longer appropriate and desirable for promoting the child's safety, wellbeing and best interests, the chief executive may make a referral to the litigation director to apply to vary or revoke the order.

#### *Varying or revoking long-term guardianship orders to the chief executive*

Currently, in order to transfer long-term guardianship of a child from the chief executive to a long-term order granting guardianship of the child to another suitable person, the litigation director or the child must apply for the order to be revoked. This application is treated as an application for a new child protection order. The Childrens Court must then reconsider all the matters that findings have been made in relation to under section 59 of the Act when a court made the original long-term guardianship order, including—for example, that the child is a child in need of protection and that an order is appropriate and desirable for the child's protection.

The Bill enables the litigation director or a child to apply to vary a long-term guardianship order that grants guardianship of the child to the chief executive to a long-term order that grants guardianship to another suitable person, or to revoke the long-term guardianship order and make a permanent care order without requiring matters about which findings have already been made to be reconsidered.

These matters include:

- whether a child is a child in need of protection and the order is appropriate and desirable for the child's protection (section 59(1)(a));
- whether the protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms (section 59(1)(e)); and
- the matters in section 59(6)(a), (7) and (8).

The default position will be that these matters do not need to be re-considered by a court because they have already been determined when making the original long-term guardianship order and the court can rely on the previous findings. The only circumstance the simplified process in subsection (5B) will not apply is if the court makes a specific order that because it is exceptional circumstances it is in the best interests of the child for the matters mentioned in (5B) to be considered.

A court will be able to make an order that these matters are re-considered if the application relates to an application to revoke a long-term guardianship order for the child and make a permanent care order and the court satisfied that there are 'exceptional circumstances'. An 'exceptional circumstances order' can only be made if an application is made by the litigation director or the child for such an order, or the court determines it is necessary on its own initiative. A parent will not be able to apply for an 'exceptional circumstances order'.

This amendment responds to stakeholder feedback that applications to vary or revoke a long-term guardianship order for a child to another more permanent type of long-term guardianship order may not be made if it requires all matters in section 59 to be re-litigated. The amendments aim to provide some reassurance for a child who is the subject of a variation or revocation proceeding that a Court's previous findings can be relied on and that the Court does not need to reconsider whether their needs for long-term stability and security outweigh the possibility that their parents may be able and willing to meet their protective needs in the foreseeable future.

This amendment also supports the introduction of a new permanent care order by enabling an application to be made for a cohort of children that are already subject to a long-term order to be provided with a more stable care arrangement under a permanent care order without the child's need for protection under a long-term order being reconsidered by the Court. A permanent care order is a new type of long-term guardianship order. Issues related to the particular nature of a permanent care order and whether such an order is appropriate in all of the circumstances will be required to be considered by the Court, including in proceedings to vary or revoke an existing long-term guardianship order for a child and make a permanent care order.

### *Improving transition from care*

Section 75 of the Act obliges the chief executive to ensure a person who is or has been a child in the custody or under the guardianship of the chief executive is provided with help to transition to independence. The Act does not define the nature of after-care support that can be provided or specify the age up to which a person can access support. The Act does not contain a requirement for transition to independence planning to commence at a particular age.

The Bill introduces a requirement for transition planning to commence when a young person in out-of-home care turns 15 years of age and for a transition to independence plan to be



included in the child's case plan at the next scheduled review.

The Bill also clarifies that the chief executive is to ensure, as far as practicable, that help is available to assist a young person to transition from care to independence from the time they turn 15 years up until the age of 25 years. The Bill provides examples of the type of help that may be provided. Access to these services is subject to the availability and the young person's eligibility for specific services at the particular point in time the assistance is sought by the young person.

*Promoting the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures*

*Additional principles for Aboriginal and Torres Strait Islander children*

Section 5C of the Act includes principles that Aboriginal and Torres Strait Islander children should be allowed to develop and maintain connections with their culture, tradition and community, and that the long-term effects on their identity and connection should be taken into account. Section 6 provides for recognised entities to be involved in, or to give advice in relation to, decisions by departmental officers, the litigation director and the Childrens Court about Aboriginal and Torres Strait Islander children. Section 83(4) provides an order of priority of with whom an Aboriginal or Torres Strait Islander child should be placed if the chief executive places the child in out-of-home care.

On 30 May 2017, the Queensland Government released the *Our Way Strategy and Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2017-2019* (the Action Plan). The *Our Way Strategy* provides the framework for improving outcomes for Aboriginal and Torres Strait Islander children and families experiencing vulnerability. It centres on self-determination and the actions contained in the supporting Action Plan aim to improve support to and outcomes for Queensland Aboriginal and Torres Strait Islander children and families at risk of entering, or in contact with, the child protection system.

The Bill supports the *Our Way Strategy* and Action Plan by making amendments to include in the Act the right of Aboriginal and Torres Strait Islander people to self-determination, the nationally recognised Aboriginal and Torres Strait Islander Child Placement Principle, and by enabling greater flexibility in facilitating the participation of an Aboriginal or Torres Strait Islander child and their family in decision making under the Act. The Bill initiates implementation of Action 4.2 of the Action Plan by introducing a framework to allow the chief executive to delegate some or all of the chief executive's powers and functions under the Act, in relation to an Aboriginal or Torres Strait Islander child, to a suitable individual who is the chief executive of an Aboriginal and Torres Strait Islander entity, with appropriate safeguards.

*Cultural advice about Aboriginal and Torres Strait Islander children*

The Bill makes amendments to provide greater flexibility in how the chief executive, authorised officers and the litigation director obtain and consider relevant cultural information about Aboriginal and Torres Strait Islander children and their family, and to better support a child and their parents to participate in decision-making.

The Act provides for 'recognised entities' to provide advice in relation to decisions for Aboriginal and Torres Strait Islander children. Recognised entities must consist of individuals, or be an individual, with appropriate knowledge of, or expertise in, child protection; and

provide services to Aboriginal persons or Torres Strait Islanders. The chief executive, litigation director or an authorised officer must provide an opportunity for a recognised entity for a child to participate in making a significant decision for a child and must consult a recognised entity for a child before making a decision. A significant decision is defined as a ‘decision likely to have a significant impact on the child’s life’.

The Bill retains the definition of significant decision and moves it to the dictionary in schedule 3 of the Act.

The Bill broadens the range of entities that may support the provision of relevant cultural advice for an Aboriginal or Torres Strait Islander child. These amendments aim to ensure an entity providing this function has relevant and appropriate cultural authority for the family.

The Bill introduces a new concept of an ‘independent Aboriginal or Torres Strait Islander entity’ for a child. The purpose of an independent Aboriginal or Torres Strait Islander entity for a child is to facilitate the meaningful participation of the child and the child’s family in making a significant decision. This recognises that the child and the child’s family are the primary source of cultural knowledge in relation to the child.

The scope of entities that may be an independent Aboriginal or Torres Strait Islander entity for a child may include: an entity funded by the department to provide advice (such as a recognised entity under the funded recognised entity program); individuals (such as a relative or kin for a particular child); organisations (such as cultural advocacy groups); or another person nominated by the child’s family as having cultural authority for the child and their family.

This will provide greater flexibility for a child’s family to have an entity facilitate their participation that has relevant and appropriate cultural authority for the child. The Bill provides that the chief executive, litigation director or authorised officer must, in making arrangements with an independent Aboriginal or Torres Strait Islander entity for a child, consult with the child and the child’s family, and may not make arrangements with the entity if the child or the child’s family does not consent.

In recognition that the child and the child’s family are the primary source of cultural knowledge for the child, and that an independent Aboriginal or Torres Strait Islander entity will help to facilitate the family’s participation in making a significant decision, the Bill removes the requirement for the chief executive, litigation director or authorised officer to give a recognised entity the opportunity to participate in making a significant decision, and the requirement to consult with a recognised entity on a decision.

References throughout the Act to recognised entities are removed, and new references to an independent Aboriginal or Torres Strait Islander entity for a child are inserted, as appropriate.

#### *Aboriginal or Torres Strait Islander entities exercising delegated key functions and powers of the chief executive*

The Bill implements action 4.2 from the Action Plan by introducing provisions to enable the chief executive to delegate one or more of the chief executive’s functions and powers under the Act in relation to an Aboriginal or Torres Strait Islander child to the chief executive officer of an Aboriginal or Torres Strait Islander entity.

The proposed delegate must be suitable and appropriately qualified, be an Aboriginal or Torres Strait Islander person, and accept the delegation in writing. The inclusion of this delegation power in the Act means that, with some minor exceptions, section 27A of the *Acts Interpretation Act 1954* (AIA) will apply to all delegations made under the new provisions. The result will be, among other things, that the chief executive will remain liable for the action of a delegate, laws will apply to a delegate as if the delegate were the chief executive and decisions made by a delegate will be reviewable in the same way as decisions of the chief executive. However, the provisions make clear that, despite section 27A of the AIA, a delegation may only be made to a stated person and, in instances where the prescribed delegate performs a function or exercises a power inconsistently with the performance of the function or exercise of the power by the chief executive, the action of the chief executive has effect.

The Bill provides a range of safeguards for children to whom a delegation of powers and functions applies. These include:

- a proposed delegate must hold a current positive prescribed notice
- the chief executive must be reasonably satisfied the proposed delegate is suitably qualified and a suitable person to perform the delegated function or exercise the delegated power in relation to the child
- the reviewable decision provisions in Chapter 2A and schedule 2 of the Act will apply to a decision of a delegate in the same way as they apply to a decision of the chief executive
- the chief executive will continue to be able to exercise a delegated function or power, and, in circumstances where the chief executive and the prescribed delegate each exercise a function in a way that is inconsistent, the performance of the function by the chief executive prevails, and
- the chief executive will be able to revoke a delegation at any time.

*Providing a contemporary information sharing regime for the child protection and family support system, which is focused on children's safety and wellbeing*

Chapter 5A of the Act currently enables broad information exchange for particular purposes between entities involved in the child protection system.

The Bill simplifies and consolidates the current provisions to be clearer about who can share information and the purposes for which they can share it. The Bill brings together the operative provisions and relevant definitions into a new Part 4 of Chapter 5A.

### *Safeguards*

The Bill improves safeguards to prevent the inappropriate sharing of sensitive information. It includes a new principle to clarify that, when providing or planning to provide a service to a child or the child's family to decrease the likelihood of a child becoming in need of protection, sharing information with consent is the preferred approach, where it is safe, possible and practical to obtain it. But, the Bill prioritises children's safety, wellbeing and best interests over the protection of an individual's privacy by enabling information sharing to occur without consent for particular purposes.

The Bill also includes a requirement for the chief executive of the department to develop information sharing guidelines that provide guidance on when information should be shared and on the secure use, storage, retention and disposal of information.

*Specialist service providers*

The provisions in Chapter 5A of the Act were developed at a time when the department played the central role of receiving people's concerns about children's safety and wellbeing and referring children and families to appropriate services. The reformed child protection and family support service system is increasingly coordinated and delivered by a range of non-government organisations.

However, these entities cannot currently share information with each other without consent, even when a child may become in need of protection if preventative help and assistance is not provided. Obtaining consent is not always safe, possible or practicable and requiring consent can prevent or delay services engaging with families and, where multiple services are involved with a family, prevent the effective coordination of services.

The Bill enables 'specialist service providers' (defined by the Bill as non-government entities funded by the Queensland or Commonwealth Government to provide services that have the primary purpose of helping children in need of protection or decreasing the likelihood of children becoming in need of protection) to share information with each other for particular purposes. This means, for example, services providing support to a family will be able share information with each other in the event that the family moves from one part of the state to another. It also means that a service that was previously working with a family to provide preventative support will be able to share information with another service which begins to work with a family because the child is now in need of protection.

*Pregnant women and unborn children*

Section 21A of the Act obliges the chief executive to take appropriate action where he/she reasonably believes that an unborn child will be in need of protection after birth. This can include investigating and assessing circumstances and/or offering help and support to the pregnant woman. The Act currently enables the chief executive and authorised officers to gather information for these purposes. However, some uncertainty has been reported as to whether they can give information to other entities (such as hospitals), and whether other entities can share information with each other, without the consent of the pregnant woman.

Failing to share relevant information about a pregnant woman can prevent the department engaging effectively with and supporting a pregnant woman and her family. If the consent of a pregnant woman cannot be obtained, or it is unsafe to seek it, the chief executive may be prevented from adequately meeting his or her statutory duty under section 21A.

The Bill allows entities to share information with each other to decide if they should inform the department that an unborn child may be in need of protection after their birth. It clarifies that entities can give information to the department to enable it to investigate and assess whether an unborn child will be in need of protection after birth, and that the department can give information to entities to help them decide whether and what information to give the department. The Bill also allows information to be shared to enable help and support to be offered to a pregnant woman.

### Additional amendments

#### *Temporary custody orders*

Part 3AA of Chapter 2 of the Act enables the Childrens Court to make a temporary custody order to authorise action to ensure the immediate safety of a child while the chief executive decides the most appropriate action to meet the child's ongoing protection and care needs.

Section 51AC enables an authorised officer of the department to apply for a temporary custody order for a child. Under section 51AE, the court can make an order if satisfied that the order is necessary to protect the child from an unacceptable risk of harm and the chief executive will be able, within the term of the order, to decide the most appropriate action to meet the child's ongoing needs. Some uncertainty has been identified regarding whether an authorised officer has standing to make an application for a temporary custody order where a matter has already been referred to the litigation director, as it might be argued the chief executive has already determined the most appropriate action by referring a matter to the litigation director.

The Bill recognises that a family's circumstances can change rapidly in a way that escalates risk to a child. To address this, amendments to section 51AB and 51AE of the Act clarify that a temporary custody order can be applied for by an authorised officer where the chief executive has already referred the case to the litigation director, so the chief executive can ensure the immediate safety of a child and work with the litigation director under s53A of the Act to consider the changing circumstances and determine the best course of action while the temporary custody order is in place.

#### *Vaccination of children in the chief executive's custody*

Section 97 of the Act enables medical practitioners to examine or treat a child who is in the chief executive's custody, without the consent of the child's parents. The Bill clarifies that medical treatment includes vaccinations. The amendment is necessary to clarify that children in the chief executive's custody can be effectively protected from preventable disease by vaccination. For example, in an emergency situation where a child suffers an injury that requires a vaccination against tetanus or the child has been exposed to a viral infection.

All medical treatment carried out under section 97 is, and will continue to be, subject to the child's rights and must be reasonable in the circumstances.

The amendments also clarify that, in situations where vaccination is sought to comply with a routine vaccination schedule, the department will be able to seek vaccination in the absence of parental consent, even if parents retain guardianship. In recognition that vaccination is usually considered a guardianship decision, departmental policy will continue to require officers to determine the parents' views regarding vaccination in cases where parents retain guardianship. This will provide the opportunity for parents to explain why they would not consent to vaccination and advise of any relevant medical information, such as past allergic reactions which can then be included in the information provided to a medical practitioner. If parents indicate they would not consent to vaccination of their child or their views cannot be obtained despite reasonable efforts to do so, section 97 will still allow a health practitioner to administer vaccination, where sought by the chief executive, under the new definition of medical treatment in section 97(8).

*Sharing information about third parties*

Section 187(4) of the Act allows people involved in the administration of the Act to disclose information to people to the extent that the information is about them. This enables the department to give information to people who are or have been in care, about their time in care. However, the information that is supplied is often redacted to remove information that relates to third parties — such as carers, siblings and other family members. Information being withheld about third parties can compound the adverse impacts on people's identity and sense of self that can arise from their time separated from family.

The Bill enables the department to disclose to children in care, and people who were previously in care, information that is about them and also related information about someone else. Safeguards are provided to prevent information being disclosed in specified circumstances, including where there is a reasonable belief the disclosure is likely to adversely affect the safety, psychological or emotional wellbeing of someone.

*Sharing information with interstate and New Zealand child protection agencies*

Chapter 7 of the Act provides for the transfer of child protection orders and proceedings between Queensland and other states, territories and New Zealand. Section 187(3)(b) allows people involved in the administration of the Act to use or disclose information for purposes related to a child's protection or wellbeing. However, the Act does not clearly enable the department to share information with interstate child protection agencies, particularly in relation to unborn children.

The Bill clarifies that the chief executive can make arrangements with interstate or territory and New Zealand agencies that administer child welfare laws, to provide them with information that is relevant to them performing their functions. This will enable the department, for example, to provide information about an investigation of whether an unborn child may be at risk of harm after their birth if the family moves interstate before the birth of the child.

These new provisions will enable the sharing of information about approved foster and kinship carers and unsuccessful applicants, for the purposes of other states, territories or New Zealand performing a function under its child welfare law. This will enable information about a carer to be disclosed to another jurisdiction, without the consent of the person it relates to, to enable, for example, a jurisdiction to consider the information as part of a carer approval process.

*Sharing information for research and related purposes*

Section 189B of the Act currently enables the department to give people access to information relating to the administration of the Act for research purposes, where the research is consistent with chief executive's functions and the information will be collected in a way that does not identify any of the people to whom it relates.

The Commission of Inquiry heard of many areas where further research and evaluation are needed to underpin improvements in child protection policy and practice. These include research into long-term outcomes of children and young people in the child protection system, how they fare once they leave care, and what contributes to positive outcomes.

The current s189B does not allow the department to give researchers access to child protection information that identifies individuals — for example, for the purposes of matching it to information held by other Queensland or Commonwealth Government agencies.

The Bill improves the department's capacity to participate in research and analytical projects and to pilot innovative investment approaches, while protecting the privacy of individuals and recognising the highly sensitive nature of information the department holds. It enables the chief executive to authorise people to have access to information for key research activities with safeguards to prevent the information being published in way that can lead to the identification of anyone it relates to.

#### *Sharing information with the police commissioner*

Section 186 of the Act prohibits the disclosure of the identity of people who notify the department of harm, or a risk of harm, to a child or that an unborn child may be at risk of harm after their birth. Subsection 186(3)) specifically prohibits evidence which may identify a notifier being deduced in a court or tribunal without leave. The ability of people involved in the administration of the Act to disclose information under other provisions is subject to the prohibition in section 186.

The Bill makes it clear that the chief executive must disclose information, including information about the identity of a notifier, to the Police Commissioner where the Commissioner makes a written requirement to the chief executive to provide information that relates to a police investigation following the death of a child.

#### *Protecting all child witnesses*

Section 193 of the Act currently prevents reports of court proceedings identifying child witnesses in cases involving sexual offences without the express authorisation of a court. In cases involving other types of offences, a court can order that identifying information about a child witness not be published. Section 194 of the Act prevents the publication of identifying information about a person who is or was a child victim of a crime.

The Bill increases protections for child witnesses by providing that, where a child is reasonably likely to be a witness in a proceeding for a sexual or violent offence, a report of the proceeding or a 'related proceeding' such as a bail hearing, must not identify the child unless the court has authorised the identifying information to be included in the report. In order to ensure publication can occur in appropriate cases, a person wishing to publish such identifying information, or another person, will be able to apply to the court for authorisation. A court will be able to authorise publication in relation to offences of a sexual or violent nature on its own motion or order that identifying information is not to be published for other types of offences where it is reasonably likely the child will be a witness in a proceeding.

The prohibition will apply to all proceedings, including what might be considered incidental proceedings, such as bail or committal hearings or extradition proceedings, for a criminal offence of a sexual or violent nature and will apply from the time when the originating process for a proceeding is filed with the appropriate court. For example this may be when a summons, or notice to appear, or bail application is filed.

The Bill makes it clear that, for the prohibitions in section 193 to be infringed, the publication must be made knowingly and it is required the person making the publication ought reasonably to have known the child was likely to be a witness in a proceeding of a sexual or violent nature.

#### *Intervention with Parental Agreement*

The Bill will clarify that an intervention with parental agreement can only be considered if the child will not be placed at risk of immediate harm if the parents withdraw their agreement, and that the case plan for the child must include details about what is expected of the child's parents and the chief executive in carrying out the intervention.

The Bill will also provide that a court may have regard to a decision by the department to end an agreement when considering making a child protection order.

## **Alternative ways of achieving policy objectives**

The proposed Bill is essential to implement key outcomes of the review of the Act. There is no alternative way of achieving the reforms.

## **Estimated cost for government implementation**

The reforms in the Bill will support and drive a number of reforms and initiatives already underway and funded under the reform program or through previous allocations to the department.

It is anticipated that there will be some implementation costs associated with staff and sector training, information system updates, and operational policy and procedure updates. These will be met from within existing resources.

The department will make available relevant assistance to support young people to access support and assistance that is available and which they are eligible to access when they transition to independence. Making support available to young people up to the age of 25 years will be funded within existing resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

### **Legislation has sufficient regard to the rights and liberties of individuals, including privacy and confidentiality (section 4(2) of the *Legislative Standards Act 1992*)**

#### Clause 62— funded 'specialist service providers' sharing information

Clause 62 of the Bill introduces a new Chapter 5A, Part 4 into the Act that enables 'specialist service providers' to share information with each other and with other 'service providers' to identify, assess and respond to child protection and child wellbeing concerns. These provisions are a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, under section 4(2) of the *Legislative Standards Act 1992*.



This amendment is necessary to enable the reformed child protection service system to better identify, assess and respond to child protection concerns and to enable particular non-government service providers to coordinate and deliver critical services to protect children and support families to reduce the likelihood of children becoming in need of protection. In recent years, child death review processes have highlighted the importance of sharing relevant information between government entities and non-government service providers for the purpose of protecting children. The Royal Commission into Institutional Responses to Child Sexual Abuse and national work being led by the Child and Family Secretaries group has also highlighted the need for broad and enabling information sharing regimes.

The Bill and the Act provide limitations and safeguards that apply to the sharing of information without consent. These are:

- stating that, wherever safe, possible and practicable to do so, consent should be obtained before providing, or planning to provide, a service to a child or their family to reduce the likelihood of the child becoming in need of protection, or disclosing information about the person to somebody else
- ‘specialist service providers’ are non-government service providers that are funded by the Queensland or Commonwealth Government to deliver services to a child in need of protection or prevent children becoming in need of protection. This will help ensure that information will be handled by organisations that specialise in providing child and family support services, understand the sensitive nature of the information and will treat it appropriately
- information can only be shared to the extent that the holder reasonably believes it may help the receiver to do particular things, such as assess and respond to the care and protection needs of children and/or offer help and support to their families
- the chief executive of the department will be required to develop an information sharing guideline to support the legislation, which will contain detailed practical advice on when information should be shared and requirements for the secure storage, retention and disposal of information, and
- penalties of up to two years imprisonment or 100 penalty units, for the inappropriate use or disclosure of information.

#### Clause 62— sharing information about an unborn child and pregnant woman

Clause 62 of the Bill inserts new sections 159MA to 159MC that enable the department, prescribed entities and service providers to share information about an unborn child and pregnant woman without consent. These provisions are a potential departure from the principle that sufficient regard be given to an individual’s rights and liberties, including privacy and confidentiality, under section 4(2) of the *Legislative Standards Act 1992*.

This amendment is necessary to enable the department to conduct informed, rigorous investigations and assessments to decide if an unborn child may be at risk of harm after birth. In cases where it is decided such a risk exists, the department and service providers require prompt access to information to take effective action to reduce the risk. Failing to share information about a pregnant woman can prevent or delay the department or other service providers engaging in a timely way that supports the woman and her family to reduce risks to the child following their birth.

The Bill and the Act provide limitations and safeguards that apply to the sharing of information without consent. These are:

- information can only be shared for the purposes of enabling the department to investigate or assess whether an unborn child will be in need of protection after their birth or to enable help and support to be offered to a pregnant woman
- a pregnant woman will still be able to decide whether to accept an offer of help or support by the department or a service provider
- if the unborn child is an Aboriginal or Torres Strait Islander child, the requirement to consult with an independent Aboriginal or Torres Strait Islander entity will continue to require the consent of the pregnant woman
- the information sharing guideline developed by the chief executive to support the legislation will contain detailed practical requirements for when information can be shared and requirements for the secure storage, retention and disposal of information, and
- penalties of up to two years imprisonment or 100 penalty units, for the inappropriate use or disclosure of information.

#### Clause 73 — sharing identifying information for research purposes

Clause 73 of the Bill inserts a new section 189B into the Act to enable the chief executive to share identifying information for research and related purposes. The provision is a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, under section 4(2) of the *Legislative Standards Act 1992*.

This amendment is necessary to enable the department to participate in whole-of-government and national research and analytical projects to assess and improve life outcomes for children who have been in out-of-home care and to pilot innovative investment approaches to deliver new and improved services to children and families.

The Bill and the Act provide limitations and safeguards for the sharing of information for research purposes. These are:

- the chief executive will only be able to provide information for research that is consistent with his/her functions under the Act or for other prescribed research projects
- the chief executive will only be able to provide information where the chief executive is satisfied that research information will not be published in a way that can be reasonably expected to result in the identification of any individuals — for example, a high profile case in a small rural community may lead to the identification of individuals even if no names are used
- the chief executive will be able to provide the information subject to the conditions that he/she considers appropriate and penalties of up to 100 penalty units will apply for breaching a condition, and
- when information is provided to a researcher, they will only be able to use or disclose the information to the extent authorised by the chief executive and penalties of up to 2 years imprisonment or 100 penalty units will apply for the inappropriate use or disclosure of information.

#### Clause 71 — providing records to persons who were in out-of-home care

Clause 71 of the Bill introduces a new section 188C to enable the chief executive to disclose information to a child in care, or an adult who was in care, including departmental records

about the department's involvement with the person, that may contain information about other individuals, such as siblings or carers. These provisions are a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, under section 4(2) of the *Legislative Standards Act 1992*.

This amendment is necessary to enable the department to provide information to people about their personal history and to reduce adverse effects on their identity and sense of self that can result from being in out-of-home care and having information about their care, family history and circumstances withheld.

The Bill provides limitations and safeguards that will apply to the sharing of information without consent. These are:

- the chief executive will be prevented from providing information or documents that relate to a third party where he/she reasonably believes providing the information is likely to adversely affect the safety or wellbeing of any person
- the chief executive will also be prevented from disclosing information that: identifies a source of information that would prejudice the achievement of the purpose of the Act, or could reasonably be expected to prejudice the investigation of a criminal offence
- the amendments will not affect a claim of privilege, including legal professional privilege, and
- the chief executive will be able to make the disclosure subject to the conditions she/he thinks are appropriate in the circumstances.

#### Clause 71 — providing information to the Police Commissioner

Clause 71 of the Bill introduces a new section 188E into the Act to oblige the chief executive to provide information to the police commissioner to assist with the investigation of a child's death. These provisions are a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, under section 4(2) of the *Legislative Standards Act 1992*.

This amendment is necessary to enable the chief executive to disclose information that may be essential to assist the police commissioner to undertake a well-informed and comprehensive criminal investigation and prosecution following the death of a child. The inability of the department to provide information about a notifier of harm may hinder the investigation of a child's death.

The Bill provides limitations and safeguards that will apply to the giving of the information. These are:

- the chief executive will only be able to provide information where she/he receives a written request from the Police Commissioner, and
- when the chief executive provides information that includes details of the identity of a notifier of harm to a child, he/she must advise the Police Commissioner of this so that the police can deal with the information appropriately and manage any risks to the notifier.

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Clause 62 — independent Aboriginal or Torres Strait Islander entities sharing information with the chief executive

The Bill introduces a new section 159ME into the Act to enable the chief executive or authorised officer and an independent Aboriginal or Torres Strait Islander entity for a child (as defined in the new section 6) to share information with each other. This may be a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, in accordance with section 4(2) of the *Legislative Standards Act 1992*.

This amendment is necessary to enable an independent Aboriginal or Torres Strait Islander entity for a child to provide information to the chief executive to help the entity facilitate the participation of a child or child's family in decision-making, making plans, and the provision of services to the child and the child's family. For example, an independent Aboriginal or Torres Strait Islander entity may provide information to the chief executive regarding the child's cultural needs.

In proposed new section 159B(g), the Bill includes the principle that whenever safe, possible and practical, consent should be obtained before disclosing personal information about a person to someone else. However, the proposed new section 159B(h)(i) provides a child's protection and care needs take precedence over the protection of an individual's privacy. Section 159(h)(ii) requires a person to consider if the disclosure is likely to adversely affect the safety, wellbeing or best interests of a child or the safety of another person.

The Bill and the Act provide limitations and safeguards that apply to the sharing of information without consent. These are:

- the chief executive and authorised officers can provide an independent Aboriginal or Torres Strait Islander entity with information about a child only if there is a reasonable belief that the information will help the entity facilitate the participation of a child or a child's family in decision-making, making plans, or the provision of services to the child and the child's family
- an independent Aboriginal or Torres Strait Islander entity for a child may only provide the chief executive or authorised officer with information about the child, where the entity reasonably believes the information will help the child or the child's family participate in making plans or decisions relating to the child, or providing or offering to provide services to the child or the child's family, and
- the inclusions of penalties of up to two years imprisonment or 100 penalty units for the inappropriate use or disclosure of information.

**Legislation has sufficient regard to the rights and liberties of individuals, including delegating administrative power only in appropriate cases and to appropriate persons (section 4(2) of the *Legislative Standards Act 1992*)**

Clause 48 — Aboriginal and Torres Strait Islander children and families

Clause 48 of the Bill inserts a new Part 2A into Chapter 4 of the Act that enables the chief executive to delegate one or more of the chief executive's functions or powers in relation to an Aboriginal or Torres Strait Islander child to a named officer of an appropriate Aboriginal or Torres Strait Islander entity. These provisions are a potential departure from the principle that administrative power should only be delegated in appropriate cases and to appropriate persons, in accordance with section 4(3)(c) of the *Legislative Standards Act 1992*.

The proposed amendment is necessary to give practical effect to the new principle in the Act that recognises the right of Aboriginal and Torres Strait Islander people to self-determination.

The Bill provides limitations and safeguards in relation to the delegation of powers. These are:

- the chief executive can only delegate a function or power to a named person who is the chief executive of an appropriate Aboriginal or Torres Strait Islander entity and who has a current blue card
- the chief executive must also be reasonably satisfied that the person is appropriately qualified and a suitable person to perform the delegated function/s or exercise the power/s
- the chief executive will still be able to exercise a power or perform a function for a child for whom a delegation has been made — for example, where the delegate becomes unable or unwilling to exercise a power or perform a function
- if the delegate acts in a way that is not consistent with the chief executive's actions for the child, the chief executive's actions will prevail
- before delegating a function or power, the chief executive must seek and have regard to the views of the child and parents of the child in relation to the delegation, and
- the chief executive can request, from the delegate, information or documents about a child or the delegate at any time and the delegate must comply unless he/she has a reasonable excuse.

**Legislation has sufficient regard to the rights and liberties of individuals, including being consistent with the principles of natural justice (section 4(2) of the *Legislative Standards Act 1992*)**

Clauses 25, 31 – 33, 36, 38, and 40, 42 - 45 — Permanency and stability for children in out-of-home care

Clauses 25, 31 to 33, 36, 38, 40 and 42 to 45 of the Bill introduce a permanent care order as a new type of child protection order that may be made by a court. The making of a permanent care order will restrict the rights of biological parents. The parents will no longer have the rights given to a parent by law. With the possible exception of some limited contact with the child, the biological parents will have no ability to make decisions for, or about, or exercise parental responsibility for the child. Further, only the litigation director will be able to apply to court to vary or revoke the order. This is a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including natural justice and proportional intervention, in accordance with section 4(2) of the *Legislative Standards Act 1992*.

The amendment is necessary to provide for the permanency needs of children in out-of-home care, where reunification with family is not possible. Instability in a child's living and care arrangements is widely recognised as having negative long-term impacts.

The Bill and the Act include limitations and safeguards that will apply to the making of permanent care orders. These are:

- a permanent care order can only be made by the Childrens Court and, as with other child protection orders, the court can make an order only in the absence of a parent in limited circumstances
- the new permanency principles in the Bill clearly state a preference for a child to be cared for by their family, and permanency options will only be pursued where it has been determined that the reunification with family is not reasonably achievable in a timeframe

that is appropriate for the child's age and circumstances, even if the family is supported to become capable of meeting the child's protection and care needs

- any application for a permanent care order will have been preceded by detailed case planning under the Act, in which the parents will have been given the opportunity to be active participants
- a court can make a permanent care order only where it is satisfied that the proposed guardian is committed to preserving the child's relationship with their birth family in accordance with the child's case plan
- the making of a permanent care order will not permanently end a biological parent's legal rights and responsibilities in the same way as an adoption order under the *Adoption Act 2009* does — for example, the order will only last until the child is 18 years old and no new birth certificate naming the guardian as the child's parent will be issued
- a child or a member of the child's family will be permitted to contact the department if they have concerns about a significant breach of a permanent guardian's obligations — for example, in relation to contact. The chief executive can then decide to refer the matter to the litigation director if it is assessed that there has been a serious breach of the permanent guardian's obligations that cannot be resolved through other means and that the permanent care order is no longer appropriate to promote a child's protection, wellbeing and best interests, and
- a permanent guardian for a child must keep the chief executive informed about where the child is living. A permanent guardian is also required to notify the chief executive if a child ceases to be in their care or if the guardian reasonably believes their care of the child will end in the near future, for example because the guardian suffers serious health issues that impede their capacity to care for a child.

**Legislation has sufficient regard to the rights and liberties of individuals, including not abrogating other rights from any source (section 4(2) of the *Legislative Standards Act 1992*)**

Clause 47 — Vaccination of children in the custody of the chief executive

Clause 47 of the Bill amends section 97 of the Act to clarify that, where a child is in the custody of the chief executive, a medical practitioner can vaccinate a child without the consent of the parents. These provisions are a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including not abrogating any rights from any source, in accordance with section 4(2) of the *Legislative Standards Act 1992*.

The amendment is necessary to clarify that children in the chief executive's custody can be effectively protected from preventable disease by vaccination. For example, in an emergency situation where a child suffers an injury that requires a vaccination against tetanus or has been exposed to a viral infection.

The amendments will also clarify that, in situations where vaccination is sought to comply with a routine vaccination schedule, a health practitioner will be able to administer vaccination when sought by the chief executive, in the absence of parental consent, even if parents retain guardianship. In recognition that vaccination is usually considered a guardianship decision, departmental policy will continue to require parental views regarding vaccination to be sought in cases where parents retain guardianship. This will provide the opportunity for parents to explain why they would not consent to vaccination and advise of any relevant medical information, such as past allergic reactions which can then be included in the information

provided to a medical practitioner. If despite reasonable efforts to do so, this information and the parents' views cannot be obtained, section 97 will still allow the chief executive to seek vaccination under the new definition of medical treatment in section 97(8). All medical treatment carried out under section 97 is, and will continue to be, subject to the child's rights and reasonable in the circumstances.

**Legislation has sufficient regard to the rights and liberties of individuals, including freedom of speech and the implied constitutional right to communication on matters of government and politics (section 4(2) of the *Legislative Standards Act 1992*)**

Clauses 74 and 75 — preventing the publication of the identity of child witnesses

Clauses 74 and 75 of the Bill amend sections 193 and 194 of the Act to provide that if a child is, or is reasonably likely to be, a witness in a proceeding for a criminal offence of a sexual or violent nature, their identifying details must not be published without the court's authorisation. In relation to other offences, a court may prohibit publication. The Bill makes it clear that the prohibition on publication will apply to any court proceedings, including what might be regarded as 'incidental proceedings' such as bail hearings. The Bill includes a process for application to a court by a person who seeks authorisation for publication.

These provisions are a potential departure from the principle that legislation should not infringe on open justice or the right to communicate on matters of government and politics, in accordance with section 4(2) of the *Legislative Standards Act 1992*.

The amendment is necessary to protect all children who might be witnesses for a sexual or violent offence at all stages of the criminal prosecution process. The amendment will help ensure children who might be able to provide evidence in criminal proceedings are not impacted by being publicly identified and become incapable of giving evidence in proceedings. These protections will help ensure the court can be fully informed of all relevant facts and therefore help achieve justice.

Currently, there is an automatic prohibition on publishing identifying information about children in relation to an offence of a sexual nature, but not other offences. Further, the protections only apply to proceedings where witnesses are examined and not other steps in the prosecution process, where there may be no examination of witnesses such as bail hearings.

The amendments recognise that children may find the experience of appearing in a court proceeding traumatic, not only because the nature of the offence, but also because of the reporting of information that identifies them. There have been cases where young children have witnessed violent offences and have been identified in the media after 'incidental proceedings', such as bail hearings, and before any determination could be made regarding their capacity to give evidence. The department was made aware of the serious detrimental effect this identification has had for the children in question.

Extending these protections to the cover processes that may not be considered court proceedings is justified on the basis that if a child witness is publicly identified prior to proceedings commencing, any protection at that stage will be rendered ineffective.

Further, the amendments will not mean that no reporting can occur, it merely must not include identifying information about a child. The power of a court to authorise publication in appropriate cases is maintained and the Bill clarifies how an application for authorisation can be made and that the Court may authorise publication on its own motion.

## Consultation

The review of the Act commenced with a first stage consultation in September 2015 with the publication of a discussion paper and six months of broad stakeholder engagement to identify issues to be considered as part of the review. Approximately 350 stakeholders attended 16 state-wide community consultation forums, and 51 written submissions were received in response to a public discussion paper. Targeted consultations were also undertaken, including with Aboriginal and Torres Strait Islander individuals and communities, young people who had an out-of-home care experience, families involved in the child protection system, and various reform committees.

In response to the findings of this first stage of consultation, *The next chapter in child protection legislation for Queensland: Options paper* (Options Paper) was developed to guide a second stage of public consultation on a range of options for legislative change across 13 key topic areas. Approximately 250 people participated in nine community forums in Ipswich, Beenleigh, Caboolture, Townsville, Mackay, Roma, Cairns, Brisbane and Rockhampton. A total of 128 written submissions were received in response to the Options Paper.

The department also engaged the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) to conduct targeted consultations with Aboriginal and Torres Strait Islander people and communities in Woorabinda, Rockhampton, Mt Isa, Townsville, Cairns, Yarrabah, Thursday Island and Palm Island.

In April 2017, the department presented policy proposals to the child and family reform Stakeholder Advisory Group, which is chaired by the Director-General and comprises key stakeholders from child protection and social services peak bodies, non-government service providers, Aboriginal and Torres Strait Islander organisations, and academics. In May and June 2017, the department also discussed versions of a draft Bill with the group.

In May 2016, the department consulted with legal stakeholders on a draft Bill. Attendees included: the Queensland Law Society, Community Legal Centres Queensland, the Bar Association of Queensland, Aboriginal and Torres Strait Islander Legal Service, the Youth Advocacy Centre and Legal Aid Queensland. Dedicated consultations were also undertaken with Chief Executive Officer of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak and the Public Guardian.

In June 2017, the department consulted key members of the judiciary, including the President of the Childrens Court of Queensland, the Chief Magistrate and Deputy Chief Magistrate/Childrens Court Magistrate.



## Consistency with legislation of other jurisdictions

### Permanency

Key aspects of the proposed approach in the Bill are consistent with recent permanency reforms in the New South Wales and Victoria. In New South Wales, the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the NSW Act) has a hierarchy of placement preferences as follows: restoration to the family, guardianship to a relative, kin or other suitable person, open adoption (except for Aboriginal or Torres Strait Islander children) and parental responsibility of the Minister. In Victoria, the *Children, Youth and Families Act 2005* (Vic) (the Victorian Act) also includes a hierarchy of permanency objectives: family preservation, family reunification, adoption, permanent care and long-term out-of-home care.

In New South Wales, a permanency plan is to be prepared and implemented where family restoration is not viable. Where there is no realistic possibility of restoration, the Secretary must consider whether adoption is the preferred option. In Victoria, permanent care orders are the preferred method to achieve permanency for children unable to return to the care of a parent. A permanent care order transfers sole parental responsibility to an approved carer until the child is 18 years old. The Victorian child protection agency does not have any further involvement once a permanent care order is made. All permanent care orders provide that a child's carer must, unless the Court otherwise provides, preserve the child's identity and connection to their culture of origin and the child's relationships with their birth family. New South Wales and Western Australia also have orders in place that are similar to Victoria's permanent care order. In these jurisdictions, a child is effectively exited from the statutory system and no ongoing departmental oversight is mandated after a final order is made. The permanent care order in the Bill offers more avenues for departmental involvement than other jurisdictions through the inclusion of a complaints framework.

New South Wales and Victoria both provide legislated timeframes for permanency decisions to be made. In New South Wales, the Children's Court must decide whether restoration of the child to their birth family is a realistic possibility within six months for children under two years of age, and within twelve months for all other children. In Victoria, a family reunification order can be made for a period more than 12 months when a child has not been in out-of-home care. It may be extended where the child will have been in out-of-home care for 24 months and there is evidence that the child is likely to be restored permanently to the parents' care within that time. It cannot be extended if a child has been in out-of-home care for two years.

### Transition to independence

The proposed approach in the Bill is consistent with the approach in all other Australian jurisdictions, which provide support to young people who have been in the custody or under the guardianship of a government department in their transition to independence.

Legislation in the Australian Capital Territory and New South Wales requires the preparation of dedicated transition from care plans that identify the specific needs of a child who is about to leave care and how those needs will be met. Legislation in Western Australia requires an existing care plan to be modified to include transition planning for a child who is about to leave care.

Victoria's legislation includes the requirement to provide transition to independence support for care leavers under the age of 21 and the type of support that may be offered. Legislation in the Northern Territory, Western Australia and New South Wales provides for transition to independence support to continue until a young person turns 25.

#### Aboriginal and Torres Strait Islander children

The Bill's recognition of self-determination for Aboriginal and Torres Strait Islander people is consistent with the approach in Victoria, New South Wales, Western Australia, the Northern Territory, and Tasmania. The proposed approach to the Child Placement Principle is consistent with the approach in Victoria, New South Wales, Western Australia and South Australia.

The proposed provisions for delegation of the chief executive's functions to a chief executive of an appropriate Aboriginal or Torres Strait Islander entity is similar to the approach in Victoria. The Victorian Act provides that powers and functions can be performed by Aboriginal agencies, with written authorisation of the Victorian Secretary.

Each state and territory requires engagement with Aboriginal and Torres Strait Islander communities and organisations in relation to decisions making about Aboriginal and Torres Strait Islander children. The level of engagement and role of consultation with these entities vary across jurisdictions. Some jurisdictions refer to the role of these entities in the general or principles section of their legislation — for example, in South Australia and New South Wales. Others specifically refer to engagement with entities throughout their legislation — for example, Victoria.

#### Information sharing

The proposed approach in the Bill is broadly consistent with the approach in New South Wales. Chapter 16A of the NSW Act allows a wide range of organisations — the New South Wales Government and Commonwealth Government entities, non-government organisations entities and courts — to share information with each other without consent. It enables information to be shared about children 'in need of protection' and also children and families falling below this threshold. Shared information must relate to the safety, welfare or wellbeing of a child and must assist the recipient to make a decision, assessment or plan, conduct an investigation or provide a service for the safety, welfare or wellbeing of a child or manage risks to a child that arise in the recipient's capacity as an employer or an organisation that arranges the provision of out-of-home care.

In Victoria, key government entities and key non-government service providers can refer cases to Child FIRST if there is a significant concern about a child, but the child is not 'in need of protection'. The Victorian Act authorises these entities to share information with the Department of Human Services (DHS) or Child FIRST to decide how best to respond. The entities can also share information with DHS during an investigation or once a child is assessed as being in need of protection. They can also be compelled to disclose information to DHS if a child is subject to a child protection order. If Child FIRST or DHS refers a case to a family service or another agency, such as a disability service or drug and alcohol treatment service, information sharing can only occur with the consent of the child's parents or the child.

In Western Australian, the *Children and Community Services Act 2004 (WA)* enables information sharing between agencies to protect the wellbeing of children. Obtaining consent prior to sharing information is preferred, unless there doing so is not safe, possible or practicable. The Department for Child Protection and Family Support can disclose or request information relevant to a child's safety and wellbeing with other government agencies, including interstate or overseas child protection agencies, non-government service providers, or a person with a direct interest in the child. Key government agencies — including the Departments of Housing and Education and Police — can share information with each other if it is relevant to the wellbeing of a child, without the involvement of the department. These agencies can also exchange relevant information with funded non-government service providers. Non-government service providers can request information from the government agencies, but cannot share information with another non-government service provider or a non-government school.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* states that the Bill, when enacted, may be cited as the *Child Protection Reform Amendment Act 2017*.

*Clause 2* provides the Act commences on a day to be fixed by proclamation.

### Part 2 Amendment of the Child Protection Act 1999

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

*Clause 4* amends section 5A to insert the words ‘both through childhood and for the rest of the child’s life’ to paramount principle for the administration of the Act. This will direct decision making to include a consideration of long-term wellbeing outcomes for a child, as well as the immediate circumstances relevant to the point-in-time a decision is made.

Clause 4 also amends the example in section 5A to insert the words ‘whether immediate or long-term in nature’ after the words ‘the child’s safety wellbeing and best interests’ to clarify the long-term outcomes for a child must be part of the consideration of the paramount principle.

*Clause 5* amends section 5B to omit the general principle in subsection (k) that a child should have stable living arrangements and consequently renumbers the remaining general principles for administering the Act. Principles relating to stability and permanency, including living arrangements, are instead provided in the new section 5BA inserted by clause 6.

*Clause 6* inserts a new section 5BA to provide new principles for achieving permanency for a child under the Act. The new subsection 5BA (2) provides that the preferred action or order for a child is the one that best ensures the child experiences or has ongoing positive relationships with significant people in their life; stable living arrangements, and legal arrangements that provide them with a sense of permanence and long-term stability. Clause 82 also inserts a definition of permanency in the dictionary in Schedule 3 of the Act.

Clause 6 inserts a new subsection (4) to set out a hierarchy of preferences for deciding if an action or order achieves permanency for a child. In order of priority, these preferences are: for the child to be cared for by the child’s family; for the child to be cared for under the guardianship of a member of the child’s family or another suitable person; the third preference is for the child to be cared for under the guardianship of the chief executive.

*Clause 7* replaces the additional principles for Aboriginal or Torres Strait Islander children in section 5C with a new section 5C that provides new principles for administering the Act in relation to Aboriginal and Torres Strait Islander children. These principles apply to the administration of the Act in relation to Aboriginal and Torres Strait Islander children.

The Bill inserts a new section 5C(1) to explicitly recognise the right of Aboriginal and Torres Strait Islander people to self-determination. The Bill supports self-determination throughout the Act by providing the new principles stated in section 5C(2) apply for administering the Act.

Section 5C(1) also requires the long-term effect of decisions on an Aboriginal or Torres Strait Islander child, their family and community, to be taken into account.

The Bill inserts ‘child placement principles’ in section 5C(2), which incorporate the original scope and intent of the Aboriginal and Torres Strait Islander Child Placement Principle by embedding each of the five core elements of the Child Placement Principle – prevention, partnership, placement, participation and connection as a separate principle in the new sections 5C(2)(a) to (e). These amendments are intended improve and strengthen the application of the Child Placement Principle throughout the Act.

The partnership principle in section 5C(2)(b) and participation principle in 5C(2)(d) recognise the rights of Aboriginal and Torres Strait Islander people to be involved in administrative and judicial processes for making significant decisions about Aboriginal and Torres Strait Islander children under the Act. This is in addition to existing provisions in the Act which provide for parents and other guardians to be respondents to proceedings for child protection orders (under section 57 of the Act) and other people, such as members of the child’s extended family or a representative of the relevant Aboriginal or Torres Strait Islander community, to apply to participate in proceedings. If a person who is not a party to proceedings wishes to take part in judicial proceedings under the participation principle, they will be able to do so by making an application to the court under section 113 of the Act.

The ‘placement principle’ in section 5C(2)(c) provides that, if an Aboriginal or Torres Strait Islander child is to be placed in out-of-home care, the child has a right to be placed with a member of their family group. A corresponding amendment is made to section 83 of the Act by clause 46 of the Bill. This supports the other child placement principles and reinforces the importance of an Aboriginal or Torres Strait Islander child being brought up in and maintaining their connection with their family, community, culture and language.

The child placement principles in section 5C(2) are specifically referred to in multiple provisions throughout the Act, ensuring the prominence of the new principles and their application to decisions made under the Act.

*Clause 8* replaces section 6 that provides for recognised entities and decisions for Aboriginal and Torres Strait Islander children, with new sections 6 to 6AB which provide for independent Aboriginal or Torres Strait Islander entities and decisions about for Aboriginal and Torres Strait Islander children. This clause defines an ‘independent Aboriginal or Torres Strait Islander entity’ and outlines their role in the administration of the Act.

Amended section 6 defines an *independent Aboriginal or Torres Strait Islander entity*. An independent Aboriginal or Torres Strait Islander entity can be an individual who is an Aboriginal or Torres Strait Islander person, or a group which includes individuals who are Aboriginal or Torres Strait Islander persons. The chief executive must be satisfied that the entity provides services to Aboriginal persons or Torres Strait Islanders, is a representative of the child’s community or language group, or satisfies specific requirements under section 6(2) if the entity is an individual. If the independent Aboriginal or Torres Strait Islander entity is an individual, the person must also be a person of significance to the child or child’s family, be a suitable person for associating on a daily basis with the child, has appropriate authority to speak about Aboriginal or Torres Strait Islander culture in relation to the child or child’s family, and not be an officer or employee of the department. For this provision, cultural authority includes, but is not limited to, authority to speak about Aboriginal tradition or Island custom.

To be an independent Aboriginal or Torres Strait Islander entity for a child, the group or individual must also be considered a suitable person to fulfil the role, under new section 6(c). Schedule 3 of the Act includes a definition of suitable person that recognises the various roles of individuals and organisations under the Act and Part 7 of the *Child Protection Regulation 2011* (the Regulation) contains specific provisions for determining the suitability of the various types of persons included in the definition of suitable person in Schedule 3 of the Act. The requirements for suitability may differ according to the role undertaken by an entity for a particular child and of their family. The requirements for determining suitability of an entity will also be prescribed by regulation. In order to enable the regulation to be amended to include these requirements, clause 82 of the Bill amends the definition of suitable person in Schedule 3 to include a suitable person to be an independent Aboriginal or Torres Strait Islander entity. Suitability will include criteria to satisfy the chief executive that the person is capable and appropriate for facilitating, supporting and enabling the child and the child's family group to participate in making decisions about the child's protection and care needs. Examples are provided under section 6(1)(c) to provide guidance regarding who may be considered an independent Aboriginal or Torres Strait Islander entity for a child.

*Clause 8* inserts section 6(2)(d) to specify that an independent Aboriginal or Torres Strait Islander entity cannot be an officer or employee of the department. This reflects the previous prohibition on who could be considered a recognised entity (under section 246I, to be omitted by this Bill) and supports the intention that the entity is independent of the department.

*Clause 8* inserts section 6AA to require the chief executive, the litigation director and authorised officers to arrange for an independent Aboriginal or Torres Strait Islander entity to facilitate participation of a child and the child's family when making a significant decision about an Aboriginal or Torres Strait Islander child. A significant decision is defined in the dictionary as a 'decision likely to have a significant impact on the child's life'. When making a significant decision about an Aboriginal or Torres Strait Islander child the chief executive, the litigation director and authorised officers must also have regard to the child placement principles (in amended section 5C(2)) in relation to the child. These provisions ensure an Aboriginal or Torres Strait Islander child and the child's family are supported and enabled to participate in decision-making under the Act; and support the right of Aboriginal and Torres Strait Islander people to self-determination.

*Clause 8* inserts section 6AA(3) to recognise that a child's best interests may be best served timely decision making, and the obligation for the chief executive, the litigation director and authorised officers to arrange for an independent Aboriginal or Torres Strait Islander entity to be involved in the process may not always be practicable, safe or otherwise in the child's best interests. In these circumstances, it will not be required that an independent Aboriginal or Torres Strait Islander entity be arranged to facilitate participation of the child and the child's family in the decision making process. Under section 6AA(3)(b) the requirement will also not apply to situations where the child or their family does not consent to the entity's involvement, as this would be contrary to facilitating meaningful participation of the child and family.

The new section 6AA(4) clarifies that there is no obligation on the litigation director to arrange for an independent Aboriginal or Torres Strait Islander entity for a child to facilitate participation, if the litigation director is satisfied the chief executive or an authorised officer has already made this arrangement.

The obligation for arranging an independent Aboriginal or Torres Strait Islander entity to be involved applies to each significant decision. Therefore, the exemptions in sections 6AA(3) and (4) will only apply to a particular significant decision and need to be reconsidered for any subsequent significant decisions in relation to a child.

The new section 6AA(5) requires the chief executive, the litigation director and authorised officers to conduct processes involving an Aboriginal or Torres Strait Islander person in a way that allows the full participation of the person and their family group and in a place that is appropriate to the Aboriginal tradition or Island custom.

*Clause 8* inserts new section 6AB which applies to the Childrens Court and provides for additional principles about Aboriginal and Torres Strait Islander children. Section 6AB provides that, if the Childrens Court exercises a power in relation under the Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to Aboriginal tradition and Island custom relating to the child and the new child placement principles (provided in new section 5C) in relation to the child. The court is not limited in the way it may inform itself about the Aboriginal tradition and Island custom relating to the child, however it may have regard to the views of a child, a member of the child's family or an independent Aboriginal or Torres Strait Islander entity for the child, if appropriate. This could be similar to the current process whereby the court has regard to the views of a recognised entity for the child, about Aboriginal tradition and Island custom.

A note is included in section 6AB(2)(a) to make it clear the meaning of Aboriginal tradition and Island custom is in accordance with the relevant definitions in the *Acts Interpretation Act 1954* (the AIA). The AIA defines Aboriginal tradition as 'the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships'. Island custom is defined as 'the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships'.

*Clause 9* amends the chief executive's functions in section 7 to remove the function of consulting with recognised entities about the administration of the Act in relation to Aboriginal or Torres Strait Islander children and replace it with a new function of engaging independent Aboriginal and Torres Strait Islander entities to facilitate the participation of a child and their family in decision-making under the Act.

*Clause 10* amends section 13B to update a reference to the new information sharing provisions in Chapter 5A of the Act.

*Clause 11* amends section 21A to reflect the changes regarding the entities which can provide cultural advice and better support Aboriginal and Torres Strait Islander children and their family to participate in decision-making under the Act. Section 21A applies when the chief executive reasonably suspects an unborn child may be in need of protection after the child is born.

*Clause 11* replaces the requirement in 21A(3) that, if the child is an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity

for the child. The new requirement is that if the child is an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must arrange for an independent Aboriginal or Torres Strait Islander entity to facilitate the participation of the pregnant woman and the child's family in relation to the chief executive's actions under existing 21A(2) of the Act. Section 21A(2) requires the chief executive to take appropriate action, such as having an authorised officer investigate the circumstances and assess the likelihood that the child will need protection after he or she is born; or offering help and support to the pregnant woman.

Section 21A(3)(b) is amended to require the chief executive, where the child is an Aboriginal or Torres Strait Islander child, to arrange for an independent Aboriginal or Torres Strait Islander entity to offer help and support to the pregnant woman.

The requirement that the pregnant woman consent to the involvement of an entity is retained. Clause 11 amends the requirement for consent in section 21A(4) to refer to the involvement of an independent Aboriginal or Torres Strait Islander entity, instead of a recognised entity. If a pregnant woman does not consent to the entity's involvement, this will not prohibit the chief executive from making a decision or taking action in relation to the child under section 21A(2) without the involvement of an entity.

*Clause 12* amends section 23 to include a permanent guardian of the child in the definition of 'parent' for the purposes of chapter 2, part 2 of the Act (temporary assessment orders).

*Clause 13* amends section 37 to include a permanent guardian of the child in the definition of 'parent' for the purposes of chapter 2, part 3 of the Act (court assessment orders).

*Clause 14* amends section 51AA to include a permanent guardian of the child in the definition of 'parent' for the purposes of chapter 2, part 3AA of the Act (temporary custody orders).

*Clause 15* amends section 51AB to replace subsection 51AB(2) to clarify that the purpose of a temporary custody order includes authorising action necessary to ensure the immediate safety of a child while the chief executive works with the litigation director under section 53A of the Act.

*Clause 16* Amends section 51AE to replace subsection 51AE(b) to clarify that magistrates can only make a temporary custody order where they are satisfied that, within the period of the order, the chief executive or the litigation director, will be able to decide the most appropriate action to meet the ongoing protection and care needs of the child.

*Clause 17* amends section 51B to insert new subsections (1A) and (1B) that set out matters that a case plan must include. These are: a permanency goal (and, where the goal is returning the child to the care of a parent, an alternative goal is required for the event that timely return to the parent is not possible); and, where the child is Aboriginal or Torres Strait Islander, a cultural support plan is in place, which details how the case plan is consistent with the child placement principles in the new section 5C(2)(e).

*Clause 17* also inserts new 51B(1)(b) to require that, where the child is age 15 years or older and does not have a long-term guardian, the case plan must also include actions to help the child transition to independence. Consequential amendments are also made to sections 51B(2) and (2)(a).



*Clause 18* amends section 51D to replace the note in subsection (1)(c)(iv) to reflect the change in wording of the requirement in section 6(5) to perform functions involving Aboriginal or Torres Strait Islander people, in a way that allows the participation of the person and their family group, and in a place that is appropriate to Aboriginal tradition or Island custom. Section 51D(1)(e) is omitted as requirements relating to stable and care and continuity of relationships are now in the new section 51B(1A) inserted by clause 17.

*Clause 19* omits section 51E that defines who is a child's family group. Clause 82 amends the dictionary in Schedule 3 to include a definition of family group.

*Clause 20* amends section 51F to include a permanent guardian of the child in the definition of 'parent' for the purposes of chapter 2, part 3A of the Act.

*Clause 21* amends section 51L to align with changes to provide greater flexibility in how the department and other entities involved in the administration of the Act obtain and consider relevant cultural advice (by clause 8). Section 51L(1)(f) is replaced to require the convenor of a case planning meeting, where the child is an Aboriginal or Torres Strait Islander child, to give an independent Aboriginal or Torres Strait Islander entity for the child a reasonable opportunity to attend and participate at the meeting. This replaces the requirement for a convenor to give a recognised entity a reasonable opportunity to attend and participate. Section 51L(4) is amended to include replaced section 51L(1)(f), providing that the convenor of a case planning meeting does not have to allow an independent Aboriginal or Torres Strait Islander entity to attend or participate in the meeting, if the convenor is satisfied the entity's attendance or participation would be contrary to the purposes of the meeting or not in the child's best interests.

Section 51L(5) is inserted to provide further exceptions to the convenor's requirement to give an independent Aboriginal or Torres Strait Islander entity for the child a reasonable opportunity to attend and participate at the meeting, acknowledging that it may not be appropriate in all circumstances. The exceptions are: when the entity's attendance or participation is likely to have a significant adverse effect on a person's safety, psychological or emotional wellbeing; or when the child or the child's family does not consent to the entity's attendance or participation.

Section 51L(3) is amended to remove an independent Aboriginal or Torres Strait Islander entity from who is required to be allowed to attend or participate in a case planning meeting, regardless of whether the child's parents agree to the attendance or participation. This reflects the intention that an independent Aboriginal or Torres Strait Islander entity will not be involved in supporting and facilitating the participation of an Aboriginal or Torres Strait Islander child and their family in decision-making under the Act if the child or the child's family does not consent to the entity's involvement.

*Clause 22* amends section 51N to replace subsection (d) to update the terms used in section 51N as a consequence of the new definitions in chapter 5A, part 4 of the Act. The changes mean the convenor of a case planning meeting must take reasonable steps to ascertain and make known at the meeting, the views of a relevant prescribed entity or service provider.

*Clause 23* amends section 51S to update the terms used in section 51S(3)(a)(iv) as a consequence of the new definitions in chapter 5A, part 4 of the Act. If a case plan is not developed at a case planning meeting, the chief executive must take reasonable steps to obtain

the views of a relevant prescribed entity or service provider, if their views have not yet been obtained.

*Clause 24* amends section 51V by inserting new subsections (4A) and (4B) to require a review of a case plan to include developing appropriate actions for helping children transition from care where a plan does not include transition actions and the child has turned 15 since the plan was made or last reviewed.

*Clause 25* inserts a new section 51VB to provide for the review of a case plan where a child has a permanent guardian under a permanent care order. The permanent guardian, or the child, can ask the chief executive for the case plan to be reviewed at any time. Under the new subsection (3), the chief executive must review the plan unless the chief executive is satisfied there has been no significant change in circumstances since the last review of the plan, or a review is otherwise not appropriate. If the chief executive decides not to review the case plan, the new subsection (4) requires the chief executive to give written notice of that decision to the person who requested the review and the permanent guardian. The person given the notice can then apply to the Queensland Civil and Administrative Tribunal for a review of the chief executive's decision.

*Clause 26* amends section 51W to align with changes in how the department and other entities involved in the administration of the Act obtain and consider relevant cultural advice. Section 51W(1)(f) is amended to require the chief executive to give an independent Aboriginal or Torres Strait Islander entity for the child a reasonable opportunity to participate in the review and preparation of a revised case plan. This replaces the requirement for the chief executive to give a recognised entity a reasonable opportunity to participate.

Section 51W(1)(h) is replaced to update terminology as a consequence of the new definitions in chapter 5A, part 4 of the Act. The chief executive must give a relevant prescribed entity or service provider a reasonable opportunity to participate in the review and preparation of a revised case plan.

Section 51W(5) is amended to include amended section 51W(1)(f), providing that the chief executive does not have to allow an independent Aboriginal or Torres Strait Islander entity to participate in the review and preparation of a case plan (usually via a family group meeting), if the chief executive is satisfied the entity's attendance or participation would be contrary to the purposes of the family group meeting or not in the child's best interests.

Section 51W(6) is inserted to provide further exceptions to the chief executive's requirement to give an independent Aboriginal or Torres Strait Islander entity for the child a reasonable opportunity to attend or participate at a family group meeting for the purposes of reviewing or preparing a case plan, acknowledging that it may not be appropriate in all circumstances. The exceptions are when the entity's attendance or participation is likely to have a significant adverse effect on a person's safety, psychological or emotional wellbeing, or when the child or the child's family does not consent to the entity's attendance or participation

*Clause 27* updates section 51X to align with the changes in the Bill relating to permanency planning, permanent care orders and planning for a child's transition from care to independence. The clause also adds a new subsection (4) to require a report on the review of a case plan to state the progress made in planning alternative long-term care for a child who is on a long-term guardianship order to the chief executive.

*Clause 28* amends section 51ZB to insert new subsection (2) to clarify the chief executive is not required to consider intervening with the parent's agreement if she/he reasonably believes the child will be at immediate risk of harm if the parent/s withdraw their agreement to the intervention.

*Clause 29* amends section 51ZC to insert new subsection (2) to require a case plan for a child subject to an intervention with parents' agreement to include details about what is expected of the parents and the chief executive in to achieve the goals under the agreement.

*Clause 30* amends section 52 to include a permanent guardian of the child in the definition of 'parent' for the purposes of chapter 2, part 4 of the Act.

*Clause 31* amends section 59(1)(b)(iii) to refer to permanent care orders so that a court will be required to consider if a child's case plan includes contact and living arrangements before making a permanent care order. Clause 31 also amends section 59(2) to provide that the court, when making a child protection order, may have regard to any contravention of the Act or of an order or a decision by the chief executive to end an intervention with parents' agreement.

Subclause (4) inserts new subsections (7A) and (7B) that state the additional matters the court must be satisfied of before making a permanent care order. The court must be satisfied the proposed guardian is suitable; willing and able to meet the child's protection and care needs on a permanent basis; and is committed to preserving the child's identity, connection to their culture and relationships with their birth family. The actions for preserving the child's identity, connection with their culture and relationships with their family should be outlined in their case plan. The court must also be satisfied the child has been in the care of the proposed guardian for at least 12 months before the application for the order is made, unless the court is satisfied there are exceptional circumstances that justify making the order. For example that the permanent guardian is already caring for one or more of the child's siblings under a permanent care order.

*Clause 32* inserts a new section 59A to provide additional matters relating to permanent care orders for Aboriginal or Torres Strait Islander children. Under 59A(2), when the Childrens Court is deciding whether to make a permanent care order, the court must have proper regard to the new child placement principles in relation to the child (provided in new section 5C), and the Aboriginal tradition or Island custom relating to the child. The court is not limited in the way it may inform itself about the Aboriginal tradition and Island custom relating to the child, however it may have regard to the views of a child, a member of the child's family or an independent Aboriginal or Torres Strait Islander entity for the child, if appropriate. New section 59A(3) prohibits the court making a permanent care order for the Aboriginal or Torres Strait Islander child unless it is satisfied the child's case plan appropriately provides for the child's connection with their culture, community or language group, to be developed or maintained, and the child has been consulted (if appropriate), on the decision to apply for the order.

*Clause 33* amends section 61 to replace subsection (f) and add a new subsection (g). The new 61(f) includes a note explaining that parents of a child are able to apply to vary or revoke a long-term guardianship order. The new 61(g) includes a permanent care order as a type of child protection order and includes a note explaining that only the litigation director can apply to vary or revoke a permanent care order.

*Clause 34* amends section 62(b) to limit the period a child can be the subject to one or more short-term orders that result in a child being in care for a continuous period of time. Where a court makes a custody or short term guardianship order and the child has already been subject to one or more orders that were in effect for less than two years, the new order must not result in the child having been in care for a continuous period of more than two years after the first of the orders was made. A caveat is included in a new subsection (2A) to provide that the limit on the duration of one or more custody or short-term guardianship orders does not apply if the court is satisfied it is in the best interests of the child to have a longer stated time for an order and reunification of the child with the child's family is reasonably achievable within the longer stated time.

*Clause 35* amends section 64 to insert new subsections (2A) and (2B). These compliment the changes in clause 34 by limiting the period that a custody or short-term guardianship order can be extended for. Unless satisfied it is in the best interests of the child and that the protection and care needs of the child will be met within a longer period, a court must not extend a custody or short-term guardianship order for a period that would result in a child have or being been in out-of-home care for a continuous period of 2 years from the time the first custody or short-term guardianship order was made.

*Clause 36* amends section 65 to simplify the process for varying a long-term guardianship order to the chief executive to transfer long-term guardianship of a child to a member of a child's family or another suitable person. It also amends section 65 to simplify the process of revoking a long-term guardianship order to either the chief executive or a member of a child's family or another suitable person and making a permanent care order in its place. Under section 65(1)(a) the litigation director or the child will be able to apply to vary or revoke a child protection order, other than a permanent care order, for the child; or revoke a child protection order, other than a permanent care order, and make another child protection order (which does include a permanent care order) in its place.

Amendment of section 65(2) clarifies that a parent of the child will not be able to apply to vary a long-term guardianship order to the chief executive to transfer long-term guardianship of a child to a member of a child's family or another suitable person through the new simplified process. A child's parent is able to apply to revoke a child protection order for a child or make a child protection order that grants custody of the child in its place, but not guardianship, under the current section 65 of the Act.

The litigation director on referral from the chief executive, will be able to apply to vary or revoke a permanent care order for the child under new section 65AA (inserted by clause 38). The child's parent will not be able to apply to vary or revoke a permanent care order for the child.

The new subsection (5A) provides for the simplified variation or revocation process of long-term guardianship orders. The litigation director or the child may apply to vary or revoke a long-term guardianship order for the child; or revoke a long-term guardianship order for the child and ask the court to make a permanent care order in its place. This clause also inserts a new subsection (5B) that provides that, if an application for a variation or revocation is made under (5A), certain subsections of section 59 do not apply. This means that a court does not need to consider if the child is in need of protection, and the order is appropriate and desirable for the child's protection or whether the protection sought to be achieved by the order can be achieved by an order on less intrusive terms. The court is also not required to consider the

matters outlined in subsections 59(6)(a), (7) and (8). This sets a clear expectation that the usual process is that a court is not required to reconsider matters which have already been determined in making the existing long-term guardianship order which is varied or revoked.

*Clause 36* provides under new section 65(5C) that the only circumstance the simplified process in subsection (5B) will not apply is if the court makes a specific order that there are exceptional circumstances, and it is in the best interests of the child for the matters mentioned in (5B) to be considered. Pursuant to section 104, the court would be required to state its reasons for determining that because of exceptional circumstances, it is in the best interests of the child for the provisions of section 59 mentioned in subsection (5B) to apply to the application.

An order under s 65(5C) that the streamlined process does not apply can be made on the court's own initiative or on application by the litigation director or the child. A parent cannot bring an application for an order under section 65(5C).

*Clause 37* amends section 65A so that it applies when a court revokes a permanent care order or decides an appeal against the making of a permanent care order in favour of a person other than the litigation director. In these instances a court may make a transition order under section 65A(2).

*Clause 38* inserts a new section 65AA dealing with the variation and revocation of permanent care orders.

The new section 65AA provides that only the litigation director can apply to vary or revoke a permanent care order or to revoke a permanent care order and make another child protection order in its place. Subsection (2) provides that the litigation director may only apply to vary or revoke a permanent care order if the chief executive is satisfied the child has suffered significant harm, is suffering significant harm, or is at an unacceptable risk of suffering significant harm, and the child's permanent guardian is not able and willing to protect the child from harm or the guardian is not complying with their obligations in a significant way — for example, by not helping the child maintain their relationship with their birth parents.

Under subsection (3), a variation or revocation application will be dealt with as if it was an application for a child protection order. Subsection (5) provides that a court may revoke the order only if it is satisfied that the revocation is in the best interests of the child and will promote their ongoing care and protection needs. In making its decision, subsection (5) provides that the court may have regard to a contravention of the permanent care order or the Act and must have regard to the child's need for emotional security and stability.

Subsection (6) provides for the actions the court may take in deciding the application. Without limiting the court's inherent powers (including the power to dismiss an application), the court may simply revoke the permanent care order, or revoke the permanent care order and make another child protection order in its place. When a permanent care order is revoked and no further order is sought (or order applied for by the litigation director is not granted), the ability of the court to make any order provides a safeguard by enabling the court to ensure the child is still subject to an appropriate order to meet their care and protection needs.

*Clause 39* amends section 70 to replace subsection (4) to reflect the inclusion of independent Aboriginal or Torres Strait Islander entities in the Act and provides an entity may attend a court ordered conference. The current reference to recognised entities is removed.

*Clause 40* inserts a new section 74A to place new obligations on the chief executive in relation to children subject to permanent care orders and long-term guardianship orders granting guardianship to a person other than the chief executive. The chief executive must ensure children subject to these orders are told about the Charter of Rights for a child in Schedule 1 of the Act, is given written information about the charter of rights if this is appropriate having regard to the child's age or ability to understand, is told about the obligations of the child's long-term guardian or permanent guardian; is told about the public guardian and other entities known to the chief executive that can help the child if the child considers that their guardian is not complying with their obligations in relation to the child; and is told about the child's right to contact the chief executive if the child has any questions or concerns about the child's protection and care needs.

*Clause 41* replaces section 75 to clarify the requirements for the chief executive to plan for, and assist, a young person who is or has been a child in a custody or guardianship of the chief executive to transition from out-of-home care to independence. The new sub-section (2) requires that, as far as reasonably practicable, the chief executive must ensure help is available to assist a child or person in their transition and ensure the help is available from at least when the child is 15 years of age until they are 25. Subsection (3) states that the assistance available may include matters such as help to access entitlements, accommodation and education and help to obtain employment and legal advice. This subsection includes help in accessing information in the chief executive's possession or control about the person and the person's time in care. Subsection (4) defines information for the purposes of section 75 to include a document or a copy of a document.

*Clause 42* amends section 79 to require long-term and permanent guardians for a child to keep the chief executive informed about where the child is living.

*Clause 43* inserts a new section 79A that provides obligations of long-term and permanent guardians. These include ensuring the child is cared for in accordance with the charter of rights in Schedule 1 of the Act; ensuring the child is provided with appropriate help to transition to independence; preserving the child's identity and connection to the child's culture or origin and helping them maintain a relationship with their parents, family and other significant people in a child's life. Subsection (2) provides that the Childrens Court can order all or part of the requirements do not apply or apply with stated modifications if it considers that complying with them would constitute a significant risk to the safety of the child or anyone else or it is not otherwise in the child's best interests.

*Clause 44* replaces section 80A to include permanent guardians and require them to give written notice to the chief executive if their care of a child ends and where the child is living. The new section 80A also requires long-term or permanent guardians to notify the chief executive if they reasonably believe that their care of the child will end in the near future. Subsection (2) requires a long-term or permanent guardian to immediately give the chief executive written notice if their care of a child has ended or is reasonably likely to end in the near future. Subsection (3) requires that if the chief executive receives notice under subsection (2) he or she must review the child's protection, care and wellbeing needs and take any further action considered appropriate.

*Clause 45* inserts a new Division 3A into Chapter 2, entitled ‘Complaints and permanent care orders’ that comprises new sections 80B to 80E.

New section 80B enables a child or a member of a child’s family to make a complaint to the chief executive if they honestly and reasonably believe that a permanent guardian is not complying with their obligations under section 79A of the Act.

New section 80C provides that the chief executive may ask a complainant to give the chief executive further information about the complaint within a reasonable time. This section allows the chief executive to gather information necessary to determine whether to deal with the complaint or refuse to deal with the complaint.

New section 80D enables the chief executive to refuse to deal with a complaint if the chief executive reasonably believes that a complaint is trivial, unreasonable or without substance; or the complaint concerns frivolous matter or was made vexatiously; or the complainant refuses, without a reasonable excuse, to provide further information reasonably required by the chief executive to decide whether to deal with the complaint. If the chief executive refuses to deal with a complaint, the chief executive must, as soon as practicable, give written notice of the decision to the complainant which must comply with the requirements outlined in section 157(2) of the *Queensland Civil and Administrative Tribunal Act 2009*. The chief executive must also keep a record about the complaint.

New section 80E provides that if the chief executive does not refuse to deal with a complaint under section 80D, the chief executive must take all reasonable steps to resolve the complaint as soon as is reasonably practicable. The chief executive must give the complainant a response to the complaint stating the steps taken; the reason the chief executive considers the steps taken are reasonable in the circumstances; and any results of the steps taken that are known at the time of providing the response.

*Clause 46* Amends section 83, replacing subsections 83(2) to (6). Section 83(2) is replaced to align with changes to provide greater flexibility for a child’s family to have an entity facilitate their participation in significant decisions. New section 83(2) requires the chief executive to arrange for an independent Aboriginal or Torres Strait Islander entity for a child, to facilitate the participation of the child and the child’s family when making decisions about where or with whom the child will live. This replaces the existing requirement for the chief executive to ensure a recognised entity for a child is given an opportunity to participate in the process of making decisions about where or with whom the child will live.

Subsection 83(3) provides that, in urgent circumstances, the chief executive may make a decision about where and with whom a child will live without consulting with the recognised entity. The section is amended to now require an independent Aboriginal or Torres Strait Islander entity for a child. The chief executive does not have to make the arrangement if it is not practicable because an entity is not available or urgent action is required to protect the child, or if the child or child’s family does not consent to the entity’s involvement. An exception also applies if the chief executive is satisfied the entity’s involvement is likely to have a significant adverse effect on the safety or psychological or emotional wellbeing of any person; or is not otherwise in the child’s best interests. Similar exceptions are reflected in new sections 6AA(3), 51L(5) and 51W(6).

Subsection 83(4) places an obligation on the chief executive, when placing a child, to place the child with a member of the child's family group. Subsection 83(5) provides, that, if this is not practicable to place the child with a member of the child's family group, the chief executive must place the child in accordance with the hierarchy of placement options listed from 83(5)(a) to (d). Each consideration of placement should only be made where it is not practicable to place the child in the care of the person mentioned in the previous placement.

New subsection 83(6) provides that, during consideration of who an Aboriginal or Torres Strait Islander child should be placed with, the chief executive must give proper consideration to the views of the child and the child's family. This replaces the requirement in section 83(5)(a) which requires the chief executive to give proper consideration to the views of a recognised entity for the child. This aligns with changes to provide greater flexibility in how the department and other entities involved in the administration of the Act obtain and consider relevant cultural advice; and recognises that the child and the child's family is the primary source of cultural knowledge in relation to the child. Section 83(5)(b) is retained as renumbered section 83(6)(b) and requires the chief executive to give proper consideration to ensuring the decision provides for the optimal retention of the child's relationships with parents, siblings and other people of significance under Aboriginal tradition or Island custom.

*Clause 47* amends section 97 to add a new definition of 'medical treatment' to clarify that the term includes vaccinations. This means that a medical practitioner can vaccinate a child who is in the custody of the chief executive where parental consent cannot be obtained.

*Clause 48* inserts a new part 2A into chapter 4, entitled 'Prescribed delegates for Aboriginal or Torres Strait Islander children' that comprises sections 148BA to 148BI.

New section 148BA defines key terms used in part 2A. The definition of 'appropriate Aboriginal or Torres Strait Islander entity' is broad to provide flexibility in determining which entity is best placed to be a delegate for a particular Aboriginal or Torres Strait Islander child. The criteria in (a) and (b) reflect requirements previously used for recognised entities under section 246I of the Act (which is removed by clause 79 of the Bill).

New section 148BB enables the chief executive to delegate functions or powers under the Act in relation to an Aboriginal or Torres Strait Islander child who is in need of protection or likely to become in need of protection. Section 27A of the *Acts Interpretation Act 1954* (the AIA) applies, with some minor exceptions, to the power of delegation and is to be read alongside the provisions in new part 2A. Section 148BB(2)(a) limits the application of section 27A of the AIA to ensure the delegation is made to a stated person. The delegation must also state the name of the Aboriginal or Torres Strait Islander child to which the delegation applies, all functions and powers being delegated and any conditions of the delegation. Under section 27A(4) of the AIA a delegated function or power may be exercised only in accordance with any conditions to which the delegation is subject.

Under new section 148BB(3), a power or function can only be delegated to a person who is an Aboriginal or Torres Strait Islander person and the chief executive officer of an appropriate Aboriginal or Torres Strait Islander entity. The person must also have a positive notice or a positive exemption notice under the *Working with Children (Risk Management and Screening) Act 2000*, commonly referred to as a 'blue card'.



The chief executive must also be satisfied the person is appropriately qualified and a suitable person to perform the function or exercise the power in relation to the child. The AIA, schedule 1 defines 'appropriately qualified' as 'having the qualifications, experience or standing appropriate to perform the function or exercise the power'. The suitability of a person to be a delegate will be determined on a case-by-case basis and depend on the particular powers or functions being delegated. Considerations may include whether the person is competent and capable of acting as a chief executive officer of the entity, and whether the entity itself is appropriate and capable of supporting the prescribed delegate to deliver the functions and powers for the child.

New section 148BB(4) requires the chief executive to seek and have regard to any views expressed by the child and their parents about the delegation. It follows if an express objection is made to a proposed delegation, it is extremely unlikely the delegation would be made, as it would not appear to be in the best interests of the child if there was limited support from the child or their family. However, this would depend on the circumstances in each case and subject to the best interests of the child. Views of the child and their parents should only be sought where it is safe, possible and practical to do so. This may not be the case in a variety of circumstances, including where the child and/or child's family would not be aware that the chief executive is exercising a function (for example, in assessing whether to undertake an investigation).

New section 148BB(5) provides that a delegation does not take effect until the proposed delegate accepts it by giving written notice to the chief executive. This reflects section 27A(3) of the AIA which requires any delegation made by the chief executive to be in writing and signed.

New section 148BC applies if the chief executive exercises a power or function in relation to a child and the prescribed delegate for that child exercises the power or function in a way that results in an outcome for the child that is inconsistent with the outcome achieved by the chief executive's action. In this case, the chief executive's action will prevail to the extent of the inconsistency. Under section 27 of the AIA the chief executive will still be able to perform a function or exercise a power even if it has been delegated.

Section 148BC(2) clarifies that the chief executive's action prevails to the extent of inconsistency with the action of a prescribed delegate in section 148BC(1), despite section 27A of the AIA. This is to ensure there is no ambiguity between the operation of section 27A of the AIA and the operation of new section 148BC(1).

New section 148BD enables a delegate to withdraw their acceptance of a delegation at any time by giving written notice to the chief executive. The delegation ends on either the day the chief executive is given the written notice or any later date that is stated in the written notice. The chief executive must record the notice of withdrawal of a delegation, and the day the delegation ends.

New section 148BE provides a delegation will end automatically if the prescribed delegate for a child ceases to be the chief executive officer of the appropriate Aboriginal or Torres Strait Islander entity, or ceases to have a current positive prescribed notice or current positive exemption notice. If the prescribed delegate is no longer the chief executive officer of the appropriate Aboriginal or Torres Strait Islander entity, the person will not meet the minimum prescribed criteria in new section 148BB(3)(a)(ii) or (ii), and should not be exercising powers

or functions of the chief executive in relation to a child. The person must notify the chief executive by written notice as soon as practicable of the fact they have ceased to be the chief executive officer of the entity under section 148BE(2).

New section 148BF allows the chief executive to request information from a prescribed delegate, or person who was a delegate, about a child. The person must provide the information within a reasonably stated time. Section 148BF(3) provides if the information is confidential under any law or practice or providing it would be a breach of ethics or standards, a delegate will not contravene those confidentiality requirements and will not be liable to any disciplinary action for providing the information.

New section 148BG allows the chief executive to request from a prescribed delegate, or a proposed delegate, information about whether the person meets the criteria for being a delegate set out in section 148BB(3)(a). The request must include the information required and the day by which the person must provide the information to the chief executive (at least 14 days after the notice is provided). The person must comply with the request.

New section 148BH applies to a prescribed delegate or person who provides information upon request by the chief executive about their suitability under section 148BG(3)(a) (which potentially includes a proposed delegate). The person (or delegate) must notify the chief executive of any change, or new information, relating to their suitability. This would include for example, if the person ceases to be the chief executive officer of the appropriate Aboriginal or Torres Strait Islander entity, or no longer holds a current blue card.

Section 148BI requires the chief executive to give a proposed delegate information about the child to which the proposed delegation applies, to enable the proposed delegate to make an informed decision about whether or not to accept the delegation. This will ensure the delegate is aware of all obligations and responsibilities consequential to accepting the delegation and make an assessment as to their capability and willingness to perform the functions and or powers proposed to be delegated.

*Clause 49* amends section 156 of the Act to provide that the chief executive cannot delegate the power to delegate to a prescribed delegate the new part 2A, chapter 4 to another officer of the department. Given the significant powers and functions that can be delegated to a prescribed delegate, it is appropriate that only the chief executive can make such a delegation.

*Clause 50* amends section 159 to insert references to permanent guardians as people to whom the chief executive may pay allowances for a child's care and maintenance.

*Clause 51* amends the heading to chapter 5A from 'Service delivery coordination and information exchange' to 'Service delivery coordination and information sharing'.

*Clause 52* amends section 159A to update the terms as a consequence of the new definitions in Chapter 5A, Part 4.

*Clause 53* Amends section 159B to update the terms and inserts three new principles into the section. The new principles in subsection (g) and (h) clarify that, wherever safe, possible and practical, consent should be obtained before providing or planning to provide a service to a child or their family to decrease the likelihood of the child becoming in need of protection; or before disclosing personal information about the person to someone else. The principles further

state that, because a child's safety, wellbeing and best interests are paramount, the child's protection and care needs take precedence over the protection of an individual's privacy. The new principle in subsection (i) requires an entity to consider whether disclosing information will adversely affect the safety or wellbeing of a child or another person before disclosing the information.

*Clause 54* replaces sections 159C and 159D with a new section 159C that requires the chief executive to publish an information sharing guideline to give front line practitioners and service providers practical guidance on sharing and dealing with information under the Act.

*Clause 55* amends section 159F to update the terms as a consequence of the new definitions in Chapter 5A, Part 4.

*Clause 56* amends section 159G(1) to update the terms as a consequence of the new definitions in Chapter 5A, Part 4.

*Clause 57* amends section 159H to update the terms as a consequence of the new definitions in Chapter 5A, Part 4.

*Clause 58* amends section 159J to update the reference to the information sharing provisions in part 4.

*Clause 59* amends section 159K to omit subsection 159K(a)(v) and amend (b) to update the terms as a consequence of the new definitions in Chapter 5A, Part 4.

*Clause 60* amends section 159L(e) to update the terms as a consequence of the new definitions in Chapter 5A, Part 4.

*Clause 61* amends the heading to Part 4 of Chapter 5A from 'Information exchange' to 'Information sharing'.

*Clause 62* replaces section 159M with new sections 159M to 159MF to clarify and improve the information sharing framework in the Act. The new sections bring together the relevant definitions and operative provisions into Part 4 of Chapter 5A.

New section 159M provides definitions for Part 4 of the terms 'prescribed entity', 'service provider' and 'specialist service provider'. The chief executive and authorised officers are no longer 'prescribed entities' and are referred to separately in the provisions. 'Specialist service providers' are added as 'prescribed entities'. 'Specialist service providers' are defined as non-government entities funded by the Queensland or Commonwealth Governments to provide services to help children in need of protection or decrease the likelihood of children becoming in need of protection — for example, Family and Child Connect and Intensive Family Support services.

New section 159MA allows prescribed entities and service providers to give information to a prescribed entity or service provider if the holder reasonably believes the information will help the receiver decide if information about suspected harm to a child or an unborn child should be given to the chief executive. Under sections 13A people can inform the chief executive if they reasonably suspect a child may be in need of protection or an unborn child may be in need of protection after their birth. Section 159MA enables entities that may each have a small piece

of information to share information to form a complete picture of the risks to a child or unborn child.

New section 159MB allows prescribed entities and service providers to give information to the chief executive or an authorised officer if the holder reasonably believes it will help the recipient investigate an allegation or risk of harm to a child or unborn child. The section also allows the chief executive or an authorised officer to give information to these entities to help them decide whether and what information to provide. This will enable, for example, an authorised officer to give information to a hospital to enable the hospital to notify the department when a pregnant women presents for delivery.

New section 159MC enables prescribed entities and service providers to give information to the chief executive or an authorised officer where the hold reasonably believes it will help the receiver undertake case planning for a child or assess and respond to the care needs of a child in need of protection or a child who may become in need of protection if preventative support is not provide to them or their family. The chief executive and authorised officers may also give information to a prescribed entity or a service provider where the hold reasonably believes it will help it meet the care needs of a child in need of protection. A service provider can give information to a prescribed entity for the same purpose.

New section 159MD enables the chief executive, an authorised officer and a prescribed entity to give information to a prescribed entity or a service provider if the holder reasonably believes it will help the receiver to meet the care needs of a child who may become in need of protection if preventative support is not provide to them or their family. A service provider may give a prescribed entity information for the same purposes.

New section 159ME provides that shared information may include both facts and opinions.

New section 159MF prevents information being shared about spent criminal convictions.

*Clause 63* amends section 159N to update terms as a consequence of the revised definitions in section 159M. It also clarifies that the information requested by the chief executive or an authorised officer must be relevant to their performance of a function or exercise of a power under the Act.

*Clause 64* inserts new section 159NA to provide information about a person may not be shared under Chapter 5A part 4 of the Act to the extent in relation to expired criminal convictions.

*Clause 65* amends section 159O to update terms as a consequence of new definitions in Chapter 5A, Part 4.

*Clause 66* amends section 159R to clarify that disclosure under chapter 5A does not affect waive or otherwise affect a claim of privilege by the person the information is about. This includes legal professional privilege.

*Clause 67* amends section 182(4)(h) to remove the reference to a recognised entity and replace it with independent Aboriginal or Torres Strait Islander entity so that the chief executive will be able to sign a certificate stating a stated entity was a stated entity for a particular child and that the certificate can be used as evidence for legal proceedings under the Act..

*Clause 68* amends section 187 by updating the list of persons the confidentiality of information obtained by persons involved in administration of Act, as provided in the section applies to. This includes service providers and their staff, independent Aboriginal or Torres Strait Islander entities and prescribed delegates and proposed delegates under chapter 4 new part 2A. The clause also updates a cross reference to the information sharing provisions and adds a new note to section 187(4) to refer to new section 188C that is inserted by clause 71. The definition of ‘recognised entity’ is included in 187(6) as 187(1) continues to apply to a person who has been a recognised entity or member of a recognised entity.

Individuals provided information under the new sections 188B, 188C and 188D are included in the confidentiality provisions in Division 2, Part 6, Chapter 6 of the Act.

*Clause 69* amends section 188 to update terms as a consequence of new definitions in Chapter 5A, Part 4.

*Clause 70* amends section 188B to remove the reference to section 51E for the purposes of defining ‘family group’. ‘Family group’ for the purposes of this section is now to be defined as per the definition in the dictionary (inserted by clause 82).

*Clause 71* inserts new sections 188C to 188E to enable the chief executive to disclose particular information for particular purposes.

New section 188C enables the chief executive to give a relevant person information that is about them and also about someone else. Section 187(4)(a) currently enables disclosure of information to a person to the extent the information is about that person. The section defines relevant people as a child or person who is was, in care under the Act, the repealed *Child Services Act 1965* or the *State Children Act 1911*. Subsection (3) sets out circumstances in which the chief executive must not disclose information. These include that the chief executive reasonably believes disclosing the information is likely to adversely affect someone’s safety or wellbeing. Section 188C(5) enables the chief executive to impose any other conditions that would be appropriate in the particular circumstances relating to the person receiving the information.

New section 188D clarifies that the chief executive can give information about a child to the parents of the child, or another person acting on behalf of the child, if the child dies while they were the subject of a child protection order. The section operates subject to specific safeguards that prevent the chief executive disclosing information set out in section 188(3). These safeguards mirror those in section 188C.

New section 188E clarifies that the chief executive must give information to the police commissioner where the police commissioner is investigating the death of a child and the Commissioner gives a written notice requesting the information to the chief executive. The information provided can include information about a notifier of harm. If it does include information about a notifier of harm, the chief executive must advise the police commissioner of this to enable the police to deal with any potential risks to the notifier.

*Clause 72* inserts a new section 189AB to clarify that the chief executive can enter into arrangements with a corresponding chief executive of a child welfare department in another Australian State or New Zealand to give them relevant information. Under the AIA, the term ‘State’ includes a Territory. The chief executive must reasonably believe the corresponding

chief executive requires the information to perform a function under a child welfare law. Sections 12 and 13 and schedules 1 and 2 of the *Child Protection Regulation 2011* define child welfare laws of other States. This provision allows for the sharing of information despite the general confidentiality prohibitions in the Act. Section 187(3)(c)(iii) clarifies that one of the exceptions to the confidentiality requirements includes information sharing permitted under the Act. A specific example is provided which references ‘this division’. The new section 189AB which provides for inter-jurisdictional information sharing is included within ‘this division’ (division 2, confidentiality in relation to administration of Act). Section 189AB specifically refers to information about an unborn child in the definition of ‘relevant information’ for the section.

*Clause 73* replaces section 189B, which allows the chief executive to authorise a person to access information for prescribed research. The section retains the current provisions regulating research but is amended to make it clear the chief executive can authorise access to identifying information about a person where the chief executive is satisfied that it is reasonably necessary for the research and that the information will not be published in a way that that could be expected to result in the identification of the person it relates to. The chief executive can impose appropriate conditions on the authorisation. The maximum penalty for breaching such a condition is 100 penalty units.

*Clause 74* amends section 193 to prohibit the publication of identifying information about a child who is or is reasonably likely to be a witness in a criminal proceeding for an offence of a sexual or violent nature in a report of the proceeding, unless the court expressly authorises the publication to include the information. If a child is reasonably likely to be a witness in a proceeding for another type of offence, a court can order that a report of the proceeding must not disclose identifying information, but the prohibition will not apply automatically.

Section 193(3) makes it clear identifying information about police officers or authorised officers (of the department) is not to be published in relation to offences of a sexual nature where a child may be a witness. Section 193(3A) clarifies a court may prohibit the publication of this identifying information for an offence of a violent nature or any other offence, where a child may be a witness.

Specific safeguards are included in section 193, including that for the section to be infringed, the report of identifying information must be made knowingly and the person making the report must also know or reasonably know the child is or is likely to be a witness in a proceeding.

The current definitions in section 193(6) are amended. The definition of ‘proceeding’ in section 193 is omitted and replaced with a new definition to make it clear that the definition includes a ‘related proceeding’. Examples of related proceedings are included – bail proceedings and committal proceedings.

Section 193(5A) provides a court may make an order authorising disclosure of identifying information on application by a person or on its own initiative. This means any person may make the application, not only the person the subject of the authorisation. For example, a prosecutor will be able to make an application for a journalist to publish the identifying information. The application will be able to be made at the first proceeding, for example, a bail proceeding. The point in time from when the automatic prohibition in section 193 will apply will be from when the originating process for a proceeding is filed with the appropriate court. For example, this may be when a summons, notice to appear, or bail application is filed.

*Clause 75* inserts a note to section 194(2)(d) to refer to section 188A to make it clear that disclosure under this section is not prohibited if the information disclosed may identify a child in the child protection system. Section 188A provides a police officer may use confidential information acquired under the Act to perform his or her functions as a police officer. The note clarifies that, for example, if a child abduction alert is issued by the police commissioner under section 194(2)(d) in relation to a child in foster care, the Act will not be breached.

*Clause 76* amends section 205 to include a permanent guardian of the child in the definition of 'parent' for the purposes of chapter 7 of the Act.

*Clause 77* amends section 206 to allow permanent care orders to be transferred to a participating State.

*Clause 78* Amends 246DA to update terms as a consequence of the new definitions in Chapter 5A, Part 4.

*Clause 79* Removes section 246I of the Act (recognised entities), to align with changes to provide greater flexibility in how the department and other entities involved in the administration of the Act obtain and consider relevant cultural advice.

*Clause 80* inserts a new part 11 in chapter 9 of the Act which provides section 274, which includes transitional arrangements for applications for temporary custody orders, and section 275, which provides transitional arrangements for new case plan requirements.

*Clause 81* amends Schedule 2 to make a refusal of a request to review a case plan under the new section 51VB a reviewable decision.

*Clause 82* amends the dictionary for the Act. Subclause 82(1) removes definitions from the dictionary in Schedule 3 that are no longer needed and clause 82(2) inserts new definitions as required.

The definition of 'suitable person' is amended to reflect new suitability requirements of an independent Aboriginal or Torres Strait Islander entity. This aligns with changes to provide greater flexibility in how the department and other entities involved in the administration of the Act obtain and consider relevant cultural advice. A suitable person for being an independent Aboriginal or Torres Strait Islander entity will be prescribed by regulation. Suitability will include criteria to satisfy the chief executive that the person is capable and appropriate for facilitating, supporting and enabling the child and the child's family group to participate in making decisions about the child's protection and care needs.

The definition of 'member' is amended to replace the reference to 'a recognised entity' to 'an independent Aboriginal or Torres Strait Islander entity' to align with changes to provide greater flexibility in how the department and other entities involved in the administration of the Act obtain and consider relevant cultural advice.

A definition of permanency has been inserted into the Act. The definition includes the three dimensions of permanency of relational, physical and legal permanency.

## **Part 3      Amendment of the Director of Child Protection Litigation Act 2016**

*Clause 83* states this part amends the *Director of Child Protection Litigation Act 2016*.

*Clause 84* amends section 5 to insert the words ‘both through childhood and for the rest of the child’s life’ to paramount principle for the administration of the Act to be consistent with the amended section 5A of the *Child Protection Act 1999* (Clause 4).

*Clause 85* amends section 6(1) to insert a new subsection (da) that cross references the new principles in section 5BA of the Act.

*Clause 86* amends section 15 to insert a new subsection (1)(c) to enable the chief executive to refer a variation or revocation or a permanent care order to the litigation director if he or she is satisfied that the permanent guardian has significantly breached their obligations to a child and the permanent care order is no longer appropriate and desirable for promoting the child’s safety, wellbeing and best interests.

*Clause 87* amends section 16 to insert a new subsection (1)(ba) outlining that a brief of evidence outlining the reasons why the chief executive is satisfied a referral under the new 15(1)(c) should be made.