

Child Death Review Legislation Amendment Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Child Death Review Legislation Amendment Bill 2019.

Policy objectives and the reasons for them

The policy objective of the Child Death Review Legislation Amendment Bill 2019 (the Bill) is to implement the recommendation of the Queensland Family and Child Commission (QFCC) report, *A systems review of individual agency findings following the death of a child* (QFCC report), and give effect to the Government's commitment to develop a new, independent model for reviewing child death cases.

Current child death review process

Queensland's current system of conducting reviews following the deaths and serious physical injuries of children known to the Department of Child Safety, Youth and Women (Child Safety) is a two-tiered system established under Chapter 7A of the *Child Protection Act 1999* (Child Protection Act). This involves:

- an internal systems and practice review of service provision by Child Safety and the Director of Child Protection Litigation (litigation director); and
- the convening of external multidisciplinary Child Death Case Review Panels, located in Child Safety, by the Minister for Child Safety to conduct an independent review.

A child 'known to Child Safety' (as per section 246A of the Child Protection Act) includes children who have had contact with Child Safety within one year preceding their death or serious physical injury, including through intake, investigation and assessment; and children who are on a child protection order or subject to intervention with parental agreement.

The purpose of these reviews is to facilitate ongoing learning and improve service provision and accountability by Child Safety and the litigation director – the only agencies currently mandated to conduct a review of their involvement following the death or serious physical injury of a child known to Child Safety.

While Queensland has other established mechanisms for reviewing the deaths of children, including coronial investigations and reviews by the Queensland Ombudsman, these reviews have different purposes and scope; and do not focus primarily on achieving systems improvements for children known to Child Safety in a way that is timely, consistent and public-facing.

Under the *Family and Child Commission Act 2014* (Family and Child Commission Act), the QFCC has a systems review function to analyse and evaluate, at a systemic level, policies and practices relevant to the child protection system and the performance of relevant agencies in delivering services. This includes conducting systems level reviews prompted by the death of a child known to the child protection system, however, in practice, this currently only occurs by Ministerial request.

QFCC report: A systems review of individual agency findings following the death of a child

On 11 July 2016, following the death of 21-month-old Mason Jet Lee, the Premier and then Minister for the Arts (as the responsible Minister at the time) requested the QFCC oversee the reviews of Child Safety and the health services investigation by Queensland Health, to ensure reviews were undertaken thoroughly to deliver outcomes and provide guidance needed to make system changes.

On 10 April 2017, the Government publicly released the QFCC report, which found that while Child Safety's internal review processes are comprehensive and effective at an agency level, Queensland's current system of reviewing deaths of children known to Child Safety does not consider or identify systems changes required to protect vulnerable children.

The QFCC report noted that other government agencies involved with children known to Child Safety are not mandated to review their involvement when a child dies or suffers serious physical injury. Where reviews are conducted, they are done in isolation and agencies do not routinely share findings with each other.

The QFCC report noted that despite several reforms of the child death review process, Queensland does not yet have a contemporary, best practice child death review model and identified a number of issues with the current Child Death Case Review Panels, including: that they are not truly independent of Child Safety (noting governance and secretariat support is provided by Child Safety); they are not able to undertake own-motion reviews of systemic issues arising from child deaths; and there is no public reporting process outside of an annual report produced by Child Safety. The QFCC report also noted that Child Death Case Review Panels can only make recommendations to Child Safety and cannot monitor or report on the implementation of their recommendations.

The QFCC report identified several best practice benchmarks that must be considered in designing a contemporary child death review model, including:

- extending the scope to include other government and non-government organisations;
- extending the powers and authority of Child Death Case Review Panels, including the power to make recommendations;
- reporting to government and public audiences on outcomes of child death reviews;
- reconsidering panel governance, such as selection and appointment of members and period of membership; and
- providing appropriate resourcing for secretariat, panel operation and agency reviews.

The QFCC report also noted the need to establish an internal process for nominated agencies to ‘review their involvement with children known to the child protection system who have died’; and recommended that these reviews should ‘promote learning and analysis of decision-making, consideration of systems issues and collaboration with other agencies’.

The Government accepted the QFCC’s single, overarching recommendation to: ‘consider a revised external and independent model for reviewing the deaths of children known to the child protection system’.

The Government also committed to introducing legislation requiring agencies involved in providing services to children in the child protection system – Health, Education and Police – in addition to Child Safety and the litigation director – to conduct internal reviews.

Achievement of policy objectives

The Bill establishes a new child death review model (new model) by:

- expanding the requirement to conduct an internal systems review following the death or serious physical injury of a child known to Child Safety, to other relevant government agencies involved in providing services to that child (in addition to Child Safety and the litigation director); and
- establishing a new, independent Child Death Review Board (the Board), located within the QFCC, responsible for carrying out systems reviews, following child deaths connected to the child protection system, to identify opportunities for continuous improvement in systems, legislation, policies and practices; and to identify preventative mechanisms to help protect children and prevent deaths that may be avoidable.

Given the broad purpose of the new model is about systems and practice improvements, and not about individual accountability or blame, the Bill makes it clear that the scope of reviews (for internal reviews and by the Board) must not include considering whether disciplinary action should be taken against an individual.

The new model has a continued focus on children known to Child Safety, given the heightened vulnerability of this cohort, but with a broader systems focus beyond the provision of child safety services. The new model complements, rather than duplicates, existing Queensland child death review processes.

Internal agency reviews

The Bill amends the Child Protection Act by replacing existing Chapter 7A to provide for a new system under which an expanded list of government agencies will be required to conduct internal agency reviews following the deaths or serious physical injuries of children known to Child Safety.

The QFCC report found that internal review processes for Child Safety and the litigation director are comprehensive and effective. As a result, the new Chapter 7A, as inserted by the Bill, largely retains these processes for Child Safety and the litigation director; and expands the review requirement (and existing processes) to the other

agencies named in the Government's commitment (Queensland Health – which incorporates the Department of Health and Hospital and Health Services, Department of Education and Queensland Police Service), as well as the Department of Youth Justice. The addition of the Department of Youth Justice is appropriate given the particular vulnerability of children known to the youth justice system and that a significant number of children involved in the youth justice system are also known to Child Safety.

Purpose of internal agency reviews

The purpose of internal agency reviews is to promote the safety and wellbeing of children who come into contact with the child protection system by:

- facilitating ongoing learning and improvement in the provision of services by relevant agencies and the litigation director;
- promoting the accountability of relevant agencies and the litigation director; and
- supporting collaboration and joint learning by relevant agencies.

This purpose is largely consistent with the current purpose of internal reviews under the Child Protection Act, with the additional focus on supporting collaboration and joint learning, which reflects that child protection is a shared responsibility.

To support this new and expanded purpose, the Bill includes information sharing provisions (discussed further below) and also sets out principles to guide the internal review system for relevant agencies.

When reviews must be carried out

The Bill replicates the current 'triggering events' for Child Safety and the litigation director to conduct an internal review (under existing sections 246A and 246AA of the Child Protection Act), with minor technical changes.

To trigger a review by another relevant agency, the Bill introduces a new requirement for the chief executive (child safety) to give a written notice to the heads of other relevant agencies (other than a Hospital and Health Service). Heads of relevant agencies (referred to as 'agency heads') are defined in the Bill as the chief executive of a department, a health service chief executive for a Hospital and Health Service, or the commissioner of the Queensland Police Service.

The notice must state that: a child has died or suffered a serious physical injury; the chief executive (child safety) is required to carry out a review; and the agency head may also be required to carry out a review.

For Queensland Health, the chief executive (child safety) is required to notify the chief executive (health), who must then provide a copy of the notice to the head of each Hospital and Health Service who the chief executive (health) has determined may have provided a service to the child within one year of the child's death or serious physical injury. This provision is required to enable a coordinated response within Queensland Health.

A notice must also include: the child's name and date of birth; date of the death or serious physical injury; and any other information held by the chief executive (child safety) that may be relevant to a determination about whether another relevant agency is required to carry out a review.

After receiving the notice from the chief executive (child safety), a relevant agency is required to carry out a review of the agency's involvement with a child if the agency provided a service to the child (which includes interacting with a child, or a member of a child's family, in relation to a matter relevant to the child's safety and wellbeing), within one year before the child's death or serious physical injury.

The Bill will also retain the ability for the Minister for Child Safety to request that Child Safety carry out an internal review (currently under section 246A(2) of the Child Protection Act). Similarly, the Bill also provides that in exceptional circumstances the Minister responsible for another relevant agency may ask that agency to carry out a review if the Minister considers it would be appropriate to do so, having regard to the circumstances of the child's death or serious physical injury and the purpose of internal reviews.

Allowing reviews by Ministerial request ensures that cases that would otherwise fall outside of scope can be captured in exceptional circumstances (for example, where a child may have had multiple or ongoing interactions with a relevant agency and was not known to Child Safety but the nature and circumstances of the child's case suggest they perhaps should have been).

Scope of reviews

Consistent with existing provisions in the Child Protection Act for Child Safety and the litigation director, relevant agency heads will be required to determine the extent of, and terms of reference for, their reviews, depending on the nature and extent of their involvement with the particular child.

The terms of reference for an agency's review may include:

- finding out whether the agency's involvement with the child complied with legislative requirements;
- considering the adequacy and appropriateness of the agency's involvement with the child;
- commenting on the adequacy of the agency's involvement with other entities in the delivery of services to the child;
- commenting on the adequacy of legislative requirements and the agency's policies relating to the child; and
- making recommendations relating to these matters and suggesting strategies to put recommendations into effect.

The Bill replicates existing provisions regarding the scope of reviews for the litigation director (existing sections 246AB(2) and 246BA of the Child Protection Act), with minor technical changes. In addition, the Bill requires that the terms of reference for reviews by both relevant agencies and the litigation director must not include considering whether disciplinary action should be taken against an employee of the agency, or an employee of the office of the litigation director.

Conduct of reviews

Consistent with current practice, as soon as practicable and not more than six months after the ‘triggering event’ for an internal review, relevant agencies and the litigation director will be required to decide the extent of, and terms of reference for, the review; complete the review; prepare a report about the review; and for internal reviews relating to the death of a child, give a copy of the review report and copies of any documents obtained by the agency head or litigation director and used for the review, to the Board.

For a review in relation to a reportable death under the *Coroners Act 2003* (Coroners Act), reports must also be given to the State Coroner. This is consistent with current practice for Child Safety and the litigation director. Where two or more relevant agencies or the litigation director carry out reviews in relation to the same child, they may also provide reports to each other. For Child Safety and the litigation director, the requirement that review reports about the same child must be shared with each other will continue to apply.

Recognising that some agencies have other established review processes that may overlap with the new internal review requirement, and that relevant agencies may be conducting concurrent reviews in relation to the same child, the Bill requires agencies to avoid unnecessary duplication and work with other relevant agencies to coordinate reviews and other processes.

Information sharing

The Bill establishes a new Part ‘Information sharing and protection from liability’ to enable the sharing of information, particularly to support the new additional purpose of ‘supporting collaboration and joint learning’. The Bill enables confidential information to be requested and shared for the purpose of carrying out an internal agency review and sharing the outcomes. The Bill includes a provision that the head of a relevant agency may ask another entity for stated information that may be relevant to their review and that such confidential information may be provided for the purpose of an internal agency review.

In recognition that other relevant agencies have legislation that may restrict the giving of information, the Bill makes it clear the provisions apply despite any other law, but do not apply to information about the identity of a notifier (protected under section 186 of the Child Protection Act), which is not to be disclosed as part of the internal agency review process.

The Bill also maintains existing confidentiality provisions around the use and disclosure of confidential information; and maintains protections for persons giving information under the Child Protection Act.

Whole-of-systems reviews by the Board

The Bill amends the Family and Child Commission Act by inserting a new Part 3A which establishes the Board, located within the QFCC. The development of the Board and its purpose, scope, functions and powers was informed by the best practice

benchmarks identified in the QFCC report, as well as key elements from comparable death review models in Queensland and other jurisdictions, including Queensland's Domestic and Family Violence Death Review and Advisory Board. The Board will replace the role of the existing Child Death Case Review Panels, which will be dissolved upon commencement.

Purpose and focus

The new Board represents a significant shift in scope, functions, powers and governance from the Child Death Case Review Panels. As the Board will replace the existing panel process in its entirety, the Bill amends the Child Protection Act to remove Chapter 7A, Part 2 (Child Death Case Review Panels) and creates a new Part 3A in the Family and Child Commission Act 'Child Death Review Board' to establish a separate and independent Board located in the QFCC, with distinct functions and powers.

The Bill establishes the Board to carry out systems reviews following child deaths connected to the child protection system, which consider matters relating to the provision of services to, and other interactions with, children and their families by government and non-government entities.

The purposes of reviews are to identify:

- opportunities for continuous improvement in systems, legislation, policies and practices; and
- preventative mechanisms to help protect children and prevent deaths that may be avoidable.

This wide systems focus across the broader child protection system (beyond just child safety service provision as is currently the case) recognises that the safety and wellbeing of children is a shared responsibility; and that a system for the protection of children is more than just a statutory child protection service.

The Board will be focussed on reviewing child deaths and not, as a matter of course, serious physical injury cases. Experience suggests that learnings from serious physical injury reviews are similar to those gained from reviews of child deaths; and have the added complexity of ongoing case management for the particular child and family, more relevant to internal agency reviews. The Board will, however, on an exception basis, and at the request of the responsible Minister for the QFCC, be able to review serious physical injury cases.

Functions and powers

Consistent with the best practice benchmarks identified in the QFCC report and other comparable death review models, the Bill provides that the functions of the Board are to:

- carry out reviews relating to the child protection system following child deaths 'connected to the system' (namely, deaths of children for whom relevant agencies have conducted an internal review under the Child Protection Act);
- analyse data, and apply research, to identify patterns, trends and risk factors and carry out, or engage persons to carry out, research relevant to its systems reviews;

- make recommendations about legislative change and improvements to systems, policies and practices for implementation by government and non-government entities that provide services to, or otherwise interact with, children and their families; and
- monitor the implementation of its recommendations.

The Board will also have the ability to provide comments and information to relevant agencies in response to internal review reports. This is intended to support continuous improvement and capacity building in internal review processes; and comments must not be included in a report of the Board.

Pursuant to the exercise of these functions, the Board will take on the QFCC's current role of conducting systemic reviews of deaths of individual children known to the child protection system. The QFCC will continue to undertake reviews about broader child protection systems issues outside of child deaths. The Bill makes other amendments to the Family and Child Commission Act to make it clear that any functions performed by the QFCC in relation to child deaths are limited to performing functions in relation to the child death register under existing Part 3 of the Family and Child Commission Act, with all other child death related functions to be performed by the Board. Maintaining the child death register is a separate and distinct function of the QFCC, where under Part 3, the QFCC are required to keep a register of information relating to all child deaths in Queensland (for example, information that classifies deaths according to cause of death, demographic information and identifying patterns or trends).

The Bill provides that the Board may do all things necessary or convenient to be done for, or in connection with, the performance of its functions, which includes engaging appropriately qualified persons to conduct research, provide legal advice, or to prepare reports relevant to, or to help the Board perform, its functions.

The Bill provides that in performing its functions, the Board must act independently and in the public interest and is not subject to direction by the responsible Minister or anyone else about how it performs its functions.

The Board is intended to complement, not duplicate, existing child death review mechanisms. Accordingly, the Bill makes it clear that it is not a function of the Board to investigate the death of any particular child; and provides that the Board must avoid unnecessary duplication of processes carried out in other entities; and to the extent it considers appropriate, coordinate its reviews and the reviews carried out by other entities.

Conduct of reviews

The Board will carry out systems reviews it considers appropriate for its purpose and must decide the extent of, and terms of reference for, each of its reviews. In deciding the extent and terms of reference, the Board may consider:

- particular systems or issues arising from internal agency review reports;
- the effectiveness of, or interaction between, services provided to a child or a child's family before the child's death, or services that could have been but were not provided;
- issues relating to practices or systems that may expose children to risk;

- ways of improving practices or systems relating to identifying or responding to risks; and
- ways of improving communication and collaboration between service providers.

Consistent with the broad purpose of systems reviews (being about continuous improvement and not apportioning individual blame), the Bill makes it clear that the terms of reference for a review must not consider whether any disciplinary action should be taken against any person.

The Bill provides that in exceptional circumstances the responsible Minister for the QFCC may also request the Board to conduct a review. This could be a review that would ordinarily fall outside of the Board's scope, such as a review of systems related to the death of a child who was not the subject of an internal agency review, or a review related to a serious physical injury of a child.

The Board must comply with a Ministerial request but will determine the extent of, and terms of reference for, the review. After completing the review, the Board must advise the Minister of the outcomes and, if appropriate, include the outcomes in a report.

It is intended that Ministerial requests will only occur in limited circumstances to ensure that matters outside of the Board's usual scope, that are particularly serious or high profile and raise significant systems issues, can receive appropriate consideration.

Information sharing

Given the whole-of-systems focus of the Board and its consideration of multiple systems, with which a child or the child's family may have had involvement prior to the child's death, the Bill includes the ability for the Board to request information (including confidential information) from any entity. An entity may give confidential information to the Board for the purpose of the Board's functions, whether or not the Board has requested the information and despite any other law that would otherwise prohibit or restrict the giving of the information.

To provide for the broadest application, the term 'entities' under the Bill relies on its meaning under the *Acts Interpretation Act 1954*, covering persons and unincorporated bodies. In practice, it is envisaged the Board will predominantly request information from public entities (as defined in Schedule 1 of the Family and Child Commission Act), but the Bill enables information to be requested from a range of entities, such as from a private hospital, medical practitioner, the principal of a school or the approved provider of an early childhood education and care service.

The Bill also provides that an underlying principle of this part is that public entities should give information requested by the Board for the purpose of its functions in a timely way and to the extent that it is appropriate, having regard to the relevance of the information to the Board's functions; and the effect of giving the information on the safety, wellbeing and best interests of children.

The Bill maintains confidentiality of information by amending section 36 of the Family and Child Commission Act to extend to a member of the Board, which prevents the disclosure of confidential information other than in the circumstances prescribed in the section. Essentially, the intent is that the Board cannot publish confidential information as part of their annual or systems reports. The Bill, however, also provides that the chairperson may disclose confidential information to an entity for the performance of the Board's functions, including for the purpose of obtaining information the chairperson requests; to avoid unnecessary duplication of the processes carried out in other entities; and to coordinate its reviews and the reviews carried out by other entities (for example, reviews by the Domestic and Family Violence Death Review and Advisory Board).

The Bill also enables the Board to enter into an information sharing arrangement with an entity, including the QFCC, the Domestic and Family Violence Death Review and Advisory Board or the State Coroner, about sharing or exchanging confidential information. By way of example, the Bill provides that the information sharing arrangement with the State Coroner may include arrangements for obtaining investigation documents under section 54 of the Coroners Act.

Reporting

The Bill requires that the Board report annually to the responsible Minister on the operation of its functions, with these reports to be tabled in Parliament within 14 sitting days after receipt. To support accountability of the Board and government agencies, annual reports may include systems recommendations made by the Board; and information about progress made by government and non-government entities to implement previous recommendations.

The annual report must be provided to the responsible Minister by 31 October in each year. This aligns with the timing for the QFCC's annual report relating to maintaining the child death register under Part 3 of the Family and Child Commission Act.

The Bill also provides that at any time, the Board may prepare other reports about the outcomes of a review or another matter arising from its functions, which may be provided to the responsible Minister. In doing so, consistent with section 91ZC of the Coroners Act in respect of the Domestic and Family Violence Death Review and Advisory Board, the Board must make a recommendation about whether the report be tabled. In deciding whether to table the report, the responsible Minister must have regard to whether the report includes personal information about an individual; information that may prejudice the investigation of a possible contravention of the law; or anything else relevant to whether tabling would be in the public interest. Reports containing personal information; information that may prejudice an investigation of a possible contravention of the law; or recommendations made by the Board must not be published unless the responsible Minister has tabled the report.

In the interests of natural justice, the Bill requires that the Board must not include any adverse information about an entity identifiable in a report, unless the entity has been given a copy of the information and allowed reasonable opportunity to make a submission. If an entity makes a submission, the Board must consider it before finalising the report and must not include the information in the report unless the Board includes the relevant submission by the entity or a fair summary of it. To ensure recommendations made by the Board are reasonable, proportionate and achievable, the Bill provides that for any proposed recommendations that require an entity to take particular action, the Board must consult with the affected entity, and any other entities likely to be affected about the recommendation, before finalising the report.

Membership of the Board

The Bill establishes an appropriate framework for Board membership and appointments to the Board. This features:

- a chairperson, appointed by the responsible Minister, who must be the Principal Commissioner or another commissioner of the QFCC, and is responsible for leading the Board and directing its activities to ensure it appropriately performs its functions;
- a requirement that the chairperson or deputy chairperson must be an Aboriginal or Torres Strait Islander person;
- no more than eleven other members (also appointed by the responsible Minister) based on relevant expertise, with specific requirements regarding eligibility, such as having regard to a person's criminal history. Members are to be appointed for up to three year terms and may be reappointed;
- a requirement that the responsible Minister ensure the Board membership reflects the social and cultural diversity of the Queensland community; includes at least one Aboriginal or Torres Strait Islander member; includes persons with a range of relevant experience, knowledge or skills relevant to the Board's functions; and must not include a majority of persons who are public service employees;
- circumstances under which the office of a member becomes vacant, including if the Minister ends the member's appointment (this may occur if the member is absent from three consecutive meetings and without a reasonable excuse); and
- appropriate conditions of appointment, including provisions regarding remuneration and allowances for members of the Board, including that a member who is a State Government employee is not entitled to remuneration.

Proceedings of the Board

The Bill includes a general provision that the Board may conduct its proceedings as it considers appropriate. This includes where and when meetings are held; a quorum of at least half of Board members required for a meeting (including that a quorum include at least one member who is an Aboriginal or Torres Strait Islander person); and that votes of the Board are to be decided by a majority of members present.

The Bill also provides that the Board may invite persons other than members (such as subject matter experts) to attend a meeting to advise or inform the Board about any matter.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

As part of the 2019-20 Budget, the Government allocated \$2.521 million net over four years (\$0.825 million net ongoing and 3.8 new FTEs) to establish and operate the new Board.

The requirement for agencies to conduct internal reviews will be met from within their existing resources.

Consistency with fundamental legislative principles

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

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992)

Information sharing under the new model - clause 6, clause 23

The Bill includes information sharing provisions to support internal agency reviews, and to support the legislative functions of the Board.

Information sharing provisions to support internal agency reviews include:

- requiring the chief executive (child safety) to issue a notification to all other relevant agencies when Child Safety is undertaking a review, which must include the child's name, date of birth, date of death or injury, and other relevant information;
- allowing the heads of relevant agencies to ask another entity for information that may be relevant to the review, and providing that, despite any other law that would otherwise prohibit or restrict the giving of the information, entities can give confidential information to the head of a relevant agency for the purpose of an internal agency review;
- providing that, despite any other law that would otherwise prohibit or restrict the giving of the information, the head of a relevant agency can give confidential information to the head of another relevant agency for the purpose of sharing the outcomes (findings, recommendations and other relevant information) of an internal agency review; and
- allowing relevant agencies and the litigation director, following the completion of an internal review, to share review reports with each other if reviews are conducted in relation to the same child.

Information sharing provisions in relation to the Board include:

- providing the Board with the ability to ask an entity for stated information for the purpose of its functions; and
- providing that an entity may give confidential information to the Board for the purpose of the Board's functions.

While it is not anticipated that agencies or the Board will regularly have a need to request or share highly sensitive information, such as identifying details of individuals, this will be necessary in some circumstances, such as to create a timeline of a child and family's interactions with various service providers.

These provisions represent a potential departure from the fundamental legislative principle that requires legislation have sufficient regard to the rights and liberties of individuals, including privacy and confidentiality.

The information sharing provisions are necessary to:

- ensure agencies have access to information necessary to determine if a review is required by that agency;
- enable relevant agencies to effectively carry out internal agency reviews and share the outcomes;
- support joint learning and collaboration by relevant agencies; and
- ensure the Board can access relevant information necessary to perform its systems review functions.

The provisions are considered justified in the interests of assisting ongoing learning and improvements to service delivery across the child protection system and, in turn, supporting the reduction of child deaths that may be avoidable.

The Bill will include appropriate safeguards and limitations regarding the sharing of information. It will not be mandatory for an entity to comply with a request for information by a relevant agency head, and information is to be given only for the purpose of an agency's internal review. The Bill makes clear that for both internal agency reviews and systems reviews by the Board, section 186(2)(a) of the Child Protection Act does not apply to a disclosure of the identity of a notifier (i.e. notifier information must not be disclosed).

The Bill will limit information sharing to the Board by providing that confidential information can only be given by an entity to the Board for the purpose of the Board's functions. Board members will also be subject to existing confidentiality provisions under section 36 of the Family and Child Commission Act.

Criminal history screening and disclosure of new convictions – clause 23

The Bill contains provisions relating to the criminal history of members and prospective members of the Board.

The Bill provides that:

- the Minister responsible for the QFCC may ask the police commissioner for a person's criminal history (including a brief description of the circumstances of a conviction or charge mentioned in the criminal history) if the person is a Board member or has consented to a criminal history check for the purpose of their appointment as a Board member;
- the responsible Minister may have regard to a person's criminal history (including spent convictions) when deciding whether a person is suitable for appointment;

- a person will not be eligible for appointment if the person has a conviction for an indictable offence or does not consent to a criminal history check before appointment; and
- members of the Board must give immediate notice to the responsible Minister if convicted of an indictable offence during their term of appointment (with a maximum penalty of 100 penalty units for non-disclosure), at which time the office of a member becomes vacant.

It is likely that these provisions will not impact on most prospective appointees, however a person's eligibility to hold office as a member may be affected in some cases, which may be considered a departure from the fundamental legislative principle that requires legislation to have sufficient regard to the rights and liberties of individuals.

These provisions are considered appropriate, given the functions of the Board and that members of the Board may have access to sensitive and confidential information about vulnerable children and their families. The provisions are considered justified and necessary to promote and protect the rights, interests and wellbeing of children, and to ensure the credibility of the Board. There are appropriate provisions in the Bill to maintain confidentiality and for the responsible Minister to destroy the criminal history report as soon as practicable after it is no longer needed.

Legislation is consistent with the principles of natural justice (section 4(3)(b) Legislative Standards Act 1992)

Public reporting of the Board – clause 23

The Bill requires the Board to release annual reports of its operations, and allows the Board to produce other review reports, which may include information that could be considered adverse to an individual. This may be considered a departure from the fundamental legislative principle that requires legislation to have sufficient regard to the rights and liberties of individuals, including being consistent with the principles of natural justice.

The release of reports (and the independence of the Board to do so) is considered justified and necessary in the interests of ensuring transparency and accountability of the Board and its functions, and maintaining public confidence in the systems review process. The Bill includes appropriate safeguards and limitations that apply to the reporting of the Board, including that the Board must not include any adverse information about an entity identifiable in a report, unless the entity has been given a copy of the information and allowed a reasonable opportunity to make a submission.

Further, the Bill provides that, in relation to other reports, if a report includes personal information about an individual, the Board must not publicly publish the report unless the responsible Minister has decided to table the report. In deciding whether to table a report, the Minister must have regard to whether it includes personal information about an individual; information that may prejudice the investigation of a contravention or possible contravention of the law; or anything else relevant to whether tabling the report would be in the public interest.

Legislation does not confer immunity from proceeding or prosecution without adequate justification (section 4(3)(h) Legislative Standards Act 1992)

Protection from liability for giving or publishing information – clause 6, clause 23

The Bill provides protection from liability for the giving of information or publishing of reports under the new model.

The Bill provides protection from liability for:

- persons, acting honestly, giving information under the new Chapter 7A of the Child Protection Act or the new Part 3A of the Family and Child Commission Act; and
- the publication of a defamatory statement made in a report if the publication is made in good faith and is, or purports to be, made for the Child Protection Act or the Family and Child Commission Act.

These provisions are based on existing protections under the Child Protection Act and the Family and Child Commission Act, amended to support the new expanded model. These amendments are intended to ensure that individuals are not reluctant to share or publish information due to concerns about individual liability, even where it would be in the interests of facilitating ongoing learning and improvements in service delivery to children and their families. The protections are limited to apply only to actions done honestly or in good faith.

Consultation

The QFCC was consulted in the development of the Bill.

Stakeholder information sessions and/or a fact sheet on the proposed changes were provided to key stakeholders including: Queensland Law Society; Bar Association of Queensland; Aboriginal and Torres Strait Islander Legal Service (Queensland) Ltd; Legal Aid Queensland; Community Legal Centres Queensland; Sisters Inside Inc.; Human Rights Law Centre; Hub Community Legal (formerly The South West Brisbane Community Legal Centre); PeakCare Queensland Inc.; CREATE Foundation; Griffith University School of Human Services and Social Work; Queensland Foster and Kinship Care; Family Inclusion Network South-East Queensland; Micah Projects; Queensland Aboriginal and Torres Strait Islander Child Protection Peak; Queensland Council of Social Service; Youth Advocacy Centre; YFS Legal; Youth Affairs Network Queensland; Bravehearts; Protect All Children Today Inc.; Child Protection Practitioners Association of Queensland; Family Matters Queensland; Queensland Teachers' Union; Queensland Association of State School Principals Inc.; Queensland Secondary Principals Association and Queensland Association of Special Education Leaders Inc.; Queensland Police Union of Employees; and the Queensland Police Commissioned Officers' Union.

As part of finalising the QFCC report, which the Bill gives effect to, the QFCC undertook a broad consultation process. This included working with key government agencies and agencies in other states and territories, which allowed the QFCC to consider potential areas of reform in Queensland based on other contemporary models and experiences.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with, or complementary to, legislation of the Commonwealth or another state.

While child death review models vary across jurisdictions, there are some common, best practice elements that informed the development of the new model, including:

- whole-of-systems focus, including considering service system interactions with children and families across government and non-government agencies;
- ability to consider other child deaths, broader than just children known to child safety services;
- matters of individual accountability and disciplinary action are outside of scope;
- legislative powers to request information from a range of public and private entities;
- ability to produce systemic reports and make public recommendations; and
- ability to monitor implementation of recommendations and publicly report on progress.

The location of the Board within the QFCC is consistent with the approach in other jurisdictions, including Victoria (Commission for Children and Young People); New South Wales and Western Australia (located in the Ombudsman); and Northern Territory (Coroners Court).

Notes on provisions

Part 1

Clause 1 states that, when enacted, the Bill will be cited as the *Child Death Review Legislation Amendment Act 2019*.

Clause 2 states that the Bill is to commence on a day to be fixed by proclamation.

Part 2 Amendment of Child Protection Act 1999

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

Clause 4 amends section 7 (Chief executive's functions) by inserting a new section 7(1)(p)(iii) which provides that, for the proper and efficient administration of the Child Protection Act, and in particular for the purpose of conducting reviews under Chapter 7A, it is an additional function of the chief executive to support collaboration and joint learning between the department and other relevant agencies.

Clause 4 also amends section 7(2) by inserting the term 'relevant agency' with reference to new section 245B (inserted by clause 6) which defines the term to mean: the department administering the Child Protection Act (Child Safety); the department mainly responsible for education; the department mainly responsible for public health; the department mainly responsible for youth justice services; a Hospital and Health Service and the Queensland Police Service.

Clause 5 amends section 188 (Confidentiality of information given by persons involved in administration of Act to other persons) by replacing the reference in section 188(3)(d) to the chief executive, under section 246C, with a reference to the head of a relevant agency under new section 245T (as inserted by the Bill). Head, of a relevant agency, is a defined term in new section 245B (inserted by clause 6) and means the chief executive of a department; the chief executive of a Hospital and Health Service; or the commissioner of the police service.

Clause 6 omits Chapter 7A (Child deaths and other matters) and replaces it with new Chapter 7A 'Internal agency reviews following child deaths or injuries'.

New Chapter 7A, Part 1 'Preliminary' deals with preliminary matters for Chapter 7A.

New section 245 'Overview of chapter and purpose of reviews' states that new Chapter 7A provides for a system under which, if a child dies or suffers serious physical injury after a relevant agency has been involved with the child, the agency's head must carry out a review of its involvement. Subsection (2) provides that the system also includes review of the involvement of the office of the litigation director in performing a litigation function in a matter concerning the child.

Subsection (3) provides that the purpose of internal reviews under the new Chapter 7A is to promote the safety and wellbeing of children who come into contact with the child protection system by:

- a) facilitating ongoing learning and improvement in the provision of services by the agencies and the litigation director; and

- b) promoting the accountability of the agencies and the litigation director; and
- c) supporting collaboration and joint learning by the agencies (additional new purpose).

Subsection (4) provides that review reports in relation to child deaths are given to an independent board under new Part 3A of the *Family and Child Commission Act 2014* (Family and Child Commission Act) (the child death review board, established pursuant to clause 23 of the Bill), which carries out further reviews of relevant systems.

New section 245A ‘Principles underlying chapter’ provides that the principles underlying new Chapter 7A are:

- a) relevant agencies should work collaboratively, and in a way that respects each others’ functions and expertise, to achieve the purpose of internal agency reviews; and
- b) if a relevant agency is carrying out an internal agency review, other relevant agencies should share information with the reviewing agency in a timely way, and to the extent that is appropriate, having regard to—
 - i. the relevance of the information to the review; and
 - ii. the extent to which sharing the information would advance the purpose of the review; and
 - iii. the effect of sharing the information on the safety, wellbeing and best interests of children; and
- c) a relevant agency that has carried out, or is carrying out, an internal agency review should share the outcomes of the review with other relevant agencies in a timely way, and to the extent that is appropriate, having regard to—
 - i. the relevance of the outcomes to the other agencies’ functions; and
 - ii. the extent to which sharing the outcomes would advance the purpose of the review; and
 - iii. the effect of sharing the outcomes on the safety, wellbeing and best interests of children.

New section 245B ‘Definitions for chapter’ provides definitions for new Chapter 7A. Definitions are provided for ‘agency head’; ‘head, of a relevant agency’; ‘internal agency review’; ‘Minister for a relevant agency’; ‘outcomes’; ‘policies’; ‘relevant agency’; ‘review report’ and ‘triggering event’.

Agency head means the head of a relevant agency. ‘Head’ of a relevant agency means the chief executives of a department; the chief executive of a Hospital and Health Service (health services chief executive); or the commissioner of the police service. The chief executive (health) is defined separately to mean the chief executive of the department mainly responsible for public health. The chief executive (health) and health service chief executive are defined separately to reflect that within Queensland Health (the department mainly responsible for public health), each Hospital and Health Service will be responsible for conducting its own internal review.

Internal agency review means a review, carried out by the head of a relevant agency, of the agency’s involvement with a child.

Minister, for a relevant agency, means:

- a) for a department – the Minister administering the department; or

- b) for a Hospital and Health Service – the Minister administering the *Hospital and Health Boards Act 2011*; or
- c) for the Queensland Police Service – the Minister administering the *Police Service Administration Act 1990*.

Pursuant to section 33 of the *Acts Interpretation Act 1954*, references to ‘Minister’ under new Chapter 7A are taken to be references to the Minister administering the Child Protection Act, unless otherwise specified. Similarly, references to ‘chief executive’ are taken to be references to the chief executive responsible for Child Safety, unless otherwise specified.

Outcomes, of an internal agency review, includes:

- a) findings and recommendations; and
- b) information considered in forming findings and recommendations.

Policies include guidelines, procedures, protocols, standards and systems.

The definition of ‘relevant agency’ means any of the following entities:

- a) the department in which the Child Protection Act is administered;
- b) the department mainly responsible for education;
- c) the department mainly responsible for public health;
- d) the department mainly responsible for youth justice services;
- e) a Hospital and Health Service;
- f) the Queensland Police Service.

New section 245C ‘References to providing a service to a child’ clarifies that a reference within Chapter 7A to providing a service to a child also includes a reference to interactions with a child or a member of a child’s family, in relation to a matter relevant to the child’s safety and wellbeing. The scope of this term is particularly relevant to an agency head determining if the agency is required to carry out a review, about the agency’s involvement with a child, under new section 245H.

New Chapter 7A, Part 2 ‘When reviews must be carried out’ deals with when an internal review must be carried out by a relevant agency or the litigation director under the new Chapter 7A.

New section 245D ‘Application of part’ provides that Chapter 7A, Part 2 applies if a child dies or suffers serious physical injury. This provision is based on previous section 246 of the Child Protection Act. The term ‘serious physical injury’ is already defined in the Child Protection Act.

New section 245E ‘Department review following involvement with child’ is substantially similar to previous section 246A(1)(a) to (d) of the Child Protection Act, with minor technical changes. The provision sets out when the chief executive (child safety) must carry out a review about the department’s involvement with a child.

New Section 245F ‘Department review at Minister’s request’ is similar to previous section 246(1)(e) and (2) of the Child Protection Act, with minor technical changes and provides that the Minister for Child Safety may ask the chief executive (child safety) to carry out a review if the Minister considers it may be relevant to the chief executive’s functions, having regard to the purpose of internal reviews under section 245(3).

Subsection (1) provides that the chief executive (child safety) must carry out a review about the department's involvement with a child if requested by the Minister under this section. Subsection (2) provides that the Minister may ask the chief executive to carry out a review if the Minister considers the circumstances of the child's death or serious physical injury may be relevant to the chief executive's functions under the Child Protection Act, having regard to the purpose of reviews stated in new section 245(3).

New section 245G 'Notification about department review' sets out the new obligation for the chief executive (child safety) to notify other relevant agencies and the litigation director if the chief executive (child safety) is required to carry out a review under new sections 245E or 245F. Subsection (2) requires the chief executive (child safety), as soon as becoming aware of the requirement to carry out the review, to give written notice to the head of each other relevant agency (other than a Hospital and Health Service); and the litigation director, if the litigation director is performing or has performed a litigation function in relation to the child. The requirement to notify the litigation director under subsection (2)(b) is based on the previous section 246A(3). Subsection (3) sets out the information that must be included in the notice.

Subsection (4) requires the chief executive (health), as soon as practicable after receiving a notice from the chief executive (child safety), to determine whether a Hospital and Health Service may have provided a service to the child within one year before the child's death or serious physical injury, and if so, give a copy of the notice to the head of the Hospital and Health Service. Subsection (5) clarifies that the chief executive (health) in this section means the chief executive of the department mainly responsible for public health.

New section 245H 'Other relevant agency review following involvement with child' applies to a relevant agency other than Child Safety. Subsection (2) requires the agency head, as soon as practicable after receiving a notice from the chief executive (child safety) under new section 245G, to determine whether the agency provided a service to the child within one year before the child's death or serious physical injury and, if so, carry out a review about the agency's involvement with the child.

Subsection (3) allows, on request by agency head, the chief executive (child safety) or another relevant agency head to give information to the agency head for use in determining whether a review is required under subsection (2). Examples of information that may be requested are provided following subsection (3).

New section 245I 'Other relevant agency review at Minister's request' applies to a relevant agency other than Child Safety and requires under subsection (2) that the agency head must carry out a review about the agency's involvement with the child if requested by the agency's Minister under this section. Subsection (3) allows the agency's Minister, in exceptional circumstances, to ask the agency head to review the agency's involvement with the child even if no notice has been given to the agency head from the chief executive (child safety) under section 245G or a review is not required under section 245H. Subsection (4) provides that the agency's Minister may make the request if the Minister considers it would be appropriate, having regard to the circumstances of the child's death or serious physical injury and the purpose of internal reviews under new section 245(3). Subsection (5) allows the agency head to notify another agency head that a review is being carried out under this section.

New section 245J ‘Office of litigation director review’ replicates previous section 246AA, with an updated section number reference to the new section 245G(2)(b), which refers to the notice that must be provided by the chief executive (child safety). This provision provides the circumstances in which the litigation director must carry out an internal review.

New Chapter 7A, Part 3 ‘Scope of reviews’ sets out the scope for internal reviews conducted by relevant agencies and the litigation director under new Chapter 7A.

New section 245K ‘Scope of relevant agency review’ applies to a review about a relevant agency’s involvement with a child. Subsection (2) provides that the agency head must decide the extent of, and terms of reference for, the review. This is based on previous section 246AB(1), amended to apply to the expanded internal agency review process. Subsection (3) provides the matters that may be included in the terms of reference for the review. Subsection (3) largely replicates previous section 246B(2), with amendments to apply to the expanded internal agency review process and to refer to the purpose of reviews stated in section 245(3). Subsection (4) makes it clear that the terms of reference must not include considering whether disciplinary action should be taken against an employee of the agency.

New section 245L ‘Scope of litigation director review’ relates to the scope of a review about the involvement of the office of the litigation director in a matter concerning a child. This provision largely replicates previous sections 246AB(2) and 246BA with minor technical changes.

New Chapter 7A, Part 4 ‘Conduct of reviews and reporting’ sets out details regarding when reviews are to be carried out and the process for preparing and sharing reports about reviews.

New section 245M ‘*Triggering event* for review’ sets out the triggering event for an internal agency review by the chief executive (child safety), the head of another relevant agency and a review by the litigation director. Subsection (1) provides the *triggering event* for an internal agency review. For the chief executive (child safety), the triggering event for a review under new section 245E is the chief executive becoming aware of the child’s death or serious physical injury, or, for a review under new section 245F, receiving the Minister’s written request. This replicates previous sections 246D(4)(a) and (b).

For the head of another relevant agency, other than Child Safety, the triggering event for a review under new section 245H is the agency head determining that a review is required, or, for a review under new section 245I, the agency head receiving their Minister’s written request. Subsection (2) provides that the *triggering event* for a review by the litigation director under new section 245J(b)(i) or (ii) is the litigation director receiving notice from the chief executive (child safety) under section 245G(2)(b), or, for a review under new section 245J(b)(iii), the litigation director receiving the chief executive’s (child safety) written request.

New section 245N ‘Review to be completed and report prepared’ is largely based on previous section 246D(2). It provides that, as soon as practicable, and not more than six months after the triggering event for a review, the agency head or litigation director must decide the extent of, and terms of reference for, the review; complete the review;

prepare a report about the review; and give the review report, where it relates to the death of a child, to the Child Death Review Board (under new section 245O); where it relates to a 'reportable death' under the *Coroners Act 2003* (Coroners Act), the State Coroner (under new section 245P); and for Child Safety and the litigation director, give a report to each other if they are required to carry out a review for the same child (under new section 245Q). Subsection (2) provides that in carrying out an internal agency review, an agency head must seek to work with other relevant agencies to coordinate, and avoid unnecessary duplication of, the reviews and other processes carried out in that agency and other relevant agencies.

New section 245O 'Giving report to child death review board' applies in relation to a review following the death of a child. Subsection (2) requires the agency head or litigation director who carried out the review to give the child death review board a copy of the review report along with copies of any documents obtained by the agency head and litigation director and used for the review. This provision is similar to the previous requirement to provide review documents to the Child Death Case Review Panels (under previous section 246D(2)(c)).

New section 245P 'Giving report to State Coroner' is modelled on previous section 246H, with amendments to apply to the expanded internal agency review process. The provision applies to reviews following the death of a child that is a reportable death under the Coroners Act. Subsection (2) requires that the agency head or litigation director who carried out the review must give a copy of the review report to the State Coroner for use by the coroner to help in an investigation under the Coroners Act. Under subsection (3), if the report does not identify the child, a document stating the child's name, date of birth and child's date of death must also be given.

New section 245Q 'Giving report to department or litigation director' is substantially similar to previous section 246D(3). It provides that, if the litigation director and chief executive (child safety) are doing a review about the same child, they must give each other a copy of the review report.

New section 245R 'Giving report to relevant agency or litigation director' provides the circumstances in which the litigation director and agency heads may share a copy of their review report with each other. Subsection (1) provides if the litigation director and an agency head, other than Child Safety, are both doing a review about the same child, they may give a copy of their review report to the other. Subsection (2) provides if two or more agency heads (including the department) are doing a review about the same child, they may also give a copy of their review report to each other and to any other agency head. Subsection (3) requires the litigation director or agency head to redact any identifying information, other than a child to whom the review relates, before giving a copy of the review report to an agency head or the litigation director. Subsection (4) clarifies that for this section, review report includes part of a review report.

New Chapter 7A, Part 5 'Information sharing and protection from liability' sets out how information is to be shared under new Chapter 7A, including certain protections from liability for sharing information under new Chapter 7A.

New section 245S 'Purpose' provides that the purpose of Part 5 is to enable the sharing of information, while protecting its confidentiality, so that relevant agencies can effectively carry out internal agency reviews and share the outcomes. 'Outcomes' is

defined under new section 245B to include findings, recommendations, and information considered in forming findings and recommendations.

New section 245T ‘Confidential information may be given to relevant agencies’ builds on previous section 246C and sets out how the head of a relevant agency may request and be given confidential information. Subsections (1) and (2) provide that the head of a relevant agency may ask another entity for stated information that may be relevant to an internal agency review, and the entity may give confidential information to the head of a relevant agency for the purpose of an internal agency review.

Subsection (3) provides that the head of a relevant agency may give confidential information to the head of another relevant agency for the purpose of sharing the outcomes of an internal agency review. Subsection (4) confirms that information may be given to the head of a relevant agency under this section whether or not the information has been requested.

Subsection (5) makes clear that subsections (2) to (4) do not apply to information about the identity of a notifier under section 186 of the Child Protection Act (‘Confidentiality of notifiers of harm or risk of harm’). Subsection (6) states that section 186(2)(a), which allows a disclosure of the identity of the notifier in the course of performing functions under the Child Protection Act or a child welfare law or interstate law of another State, does not apply to the head of a relevant agency (other than Child Safety) in the course of performing functions under Part 5 (for the purpose of sharing confidential information for internal agency reviews).

New section 245U ‘Interaction with other laws’ is modelled largely on current section 159R of the Child Protection Act. Subsections (1) and (2) provide that Chapter 7A does not limit a power or obligation under another Act or law to give information; and Part 5 applies to information despite any other law that would otherwise prohibit or restrict the giving of the information. Subsection (3) clarifies that a privilege a person may claim in relation to information under another Act or law is not affected only because the information may be, or is, disclosed under Part 5.

New section 245V ‘Protection from liability for giving information’ largely replicates previous section 246E, with minor amendments to apply to the expanded internal agency review process. Subsections (1) to (3) provide that a person who, acting honestly, gives information under new Chapter 7A does not incur liability and cannot be held to have breached any code of professional etiquette or ethics, or departed from accepted standards of professional conduct, by reason of having provided the information. Subsection (4) provides the person with a defence of absolute privilege in a proceeding for defamation and specifies that, if the person would otherwise be required to maintain confidentiality of the information under an Act, oath or rule of law or practice, the provision of information by the person does not contravene the Act, oath, rule of law or practice and the person is not liable to disciplinary action for giving the information.

New section 245W ‘No liability for defamation if report made in good faith’ states that it is a lawful excuse for the publication of a defamatory statement made in a report under Chapter 7A that the publication is made in good faith and is, or purports to be, made for the Child Protection Act. This provision replicates previous section 246F,

with a minor technical amendment to ensure the provision applies to internal agency review reports under new Chapter 7A.

Clause 7 inserts a new Chapter 9, Part 12 ‘Transitional provisions for Child Death Review Legislation Amendment Act 2019’ to provide transitional provisions.

New section 276 provides definitions for the new Chapter 9, Part 12. Definitions are provided for the terms: ‘former’, ‘new’ and ‘original review documents’.

New section 277 ‘Current reviews by chief executive or litigation director’, applies if the chief executive or litigation director was required to carry out a review under former Chapter 7A, Part 1, Division 2, and, immediately before commencement, had not yet completed the review and given the documents to a Child Death Case Review Panel. Subsection (2) provides former sections 245 to 246D and former sections 246E, 246F and 246H continue to apply in relation to the review. However, under subsection (3) any reference to a ‘review panel’, under the former sections 246D or 246E, is taken to be a reference to the child death review board. Accordingly, reports to which new section 277 applies, must be given to the child death review board once completed.

New section 278 ‘Dissolution of review panels and pool of members’ provides that, on commencement: the appointment of a person under former section 246HA to the pool of Child Death Case Review Panel members ends; Child Death Case Review Panels established under former section 246HE are dissolved; and all documents held by Child Death Case Review Panels become documents of the new child death review board.

New section 279 ‘Child death review board may obtain documents for reviews under former provisions’ applies to an original review document under former section 246D(2) or other documents held by the chief executive (child safety) that relates to a review started before commencement. The chief executive (child safety) must, on request of the child death review board, give the document (or a copy) to the child death review board.

New section 280 ‘Annual report about review panels’ provides that, despite the repeal of former section 246HL, the chief executive (child safety) is still required to produce an annual report under that former section for the year starting on 1 July 2019.

Clause 8 amends Schedule 3 (Dictionary) by omitting definitions for the terms ‘original review documents’, ‘pool’ and ‘review panel’; and inserting new definitions for the terms: ‘agency head’; ‘child death review board’; ‘head, of a relevant agency’; ‘Hospital and Health Service’; ‘internal agency review’; ‘Minister, for a relevant agency’; ‘office of the litigation director’; ‘outcomes, of an internal agency review’; ‘policies’, ‘relevant agency’; ‘review report’ and ‘triggering event for an internal agency review’.

The clause also amends Schedule 3 to omit paragraph 3 of the definition of ‘member’, which refers to the member of a Child Death Case Review Panel.

Part 3 Amendment of Director of Child Protection Litigation Act 2016

Clause 9 states that this part amends the *Director of Child Protection Litigation Act 2016* (Director of Child Protection Litigation Act).

Clause 10 amends section 40 (Annual report) to remove former subsection (2)(b) which requires the litigation director's annual report to include any actions taken in response to a report given by a Child Death Case Review Panel.

Clause 11 amends the heading of Part 7 (Transitional provisions for this Act) as a result of the insertion of new transitional arrangements for this Bill.

Clause 12 inserts a new heading for Part 7, Division 1 'Transitional provisions for Act No. 23 of 2016' to distinguish between transitional arrangements for the Director of Child Protection Litigation Act and new transitional arrangements for this Bill.

Clause 13 amends section 43 (Meaning of *pre-amended* for this part) to refer specifically to Part 7, Division 1 instead of Part 7, as a result of the insertion of a new division dealing with transitional arrangements for this Bill.

Clause 14 inserts new Part 7, Division 2 'Transitional provision for Child Death Review Legislation Amendment Act 2019' to provide the transitional arrangements for this Bill.

New section 48 'Annual report' provides that, despite its amendment, former section 40(2) applies to the annual report for the financial year starting on 1 July 2019.

Part 4 Amendment of Family and Child Commission Act 2014

Clause 15 states that this part amends the Family and Child Commission Act.

Clause 16 amends section 9 (Commissioner's functions) by inserting new subsection (3) which provides that, in performing its functions, the Queensland Family and Child Commission (QFCC) must avoid unnecessary duplication of the board's performance of its functions under new Part 3A. This, as well clauses 17-22, is to clarify that any functions performed by the QFCC in relation to child deaths are limited to performing functions in relation to the child death register (under existing Part 3 of the Family and Child Commission Act), which is a separate and distinct function of the QFCC.

Clause 17 replaces section 19 (Additional functions of principal commissioner) with a new provision, 'Principal commissioner to control commission', which removes reference to the principal commissioner having additional functions to record, analyse, research and report on information about child deaths. This function is provided for under Part 3, section 26 ('Other functions relating to child deaths').

Clause 18 replaces the heading of Part 3 (Child deaths) with the new heading, 'Part 3 Child death register' to make it clear that Part 3 deals with only the child death register, with other functions relating to child deaths to be dealt with under new Part 3A (by the Child Death Review Board).

Clause 19 amends section 25 (Register) by omitting the heading and inserting the new heading, ‘Principal commissioner to keep register’.

Clause 20 amends section 26 (Other functions relating to child deaths) by amending the heading to replace ‘deaths’ with ‘death register’, to make clear that this provision relates to the child death register. It also amends section 26(b) to make clear that the principal commissioner’s function to conduct research to help reduce the likelihood of child deaths is relevant to the child death register.

Clause 21 amends section 27 (Requests by principal commissioner for information relevant to child deaths) by amending the heading to replace ‘deaths’ with ‘death register’, to make clear that this provision relates to the child death register.

Clause 22 amends section 29 (Reports) to make clear that the matters addressed in an annual report under this section are in relation to the functions of the principal commissioner relating to the child death register under section 26.

Clause 23 inserts new Part 3A ‘Child Death Review Board’ to establish the new Child Death Review Board.

New Part 3A, Division 1 ‘Preliminary’ deals with preliminary matters.

New section 29A ‘Purposes of board’s reviews’ provides that this part establishes the Child Death Review Board to carry out systems reviews following child deaths connected to the child protection system. Subsection (2) specifies that the reviews consider matters relating to the provision of services to, and other interactions with, children and their families by government and non-government entities. Subsection (3) confirms that the board’s reviews do not include an investigation of the death of any particular child.

Subsection (4) establishes the purposes of the reviews are to:

- a) identify opportunities for continuous improvement in systems, legislation, policies and practices; and
- b) identify preventative mechanisms to help protect children and prevent deaths that may be avoidable.

New section 29B ‘Child deaths *connected to the child protection system*’ provides that a child death is ‘connected to the child protection system’ if it is a child death in relation to which an internal agency review was carried out under Chapter 7A of the Child Protection Act (inserted by clause 6 of the Bill). This term is particularly relevant to clarify the main starting point for systems reviews carried out by the Child Death Review Board, under new section 29D, are those children who have been the subject of an internal agency review.

New Part 3A, Division 2 ‘Establishment, functions and powers’ establishes the Child Death Review Board, and sets out the functions, powers, and independence of the board and its obligations to coordinate with other entities.

New section 29C ‘Establishment’ establishes the Child Death Review Board.

New section 29D ‘Functions’ outlines the functions of the board, which are to:

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- a) carry out reviews relating to the child protection system (with the definition of ‘child protection system’ under the Act amended at clause 28 of the Bill for the purposes of new Part 3A), following child deaths connected to the system (as defined at new section 29B);
 - b) analyse data and apply research to identify patterns, trends and risk factors relevant to reviews under paragraph (a);
 - c) carry out, or engage persons to carry out, research relevant to reviews under paragraph (a);
 - d) make recommendations about:
 - i. improvements to systems, policies and practices for implementation by government and non-government entities that provide services to, or otherwise interact with, children and their families; and
 - ii. legislative change; and
 - e) monitor the implementation of its recommendations.

New section 29E ‘Powers’ gives the board powers to do all things necessary or convenient to be done for, or in connection with, the performance of its functions. Subsection (2) specifies, without limiting the board’s powers under subsection (1), the board may engage appropriately qualified persons to conduct research and provide legal advice relevant to the functions of the board and prepare reports to help the board perform its functions.

New section 29F ‘Board must act independently and in the public interest’ requires the board to act independently and in the public interest in the performance of its functions.

Subsection (2) clarifies that:

- a) the board is not subject to direction by the Minister or anyone else about how it performs its functions; and
- b) despite section 22, which provides that a commissioner is subject to the directions of the Minister in performing the commissioner’s functions under the Act and must comply with a direction given by the Minister, a commissioner is not subject to direction by the Minister in performing the commissioner’s functions as the board’s chairperson or other board member.

New section 29F includes a note referring to new section 29I which allows the Minister to ask the board to carry out a stated review or to consider a stated system or issue as part of a review (in which case the Board must comply with the Minister’s request).

New section 29G ‘Board to coordinate with other entities’ states, in performing its functions, the board must:

- a) avoid unnecessary duplication of the processes carried out in other entities; and
- b) coordinate its reviews and the reviews carried out by other entities, to the extent it considers appropriate.

New Part 3A, Division 3 ‘Conduct of reviews’ deals with how the board may or must conduct reviews and how information may be given to the board.

New section 29H ‘Board may carry out reviews’ allows the board to carry out reviews for the purposes stated under new section 29A. Under subsection (2), the board must decide the extent of, and terms of reference for, each review. Subsection (3) allows the board, for example, to decide to review a particular systems issue arising from internal

agency review reports received under new section 245O of the Child Protection Act. Subsection (4) sets out certain matters that the board may consider in a review. Subsection (5) makes it clear that the terms of reference for a review must not include considering whether disciplinary action should be taken against any person.

New section 29I ‘Minister may ask Board to carry out review’ allows the Minister, in exceptional circumstances, to ask the board to carry out a stated review or to consider a stated system or issue as part of a review, where the Minister considers it would be appropriate, having regard to the purposes of the board’s reviews stated in section 29A. Subsection (2) provides that the Minister’s request may relate to the child protection system other than child deaths connected to the system. For example, a request may relate to the serious physical injury of a child, or from a child death not connected to the child protection system, if the injury or death is relevant to the child protection system. This clarifies that a request from the Minister for the board to carry out a review may relate to a matter that is outside of the board’s usual scope, which is otherwise focused on children connected to the child protection system, as defined under new section 29B.

Subsection (3) provides the board must comply with the Minister’s request.

Subsection (4) requires the board to: decide the extent of and the terms of reference for a review requested by the Minister; advise the Minister of the outcomes of the requested review once completed or to which the request relates; and, if appropriate, include the outcomes of the requested review in the board’s annual report under new section 29J or in another report of the board under new section 29K. Subsection (5) provides that this provision applies despite section 29F, which requires the board to act independently and in the public interest in the performance of its functions. The effect of this is that while the Minister may direct a review or consideration of systems issues, the board still has the ability to determine how the review is carried out and outcomes.

New Part 3A, Division 4 ‘Reporting’ deals with annual reports and other reports of the board.

New section 29J ‘Annual reports’ provides that the board must give the Minister an annual report of its operations during the financial year, by 31 October after the end of each financial year. Subsection (2) sets out what may be included in the annual report. The Minister is required by subsection (3) to table a copy of the annual report in the Legislative Assembly within 14 sittings after receiving the report.

New section 29K ‘Other reports’ provides for other reports of the board. Under subsection (1) the board may, at any time, prepare a report about the outcomes of a review or another matter arising from the performance of its functions. If the board gives a report to the Minister under subsection (2), the board must also give the Minister a recommendation about whether the report should be tabled in the Legislative Assembly. In deciding whether to table a report in the Legislative Assembly, the Minister must have regard to the matters listed in subsection (3).

Subsection (4) provides the board must not publish a report to the public that includes personal information about an individual; information that may prejudice the investigation of a contravention or possible contravention of the law; or any

recommendations made by the board under new section 29D(d), unless the Minister has tabled the report in the Legislative Assembly.

If a matter in a report is relevant to the functions of a relevant agency (as defined under Schedule 1 and amended under clause 28 of the Bill), subsection (5) allows the board to give a copy of the report to the chief executive of the agency. Subsection (6) refers to the *Information Privacy Act 2009* (section 12) in reference to the term ‘personal information’ in this section.

New section 29L ‘Consultation before including particular information in reports’ provides that the board must not include in its annual report, under new section 29J, or other reports, under new section 29K, any adverse information about an entity that can be identified from the report unless the entity has been given a copy of the information and is provided a reasonable opportunity to make a submission about it. Subsection (2) provides that if an entity makes a submission regarding adverse information in a report, the board must have regard to the submission before finalising the report; and must not include the information in the report unless the board also includes the entity’s submission, or a fair summary of it, in the report. If the board proposes to recommend in a report that a particular entity take particular action, subsection (3) requires the board to consult with the entity, and any other entities likely to be affected, about the recommendation before finalising the report. Subsection (4) provides that for the purpose of this section, ‘information’ includes comment.

New section 29M ‘Board may respond to internal agency review reports’ allows the board to provide comments and information to an agency head or the litigation director in response to a review report received under section 245O of the Child Protection Act. Subsection (2) restricts the board from including the comments or information in their annual report under new section 29J, other reports under new section 29K or another document published by the board to the public.

New Part 3A, Division 5 ‘Information sharing and protection from liability’ relates to the sharing of information under new Part 3A and protections from liability for giving information.

New section 29N ‘Definitions for div 5’ defines the terms ‘chairperson’ and ‘information’ for division 5. The provision clarifies that chairperson means the chairperson of the Child Death Review Board and information includes a document.

New section 29O ‘Underlying principle’ provides the principles underlying new Part 3A. It provides that public entities (defined in schedule 1) should give information requested by the chairperson for the purpose of the board’s functions in a timely way and to the extent that is appropriate, having regard to the relevance of the information to the board’s functions and the effect of giving the information on the safety, wellbeing and best interests of children.

New section 29P ‘Information may be given to chairperson’ allows the chairperson to ask any entity for stated information for the purpose of the functions of the board. Subsection (2) provides that any entity may give confidential information to the chairperson for the purpose of the board’s functions, whether or not the chairperson has requested the information. New section 29P provides examples of entities that may give information.

New section 29Q ‘Chairperson may disclose confidential information’ provides the circumstances in which the chairperson of the board may disclose confidential information to an entity. Subsection (2) clarifies that this section does not limit section 36(3), which relates to the recording and disclosure of confidential information.

New section 29R ‘Information sharing arrangements’ provides the chairperson may enter into an information sharing or exchange arrangement under new Part 3A with the commission, the State Coroner, the Domestic and Family Violence Death Review and Advisory Board or another entity. New section 29R provides an example that an information sharing arrangement with the State Coroner may include arrangements for obtaining investigation documents under the Coroners Act (section 54).

New section 29S ‘Interaction with other laws’ explains how new Part 3A interacts with other Acts or laws. Subsection (1) provides new Part 3A does not limit a power or obligation under another Act or law to give information. Subsection (2) states information may be given under new Part 3A despite any other law that would otherwise prohibit or restrict the giving of the information. Subsection (3), however, provides if a person may claim privilege in relation to information under another Act or law, the privilege is not affected only because the information may be, or is, disclosed under new Part 3A as inserted by the Bill.

New section 29T ‘Protection from liability for giving information’ provides certain protections for giving information under new Part 3A (as inserted by the Bill). Subsections (1) to (3) provide that a person who, acting honestly, gives information under new Part 3A does not incur liability and cannot be held to have breached any code of professional etiquette or ethics or departed from accepted standards of professional conduct by reason of having provided the information. Subsection (4) provides the person with a defence of absolute privilege in a proceeding for defamation and specifies that, if the person would otherwise be required to maintain confidentiality of the information under an Act, oath or rule of law or practice, the provision of information by the person does not contravene the Act, oath, rule of law or practice and the person is not liable to disciplinary action for providing the information.

New section 29U ‘No liability for defamation if report made in good faith’ states that it is a lawful excuse for the publication of a defamatory statement made in a report under new Part 3A that the publication is made in good faith and is, or purports to be, made for the Family and Child Commission Act.

New Part 3A, Division 6 ‘Membership of board’ sets out matters in relation to membership and governance of the board.

New section 29V ‘Composition of board’ provides that the board consists of the chairperson and not more than eleven other members appointed by the Minister.

New section 29W ‘Chairperson’ provides that the Minister must appoint the principal commissioner or another commissioner of the QFCC as the chairperson of the board. Subsection (2) provides that the chairperson is responsible for leading the board, and directing its activities, to ensure it appropriately performs its functions. Under subsection (3) the chairperson holds office for the term stated in the person’s instrument of appointment as chairperson. Subsection (4) states that a person ceases to be

chairperson if the person resigns by signed notice to the Minister or ceases to be a commissioner.

New section 29X 'Other members' applies to members of the board other than the chairperson. Under subsection (2) the Minister may appoint a person as a member of the board if satisfied the person is eligible and suitable for appointment. A person is eligible for appointment if the Minister is satisfied the person meets the relevant criteria under subsection (3). Subsection (4) provides that a person is ineligible for appointment if the person has a conviction for an indictable offence, is an insolvent under administration under section 9 of the Corporations Act, or is a member of the Legislative Assembly. Subsection (5) provides the Minister must not appoint a person to the board if the person does not consent to a criminal history check before appointment. Subsection (6) allows the Minister to have regard to a person's criminal history, without limiting the matters which the Minister may have regard in deciding a person's suitability for appointment to the board. Subsection (7) requires the Minister to ensure the board membership reflects the social and cultural diversity of the Queensland community; includes at least one Aboriginal or Torres Strait Islander person; includes persons with a range of experience, knowledge or skills relevant to the board's functions; and does not include a majority of persons who are public service employees.

New section 29Y 'Deputy chairperson' allows the Minister to appoint a board member to be the deputy chairperson of the board. Subsection (2) requires the Minister to appoint a board member who is an Aboriginal or Torres Strait Islander person as deputy chairperson, if the chairperson is not an Aboriginal or Torres Strait Islander person. Subsection (3) prevents the Minister from appointing a board member who is a commissioner as deputy chairperson. Subsection (4) provides that a person may be appointed as a member of the board and deputy chairperson at the same time. Subsection (5) provides the circumstances in which a person ceases to be deputy chairperson of the board; and subsection (6) provides the circumstances in which the deputy chairperson is to act as chairperson of the board.

New section 29Z 'Conditions of appointment' provides for board members' conditions of appointment. Subsection (1) provides a board member is to be paid the remuneration and allowances decided by the Minister. Subsection (2) states a board member who is a State employee is not entitled to be paid remuneration for holding office as a member of the board. Subsection (3) provides for matters not provided for by this Act, a board member holds office on the terms and conditions decided by the Minister.

New section 29ZA 'Term of appointment' provides a board member is appointed for the term stated in the member's instrument of appointment, of not more than three years. A board member may be reappointed under subsection (2).

New section 29ZB 'Vacation of office' provides the circumstances in which the office of a board member becomes vacant. Under subsection (2) the Minister may, by signed notice given to a board member, terminate the member's appointment if the member is absent from three consecutive board meetings without the board's permission and without reasonable excuse; or the Minister is satisfied the member is incapable of satisfactorily performing the member's functions.

New section 29ZC ‘Criminal history reports’ allows the Minister to obtain criminal history reports for board members and a person who has consented to a criminal history check for the purpose of the person’s appointment as a board member. Subsection (2) provides the Minister may ask the police commissioner for the person’s criminal history and a brief description of the circumstances of a conviction or charge mentioned in the person’s criminal history. Under subsection (3) the police commissioner must comply with the request in relation to information in the police commissioner’s possession or to which the police commissioner has access. Subsection (4) requires the Minister to destroy a criminal history report given to the Minister under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.

New section 29ZD ‘Members must disclose new convictions’ provides for the disclosure of convictions for indictable offences during the term of a board member’s appointment. Subsection (2) requires a board member who is convicted of an indictable offence during the term of their appointment to immediately give notice of the conviction to the Minister, unless the person has a reasonable excuse (maximum penalty: 100 penalty units). Subsection (3) sets out the matters to be included in the notice given to the Minister.

New Part 3A, Division 7 ‘Proceedings of the board’ sets out matters related to meetings of the board and their proceedings.

New section 29ZE ‘Time and place of meetings’ provides the board may hold its meetings when and where it decides. Subsection (2) states the chairperson may call a meeting at any time and must call a meeting if asked by at least three other board members.

New section 29ZF ‘Quorum’ provides a quorum for a meeting is at least half of the board’s members, including at least one member who is an Aboriginal or Torres Strait Islander person.

New section 29ZG ‘Presiding at meetings’ explains the persons who are to preside at a meeting. Subsection (1) requires the chairperson to preside at all meetings at which the chairperson is present. If the chairperson is not present at a meeting, subsection (2) requires the deputy chairperson to preside at the meeting. If neither the chairperson nor the deputy chairperson are present at a meeting, subsection (3) provides the board member chosen by the members present is to preside at the meeting.

New section 29ZH ‘Conduct of meetings’ explains how meetings of the board are to be conducted. Subsection (1) provides, subject to this division, the board may conduct its proceedings, including its meetings, as it considers appropriate. Subsection (2) allows for the use of communication technology by the board to hold its meetings and for board members to take part in the meetings. Subsection (2) does not limit the types of technology the board and its members may use, other than describing technology that allows reasonably contemporaneous and continuous communication between persons taking part in the meeting. Subsection (3) confirms that a person who takes part in a meeting using such technology is taken to be present at the meeting.

Subsection (4) states a question at a meeting is to be decided by a majority of the votes of the board members present at the meeting. Subsection (5) provides the member presiding at the meeting has a casting vote if the votes are equal. Subsection (6) provides

the circumstances in which a resolution is a valid resolution of the board, even where it is not passed at a meeting of the board. Subsection (7) allows the board to invite persons other than board members to attend a board meeting to advise or inform the board about any matter.

New section 29ZI ‘Minutes and other records’ provides that the board must keep minutes of its meetings and a record of its decisions and resolutions.

New section 29ZJ ‘Disclosure of interests’ applies if a board member has a direct or indirect interest in a matter being considered, or about to be considered, at a meeting of the board; and the board member’s interest could conflict with the proper performance of their duties about the consideration of the matter. Subsection (2) requires the board member, as soon as practicable after the relevant facts come to the member’s knowledge, disclose the nature of the interest at a board meeting. Under subsection (3) particulars of the disclosure must be recorded by the board in a register of interests kept for the purpose. Subsection (4) states the board member must not be present when the board considers the matter or take part in a decision of the board about the matter, unless the board otherwise directs. Under subsection (5), the member must not be present when the board is considering whether to give a direction under subsection (4).

Subsection (6) provides that a contravention of this section does not invalidate the board’s decision. However, under subsection (7), if the board becomes aware the member contravened the section, the board must reconsider the board’s decision in which the member took part, in contravention of the section.

New section 29ZK ‘Attendance by proxy’ allows for a board member to attend a board meeting by proxy. Under subsection (2), the proxy holder:

- a) may participate in the meeting on the member’s behalf, but not vote on the member’s behalf;
- b) is not entitled to preside at the meeting only because the person is the proxy holder for the chairperson or deputy chairperson; and
- c) is not counted for the purpose of deciding whether a quorum is present under section 29ZF.

Subsection (3) clarifies that for section 29ZB(2)(a), an absent board member is not taken to have attended a meeting only because their proxy holder attended the meeting.

Clause 24 amends section 36 (Confidentiality of information) by adding ‘a member of the board’ to the list of entities provided at section 36(2) to ensure the current provisions in the Family and Child Commission Act regarding confidential information apply to members of the board.

Clause 25 inserts new heading for Part 6, Division 1 ‘Transitional provisions for Act No. 27 of 2014’ to distinguish between transitional arrangements for the Family and Child Commission Act and new transitional arrangements for this Bill.

Clause 26 amends section 44 (Definitions for pt 6) to refer specifically to Part 6, Division 1, instead of Part 6, as a result of the insertion of a new division dealing with transitional arrangements for this Bill.

Clause 27 inserts new Part 6, Division 2 ‘Transitional provisions for Child Death Review Legislation Amendment Act 2019’ to provide the transitional arrangements for this Bill.

New section 49 ‘Reports from current reviews’ provides that a reference in Part 3A (inserted by the Bill) to an internal agency review includes a reference to a review carried out by the chief executive (child safety) under (previous) Chapter 7A of the Child Protection Act, as in force from time to time before the commencement of the *Child Death Review Legislation Amendment Act 2019*.

Clause 28 amends Schedule 1 (Dictionary) by:

- inserting definitions for the terms ‘board’; ‘chairperson’; ‘connected to the child protection system’; ‘criminal history, of a person’; ‘education and care service’; ‘information’; ‘internal agency review’; ‘spent conviction’; and ‘State employee’;
- amending paragraph (a) of the definition for the term ‘child protection system’ to insert a definition specific to Part 3A to make it clear that the purview of the board extends beyond ‘relevant agencies’, defined in Schedule 1, to also include other entities to children and young people in need of protection or at risk of harm; and
- inserting into the definition for the term ‘relevant agency’, the human rights commissioner under the *Anti-Discrimination Act 1991* and the Domestic and Family Violence Death Review and Advisory Board under the Coroners Act.