Child Safe Organisations Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the Child Safe Organisations Bill 2024.

Policy objectives and the reasons for them

Following an extensive five-year inquiry, the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) presented its Final Report on 15 December 2017, finding widespread and systemic failings of institutions to protect children and respond to child sexual abuse. "Institution" was broadly defined to include any entity (or organisation) that provides, or has at any time provided, activities, facilities, programs or services of any kind that enable adults to have contact with children.

In its Final Report, the Royal Commission recommended state and territory governments:

- require relevant organisations to comply with 10 Child Safe Standards (CSS) as a best-practice approach to keep children safe (recommendation 6.8, Volume 6, Final Report); and
- establish nationally consistent reportable conduct schemes (RCS) to provide independent oversight of organisational responses to allegations of child abuse across sectors (recommendations 7.9 – 7.12, Volume 7, Final Report).

The Queensland Government has accepted or accepted in-principle all CSS and RCS recommendations.

Child safe standards

The Royal Commission examined the factors that can influence the risk of harm to children in institutional settings as well as the factors that protect children and make institutions safer. It identified 10 CSS that contribute most effectively to improving the safety of children in institutions (recommendations 6.5 and 6.6, Volume 6, Final Report), and recommended that all institutions that engage in child-related work meet these standards.

The 10 CSS are designed to be principle-based and outcome focused, developing child safe organisational cultures rather than setting prescriptive rules that must be followed or specific initiatives that must be implemented. Given the broad scope of organisations that interact with children, the CSS are intended to be applied in a flexible way, guided by each organisation's structure, size, level of risk, and characteristics.

Reportable conduct scheme

The Royal Commission's recommendations for an RCS were based on its findings that there were systemic issues within institutions to protect children and respond to child sexual abuse

based on a range of matters including lack of clear and accessible complaints handling policies and procedures, poor investigation standards, and under-reporting to authorities where abuse was known or suspected. It also noted that regulation and oversight of employee-related child safety matters differs between sectors and multiple bodies can have roles in the same sector.

An RCS is a legislated scheme that applies to certain organisations with a high degree of responsibility for children, across multiple sectors, and requires reporting and investigation of concerns about the conduct of workers with children under the oversight of an independent body. The RCS will provide a new level of cross-sectoral oversight of how organisations prevent risks to children, and handle allegations of child abuse by workers.

Child safe organisations system

Following extensive policy development, impact analysis and consultation, including public consultation through the *Growing Child Safe Organisations in Queensland Consultation Regulatory Impact Statement* in 2023, the Queensland Government approved a Queensland model for CSS and RCS in early 2024.

The approved model is an integrated child safe organisations (CSO) system within a single independent oversight body that includes a collaborative regulatory model to implement mandatory CSS and ensure compliance by in-scope organisations, and oversight of institutional child abuse complaints and allegations through a nationally consistent RCS.

The Queensland Government has endorsed the Queensland Family and Child Commission (the Commission) as the independent oversight body responsible for administering a legislated CSO system.

The policy objective of the Child Safe Organisations Bill 2024 (the Bill) is to improve the safety and wellbeing of children in Queensland organisations and ensure children who are at risk of experiencing abuse or who have experienced abuse in institutional settings are supported early, in a trauma-informed, appropriate way.

The Bill will deliver the Queensland Government's commitment to implement the CSS and RCS recommendations made by the Royal Commission.

Achievement of policy objectives

The Bill achieves the policy objectives and supports the intent of recommendations made by the Royal Commission by:

- establishing mandatory compliance with 10 CSS, based on the *National Principles for Child Safe Organisations* (National Principles), and a Universal Principle for cultural safety for Aboriginal and Torres Strait Islander children;
- establishing an RCS for the oversight of reporting and investigations into allegations of child abuse by organisations within scope; and
- providing that the Commission is the independent oversight body responsible for administration of CSS and an RCS.

The CSS and RCS obligations in the Bill apply to entities in relation to children under 18 years of age. "Child" means an individual under the age of 18, consistent with the definition provided under the *Acts Interpretation Act 1954* (Schedule 1, "*child"*).

Oversight by the Queensland Family and Child Commission

The *Family and Child Commission Act 2014* (FCC Act) establishes the Commission to provide strategic oversight of the child protection and family support systems by monitoring, reviewing and reporting systemic issues impacting on performance of those services. The Commission plays an important role in Queensland in overseeing the child protection system and educating the community on keeping children safe.

The Bill provides that the Commission is the independent body responsible for overseeing Queensland's CSO system. The Commission's key functions will be:

- take a responsive, risk-based approach to regulation with an emphasis on capacity building;
- provide centralised oversight, working collaboratively with sector regulators to support organisations to implement the CSS; and
- administer, oversee, and monitor the operation and reporting of allegations of reportable conduct under the RCS.

The CSO system is a collaborative regulatory model that boosts oversight capacity; streamlines regulatory obligations while minimising duplication; and informs and provides education and guidance within the community and in-scope organisations. Sector regulators collaborate with the Commission to support implementation and by identifying non-compliance with obligations under the CSS and Universal Principle and RCS.

To support the Commission to undertake its functions, the Bill includes a range of enforcement powers to effectively monitor, investigate and enforce compliance with the CSS and RCS. These powers are intended to be exercised in a graduated and proportionate way, with a strong focus on providing education and guidance to entities to build capacity in the first instance.

Child safe standards

As recommended by the Royal Commission, the National Principles were endorsed in 2019 by the former Council of Australian Governments (COAG) as the vehicle for national harmonisation of CSS. The National Principles incorporate the 10 CSS recommended by the Royal Commission and have a broader scope that goes beyond child sexual abuse to cover other forms of potential harm to children. New South Wales (NSW) applies a version of the Royal Commission's 10 CSS while Tasmania, Victoria, and Western Australia adopt the National Principles. In Queensland, the National Principles are incorporated into the Bill as they were strongly supported in consultation because they will best contribute to national consistency and have a stronger focus on children's rights and wellbeing.

The Bill establishes a legislative framework for the mandatory implementation of, and compliance with, the CSS by prescribed child safe entities that provide services specifically for children, or facilities specifically for use by children who are under the supervision of the entity.

Universal Principle

The Bill establishes a Universal Principle for child safe entities to provide environments that promote and uphold the right to cultural safety of Aboriginal and/or Torres Strait Islander children (clause 11).

The Royal Commission found that a strong connection to culture is a protective factor against child sexual abuse for Aboriginal and Torres Strait Islander children because:

- it builds resilience in communities to help mitigate the negative consequences of past policies and contemporary racism;
- strong attachments with multiple caregivers, high self-esteem and positive social connections act as protective factors against child sexual abuse; and
- racism and disconnection from culture heighten the vulnerabilities that Aboriginal and Torres Strait Islander children face in institutions.

The Bill requires the Universal Principle to be implemented and embedded by child safe entities in their implementation of each of the 10 CSS. It has the same standing as the 10 CSS and, where there is non-compliance, the same enforcement powers can be used by the Commission.

Scope of CSS

The Royal Commission recommended CSS apply to a broad range of sectors working with children including schools, early childhood education and care, child protection, youth justice, arts, sport and recreation, transport, community and commercial services.

In determining the scope of CSS entities for Queensland, additional consideration was given to:

- feedback from stakeholders indicating substantial support for a broad scope of entities to implement the CSS, and noting calls for national consistency and alignment with the Royal Commission recommendations in Queensland's approach to CSS;
- ensuring existing protections in Queensland are considered and leveraged where appropriate (for example, organisations required to develop a Child and Youth Risk Management Strategy (RMS) under the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) are required to implement the CSS, and the RMS requirements are to be repealed and replaced by CSS); and
- ensuring the oversight body is able to effectively administer the scheme as a single body, so it can deliver consistent, effective, targeted, and proportionate regulatory responses.

The Bill aligns the scope of entities required to implement the CSS to the Royal Commission's recommended categories, while also covering the existing scope of organisations required to produce a RMS under the WWC Act, to maintain existing protections.

The Bill provides further clarity and targets CSS obligations by requiring that entities in scope are prescribed under Schedule 1 or by regulation and either:

- provide services specifically for children; or
- provide facilities specifically for use by children who are under the supervision of the entity.

The obligation to comply with the CSS and Universal Principle applies at a broad organisational level, rather than to specific service streams or parts of an entity. The intent is to facilitate a flexible approach to implementation across an organisation's various services, activities and environments, tailored to the organisation's circumstances, characteristics and risk factors.

The Bill further provides that an organisation not captured within scope can voluntarily participate in the obligations of a child safe entity. This provides an avenue for all institutions to build child safe cultures in implementing and complying with the CSS and Universal Principle, even where they may not provide services or facilities specifically for children, but may, for example, employ children within their organisation.

Functions of the Commission for CSS

The Bill establishes functions and powers of the Commission for the purpose of the CSS and Universal Principle that are consistent with the Royal Commission's recommended range of powers and functions for an oversight body to administer the CSS (recommendation 6.11, Volume 6, Final Report).

The primary functions of the Commission for the purpose of CSS are:

- to promote the safety of children, the prevention of child abuse, and proper responses to allegations of child abuse;
- to promote continuous improvement and best practice by child safe entities;
- to promote and monitor implementation of, and compliance with, the CSS and Universal Principle by child safe entities; and
- to collaborate with sector regulators in relation to performing its functions.

It is intended that these primary functions are achieved by supporting functions provided under the Bill, which focus on: education and capacity building; facilitating information exchange; collecting, analysing and publishing data; and reporting on the CSS and Universal Principle to promote continuous improvement.

Consistent with the Royal Commission's commentary (Volume 6, Final Report, p. 278), the collaborative regulatory approach seeks to minimise regulatory duplication and maximise existing regulatory relationships across sectors proposed to be in-scope of the CSS and Universal Principle.

Education and capacity building

The Bill provides the Commission will undertake a range of capacity building activities in collaboration with sectors to:

- develop tools to support organisations including sector specific guidelines and development tools (this may include, for example, training and other resources);
- provide advice in relation to the CSS and Universal Principle for organisations, clarifying their responsibilities and suggesting actions organisations may take to meet them;
- guide and support entities in embedding cultural safety across each of the 10 CSS, led by Aboriginal and Torres Strait Islander peoples;

- provide resources that are accessible and available in a wide range of languages and formats; and
- lead awareness-raising of the CSS and Universal Principle with parents, families and the broader community.

Royal Commission commentary emphasised taking a capacity building and responsive approach to build a shared understanding of what it means to be child safe: "Capacity building and support should be the foundation of any approach to creating child safe institutions… genuine cultural change, rather than mere compliance, is needed to make institutions child safe." (Volume 6, Final Report, p. 286).

Stakeholders stated the oversight body should have a culture of positive, supportive action to promote understanding of, and compliance with, the CSS. There was strong support for the role, functions and powers of the oversight body to support capacity building and awareness raising in entities and the community more broadly.

Monitoring and enforcement

The Bill provides for a responsive regulatory approach consistent with the Royal Commission's commentary in relation to oversight bodies of CSS schemes. For example, the Royal Commission recommended that state and territory governments should ensure CSS oversight bodies take a responsive and risk-based approach when monitoring compliance with the CSS and, where possible, utilise existing regulatory frameworks to monitor and enforce the CSS (recommendation 6.10(c), Volume 6, Final Report).

A core principle of responsive regulation as contemplated by the Royal Commission was taking a proportionate approach to compliance, where a range of enforcement measures are available, and where coercive measures are only used when less interventionist measures have not successfully achieved compliance. Regulatory efforts should be focused on improving safety for children and prioritising cultural change in organisations, rather than meeting prescriptive compliance requirements.

The Bill provides the Commission with a graduated suite of compliance and enforcement powers to allow regulatory responses to be flexible, proportionate and tailored to the characteristics and risk profile of a child safe entity. The Commission may also monitor a child safe entity to ensure the entity is implementing and complying with the CSS and Universal Principle.

For the purposes of monitoring a child safe entity and in line with the foundational principle to build capacity to drive cultural change, generally, the first response of the Commission to non-compliance by an entity will be support, education and capacity building. In instances where there is sustained or substantial non-compliance, the Commission may utilise the suite of compliance and enforcement powers.

Collaborative regulation

The Bill also requires that the Commission and sector regulators collaborate with each other for the purpose of promoting implementation of, and compliance with, the CSS and Universal

Principle. In providing for a collaborative regulatory approach, the Commission will be supported by, and may draw on, sector regulators' expertise and information.

Information sharing framework

The Bill provides an information sharing framework that reflects the Royal Commission's commentary about enabling information to be shared between prescribed entities in a way that is purpose-driven and appropriate, and effective in identifying, preventing and responding to concerns of non-compliance (Volume 8, Final Report).

Effective information sharing arrangements are key to the successful operation of the CSS scheme. Improved information sharing to identify risks to the safety of children will complement existing mechanisms to protect children in Queensland.

The Bill facilitates information sharing between prescribed entities, including the Commission, sector regulators and other entities relating to CSS. It also enables these entities to share information with the Commission. The proactive sharing of information will assist the Commission to become aware of CSS and Universal Principle compliance issues and to identify sectors requiring support to build capacity.

Under the collaborative regulatory model, information sharing forms a key oversight mechanism for the Commission to inform itself about how well organisations are complying with the CSS and Universal Principle.

Reportable conduct scheme

Scope of reporting entities

The Bill sets out the reporting entities in scope of the RCS, which aligns with the recommendations by the Royal Commission and generally with the current scope of other jurisdictions with an RCS. The RCS applies to an entity that cares for, supervises or exercises authority over children, as part of its primary functions or otherwise, and is prescribed under Schedule 2 or by regulation (clause 29). This includes education services, early childhood education and care services, disability services, supported accommodation or residential services, religious bodies, health services, child protection services, justice and detention services and government entities.

This reflects the Royal Commission recommendations that the scope of the RCS is narrower than the CSS, as it is intended to focus on institutions, both government and non-government, that exercise a high degree of responsibility for children; and/or engage in activities that involve a heightened risk of child sexual abuse, due to the institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with. The Royal Commission noted the need to consider the regulatory burden of the RCS on institutions in terms of implementation and ensuring compliance.

Phasing of sectors

The Bill establishes a phased approach to commencement under clause 2. The CSS and Universal Principle will commence ahead of the RCS. This is intended to provide a foundation for child safe environments. Sectors will be phased in over three stages for both the CSS and Universal Principle and the RCS. This will allow the Commission to provide more targeted support to specific sectors as obligations are introduced. The obligations under the CSS and Universal Principle will commence for sectors from 1 October 2025, with all child safe entities in-scope by 1 April 2026. Obligations under the RCS will commence for sectors from 1 July 2026, with all reporting entities in scope by 1 July 2027. The first phases apply to more highly regulated and mature sectors that are engaged with the most vulnerable children (for example, child protection services, services for children with disability, youth justice services), providing more time for less regulated sectors (for example, sport and recreation services, religious bodies) to prepare for commencement.

Scope of reportable conduct

The Bill defines reportable conduct to include: a child sexual offence; sexual misconduct committed in relation to, or in the presence of a child; ill-treatment of a child; significant neglect of a child; physical violence committed in relation to, or in the presence of, a child; or behaviour that causes significant emotional or psychological harm to a child (clause 26).

This scope is consistent with the Royal Commission's recommendations and the meaning of reportable conduct in other jurisdictions.

Reportable conduct is defined to mean conduct that may occur through a single act or omission, or a series of acts or omissions, to capture patterns of behaviour that result in cumulative harm. This is consistent with the intent of the scheme to detect patterns of concerning behaviour, particularly regarding conduct that does not meet the threshold of a criminal offence or that occurs across different organisations or sectors where there is currently no single oversight body. Reportable conduct does not include conduct that is reasonable for the discipline, management or care of a child taking into account characteristics of the child and any applicable or relevant code of conduct or professional standard.

Obligations on heads of entities

The head of an entity will have obligations under the Bill to:

- ensure systems are in place for: preventing reportable conduct, enabling reporting to the entity or Commission in relation to their workers, and investigating and responding to reportable allegations against and convictions of their workers (clause 30);
- notify the Commission of reportable allegations or convictions that they become aware of against their workers through an initial report and interim report as applicable (clauses 34 – 35);
- arrange for an investigation of the reportable allegation or reportable conviction, and provide a final report to the Commission which includes findings as to whether the worker engaged in reportable conduct (clauses 36 – 37);
- provide information as requested by the Commission (or an authorised officer) upon request, including regarding its systems or its final report (clauses 31, 38, 91); and

- ensure an appropriate level of confidentiality of information relating to reportable allegations and reportable convictions and only disclose information about the allegations or convictions in circumstances permitted by legislation (clauses 56 and 57).

The Bill defines the head of an entity to mean the chief executive of the entity in the first instance, or otherwise a principal officer or other person or holder of a position approved by the Commission, depending on available roles within the entity (clause 7). For a public sector entity under the *Public Sector Act 2022*, this means the chief executive of the entity, or the police commissioner for the Queensland Police Service. The functions of the head of an entity under the RCS may be delegated to an appropriately qualified person (clause 107(2)).

These reporting obligations will mean organisations will be required to ensure their responses to allegations of child abuse are child-centred, prompt, accountable and transparent, with support from the Commission.

Historical conduct

The Bill provides that, generally, obligations under the RCS do not apply to reportable conduct that occurred before the start date for the entity (clause 112), unless, after the entity's commencement:

- a person makes a new notification to the head of reporting entity regarding a reportable allegation or reportable conviction, about a current worker of the entity, which involves conduct that occurred before the commencement of the RCS for that entity; or
- the head of the reporting entity voluntarily decides to comply with obligations under the RCS in relation to the historical reportable allegation or reportable conviction.

The start date reflects the phased commencement of RCS obligations to sectors within scope. This will ensure that this transitional provision regarding historical conduct does not apply to the reporting entity until it is within scope of the RCS under chapter 3.

This is intended to strike a balance between avoiding placing an onerous obligation on organisations to consider all historical conduct they be aware of, while ensuring that historical conduct may still be considered under the RCS in appropriate circumstances.

Principles of the RCS

The Bill includes a legislated set of guiding principles for the RCS, with an overarching principle that the protection of children from harm and promotion of children's best interest is paramount (clause 25(2)). Other guiding principles are related to right to cultural safety of children, views of the child, reporting of alleged criminal conduct to the police service with the police investigation having priority, role and responsibilities of sector regulators, consideration of natural justice and the importance of information sharing and education and guidance by the Commission. Setting out guiding principles in legislation clarifies the aim of the scheme and may guide decision making by the Commission, sector regulators and reporting entities operating under the scheme.

Functions and powers of the Commission

The Commission will have specific functions in relation to the RCS (clause 40) including to:

- administer, monitor and enforce compliance with the RCS;
- facilitate the appropriate exchange of information under the Bill;
- educate and provide advice to the public, sector regulators and reporting entities in relation to the RCS and ways to prevent reportable conduct;
- facilitate cooperation between the public, reporting entities, sector regulators and other entities in relation to the conduct of investigations of reportable allegations and reportable convictions; and
- report to the Minister about matters relating to the RCS.

These functions align with the principles, including, for example, that sector regulators have expertise, knowledge and skills in relation to entities that regulate and can make important contributions to investigations (clause 25(3)(e)).

The Bill also sets out specific powers and enforcement measures available to the Commission including:

- if it considers it is in the public interest, the ability to monitor the progress of an investigation undertaken by a reporting entity (clause 41).
- to request that a sector regulator, other than the police service, undertake an RCS investigation, only if they have the necessary functions and powers, and agree to undertake the investigation (clause 42) (referrals of alleged criminal conduct and concurrent police investigations are considered separately at clause 46).
- to undertake own motion investigations in limited and exceptional circumstances, including, for example, if it is in the public interest or the Commission believes the head of a reporting entity has failed, or is reasonably unable, to investigate a reportable allegation or reportable conviction (clause 43). The Bill enables the Commission to interview a child for the purposes of its own investigation and sets out safeguards (clause 44). This includes a general requirement to obtain consent from a parent or guardian, or in limited circumstances, the child, and providing the opportunity for a support person to be present.

Concurrent police investigations

The Bill provides that where an entity responsible for investigating a reportable allegation under the RCS (which may include a sector regulator upon request or the Commission in limited circumstances) is aware that the alleged conduct may involve criminal conduct, they must notify the police commissioner as soon as practicable (clause 46). This reflects the principles that criminal conduct should be referred to the police promptly and a police investigation has priority over an investigation under the RCS (clauses 25(3)(c), (d)). The police commissioner may ask the entity to suspend, or not commence, its investigation if there is an ongoing police investigation. If the entity is required to suspend or not commence an RCS investigation, they must still take all reasonable steps to mitigate risks to the safety, wellbeing or best interests of children. This ensures that an entity is able to take interim risk management action pending the outcome of a police investigation. If the entity is able to continue to undertake an RCS investigation concurrently to a police investigation, they must ensure that it does not prejudice the police investigation.

Disclosure of information for RCS

The Bill provides a broad enabling framework to allow the sharing of relevant information under the RCS between entities prescribed under clause 49 (known as prescribed RCS entities). This includes the Commission (and equivalent oversight bodies in other jurisdictions with an RCS), sector regulators, reporting entities, government departments, the police (in Queensland and other jurisdictions), and select independent oversight bodies, such as the Queensland Ombudsman. These entities may share relevant information in prescribed circumstances which includes to lessen or prevent a serious risk or threat to the life, health or safety of a child or class of children; in relation to an investigation into a reportable allegation or conviction; for taking action in response to a finding of reportable conduct; and/or any other information about a reportable allegation or reportable conviction that would assist a prescribed RCS entity to comply with the RCS. This excludes evidentiary material or a relevant record or transcript, which are both defined under clause 52(9), and subject to restrictions on disclosure under that clause.

The Commission or head of a sector regulator or reporting entity may share relevant investigative information under the RCS with a child the subject of the investigation, their parent, person with parental responsibility, or guardian (clause 50). The Bill also requires that the Commission share findings of reportable conduct with the chief executive of the department in which the WWC Act is administered (clause 51), which may be considered as part of a Working with Children Check (WWCC) application or re-assessment. The head of a prescribed RCS entity or the Commission may also request certain information, including evidentiary material, from the Director of Public Prosecutions (DPP) or the police commissioner (clause 52). This is intended to facilitate information sharing where there may be alleged criminal conduct or information regarding a reportable conviction. However, only the Commission may request particular recordings or transcripts due to the sensitive nature of this material, such as a criminal statement made by a child under section 93A of the *Evidence Act 1977* (Evidence Act).

General provisions for disclosure of information

The Bill provides that the Commission may share information with equivalent oversight bodies that are responsible for administration of the CSS or RCS in other jurisdictions (clause 53), for example, the Office of the Children's Guardian in New South Wales and the Victorian Commission for Children and Young People. This will: support investigative and compliance activities, particularly for child safe entities or reporting entities that operate nationally; contribute to learnings of the Commission in administration of its functions; and contribute to a national approach, which was strongly supported in consultation in Queensland.

The Commission may enter into a written agreement to facilitate the sharing of information with a prescribed CSS entity or prescribed RCS entity for the purpose of exercising its functions under the CSS and RCS (clause 54). This function is intended to support the collaborative nature of the scheme.

Confidentiality of information

The Bill provides confidentiality requirements for information gained and disclosed under the Bill. It is important the Commission, child safe entities, reporting entities, sector regulators and any other persons involved in administering the Bill, can access and disclose relevant information. However, the Bill also requires that information they receive, including confidential information, is protected from disclosure unless prescribed circumstances apply.

The Bill ensures that a person involved in its administration, including the responsible Minister under the Act or the Commission (including a commissioner or staff member), may record or disclose confidential information obtained under the Act in limited circumstances (clause 56). This includes, for example, to the extent necessary to perform that person's functions under the Act; or to the extent necessary to lessen or prevent a serious threat to a person's life, health or safety. Similarly, clause 57 of the Bill also provides that a person receiving confidential information under clause 56 or under the CSS or RCS must not use it or disclose it to anyone else, unless it is for a permitted use under clause 56(5). This includes, for example, if authorised by a commissioner of the Commission in prescribed circumstances, or under the Act or another law.

The Bill includes a prohibition against publication of information that would reveal the identity of: a child in relation to whom a child safe entity has, or is alleged to have, failed to comply with the CSS and Universal Principle; and a person who has made a report under the RCS or a child the subject of conduct by a worker that forms the basis of a reportable allegation, reportable conviction or finding of reportable conduct (clause 58). Limited exceptions to publication apply such as if the person has given informed consent or it is authorised by an Act or law, such as if it is permitted by a court order.

The Bill includes protections for persons acting honestly and in good faith and without negligence who give information under chapters 4 or 5, or give information in relation to a reportable allegation or reportable conviction to the Commission, a sector regulator, a child safe entity or a reporting entity (clause 59). These individuals are protected from civil and criminal liability or liability under an administrative process, such as disciplinary action, when providing information. The Bill also includes an offence against taking a reprisal against a person because, or based on the belief that, the person has provided or may provide information or assistance to the Commission, a sector regulator, child safe entity or reporting entity (clause 60). This means causing, or attempting to cause or conspire to cause detriment to a person, such as prejudicing a person's safety or career. This is based on the Royal Commission's recommendations to include legislative protections for individuals that make reports (recommendations 7.5 and 7.6, Volume 7, Final Report).

Investigation and enforcement

The Bill provides for the appointment of authorised officers of the Commission, with a suite of compliance and enforcement powers to support the functions of the Commission to provide oversight of the CSS and Universal Principle and RCS (chapter 6). These powers of investigation and enforcement are intended to be exercised in a proportionate way in relation to any compliance issues that arise, consistent with the responsive risk-based regulation approach considered by the Royal Commission.

The Bill provides the functions of authorised officers are to: investigate, monitor and enforce compliance; investigate or monitor occasions that arise from the exercise of powers; and facilitate the exercise of powers under the Bill (clause 63).

Authorised officers are provided with general powers to enter and inspect an entity's premises to help determine compliance with the CSS or Universal Principle, or RCS. Following entry of premises, the Bill provides authorised officers with a suite of compliance powers for the purpose of investigating non-compliance, such as: searching; inspecting, examining or filming any part of the premises; taking extracts of documents; and requesting reasonable help (clauses 85 and 86).

An authorised officer may also request that an individual provide their personal details, information or attend a place to answer questions or produce documents in certain circumstances (clauses 89, 91) such as based upon a reasonable belief or suspicion that an offence has been committed.

Review of decisions

The Bill provides that prescribed decisions by the Commission can be subject to internal review upon application (clauses 98 – 100). This is intended to provide natural justice to entities and persons who are impacted by the Commission's decisions where certain powers are exercised. The Bill further provides for external reviews by the Queensland Civil and Administrative Tribunal (QCAT) to be sought once an internal review of the decision has been finalised (clause 101).

Reporting

The Bill provides that the Commission may, at any time, prepare a special report on any matter relating to the performance of its functions and give the report to the Minister (clause 104). The Commission may recommend these reports be tabled in the Legislative Assembly; however, this requires appropriate consideration and approval by the Minister. This includes consideration of whether the report includes confidential information (noting there are confidentiality protections provided under chapter 5), information that may prejudice an investigation or the prosecution of an offence, or other factors relevant to whether tabling would be in the public interest.

Where any proposed adverse comments are included in a report, the Commission must ensure appropriate opportunities for the subject entity to review and respond to these comments, which must be considered and included or fairly summarised in the final report (clause 105).

Miscellaneous

The Bill includes miscellaneous provisions relating to delegation of functions, developing guidelines and the review of Act.

Guidelines

In support of the Commission's functions to promote continuous improvement, provide guidance on obligations under the Bill, and to work collaboratively with sector regulators to make the CSO system effective, the Bill provides that the Commission may publish guidelines about matters relating to the operation of the Bill or the Commission's functions, for example, compliance with the CSS and Universal Principle and obligations under the RCS (clause 108).

For CSS and Universal Principle, such guidelines are intended to include sector-specific guidance, developed in consultation with sector regulators in order to enable guidance to reflect the unique and diverse service delivery environments captured under these obligations.

It is intended that guidance for cultural safety will be led by Aboriginal and Torres Strait Islander peoples within and external to the Commission, consistent with stakeholder feedback and the Queensland Government's commitment to a reframed relationship with Aboriginal and Torres Strait Islander peoples.

Review of Act

The Bill provides for a review of the effectiveness of the Act as soon as practicable after 1 July 2030 (three years following full implementation of the CSS and RCS from 1 July 2027) (clause 109).

The Royal Commission recommended that governments should periodically review the operation of RCSs, including to determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse (recommendation 7.11, Volume 7, Final Report) and to adapt to changing dynamics and new challenges relevant to employee-related child abuse.

As the CSO system will be a new legislative framework for Queensland organisations, a review of the Act will ensure government can respond to emerging trends, needs and risks in sectors.

Amendments to the *Family and Child Commission Act 2014* (FCC Act)

The Bill makes consequential amendments to the FCC Act to include reference to the functions of the Commission under the Bill, including providing that the Commission must include in its annual reports under the FCC Act information about the performance of the Commission's functions under this Bill (clause 122).

Under section 40 of the FCC Act, the Commission must prepare an annual report that provides information each financial year relating to the performance of its functions. The Bill amends this section to provide that the Commission include in its annual report the performance of its functions under chapters 2 and 3; trends in reporting and investigating compliance matters; and trends in outcomes of investigations under the Bill.

This reporting requirement reflects the RCS recommendations of the Royal Commission that an oversight body should have public reporting functions and powers, including annual reporting on the operation of the scheme and trends in compliance by child safe entities and

reporting entities, such as reporting and investigations, and the power to make special reports to parliaments.

This also ensures consistency and streamlining of reporting functions for the Commission under the FCC Act and the Bill.

Amendment to the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act)

The Bill makes transitional and consequential amendments to the WWC Act to:

- repeal the requirement for organisations to develop a RMS under chapter 7, part 3 of that Act;
- amend the short title of the WWC Act to refer to the "*Working with Children Check Act 2000*" across the statute book once the RMS requirements are repealed;
- amend the long title of the WWC Act to reflect repeal of RMS requirements; and
- require the chief executive under the WWC Act to notify the Commission if a negative notice is issued to a person, or a person's negative notice is cancelled, and the chief executive is aware the person is the subject of a reportable conduct finding.

Transitional amendments

The Bill makes transitional amendments with the intent to replace the requirement for organisations to develop and implement an RMS under the WWC Act with the requirement to implement the CSS and Universal Principle. This transition will align with the phased and staged commencement of CSS and Universal Principle obligations for in-scope organisations.

The development and implementation of RMS is one of two core ways (the other being worker screening) in which the WWC Act achieves its objective to promote and protect the rights, interests and wellbeing of children in Queensland.

The RMS requirements are to be repealed by this Bill to prevent unnecessary duplication of RMS requirements with the CSS and Universal Principle for child safe entities once the CSS and Universal Principle obligations commence. As RMS obligations are similar to the CSS and Universal Principle, repealing the RMS obligations will avoid duplication in regulatory frameworks. No protective mechanisms for children within institutions are to be lost with the repeal of RMS requirements where the CSS and Universal Principle obligations replace these requirements.

Consequential amendments

The Bill makes consequential amendments to Queensland legislation to reflect the amended short title of the WWC Act.

Alternative ways of achieving policy objectives

The Queensland Government considered a number of options for CSS and selected the three most feasible to respond to the Royal Commission's CSS recommendations. Two options were considered to respond to the Royal Commission's RCS recommendations. These options were

subject to a regulatory impact analysis, which concluded that the preferred model of an integrated CSO system is highly likely to have a significant positive social and economic impact for Queensland.

Impact analysis of all feasible options supported the preferred option (i.e. a mandatory legislative model) as the most effective means to achieve the policy objectives of improving the safety and wellbeing of children in Queensland organisations and providing early support to children who have experienced abuse in institutional settings. Experiences from other jurisdictions and stakeholder feedback demonstrated that clear obligations and legislative monitoring and enforcement powers for the oversight body would best ensure compliance by in-scope organisations.

It is expected that as CSS and RCS models are implemented in Queensland, two impacts will occur over time: a reduction in annual prevalence of child abuse in Queensland organisations, and a reduction in the average harm incurred where cases of child abuse continue to occur.

Estimated cost for government implementation

The Queensland Government has committed $43.525 million over four years and ongoing funding:

- for the Commission to operate the oversight body; and
- to support the Department of Child Safety, Seniors and Disability Services' and the Department of Youth Justice's ongoing role as collaborative regulators for the CSO system.

Consistency with fundamental legislative principles

The fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992* (LS Act) require legislation to have sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The Bill is generally consistent with FLPs. Potential departures or breaches of FLPs are addressed below.

Legislation has sufficient regard to the rights and liberties of individuals – LS Act, section 4(2)(a)

<u>New offences and penalties</u>

Section 4(2)(a) of the LS Act provides that legislation must have sufficient regard to the rights and liberties of individuals. This may include regard to whether a penalty is proportionate to the offence noting a person's rights may be infringed upon breach.

The Bill provides for new offences relating to non-compliance with the legislative framework to ensure the effective administration and regulation of CSS and RCS in Queensland, which may represent a departure from the FLP.

Offences provided under the Bill relating to compliance by child safe entities with the CSS and the Universal Principle include an offence for failing to comply with a compliance notice with

a maximum penalty of 100 penalty units (clause 18) and an offence for failing to comply with an enforceable undertaking with a maximum penalty of 100 penalty units (clause 21).

Offences provided under the Bill relating to compliance by reporting entities with RCS include:
- Clause 34(2) – offence for failing to give the Commission an initial report within the prescribed timeframe without a reasonable excuse (100 penalty units);
- Clause 34(3) – offence for failing to give the Commission an interim report within the prescribed timeframe without a reasonable excuse (100 penalty units); and
- Clause 37(1) – offence for failing to give the Commission a final report as soon as practicable after an investigation is complete (100 penalty units).

The Bill also provides offences for unauthorised disclosure, recording, use or publication of confidential information or identifying information obtained under the Act, with maximum penalties of 200 penalty units (clauses 56(1), 57(2), 58(1)). These penalty unit amounts are considered proportionate and consistent with similar provisions under the FCC Act (sections 36 and 37).

Further offences are provided under the Bill in relation to the return of identity cards for authorised officers (clause 70), failure to comply with requirements made by authorised officers (clauses 87(1), 90(1) and 92), obstructing an authorised officer exercising a power (clause 96(1)), providing false or misleading information to an official (clause 102(1)), and concealing, destroying, mutilating or altering requested documents (clause 103(2)).

These offences are intended to provide appropriate protections for information disclosure as well as assist with promoting compliance with the Act, including where it further supports the graduated and proportionate regulatory approach by the Commission as recommended by the Royal Commission (Volume 6, Final Report, p. 327). The offences are considered justified and proportionate having regard to: the impact of non-compliance on the safety or wellbeing of a child; and the risk to a child or other person's privacy from a breach; similar offences provided in corresponding legislation in other jurisdictions (including Tasmania, Victoria and NSW); and similar offences provided under other Queensland legislation (for example, the FCC Act).

<u>Enforcement powers of the Commission</u>

Section 4(2)(a) of the LS Act provides that legislation must have sufficient regard to the rights and liberties of individuals. This may include regard to the privacy and property of individuals, and regard to single processes for liability of individuals under legislation, including avoidance of all forms of double jeopardy.

Child safe standards

Chapter 2 of the Bill provides the Commission with regulatory powers to enforce compliance with the CSS and Universal Principle by child safe entities, which may potentially depart from the FLP where it impacts upon individuals associated with the entity. For example, powers of the Commission provided under the Bill relating to CSS compliance include:
- Clause 16 – direct a child safe entity to conduct a self-assessment;
- Clause 18 – issue compliance notices;
- Clause 19 – accept enforceable undertakings;

- Clause 23 – apply to the court for orders to enforce the CSS and Universal Principle; and
- Clause 24 – publish details of non-compliance by child safe entities.

The Bill imposes a penalty where a child safe entity fails to comply with a compliance notice (clause 18) or fails to comply with an enforceable undertaking (clause 21). The Bill also provides for the Commission to apply to a Magistrates Court for orders, including an order for the child safe entity to pay a civil penalty to the State, where satisfied the child safe entity has failed to comply with a compliance notice or enforceable undertaking (clause 23).

These powers are considered justified and appropriate where they are intended to support the Commission's responsive and proportionate regulatory approach, in line with the Royal Commission's recommendations for oversight bodies to have a suite of enforcement tools to achieve compliance (Volume 6, Final Report, p. 326). These powers are intended to form part of a graduated suite of regulatory powers that may be exercised by the Commission in consideration of the increasing risk of harm to a child or children engaging with the entity. However, the first response to potential non-compliance by the Commission, as clarified by the fundamental principle under clause 14(1)(b), should be providing information, education or guidance to a child safe entity to achieve compliance with clause 11 before graduating to other compliance powers.

The focus of the Commission is intended to be on building the capacity of entities, to effect cultural change and develop a shared understanding of what it means to be child safe. The Royal Commission emphasised compliance through a range of preventative enforcement measures that prioritise awareness raising, proactive monitoring, education and training. Secondary to this is the application of proportionate interventionist measures such as orders to comply and penalties for institutions that are consistently or wilfully non-compliant. For example, where a child safe entity has demonstrated consistent non-compliance with a compliance notice, including the issuing of a subsequent penalty, clause 23 is intended to enable the Commission to seek the assistance of a court to enforce compliance where proportionate to the continued or wilful non-compliance demonstrated.

To mitigate the departure from the FLP, the court must consider a range of factors in fixing a penalty of not more than 100 penalty units, including whether a child safe entity has previously failed to comply with clauses 18 and 21 (clause 23(3)(e)). This is intended to provide that the court must consider if the child safe entity has previously demonstrated a failure to comply with a compliance notice or enforceable undertaking in relation to the conduct in question, or previous non-compliance with other compliance notices or enforceable undertakings, where a penalty may operate to deter continued non-compliance.

Reportable conduct scheme

The Commission also has specific enforcement measures in administering the RCS. This includes the ability to monitor a reporting entity's investigation of a reportable allegation or reportable conviction, if it considers it is in the public interest (clause 41). This may include observing an interview by the head of the reporting entity; conferring with a person carrying out the investigation; or requesting information relating to the investigation. The Commission may also conduct its own investigation into a reportable allegation or reportable conviction in limited circumstances (clause 43) and has the ability to interview a child the subject of, or

witness to, conduct to which the reportable allegation or reportable conduct relates (clause 44). The powers of authorised officers to support an own motion investigation are considered separately below. These enforcement measures are a potential departure from the FLP where they impact upon the privacy rights of individuals.

These powers are considered justified and appropriate as they support the Commission's ability to oversee compliance with obligations under the Bill, to support the protection of children from harm. Similar to CSS, these provide a graduated set of compliance tools for the Commission to rely upon. Under clause 41(2)(c), for example, the Commission may monitor an investigation by providing guidance and advice to the head of a relevant entity about the investigation. The Commission's power to undertake an own motion investigation is also limited to circumstances that justify this level of intervention, such as where it is considered to be in the public interest, or the head of a reporting entity has inappropriately handled an investigation.

The Commission's power to interview a child, in an own motion investigation, is limited by safeguards (clause 44). This includes a general requirement to obtain the consent of a parent or guardian (except where the parent or guardian is the subject of the investigation, or cannot reasonably be located). In these limited circumstances, the Commission may seek consent of the child. Otherwise, consent of the child may also be obtained if they are 16 or 17 years old, have sufficient maturity and understanding of matters being consented to, and it is appropriate not to obtain consent from the parent or guardian. Other safeguards require the Commission to ensure the interviewer has appropriate qualifications, training and experience; take all reasonable steps to mitigate negative effects; and offer a support person. For an Aboriginal or Torres Strait Islander child, this includes a support person that is a respected person of their community.

Spent convictions and criminal history

The Bill enables spent convictions to be reported and investigated, and requests for information regarding a person's criminal history to be made to the DPP or police commissioner as it relates to reportable conduct or a reportable conviction. This is a potential departure from the FLP that legislation have sufficient regard to the rights and liberties of individuals.

The Bill defines a reportable conviction to mean a conviction for an offence committed by a worker against a law of a state or the Commonwealth that may involve reportable conduct. This includes a spent conviction, or a conviction that has been spent under a law of another State or the Commonwealth (clause 28). Under the *Criminal Law (Rehabilitation of Offenders) Act 1986,* a person is generally not obliged to disclose a conviction that is not part of the person's criminal history. This may include a spent conviction which is no longer on a person's criminal record after a certain amount of time has passed.

The Bill also enables the Commission or head of a prescribed RCS entity under clause 52 to request information from the DPP or police commissioner regarding a charge or conviction of an offence including: a written statement briefly describing the circumstances of a charge or conviction for the offence; a copy or written summary of evidentiary material about the offence; or if a charge for the offence was not proceeded with—a written summary of the reasons why the charge was not proceeded with.

Reportable conduct is intended to capture a range of concerning conduct by a worker against a child. While it may include conduct that does not reach a criminal threshold, a charge or criminal conviction that involves reportable conduct is on the more serious and concerning end of the spectrum of reportable conduct including where it involves a child sexual offence. The ability to request information from the DPP or police commissioner may be critical to enable the investigator to determine whether a finding of reportable conduct is substantiated, and particularly whether a reportable conviction involved reportable conduct.

This provision includes limitations and safeguards including that the DPP or police commissioner may comply with the request if they believe it is necessary for the performance of the Commission's functions or powers, or the entity's reporting and investigation obligations under the RCS. They must not provide the information in a range of circumstances such as if it would prejudice an investigation or court proceeding. The Bill also provides that only the Commission may request certain criminal statements, recorded statements or transcripts, under sections 21AY, 93A and 103A of the Evidence Act, such as a statement from a child made before a proceeding or video-recording of an affected child's evidence, due to the sensitive nature of this material. It is considered that the aim of the RCS, to protect children from harm takes precedence over the spent convictions scheme as well as protection of confidentiality and privacy regarding a person's criminal history.

This approach is consistent with the WWCC, which may consider certain spent convictions, and the approach in other RCSs, such as Victoria and Western Australia, where spent convictions may be considered under the RCS.

Information sharing framework

Child safe standards

The Bill establishes an information sharing framework for CSS and the Universal Principle matters between prescribed child safe entities, including: the Commission, sector regulators, child safe entities and relevant public sector entities (clause 48(1)). In particular, clause 48(2) enables the disclosure of confidential information by prescribed child safe entities to coordinate ongoing information exchange relating to compliance with the CSS and Universal Principle. This is a potential departure from the FLP where it impacts a person's privacy in enabling confidential information to be shared between prescribed child safe entities.

However, the potential departure is justified as information sharing for the purposes of administering the CSS and Universal Principle is essential to ensure the safety and wellbeing of children, and their protection from harm. The information sharing framework is intended to boost the Commission's oversight of implementation of, and compliance with, the CSS and Universal Principle by child safe entities, assist with investigations, and further support the main purposes of the Bill. This justification is also based on the principle that the protection and care needs of children take precedence over the protection of an individual's privacy.

The Bill provides safeguards for balancing the right to privacy where information may only be disclosed for the following purposes under clause 48 of the Bill:

- in response to addressing concerns regarding potential non-compliance with the CSS or Universal Principle;

- assisting the Commission in performing a function or power under chapter 2 of the Bill; and
- assisting the Commission in performing a function or power under chapter 3 by providing information on compliance with chapter 2 requirements by a reporting entity, concerning reportable conduct.

Further, the Bill provides protections for confidential information under chapter 5, requiring that confidential information is not intentionally or recklessly disclosed to anyone (or recorded), unless authorised under clause 56. Clause 57 also provides for restrictions on disclosure by receivers of confidential information. This is in addition to the underlying principle that when sharing information under chapter 4, an entity must protect the identity of a child as far as practicable (clause 47). For persons who give information as part of this framework, clauses 59 and 60 provide protections against liability and reprisal respectively.

Reportable conduct scheme

The Bill enables the Commission and certain entities and individuals to request and share confidential information obtained in the administration of the Act. Under the RCS, this may include sensitive and confidential information regarding workers or a child the subject of an investigation. This is a potential departure from the FLP that legislation has sufficient regard to the rights and liberties of individuals, including protection of their privacy and disclosure of confidential information.

This includes the following provisions:

- obligations on heads of entities to report to the Commission regarding investigations into a reportable allegation or reportable conviction including identity and date of birth of a worker, details of reportable allegations or convictions, and action taken against a worker including interim risk management action (clauses 34, 37);
- the Commission's ability to request further information from an entity's final report of an RCS investigation which may also be enforced through the power to issue a notice to provide information or documents (clauses 38, 91);
- the Commission may conduct own motion investigations and has enforcement powers to require information or documents (clauses 43, 91);
- the Commission may share confidential information with a corresponding entity in another jurisdiction (clause 53); and
- the Commission may enter into an information sharing arrangement with a prescribed CSS entity, prescribed RCS entity, or corresponding entity in another jurisdiction (clause 54).

The Bill includes a broad information sharing provision under the RCS, to enable a range of relevant entities to share RCS information (clause 49). These entities may share information regarding the progress, findings, reasons, action taken regarding an RCS investigation, or other information about a reportable allegation to assist an entity to comply under the RCS.

The Bill also requires the Commission to disclose findings of reportable conduct to the chief executive responsible for administration of the WWCC, to form part of assessable information under that scheme (clause 51).

This potential departure is considered justified as information may only be shared for legitimate

and appropriate purposes under the Bill, which are critical to the aim of the RCS to protect children against harm and promote their wellbeing and best interests. Under clause 49, information may only be shared in certain circumstances, including where it is necessary to lessen or prevent a serious risk or threat to the life, health or safety of a child or class of children, or is necessary for the Commission to perform its functions under the RCS, or for reporting entities and sector regulators to meet obligations under the RCS.

Mandatory disclosure of information will apply to referrals of alleged criminal conduct to police, as police investigations have priority (clause 46(2)). The mandatory referral to the WWCC is also critical considering the overlap of workers in sectors under the RCS who are required to hold a WWCC and may move across different sectors in child-related roles or work.

The Bill includes offences against the disclosure of confidential information under clauses 56 and 57, with a maximum penalty of 200 penalty units.

Information sharing is critical to ensure the Commission, sector regulators, reporting entities and other oversight bodies can disclose and receive information to conduct a proper investigation into allegations of abuse against a child or children and share these findings to inform other regulatory processes. This includes information sharing to a sector regulator that has registration or accreditation functions regarding a worker, to respond appropriately to a finding of reportable conduct; or respond to an immediate risk to a child. These provisions balance the protection of privacy and confidentiality of individuals by ensuring that information must only be disclosed and used in limited and appropriate circumstances. However, it is considered justified that the underlying rationale of the legislation to protect children from harm and safeguarding their wellbeing and best interests takes precedence over an individual's right to privacy under these provisions.

Powers of authorised officers

Chapter 6 of the Bill provides general powers of authorised officers of the Commission, including for example:

- powers of entry with consent or under a warrant (clause 73);
- general powers upon entry – searching and inspecting the premises, including examining documents; making enquires with people on the premises; observing activities on the premises; taking photographs (clause 85);
- requiring reasonable help from a person while at a premises, including to provide information or a document (clause 86);
- requiring a person to provide their personal details, including name and residential address (clause 89); and
- requiring a person to answer questions or provide information based upon a reasonable belief that an offence has been committed against the Act (clause 91).

These powers are a potential departure from the FLP where they impact upon the privacy of individuals when exercised by authorised officers. In particular, the powers of entry with consent or under a warrant are a potential departure from the FLP provided under section 4(3)(e) of the LS Act.

The departures from FLPs with the above powers of authorised officers are considered justified to support compliance with the Bill and ensure the Commission has adequate investigative powers to obtain necessary information for enforcement of obligations under the CSS and Universal Principle, and RCS, to determine or confirm whether any offences have been committed under the Act. This supports the Commission's proportionate and responsive regulatory approach, the main purpose of which is to provide for the safety, wellbeing, and best interests of a child or children in child safe entities and reporting entities. These powers are consistent with legislative CSS and RCS schemes in other jurisdictions, including Victoria, NSW and Tasmania. These powers are also consistent with other Queensland regulatory frameworks, including for example: the *Public Health Act 2005*, section 399; *Food Act 2005*, section 182; and *Industrial Relations Act 2016*, section 911.

To further mitigate the potential departure from FLPs (section 4(3)(e)) for powers of entry, the Bill provides safeguards that require that an authorised officer may only enter a premises with consent (with an acknowledgement of consent required under clause 77) or under a warrant where a magistrate is satisfied there are reasonable grounds for suspecting there will be or is evidence of an offence at a premises (clause 79).

Legislation has sufficient regard to the rights and liberties of individuals depending on whether it is consistent with the principles of natural justice – LS Act, 4(3)(b)

Adverse information in reports

Section 4(3)(b) of the LS Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation is consistent with the principles of natural justice. The Bill may depart from this FLP where adverse information about an entity may be included within reports by the Commission that may be published.

Clause 104 of the Bill enables the Commission to prepare reports about matters relevant to the performance of the Commission's functions under the Act. These reports are to be provided to the responsible Minister with a recommendation about whether or not they should be tabled in the Legislative Assembly. The Minister must have regard to prescribed matters under clause 104(2) when deciding whether to table a report in the Legislative Assembly, including where tabling of the report is in the public interest.

It is considered that the potential departure from the FLP is justified where, in the event that a report under clause 104 includes adverse information that identifies an entity, clause 105 intends to protect natural justice by giving the entity an opportunity to respond and represent their views before including this information in a report.

Clause 105 provides that the Commission must not include any adverse information about an entity identifiable from the report, unless the entity has been given a copy of the information and a reasonable opportunity to make a submission to the Commission about the information in the report. Where the entity makes a submission, the Commission must have regard to the submission and must not include the adverse information in the report unless the entity's submission, or a summary of the submission, is also included in the report (clause 105(2)). The power of the Commission to provide reports containing adverse information further supports

the Commission's functions in providing oversight of CSS and RCS implementation, as well as ensuring transparency and accountability of the Commission in preparing reports.

Legislation has sufficient regard to the rights and liberties of individuals depending on whether it allows the delegation of administrative power only in appropriate cases and to appropriate persons – LS Act, section 4(3)(c)

Delegations

Section 4(3)(c) of the LS Act provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.

Clause 107 of the Bill provides for the delegation of certain functions and powers of a Commissioner to an appropriately qualified staff member of the Commission and enables the head of a reporting entity to delegate their functions under chapter 3 to an appropriately qualified person.

The delegation by the head of a reporting entity is a potential departure from the principle that delegation of administrative power should only occur in appropriate cases and to appropriate persons.

Delegation by the head of a reporting entity will enable the person to delegate their functions to support the day-to-day administration of the RCS. This may include ensuring there are systems in place for supporting reporting and investigations, which requires consideration of policies, practices and procedures within the entity.

Where delegations are limited to an appropriately qualified person, this will enable the head of a reporting entity to engage an appropriately qualified investigator to investigate a reportable allegation, for example, where the entity does not have those skills or resources readily available. The Bill also ensures that confidentiality provisions apply to a person who receives confidential information under the RCS. Based on these limitations and protections, the delegation of functions and/or powers by the head of a reporting entity proposed in the Bill is considered appropriate.

Legislation has sufficient regard to the rights and liberties of individuals depending on whether it provides for the reversal of the onus of proof in criminal proceedings without adequate justification – LS Act, section 4(3)(d)

Section 4(3)(d) provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation does not reverse the onus of proof in criminal proceedings without adequate justification. The Bill includes provisions that potentially depart from this FLP as it relates to legal proceedings under the Bill.

Offence for concealing, destroying, etc particular documents

Clause 103 of the Bill provides that it is an offence for a person to conceal, destroy, mutilate or alter a relevant document which is defined as:

- a document containing information requested by an authorised officer under section 91;
- a document containing information requested by the Commission in performing a function under chapter 2 or 3; or
- a document about a person whose affairs are subject to an investigation of a reportable allegation or reportable conviction under chapter 3.

Clause 103(3) provides it is a defence to a prosecution of an offence against this section for the defendant to prove that they did not act with intent to defeat the purpose of chapter 2 or 3, or to delay or obstruct an investigation under chapter 3 or 6. This subclause potentially departs from the FLP where it places the evidential and legal onus on the defendant rather than the prosecution in proceedings for the offence.

However, this departure is justified on the basis that establishing the intent of a defendant to destroy, conceal, mutilate or alter a document is within the particular knowledge of the defendant and would be difficult for the State to prove in a proceeding. The Scrutiny of Legislation Committee noted that this reversal of the onus of proof is justified in such circumstances, where the subject of proof is within the particular knowledge of the defendant.[1] Similar provisions are currently provided for under the *Motor Accident Insurance Act 1994*, section 87ZP and *Workers Compensation and Rehabilitation Act 2003*, section 532Z.

Evidentiary aids

Clause 106 of the Bill provides evidentiary aids for legal proceedings, where a certificate purported to be signed by a commissioner and stating any of the matters prescribed under subclause 106(a)-(e) is evidence of the matter. This may include, for example, a certificate signed by a commissioner that on a stated day, a stated requirement was made of a person. This may represent a potential departure from the FLP where it removes requirements to prove evidence of a fact.

This potential departure is justified where it is intended to streamline processes in proceedings and mitigate undue burdens on the State to prove administrative matters in proceedings. Similar provisions are provided under other Queensland legislation, including for example, the *Medicines and Poisons Act 2019*, section 208 and *Hospital and Health Boards Act 2011*, section 268.

Legislation has sufficient regard to the rights and liberties of individuals depending on whether it provides appropriate protection against self-incrimination – LS Act, section 4(3)(f)

Abrogation of protection against self-incrimination

Section 4(3)(f) provides that legislation must have regard to providing appropriate protection against self-incrimination. The Bill potentially departs from this FLP where it abrogates the protection against self-incrimination in certain prescribed circumstances.

[1] *Alert Digest No. 2 of 1997 at pages 12–13, paragraph 1.60.*

Under clause 86, authorised officers may require an occupier of a place or a person at a place they have entered to give the authorised officer reasonable help to exercise a power under clause 85(1), including, for example, by producing a document or providing information. Non-compliance with a request is an offence under clause 87(2), which explicitly provides that it is not a reasonable excuse to fail to comply if the information or document may tend to incriminate the person.

Clause 91 also provides that an authorised officer may require a person to:

- give the authorised officer information, or a reproduction of information, related to an offence under the Bill or other stated matter; or
- attend before the authorised officer at a reasonable time to answer questions or produce documents related to the offence or matter.

An authorised officer may only make the request where they reasonably believe an offence against the Act has been committed and the person may be able to give information about the offence, or where they reasonably believe the person may give information about prescribed obligations under clause 91(2), such as in regards to whether a child safe entity or reporting entity is complying with certain obligations under chapter 2 or 3 respectively. Clause 92(3) provides that it is not a reasonable excuse for a person to fail to comply with a requirement under clause 92 where the information may tend to incriminate the person.

The above departures from the FLP are considered justified where the provisions will ensure an authorised officer, and by extension the Commission, is able to obtain fulsome information from a person, which may be critical to an investigation into compliance with chapter 2 by a child safe entity, chapter 3 by a reporting entity, or whether a reportable allegation or reportable conviction is substantiated within a reporting entity. It is particularly important when the request for information or documents is issued to a person, or a worker the subject of a reportable investigation, where a person has specific knowledge relevant to compliance. This supports the functions of the Commission to provide oversight, and also the aim of the CSS and RCS to protect children from harm.

The Bill will also include a number of safeguards. Clause 97 provides evidential immunity to individuals that give information under clauses 86 or 91. This means that evidence of the information, or other evidence directly or indirectly derived from the information, is not admissible in any proceeding where it may tend to incriminate the person. This does not apply where the proceeding relates to the false or misleading nature of the information itself.

Clauses 87 and 92 also require the authorised officer to inform the person, in a way that is reasonable in the circumstances, that complying with their request might tend to incriminate the person or expose them to a penalty but there is a limited evidential immunity for the information disclosed under clause 97. The individual may not be convicted of an offence under clauses 87 or 92 if the officer does not provide this information. The Bill also includes confidentiality provisions which require persons who receive confidential information to maintain confidentiality of the information unless authorised under the Bill. On the basis of the above justification and safeguards contained in the Bill, it is considered that this departure is justified.

Legislation has sufficient regard to the rights and liberties of individuals depending on whether it does not adversely affect rights and liberties, or impose obligations, retrospectively – LS Act, section 4(3)(g)

Historical conduct

Clause 112 of the Bill provides a transitional provision that the Act, including obligations under the RCS, does not apply to conduct engaged in by, or a conviction of, a worker of a reporting entity prior to the chapter commencing, unless:

- a new notification is made regarding the historical reportable allegation or reportable conviction about a current worker of the entity, after the commencement of the Act; or
- the head of the entity voluntarily decides to comply with obligations under the RCS in relation to the historical reportable allegation or reportable conviction.

This is a potential departure from the FLP that legislation should not adversely affect rights and liberties or impose obligations retrospectively. This will require the entity to investigate conduct which occurred prior to the commencement of the relevant chapter in the Act and consider this conduct to determine whether reportable conduct has occurred, which may impact the worker's employment conditions or status, based on whether a finding of reportable conduct is substantiated and the appropriate action that should be taken.

The inclusion of historical conduct, in limited circumstances, is based on the Royal Commission's recommendation that the RCS should not place a time limit on when the conduct occurred for it to be reportable, and that reportable conduct should also include the historical conduct of any existing employee (Volume 7, Final Report, p. 20). However, the limitation to report and investigate historical conduct only where a new notification is made, after the scheme commences for that reporting entity, strikes a balance between ensuring that concerning past conduct may be considered under the RCS, but avoids placing an onerous obligation on entities to report and investigate all past historical allegations or convictions. This also only applies in relation to a worker that is currently engaged by the entity, so obligations will not be triggered for a worker that is no longer engaged by the entity after the commencement of the scheme. This departure is considered justified based on these limitations.

Legislation has sufficient regard to the rights and liberties of individuals depending on whether it does not confer immunity from proceeding or prosecution without adequate justification – LS Act, section 4(3)(h)

Protection from liability for giving information

Section 4(3)(h) of the LS Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether it confers immunity from proceedings or prosecution without adequate justification.

Clause 59 of the Bill provides that a person is protected from liability for giving information under chapter 5 or in relation to a reportable allegation or reportable conviction to the Commission, a sector regulator, a child safe entity or a reporting entity. The provision provides that a person is not:

- liable civilly, criminally or under an administrative process for giving the information; and

- cannot be held to have breached a code of professional etiquette or ethics, or departed from accepted standards of professional conduct, due to giving the information.

Clause 60 further provides that a person must not cause, or attempt or conspire to cause, detriment to another person if they have provided information or assistance to a relevant entity under the Act, which includes to the Commission, a sector regulator, child safe entity or reporting entity.

These protections are justified based on the Royal Commission's findings that strengthening legislative protections for those making complaints or reports is important to ensure that child sexual abuse in institutional contexts is identified and responded to adequately. In particular, the Royal Commission recommended that RCSs should protect those who inform the head of an institution or the oversight body about reportable conduct to encourage reporting and institutional cultures that are committed to the scheme. Clauses 59 and 60 support individuals to be able to report their concerns and share information under the schemes, without fear of reprisal or civil or criminal liability.

Legislation has sufficient regard to the institution of Parliament depending on whether, for example, the Bill allows for the delegation of legislative power only in appropriate cases and to appropriate persons – LS Act, sections 4(4)(a)

Exemptions

Clause 39 of the Bill enables the Commission to exempt a reporting entity from complying with obligations to make reports under the RCS (under clauses 34, 35 or 37) or a particular requirement under clauses 33 or 36, in relation to the conduct, or a class or type of conduct, of a worker. This is a potential departure from the above principle because it involves the delegation of a legislative power to exempt an entity from the operation of certain parts of the Act.

This power is based on the Royal Commission's recommendation that the RCS should provide for the power to exempt any class or kind of conduct from being reportable conduct (recommendation 7.10(g)(iv), Volume 7, Final Report). The delegation is limited as it may only apply where the Commission is satisfied the reporting entity has the competence and resources to investigate a reportable allegation or reportable conviction without the oversight of the Commission; and has demonstrated competence in taking appropriate action in response to a finding of reportable conduct. The head of an entity subject to an exemption to provide a final report, must still give written notice to the Commission regarding its findings, reasons and action taken after the completion of an investigation.

This means the conduct is still reportable conduct, and the entity is still required to investigate it, but without the oversight of the Commission. It recognises that there may be some entities and sectors which are competent to investigate certain classes or kinds of conduct without the oversight of an independent body. This is intended to ensure the oversight body can focus its efforts on the most serious matters, and on entities and sectors that have less experience, have not demonstrated a satisfactory level of competence in complaint handling and/or require capacity building and support. The Commission must also publish any exemptions on its website, to provide transparency and accountability in exercise of this power. Based on these

limitations and protections, the delegation of this legislative power as proposed in the Bill is considered appropriate.

Prescribing matters by regulation

Clauses of the Bill provide for matters to be prescribed by regulation include, for example:

- a sector regulator that is a department or other entity prescribed under clause 6(a)(ii) or another entity (clause 6(c)),
- child safe entities that meet the criteria under clause 10(1)(a) and 10(2) and may be prescribed under Schedule 1 or by regulation (clause 10(1)(b)), and
- reporting entities that meet the criteria under clause 29(a) and are prescribed under Schedule 2 or by regulation (clause 29(b)(ii)).

While this is a delegation of legislative power, and may be a potential departure from the FLP on this basis, it is appropriate that detailed matters are authorised by subordinate legislation. The ability to prescribe further sector regulators will ensure the Bill has flexibility to include other sector regulators that were not initially contemplated or did not exist at the time of commencement. The ability to prescribe further sectors within scope of the CSS and RCS will also enable the legislative framework to be responsive to learnings and developments in scope in other jurisdictions, as well as from scheme implementation as it reaches a greater level of maturity and organisations develop greater understanding and capacity to comply. This will be particularly important as jurisdictions work to harmonise RCSs to achieve greater national consistency.

Any regulation will also be subject to scrutiny of the Legislative Assembly under the *Statutory Instruments Act 1992* which requires subordinate legislation to be notified, tabled, and may be subject to a disallowance motion as well as examination by the relevant portfolio committee under section 93 of the *Parliament of Queensland Act 2001*.

Consultation

In March 2021, targeted consultation on CSS and a nationally consistent RCS focused on peak bodies and other representative organisations in sectors identified for potential oversight and regulation by the Royal Commission. A consultation paper, *Growing Child Safe Organisations in Queensland*, was sent to more than 170 stakeholders across more than 10 sectors with 29 written submissions received. A series of information sessions were also held for key stakeholders, attended by more than 60 representatives.

Following this targeted consultation, consultation continued with Queensland Government agencies and the Truth, Healing and Reconciliation Taskforce (established to provide advice to the Queensland Government on implementing the reforms arising from the Royal Commission). Cross-jurisdictional consultation was also undertaken during the development of CSS and RCS options with the NSW Office of the Children's Guardian and Victoria's Commission for Children and Young People.

On 10 August 2023, the *Growing Child Safe Organisations in Queensland Consultation Regulatory Impact Statement* was released, seeking public feedback on the regulatory impact of options developed for a Queensland approach to CSS and RCS. A six-week period of public

consultation included two information sessions attended by over 170 people; 63 written submissions; over 10 individual meetings with stakeholders as well as targeted consultation with young people and Aboriginal and Torres Strait Islander peoples.

The results of consultation indicated strong support for a legislated model of CSS and RCS in Queensland, with all stakeholders agreeing action is needed to improve the safety of children in Queensland organisations. Stakeholders suggested the implementation of CSS will establish a common framework, language, and expectations for CSO across Queensland, resulting in an uplift in practice, and better protections for children. The RCS was seen as a valuable tool to improve accountability of organisations, by progressing their ability to respond to complaints of child abuse and foster a culture of reporting suspected child abuse.

In 2021, targeted consultation heard strong support for Queensland's CSS to address cultural safety for Aboriginal and Torres Strait Islander children. In 2023, feedback was sought on two approaches to embed cultural safety in Queensland's CSO system: create an additional 11th child safe standard or include cultural safety as a guiding principle across all standards. Stakeholders overwhelmingly supported the adoption of a Universal Principle as the preferred method for embedding cultural safety within the CSS on the basis that cultural safety for Aboriginal and Torres Strait Islander children should be explicitly considered in the application of every standard and considered in all aspects of service delivery.

Stakeholders also confirmed that Aboriginal and Torres Strait Islander children themselves, their families and communities are the only authorities on what makes organisations culturally safe for Aboriginal and Torres Strait Islander children. Many stakeholders suggested that the design of systems, structures, resources and implementation must be led by Aboriginal and Torres Strait Islander peoples.

The results of consultation were released in the *Growing Child Safe Organisations in Queensland Decision Impact Analysis Statement*, which was published on 22 March 2024.

In April 2024, targeted consultation was conducted on a draft of the Bill with key government departments, statutory agencies and non-government stakeholders. This included information sessions and circulation of an exposure draft of the Bill and supporting consultation material.

Stakeholders supported the intent of the Bill, seeking clarification and guidance regarding a range of issues including scope and obligations of organisations and sector regulators, definitions, interactions with obligations under existing regulation, information sharing and operational issues.

Consistency with legislation of other jurisdictions

The Bill is consistent with similar legislation enacted within Victoria, Tasmania, South Australia, the Australian Capital Territory (ACT), NSW and Western Australia (WA) where CSS and/or RCS have been established consistent with the Royal Commission's recommendations. The Bill is specific to the State of Queensland, and was informed by legislation in other Australian states and territories, in particular NSW, Tasmania and Victoria.

The approaches to CSS in NSW, Victoria and Tasmania are of particular relevance to the CSS scheme established in Queensland. Each jurisdiction's scheme differs slightly in regulatory approach with, for example, a co-regulatory model in Victoria and an independent regulatory body in Tasmania. However, all relevant jurisdictions include CSS that are closely aligned to either the Royal Commission's 10 CSS or the National Principles.

While each jurisdiction legislates approaches for embedding the cultural safety of Aboriginal and Torres Strait Islander children within CSS, the approaches differ in application in the form of a stand-alone principle in Victoria, to a universal principle in Tasmania, or application through CSS standard 4 in NSW.

NSW, Victoria, ACT, WA and Tasmania currently have legislated RCSs. The Queensland RCS is consistent with the RCSs in these jurisdictions and as recommended by the Royal Commission and endorsed by COAG in 2018. The Queensland RCS is most closely modelled on the RCS in Victoria, under the *Child Wellbeing and Safety Act 2005*. However, it is tailored to suit the Queensland context and reflects aspects of other jurisdictions.

Most RCSs in other jurisdictions operate under a set of legislative principles with the protection of children from harm as the paramount principle. The Queensland scheme mirrors these principles set out in equivalent RCS legislation in other jurisdictions, particularly NSW, Victoria and Western Australia.

Notes On Provisions

Chapter 1 Preliminary

Part 1 Introduction

Clause 1 provides that this Bill, may be cited as the *Child Safe Organisations Act 2024* (the Act).

Clause 2 provides that certain provisions of the Act will commence on the prescribed dates.

Clause 3 provides the main purposes of the Act.

Subclause (1) states that the main purpose of the Act are to protect children from harm; and promote the safety, wellbeing, and best interest of children. This reflects the intent of the Royal Commission in recommending the 10 CSS and an RCS – to improve the safety and wellbeing of children in Queensland organisations and support children who have experienced abuse in institutional settings.

Subclause (2)(a) and (b) provides that the main purpose of the Act are to be primarily achieved by providing for the oversight and implementation of, and compliance with, the 10 CSS and Universal Principle (provided under clause 11) by child safe entities (defined under clause 10 of the Act).

Subclause (2)(c) provides for a scheme for preventing reportable conduct; reporting, notifying and investigating allegations of reportable conduct and reportable convictions; and taking appropriate action in response to findings of reportable conduct.

Subclause (2)(d) provides for the oversight by the Commission of the reportable conduct scheme.

Clause 4 provides that the Act binds all persons including and the State, and, as far as the legislative power of Parliament permits, the Commonwealth. The Act does not make the State, the Commonwealth, or another state liable to be prosecuted for an offence.

Part 2 Interpretation

Clause 5 provides that definitions for particular words used in the Bill are defined in the dictionary in Schedule 3.

Clause 6 provides the definition of a sector regulator for a child safe entity or a reporting entity under the Act.

Subclause (a) provides that a sector regulator is a department or other entity (other than the Commission) responsible for regulating a child safe entity or a reporting entity and is prescribed by regulation as a sector regulator for the child safe entity or reporting entity.

Subclause (b) also provides that a sector regulator is a department that provides funding to a child safe entity or reporting entity.

Subclause (c) provides that a sector regulator may be another entity prescribed by regulation as a sector regulator.

To support the collaborative regulatory approach to implementation of the CSS and Universal Principle, and RCS, by the Commission, the definition of sector regulator is intended to capture departments to the extent they have a role in regulating entities including, for example, through funding arrangements or accreditation, licensing, approval or certification frameworks. The reference to a "department" within this provision is intended to reflect a department of government under the *Public Sector Act 2022.*

An entity is only intended to be prescribed as a sector regulator of a child safe entity or reporting entity to the extent of their oversight or regulation of the services or facilities that the child safe entity or reporting entity provides.

Where there are multiple sector regulators for an individual child safe entity or reporting entity, the intent is to clarify that the sector regulator is responsible to the extent that the service or facility is within scope of their existing functions, not that they will take responsibility for regulating the entity outside the scope of their role.

Clause 7 provides the head of an entity is the chief executive where the entity is a public service entity, consistent with the definition of chief executive under Schedule 1 of the *Acts Interpretation Act 1954*. For government entities, this is specified as the chief executive of a public sector entity (the Director-General of a Queensland Government department) or the police commissioner for the police service.

For child safe entities or reporting entities that are not public sector entities, the head of the entity is the person or holder of a position prescribed by regulation, or otherwise the chief executive officer or principal officer of an entity (however described), or a person or office holder approved by the Commission as the head of the entity.

This definition is intended to broadly capture persons who are responsible for the strategic direction or leadership of the entity, and who have highest authority for the service delivery of the entity, considering the diversity of organisational structures across sectors in scope of the Act.

Clause 8 defines a *worker* of an entity to include persons that perform work of any kind for the entity (child safe entity or reporting entity) and includes, for example, the persons listed under subclauses (1)(a) to (i). Worker is defined broadly to capture persons who may be within scope of persons employed or engaged within an entity, noting the diversity of organisational structures of entities to be in-scope of the CSS and RCS.

Subclause (2) provides that a regulation may prescribe persons who are not a *worker* for this definition.

Chapter 2 Child safe standards

Part 1 Preliminary

Clause 9 defines child safe standards as 10 standards for Queensland, which are consistent with the 10 National Principles.

In 2019, the former COAG endorsed the National Principles, which incorporate the Royal Commission's CSS, as the vehicle for nationally harmonised implementation. As the National Principles incorporate the Royal Commission's 10 CSS, they are substantially the same set of standards, such that if an entity is implementing one set, they are well placed to be considered implementing the other.

This clause adapts the wording of the National Principles for the Queensland context as principles-based and outcomes focused principles rather than prescriptive requirements.

Noting the proposed broad scope for the application of the CSS and Universal Principle in Queensland, there will be a large variety of entities covered, including some that typically only provide services for children with a parent/guardian/caregiver present (for example, a health service that includes General Practitioners or a children's party entertainment service), and those that typically provide services for children in the absence of a parent/guardian/care giver (for example, schools or childcare). As such, it is critical that entities in scope are able to implement the CSS and Universal Principle across their various service streams, activities and environments in a flexible way that responds to their unique circumstances, risk factors and characteristics.

Clause 10 provides the definition of a child safe entity as an entity that provides:

- services specifically for children; or
- facilities specifically for use by children under the supervision of the entity; and
- is mentioned in Schedule 1 of the Act or prescribed by regulation.

The Royal Commission recommended that governments require all institutions that engage in "child-related work" (i.e. institutions that have frequent or more than incidental contact with children and/or a degree of responsibility for children's supervision and care) to meet the CSS.

For Queensland, it is intended to align the scope for the CSS and Universal Principle to the Royal Commission's recommended categories (recommendation 6.9, Volume 6, Final Report), as they reasonably translate to the Queensland context, and leverage the existing scope of organisations required to produce a RMS under the WWC Act as a baseline.

The reference to "services specifically *for* children" and "facilities specifically *for use by* children under the entity's supervision" indicates that some or all of the entity's services are particularly aimed at children or have a special application for children in the way that they are provided. For example, some entities may, on their face, focus on support for carers or parents; however, they are intended to be captured as services for children given their purpose and application to ensuring the safety or wellbeing of a child.

It is not intended that the meaning of "services specifically for children" requires that the entity's services are solely provided for, or to, children. This reflects that the obligation to comply with the CSS and Universal Principle applies at a broad organisational level, rather than applying only to specific service streams or parts of an organisation.

Similarly, facilities specifically for use by children (who are) under the entity's supervision is intended to mean that some or all of the facilities are particularly aimed at children or have a special application for children in the way in which they are provided (for example, where they would mean employees of, or workers for, the entity are supervising children who are using the facilities). It is not intended to capture organisations where the facilities are merely incidental to the other business activity, such as a play area in an aged care facility which is provided for visiting children with their families. Nor is it intended that an entity that provides services for adults, not children, is in scope of the provision.

Consistent with other jurisdictions and with the principle-based nature of the CSS and Universal Principle, and to allow for appropriate responses to emerging trends, needs and risks in sectors, the Bill provides that the scope of child safe entities can be amended by regulation.

If an entity is prescribed in Schedule 1 or by regulation, but does not provide services specifically for children or provide facilities specifically for use by children under the supervision of the entity, the entity is not a child safe entity.

Subclause (2) clarifies that an individual is not a child safe entity unless the individual carries on a business as an entity listed in subsection 1, including for example, a sole trader or a partner in a partnership business structure under the *Partnership Act 1891*. An entity may include an incorporated or unincorporated body or association, sole trader or partnership. It is not intended to capture an individual as a child safe entity where they do not carry on a business, to ensure the CSS and Universal Principle are applied at an organisational level.

Part 2 Requirement to implement and comply with child safe standards

Clause 11 provides the obligations of child safe entities to implement and comply with the CSS and Universal Principle.

Subclause (1) provides that a child safe entity must implement and comply with the CSS provided under clause 9. The obligation is intended to require child safe entities to implement the CSS, including through policies, procedures and practice, and to maintain compliance with the CSS through these actions in order to achieve a child safe organisation.

Subclause (2) provides that in implementing and complying with the CSS, the entity must provide an environment that promotes and upholds the right to cultural safety of children who are Aboriginal persons or Torres Strait Islander persons (*Universal Principle*).

The Universal Principle is an overarching guiding principle that must be implemented and complied with across each of the 10 CSS. The Universal Principle embeds cultural safety for Aboriginal and Torres Strait Islander children as an important characteristic of a child safe organisation.

Both the CSS and Universal Principle are intended to be implemented across a child safe entity's various services, activities and environments in a flexible way that makes sense for each entity's circumstances, characteristics and risk factors.

It should be noted that, while the Universal Principle concerns cultural safety for Aboriginal and Torres Strait Islander children, the CSS themselves promote cultural safety and appropriate protections for children with diverse backgrounds and needs through subclause 9(d) – equity is upheld and diverse needs respected in policy and practice.

Subclause (3) requires that a child safe entity must have regard to any guidelines made by the Commission under clause 117 in implementing and complying with the CSS and Universal Principle.

Where the Commission makes guidelines to assist child safe entities in implementing the CSS and Universal Principle, they should be considered by child safe entities to inform best practice approaches in implementing the CSS and Universal Principle.

Clause 12 provides the ability for entities to choose to be subject to this chapter.

This clause enables entities who do not meet the criteria of clause 10 to "opt in" to the obligations under this chapter, including to implement and comply with the CSS and Universal Principle. This provides an avenue for entities across the state to build child safe cultures in line with the intent of the CSS and Universal Principle, even where their services are not specifically for children but children may engage with their organisation as employees or otherwise.

Subclause (1) provides that entities not required to implement and comply with the CSS and Universal Principle may make a request in writing to the Minister for the Minister to declare that the entity is subject to the obligations of a child safe entity under chapter 2.

Subclause (2) requires that the Minister must make a declaration by gazette notice if requested under subclause (1).

Subclause (3) requires that if an entity asks the Minister to revoke the declaration the Minister must do so.

Subclause (4) provides that the entity is taken to be a child safe entity for the period of the declaration, and therefore obligated to comply with the requirements of a child safe entity under this Act.

Part 3 Oversight by Queensland Family and Child Commission

Division 1 Functions of commission

Clause 13 provides the functions of the Commission in providing centralised oversight of the implementation of, and compliance with, the CSS and Universal Principle by child safe entities.

The functions of the Commission prescribed under this clause reflect the intended collaborative approach to regulation and the Royal Commission's recommendations.

Subclause (1) provides the functions of the Commission under chapter 2, including to promote the safety of children and continuous improvement and best practice approaches by child safe entities in implementing the CSS and Universal Principle. The provision also states the Commission's role to collaborate with sector regulators to support its functions, which reflects the collaborative regulatory approach to regulation and monitoring of the CSS and Universal Principle.

The collaborative regulatory approach supported by these functions seeks to strike the right balance between ensuring that there is a level of consistency in regulatory responses and child safe outcomes, supported by expert capability building provided by the Commission. The function of the Commission to work collaboratively with key parties is to make the CSS system effective with a clear mandate to promote continuous improvement and best practice approaches to child safety in entities.

Subclause (2) provides a list of the Commission's functions relating to education, oversight, guidance, facilitating information sharing and publishing data in relation to the CSS and Universal Principle. These functions emphasise the role of the Commission in capacity building and support for child safe entities, educating the community, and collaborating with sector regulators through exchanging information relating to the CSS and Universal Principle.

Clause 14 provides the fundamental principles for implementing and complying with the CSS and Universal Principle by child safe entities, the role of sector regulators, and the oversight by the Commission. These principles are intended to clarify the roles of the Commission, child safe entities, and sector regulators as part of a collaborative regulatory approach.

Subclause (1)(a) states that child safe entities are responsible for continuously improving the ways in which their operations: ensure the safety of children is promoted; child abuse is prevented; and allegations of child abuse are properly responded to. This provision further reflects the functions of the Commission under clause 13.

Subclause (1)(b) provides the fundamental principle that the Commission adopt the most effective and proportionate means of assisting child safe entities in meeting their obligations under clause 11.

The clause implements the Royal Commission's recommendation that state and territory governments should ensure oversight bodies for CSS take a responsive and risk-based approach when monitoring compliance with the CSS and, where possible, utilise existing regulatory frameworks to monitor and enforce the CSS to minimise duplication and regulatory burden (recommendation 6.10(c), Volume 6, Final Report). Consistent with the Royal Commission's views, it is proposed the Commission will take a responsive regulatory approach in exercising its powers under the Act.

This fundamental principle reflects the intent that the first response of the Commission to non-compliance or potential non-compliance by a child safe entity is to provide information, education or guidance. Where there is an increasing risk of harm to children engaging with the child safe entity, or demonstrated non-compliance, then a graduated, proportionate response may be used. For instance, proportionate regulatory responses should start with efforts to provide support, before graduating to monitoring compliance and then exercising stronger regulatory powers under the Act.

The use of the term "proportionate" is intended to ensure that the Commission, when assisting child safe entities (including where assistance involves exercising regulatory powers), considers the individual characteristics of the child safe entity (i.e. their size, level of risk and nature of service delivery) to comply with the CSS and Universal Principle.

Subclauses (1)(c) and (2) provide for the fundamental principle for the Commission and sector regulators to collaborate with each other, child safe entities and the community to promote implementation of, and compliance with, CSS and the Universal Principle. This includes through notifying the Commission of issues affecting implementation and compliance relating to the CSS and Universal Principle by a child safe entity under this chapter.

These subclauses are also intended to support the regulatory role of the Commission in relation to the CSS and Universal Principle. In 2017, the Royal Commission commented that "if a regulator becomes aware that an institution is not child safe, they should work collaboratively with the institution to achieve compliance" (Volume 6, Final Report, p. 326). In providing the principle that the Commission and sector regulators are to collaborate with each other, including through the notification of issues with CSS compliance, they may consider appropriate responses to support a child safe entity to comply with the CSS and Universal Principle.

Division 2 Monitoring and enforcement by commission

Clause 15 establishes that the Commission may monitor the operation of a child safe entity to ensure the entity is implementing and complying with the CSS and Universal Principle. This power is intended to enable the Commission to identify issues and provide guidance to entities to support their implementation of the CSS and Universal Principle where required.

The power of the Commission to monitor a child safe entity under this clause is intended to be exercised in consideration of the principles provided under clause 14. In particular, clause 14(1)(b), which provides that the Commission is to adopt the most effective and proportionate means of assisting child safe entities with compliance with the CSS and Universal Principle.

This clause is therefore intended to be utilised in a way that is proportionate and responsive to the particular child safe entity to achieve implementation of, and compliance with, the CSS and Universal Principle.

Clause 16 provides that the Commission may direct the head of a child safe entity in writing to conduct a self-assessment of the entity's implementation of, and compliance with, the CSS and Universal Principle in the course of monitoring a child safe entity under clause 15.

A self-assessment is intended to prompt the head of a child safe entity to consider and assess how the entity is currently meeting its obligations under clause 11. Such information must be provided to the Commission, to further assist the Commission in providing guidance and support for the child safe entity, or to inform the Commission's development of an assessment report under clause 17. Guidance and support provided by the Commission that is informed by the results of a self-assessment will enable further identification of the child safe entity's characteristics, structure and capacity to achieve compliance.

The head of the child safe entity is required to comply with the direction to conduct a self-assessment and provide the results to the Commission. Where the head of a child safe entity fails to comply with directions to conduct a self-assessment, the Commission may exercise graduated enforcement powers including, for example, issuing a compliance notice under clause 18.

Clause 17 provides that the Commission may give an assessment report, providing guidance and making recommendations, to a child safe entity about the entity's implementation of, and compliance with, the CSS and Universal Principle in the course of monitoring a child safe entity under clause 15. The assessment report is intended to include recommendations that provide guidance on best practice approaches for the child safe entity to achieve effective implementation of, and compliance with, the CSS and Universal Principle.

Subclause (2) provides that if the Commission makes recommendations in the assessment report, the Commission must provide a reasonable period of 14 days or more for the child safe entity to respond to the recommendations, and that the child safe entity must give a written response to the assessment report to the Commission within this period.

It is not intended to limit how the child safe entity may respond, noting the response may vary according to the characteristics of the entity and the nature of the recommendations. Responses may include, for example, how the child safe entity has or will implement the recommendations in full or in part, including actions or timeframes for actions, or any issues identified in implementing the recommendations.

Where the child safe entity fails to provide responses to assessment reports with recommendations provided by the Commission, the Commission may consider graduated enforcement powers including, for example, issuing a compliance notice under clause 18.

Clause 18 provides for the power of the Commission to issue compliance notices to a child safe entity where the Commission believes the entity is failing to comply with its obligations under clause 11.

Consistent with the principle provided under clause 14(1)(b), a compliance notice is intended to be issued by the Commission where it is the most effective and proportionate means of assisting the child safe entity to comply with the CSS and Universal Principle.

Compliance notices are intended to form part of the stronger regulatory powers that may be exercised by the Commission in consideration of the increasing risk of harm to a child or children engaging with the entity. However, the first response to instances of non-compliance remains one of providing information, education or guidance, with compliance notices intended to be utilised where this has not addressed an identified risk or achieved compliance with clause 11.

Subclause (2) enables the Commission to give a child safe entity a compliance notice that states the prescribed matters under (a)-(g).

Subclause (3) requires the accompaniment of an information notice, defined under Schedule 3, with the compliance notice.

Subclause (4) requires that the date to comply with the compliance notice is no less than 14 days after the notice is issued.

Subclause (5) establishes an offence for the child safe entity to fail to comply with a compliance notice, with a maximum penalty of 100 penalty units.

Subclause (6) clarifies that a reference to a child safe entity under this section includes a person (including a legal entity), or the head of the entity if the child safe entity is not a legal entity.

Division 3 Enforceable undertakings

Clause 19 enables the Commission to accept enforceable undertakings proposed by a child safe entity.

Enforceable undertakings are intended to enable a child safe entity that is demonstrating non-compliance with clause 11 to voluntarily agree with the Commission to take action to meet their obligations. This is to provide the option for a child safe entity to voluntarily work toward compliance rather than the Commission issuing compliance notices to enforce compliance. This provision also reflects the principle of enforceable undertakings: that a child safe entity cannot be compelled to make an undertaking; and the Commission has the discretion whether or not to accept an undertaking.

The child safe entity must include in the enforceable undertaking the prescribed matters under subclause (2).

This clause further specifies that if the Commission decides to not accept the enforceable undertaking, the Commission must give written notice and provide reasons for the decision to the child safe entity.

Upon making the decision to accept an enforceable undertaking, including with variations that the Commission and child safe entity may agree to, the undertaking becomes enforceable on the day the Commission provides written notice of the decision to the child safe entity.

The Commission may propose variations to the enforceable undertaking, with the agreement of the child safe entity, prior to accepting the undertaking. The Bill also does not prevent the Commission from repealing their decision to accept the undertaking (see section 24AA of the *Acts Interpretation Act 1954)*.

Clause 20 enables a child safe entity to seek an amendment to an enforceable undertaking upon application to the Commission.

The Commission may agree to the amendment only if it considers the amendment of the enforceable undertaking is appropriate in the circumstances and will ensure implementation of, and compliance with, the CSS and Universal Principle by the child safe entity.

It is not intended to limit what is appropriate in the circumstances; however, the Commission may consider, for example, the purpose of the proposed amendment, the nature of the potential or actual non-compliance by the child safe entity, and a best practice approach for the child safe entity to ensure compliance with clause 11.

If the Commission approves the application, the amended undertaking takes effect once a written notice of the decision is given to the child safe entity.

This clause further provides that if the Commission refuses the application, the Commission must give written notice of the refusal to the child safe entity, including reasons for the decision.

Clause 21 establishes an offence for a child safe entity to contravene an enforceable undertaking, with a maximum penalty of 100 penalty units. Reference to a child safe entity under this section includes a person (including a legal person) or the head of the entity if the child safe entity is not a legal entity.

Clause 22 provides that the Commission is required to maintain a register of enforceable undertakings that are accepted by the Commission under this division, which includes the details of each enforceable undertaking in effect and is available on the Commission's website. This is intended to support the transparency of the Commission, and provides accountability for child safe entities in the activities they have agreed to undertake to achieve compliance with clause 11.

Division 4 Other enforcement action

Clause 23 provides that the Commission may apply to the magistrates court for an order if the Commission is satisfied that a child safe entity has failed to comply with a compliance notice or enforceable undertaking. This clause further clarifies that the court may make one or more orders provided under subclause (2) where the court is satisfied that the child safe entity has failed to comply with a compliance notice or enforceable undertaking.

This is intended to enable the Commission to seek the assistance of the court in cases of significant non-compliance with the CSS and Universal Principle demonstrated by a child safe entity, similar to other jurisdictions (for example, Victoria).

The ability to seek the assistance of the magistrates court is to be considered in line with the principle provided under clause 14(1)(b); where it is the most effective and proportionate means of assisting the child safe entity to comply with the CSS and Universal Principle. As this provision forms part of the stronger regulatory powers of the Commission, it is only intended to be exercised where the entity has breached clause 18(5) or clause 21(1).

Subclause (3) provides matters that the court must consider in fixing a penalty for the child safe entity. These matters, including the size of and resourcing available to the child safe entity, are intended to ensure the court considers the characteristics of the entity and the nature of the non-compliance when imposing a penalty that is appropriate in the circumstances.

Clause 24 enables the Commission to publish prescribed information on its website if a child safe entity fails to comply with a compliance notice issued under clause 18 or an enforceable undertaking accepted under clause 18 without a reasonable excuse.

The ability for the Commission to publish the name of a child safe entity and details of the entity's failure to comply with a compliance notice or enforceable undertaking is intended to be exercised in consideration of the principle provided under clause 14(1)(b), where it is the

most effective and proportionate means of assisting the child safe entity to comply with the CSS and Universal Principle.

The publication of details of non-compliance are intended to form part of the stronger regulatory powers that may be exercised by the Commission in consideration of the increasing risk of harm to a child or children engaging with the entity, particularly where the entity is liable for breaching clause 18(5) or clause 21(1). It also further supports the transparency of the Commission and provides accountability for child safe entities continuing to fail to achieve compliance with the CSS and Universal Principle.

Subclause (2) prescribes the information relating to the child safe entity that the Commission may decide to publish.

Subclause (3) provides that the Commission cannot publish information relating to non-compliance unless the child safe entity has been provided with written notice of the Commission's intention to publish and the Commission has given the entity a reasonable opportunity to respond to the notice.

Subclause (4) requires that the Commission must provide an information notice, defined under Schedule 3, to the child safe entity for the Commission's decision to publish information under this clause.

Chapter 3 Reportable conduct scheme

Part 1 Preliminary

Clause 25 provides that that chapter 3 is to be administered under the principles in this section.

Subclause (2) provides that the main principle for administering this chapter is that the protection of children from harm, and the wellbeing and best interests of children, are paramount.

Subclause (3) sets out other key principles including, for example: promoting the cultural safety of Aboriginal or Torres Strait Islander children; that criminal conduct or suspected criminal conduct should be reported to police as soon as possible; and that a police investigation has priority over a reportable conduct investigation.

The principles also reflect that the RCS relies on collaboration between the Commission and sector regulators that have existing expertise, knowledge and skills in relation to the entities they regulate. Information should be shared between relevant entities in a timely way to minimise the risk of harm to children and reduce duplication.

Clause 26 sets out the meaning of reportable conduct. This includes: a child sexual offence; sexual misconduct committed in relation to, or in the presence of, a child; ill-treatment of a child; significant neglect of a child; physical violence committed in relation to, or in the presence of, a child; behaviour that causes significant emotional or psychological harm to a child.

The term "significant" is not separately defined and relies on its ordinary meaning. This is intended to indicate, for neglect or behaviour that causes emotional or psychological harm, that

it must be more than trivial, negligible or insignificant. Conduct may, but does not need to, have a lasting or permanent effect to considered significant.

Subclause (2) clarifies that conduct mentioned in subsection (1) is reportable conduct whether or not a criminal proceeding in relation to the conduct has been committed or concluded.

Subclause (3) provides that conduct may constitute reportable conduct if it is engaged in a single act or omission or as a series of acts or omissions, even if each act or commission does not, of itself, amount to reportable conduct.

Subclause (4) clarifies that reportable conduct does not include conduct that is reasonable for the discipline, management or care of a child having regard to factors such as the characteristics of the child, including the age, developmental stage and health of the child; and any code of conduct or professional standard applying to the conduct.

Subclause (5) defines *child sexual offence, emotional or psychological harm, ill-treatment, neglect, physical violence* and *sexual misconduct.*

Child sexual offence is defined to mean: a child sexual offence under section 207A of the *Criminal Code Act 1899* (Criminal Code); offence of a sexual nature committed in the presence of, a child; or an equivalent offence in another jurisdiction. Child sexual offence is defined in the Criminal Code to mean an offence of a sexual nature committed in relation to a child. This includes, for example, an offence under chapter 22 (offences against morality) or chapter 32 (rape or sexual assaults) such as indecent treatment of a child, rape, incest, grooming of a child and making child exploitation material.

Emotional or psychological harm to a child means detriment to the emotional or psychological wellbeing or development of a child.

Ill-treatment of a child means conduct towards the child that is unreasonable and seriously inappropriate, improper, inhumane or cruel.

Neglect of a child means a failure to meet the basic needs of the child that is deliberate or reckless.

Physical violence means the intentional or reckless application of physical force to a person without lawful justification or excuse, or an act that intentionally or recklessly causes a person to anticipate this violence. It does not include the application of trivial, negligible or insignificant physical force to a person. This reflects the intention that reporting entities focus on reporting and investigating matters that are serious or significant enough to require oversight by the Commission, and not all minor matters that may arise.

Sexual misconduct means conduct committed in relation to, or in the presence of, a child that is sexual in nature, other than conduct that constitutes a child sexual offence. Examples in the Bill include inappropriate touching, voyeurism, use of sexual language without a legitimate reason.

Allegations that do not meet the threshold for reportable conduct may still need to be managed by organisations, outside of the RCS.

Clause 27 defines a reportable allegation to mean an allegation or other information that leads a person to form a reasonable belief that a worker of a reporting entity has committed reportable conduct or misconduct that may involve reportable conduct. A reasonable belief is a belief based on facts that would lead a reasonable person to think the reportable conduct may have occurred, and is a higher threshold than a reasonable suspicion. The allegation does not need to be investigated or substantiated for it to form an allegation.

Subclause (2) provides that the conduct or misconduct does not need to have occurred during the course of the worker performing work for the reporting entity in order for it to constitute a reportable allegation.

Clause 28 defines a *reportable conviction* to mean a conviction for an offence committed by a worker of a reporting entity which may involve reportable conduct, including convictions in other jurisdictions. Unlike a reportable allegation, for a reportable conviction, the notifier does not need to make an assessment based upon a reasonable belief if there is a clear conviction or finding of guilt. However, an investigation under the RCS may determine whether the conviction involves reportable conduct. A conviction includes a finding of guilt, and the acceptances of a plea of guilty by a court, whether or not a conviction is recorded and spent convictions as well as equivalent spent convictions in other jurisdictions.

Clause 29 defines a *reporting entity* as an entity that cares for, supervises or exercises authority over children, whether as a primary function or otherwise; and that is either mentioned in Schedule 2 or prescribed by regulation. The ability to prescribe a reporting entity by regulation will enable the Queensland RCS to be responsive to emerging trends, needs and risks in sectors within scope.

The RCS obligations, as described in chapter 3, apply to the whole reporting entity.

Part 2 Requirements for systems

Clause 30 sets out a requirement for heads of reporting entities to ensure they have systems in place for preventing and responding to reportable conduct by a worker, including systems for reporting allegations or reportable convictions to either the head of the entity or the Commission, and investigating and responding to the allegation or reportable conviction. These systems will need to cover all workers. *Worker* is defined broadly in clauses 8 and 32 to include, for example, employees, volunteers and contractors.

Subclause (2) provides a system for a matter may include, for example, a policy, practice or procedure about the matter. This is intended to provide flexibility as to how organisations implement systems, such that they could be tailored to individual environments and integrated with existing systems and reporting requirements.

Clause 31 provides the Commission may ask the head of an entity to provide information about that system the head of the entity is required to keep under section 30. An authorised officer of the Commission may also require a relevant person to give information about the systems required under section 30 (see clause 91).

Subclause (2) provides that the Commission may consult with a sector regulator for the reporting entity about the information provided by the entity and make recommendations for

action to be taken by the head of the reporting entity in relation to the system, and provide any necessary information relating to the recommendations.

Part 3 Requirements for notifying and investigating reportable allegations and reportable convictions

Division 1 Preliminary

Clause 32 defines *worker* for the purposes of the RCS. A worker includes a former worker, if (for a reportable allegation) the alleged conduct was engaged in during the period when the worker was performing work for the entity, or (for a reportable conviction) the worker was convicted during a period when the worker was performing work for the entity. This is intended to capture relevant workers who should be subject to reporting and investigation under the RCS, but may have left or been dismissed prior to the entity becoming aware of a reportable allegation or reportable conviction.

Division 2 Notification

Clause 33 sets out reporting requirements of all persons as well as workers of reporting entities. Subclause (2) provides that if a worker of the entity becomes aware of a reportable allegation or reportable conviction by another worker, they must, as soon as practicable, report it to the head of the entity, or to the Commission (if the subject of the allegation or conviction is the head of the entity itself). The worker that is a notifier is distinct from the worker the subject of the allegation or conviction; it is not intended that workers of a reporting entity must proactively self-disclose information under this provision.

Subclause (3) clarifies that a worker's reporting obligation does not apply where they reasonably believe the matter has already been reported by another person.

Subclause (4) provides that any person that becomes aware of a reportable allegation or reportable conviction related to a worker of a reporting entity may report it to the Commission.

Subclause (5) clarifies that a person does not commit any offence against this or another Act only because the person fails to comply with subsection (2).

Clause 34 provides that if the head of a reporting entity becomes aware of a reportable allegation or reportable conviction about a worker of the entity, they are obliged to provide written notice to the Commission unless they have a reasonable excuse, within the below timeframes, unless the Commission agrees to a longer period:

- initial report – within three business days; and
- interim report (or final report if available) – within 30 business days.

A maximum penalty of 100 penalty units applies to failure to comply with reporting requirements under subclauses (2) and (3). An offence applies to the head of an entity if they fail to notify the Commission of a reportable allegation or reportable conviction, as the purpose of the RCS is to improve the accountability of organisations for responses to allegations of child abuse.

Subclause (4) provides it is a reasonable excuse for the head of an entity to not comply with the reporting requirements under subclauses (2) or (3), if the head of the entity believes another person has notified the Commission.

Clause 35 sets out the content requirements for an initial and interim report, such as the details of: the reportable allegation or reportable conviction; the identification details of the worker; whether a sector regulator, or police, has been contacted regarding the matter; and any action taken, including interim risk management action.

Division 3 Investigation and report by head of reporting entity

Clause 36 provides that the head of the entity must ensure that an investigation of a reportable allegation or reportable conviction is conducted as soon as practicable after becoming aware of the matter and notify the Commission that the investigation is being conducted and contact details for a person conducting the investigation. This allows flexibility for the entity to contract services for investigation of the matter, depending on their resources and skillset, based on their ability to delegate functions under clause 107.

Subclause (2) requires the head of the reporting entity to notify the Commission if they are not reasonably able to investigate the reportable allegation or reportable conviction, and provide reasons why. Subclause (3) provides that the head of a reporting entity must ensure procedural fairness for the worker the subject of the reportable allegation or conviction, by giving written notice of any proposed adverse findings, an opportunity for the worker to provide written submissions, and for those submissions to be considered in preparation of the final report.

Clause 37 requires that as soon as practicable after the investigation is completed, the head of the reporting entity must prepare and provide a final report to the Commission. It must include certain information such as the facts and circumstances of the allegation or conviction, the findings (including whether the worker has engaged in reportable conduct) and the reasons for the findings. It must include any action, including risk management action, taken in response to the reportable allegation or reportable conviction, and any action taken or proposed to improve the entity's ability to identify reportable conduct and report and investigate reportable allegations.

A maximum penalty of 100 penalty units applies to a failure by the head of the entity to provide a final report.

Subclause (3) clarifies that the head of a reporting entity is not required to produce a final report if an investigation into the reportable allegation or reportable conviction is taken over by a sector regulator under section 42, or the Commission under section 43, and a written notice has been given to the head of the reporting entity asking them to end their investigation under those respective sections.

Clause 38 provides that the Commission may ask the head of a reporting entity for further information relevant to the findings or response to findings set out in the final report. This may be enforced by the Commission's power to issue a notice to produce information under clause 91.

Division 4 Exemptions

Clause 39 sets out the ability for the Commission to exempt particular reporting entities from complying with reporting obligations under section 34, 35 or 37 or a particular requirement under sections 33 or 36 in relation to the conduct, or a class of conduct, of a worker. The Commission must be satisfied that the entity is competent and has resources to investigate a reportable allegation or reportable conviction; and has demonstrated competence in taking appropriate action in response to a finding of reportable conduct. Subclause (3) requires the Commission to notify the entity of any exemption, and publish it on the Commission's website.

Subclause (4) and (5) clarifies that regardless of the exemption of reporting obligations, as soon as practicable after the completion of an investigation into the conduct, or conduct of that class, the head of the entity must give the Commission written notice stating the prescribed matters under subclauses (5)(a) – (c).

The intent is that exempt reporting entities are still required to conduct an investigation into a reportable allegation or reportable conviction concerning the conduct but are not subject to oversight by the Commission, considering their expertise and demonstrated ability to conduct those investigations. While the entity may be exempt from the reporting obligations under the Bill, subclause (5) clarifies that the entity must, as soon as practicable after completing its investigation, notify the Commission regarding its findings. This ensures, for example, that the Commission can still obtain data regarding trends and outcomes in reporting for that entity's sector.

Part 4 Oversight by Queensland Family and Child Commission

Division 1 Functions

Clause 40 sets out the functions of the Commission for the RCS to:

- administer, monitor and enforce compliance with the RCS;
- facilitate appropriate exchange of information under chapter 4;
- educate and provide advice to the public, sector regulators and reporting entities in relation to the RCS and ways to prevent reportable conduct;
- facilitate cooperation between the public, reporting entities, sector regulators and other entities in relation to the conduct of investigations of reportable allegations and reportable convictions; and
- report to the Minister about matters relating to the RCS.

These functions will ensure the Commission is able to provide independent cross-sectoral oversight of institutional responses to allegations of misconduct and abuse involving children but also work collaboratively with reporting entities and sector regulators to improve their ability to comply with their obligations under the scheme in a manner that is proportionate to the circumstances and the risks of each matter, such as by providing education and capacity building for in-scope sectors.

Division 2 Enforcement measures

Clause 41 provides that if the Commission considers it is in the public interest, it may monitor the progress of an investigation of a reportable allegation or reportable conviction conducted by the head of a reporting entity.

Subclause (2) sets out ways in which the Commission may monitor an investigation, such as providing guidance and advice to the head of a relevant entity about an investigation. The Commission may enforce the ability to request information under subclause (2)(d) relating to the investigation through its power to issue a notice to produce information under clause 99.

Clause 42 provides the Commission may ask a sector regulator to investigate a reportable allegation or reportable conviction relating to a worker of a reporting entity if the sector regulator has the necessary functions and powers in relation to the reporting entity to investigate the allegation or conviction. The sector regulator is not obligated to undertake the investigation and may agree to or refuse the request.

This may occur in circumstances where a reporting entity is unable or unwilling to investigate a reportable allegation or reportable conviction, and the sector regulator is better positioned to conduct the investigation than the Commission. For example, a sector regulator may be able to conduct an investigation under this provision with its investigative powers under an existing regulatory framework including streamlining with, or leveraging, an existing investigation.

Division 3 Investigations by commission

Clause 43 provides that in limited circumstances, the Commission may investigate a reportable allegation or reportable conviction relating to a worker of a reporting entity, itself if it considers:

- it is in the public interest to do so;
- the head of the reporting entity has failed to, or is reasonably unable to investigate;
- it relates to the head of a reporting entity's inappropriate handling or investigation of, or response to, the allegation or conviction, and it is in the public interest; or
- the head of the reporting entity is the subject of the allegation or conviction.

There are procedural requirements for the Commission to notify the head of the entity prior to conducting an own motion investigation. The Commission must also provide the worker the subject of the allegation or conviction an opportunity to make written submissions to its proposed findings as a result of an investigation, prior to finalising the investigation, which the Commission must consider in making its findings.

Clause 44 provides that if the Commission is conducting an own motion investigation under section 43, it may interview a child who is the subject of conduct to which the reportable allegation or reportable conviction relates, or a child who may be a witness, subject to several safeguards. This includes obtaining prior consent of a parent or guardian except in limited circumstances. Consent is not required if, for example, the child is aged 16 or 17 years old and the Commission considers the child has sufficient maturity and ability to understand the matter, and it is appropriate to not obtain consent of the parent or guardian (subclause 2(a)). This reflects the concept of mature minors who may have the competence and capacity to directly consent to an interview in lieu of a parent or guardian.

Subclauses (2)(b) and (c) set out the other limited circumstances when the Commission may seek consent from the child instead of a parent or guardian which include where the child's only parent or guardian is the subject of the investigation (this also includes if both parents or all guardians are the subject of the investigation), or if the parent or guardian cannot be reasonably be located.

Subclause (4) sets out other safeguards including that the Commission must ensure: the interviewer has appropriate qualifications, training or experience in these interviews, and the child is offered the opportunity for a support person to be present. If the child is an Aboriginal or Torres Strait Islander person from an Aboriginal community or Torres Strait Islander community, the child must be offered the opportunity for the support person to be a respected person of that community.

Clause 45 provides that as soon as practicable after its investigation ends, the Commission must provide a written notice, which includes the findings of its investigation, to the head of the reporting entity, the worker the subject of the reportable allegation or reportable conviction and any sector regulators for the reporting entity.

Part 5 Miscellaneous

Clause 46 describes the arrangement for reportable allegations that may involve criminal conduct. The person responsible for conducting the RCS investigation (head of the reporting entity, sector regulator or Commission), must notify police as soon as practicable if they become aware of a reportable allegation that may involve criminal conduct.

The police commissioner may ask the entity responsible for conducting the RCS investigation to suspend or not commence the investigation until a police investigation is complete or the police commissioner advises the entity that it may continue or commence its investigation. In complying with a police request to suspend or not commence an investigation, the entity must take all reasonable steps to mitigate any risks to the safety, wellbeing and best interests of children. If the party responsible for undertaking the investigation is able to proceed with the investigation under the RCS, it must conduct it in a way that does not prejudice the police investigation, which includes any court proceedings resulting from the investigation. For example, this may require information sharing with police to determine whether a particular person should be interviewed.

Chapter 4 Disclosure of information and confidentiality

Part 1 Underlying principle

Clause 47 provides an underlying principle for entities empowered to share information under chapter 4, to clarify the intention that information is to be disclosed between entities under this chapter to support the Commission in performing its functions under the Act.

Subclause (1) prescribes the elements of the principle, that information is to be disclosed: in a timely way; proactively rather than only upon request; where the information is relevant to the Commission's functions for the CSS and Universal Principle, and RCS under the Act; and where the information is appropriately disclosed for the purpose of protecting a child or children from harm and ensuring their safety, wellbeing and best interests.

Subclause (2) requires that in disclosing information, entities must protect the identity of a child the subject of the information as far as practicable. This is to ensure that disclosure of information does not detrimentally affect the safety, wellbeing or best interests of a child where they may be identifiable from the information.

Part 2 Disclosure for child safe standards

Clause 48 provides for information sharing between prescribed CSS entities and for prescribed purposes as it relates to chapter 2.

Information sharing between prescribed entities will facilitate a collaborative regulatory approach to: assist with implementation of, and compliance with, the CSS and Universal Principle; support the Commission in undertaking proper investigations and responses to non-compliance where risks are effectively identified; and to enable the Commission to target capacity building activities where most needed.

Subclause (1) identifies a list of prescribed CSS entities that may disclose confidential information between or to each other, including: the Commission; sector regulators; child safe entities; public sector entities (defined under the *Public Sector Act 2022*) other than sector regulators or child safe entities; the Inspector of Detention Services; Office of the Ombudsman; and another entity prescribed by regulation.

Subclause (2) provides the purposes for which a prescribed CSS entity may disclose confidential information (defined under Schedule 3). These purposes include where disclosure is: to respond to a concern about a failure of a child safe entity to comply with obligations under clause 11; to assist the Commission in performing its functions or exercising its powers under chapter 2; and to assist the Commission in performing its functions or exercising its powers under chapter 3 by providing information relating to compliance with chapter 2 by a a reporting entity.

Part 3 Disclosure for reportable conduct scheme

Clause 49 provides a broad enabling provision to allow relevant information to be shared between the Commission (and equivalent oversight bodies in other jurisdictions with an RCS), sector regulators, reporting entities, a government department, the police (Queensland and other states and territories and the Commonwealth), as well as select independent oversight bodies, such as the Queensland Ombudsman. These entities are known as prescribed reporting entities in the Bill.

Subclause (2) provides that the head of a prescribed RCS entity may disclose relevant information to the head of another prescribed RCS entity in the following circumstances:

- to lessen or prevent a serious risk or threat to the life, health or safety of a child or class of children;
- to enable the police commissioner (or equivalent in other jurisdictions) to investigate criminal conduct;
- for the Commission to perform its functions under chapter 3 in regard to the RCS;
- for the receiving entity to investigate a reportable allegation or reportable conviction;
- for a reporting entity or sector regulator to take appropriate action in relation to a finding that reportable conduct has been engaged in by a worker of the reporting entity;

- for a receiving entity other than a reporting entity under subsection (1)(c), if it is for the performance of a function by the receiving entity under an Act that relates to the protection of children from harm; or
- for another purpose necessary for the effective administration of the RCS prescribed by regulation.

Relevant information means information about the progress of an investigation of a reportable allegation or reportable conviction, the findings and reasons for the findings of an investigation, any action that is to be taken in response to the findings, and any other information about a reportable allegation that would assist a prescribed RCS entity to comply with the RCS. However, relevant information excludes evidentiary material or a relevant record or transcript, which is subject to disclosure requirements under clause 52.

Clause 50 provides relevant information may also be disclosed to a child who is the subject of the reportable conduct, a parent or person with parental responsibility, or guardian of the child. This is subject to certain conditions, such as that it must not be disclosed if it would put the safety or wellbeing of a child or any other person at risk or prejudice a proceeding or investigation.

Clause 51 sets out the requirements for the Commission to share particular information with the chief executive responsible for administration of the WWC Act. If the Commission makes a finding or is informed of a finding of substantiated reportable conduct, it must notify the chief executive (working with children) of the name and date of the birth of the worker, that the finding has been made, the reasons for the finding, the action that is to be taken in response to the finding, and any other matter relating to the finding relevant to the functions of the chief executive under the WWC Act.

Clause 52 enables the Commission or head of a prescribed RCS entity to request information about a charge or conviction for an offence from the DPP or Queensland police commissioner if it is necessary for the performance or exercise of the Commission's functions or powers under chapter 3; or for the prescribed RCS entity to notify and investigate a reportable allegation or conviction under chapter 3, part 3 or section 42. This includes evidentiary material. However, only the Commission may request a "relevant record or transcript", which includes specified criminal statements or transcripts under the Evidence Act, due to the sensitive nature of this material.

The ability to request information from the Queensland police commissioner and/or the DPP is considered critical to the scheme, to determine whether a reportable conviction actually involves reportable conduct, where allegations of reportable conduct overlap with a charge or conviction related to criminal conduct, or where a matter may involve investigative information that has not proceeded to a charge for a criminal offence.

This clause is intended to only enable a request to be made within the limited circumstances above, and enable discretion by the Queensland police commissioner or DPP to not provide information for prescribed reasons, such as where it may prejudice an investigation or prosecution of a matter before a court, expose a confidential source of information, or endanger a person's life or physical safety.

Part 4 General provisions for disclosure

Clause 53 enables the Commission to disclose information obtained under this Act to a corresponding entity performing functions that are substantially the same as the functions of the Commission under a law of another state or territory or the Commonwealth. This is intended to enable the Commission to share information with other jurisdictional oversight bodies to support the performance of the Commission's functions and exercise of its powers under the Act. Such information sharing arrangements are also intended to further support the main purposes of the Bill: to protect children from harm; and promote the safety, wellbeing and best interests of children.

Clause 54 provides that the Commission may enter into written arrangements about sharing or exchanging information: under part 2 with a prescribed CSS entity; under part 3 with a prescribed RCS entity; or under clause 53 with a corresponding entity. The written arrangement is intended to be for the exchange of information where it supports the performance of the Commission's functions and the collaborative regulatory approach under the Act.

A written arrangement may, for example, be in the form of a memorandum of understanding that specifies what information may be shared, and when it is appropriate to share that information, between the Commission and other entity.

Clause 55 clarifies the interactions between this chapter and other laws relating to the disclosure of information. Chapter 4 does not limit a power or obligation under another Act or law to give information.

Subclauses (2) and (3) clarify that protections for the disclosure of certain information are not intended to be overridden by the information sharing framework under chapter 4, to compel disclosure of certain information. This is to provide that the identity of a notifier under the *Child Protection Act 1999*, sections 186, 186A, and the identity of a detention centre employee under the *Youth Justice Act 1992*, section 300, may only be disclosed in accordance with those Acts respectively.

Subclauses (4) and (5) provide a similar clarification that information that is subject to privilege (for example, legal professional privilege) is not required to, but may, be shared under chapter 4. Where such information is shared by a prescribed CSS entity or prescribed RCS entity under chapter 4, the privilege attached to the information will not be affected or mitigated with the disclosure. This is to ensure that appropriate protections are provided to information or a document which is subject to privilege if shared.

Chapter 5 Confidentiality and protection

Clause 56 provides protections for the confidentiality of information gained or disclosed under the Act by a person. If a person gains information or confidential information through involvement in the administration of this Act, the person must not make a record of, or intentionally disclose, the information to another person. Subclause (1) makes it an offence to contravene this requirement, with a maximum penalty of 200 penalty units.

The clause is intended to establish appropriate protections for confidential information or information obtained by persons involved in this Act. It also places obligations on persons

involved in the administration of the Act, particularly where confidential information or information may also include personal information, to ensure appropriate recording, disclosure and handling of such information.

The provision further reflects a similar requirement under section 36 of the FCC Act relating to the confidentiality of information under that Act.

Subclause (2) further clarifies this requirement where a person gains information because of the nature of their position as prescribed under subclauses (2)(a)-(d).

Subclause (3), in conjunction with subclause (5), prescribes the circumstances in which confidential information may be recorded and disclosed to another person (*permitted use*). This acknowledges that there may be circumstances where disclosure is necessary for performing functions under this Act or another law, or where consent has been provided for the disclosure.

Subclause (4) provides that a commissioner may decide to disclose confidential information where satisfied that disclosure is reasonably necessary in prescribed circumstances. This is intended to balance the right to privacy with factors in the public interest and the safety of persons.

Clause 57 provides similar protections for confidential information to clause 56. Any person who receives confidential information under clause 56 or chapter 4, part 2 or 3 must not use or disclose the information to another person, unless permitted under clause 56(5). Subclause (1) provides an offence for contravention of this clause, with a maximum penalty of 200 penalty units.

This clause is intended to balance appropriate privacy protections for information obtained through administration of the Act with the objective of the information sharing framework; to facilitate a collaborative regulatory approach to the CSS and Universal Principle, and the RCS.

Clause 58 establishes a prohibition on publishing particular information under the Act to ensure appropriate protections for information that identifies a person, including a child. This clause complements the underlying principle under clause 47 to protect the identity of a child as far as practicable in sharing information under chapter 4. It further provides an offence for unauthorised publication with a maximum penalty of 200 penalty units.

This clause clarifies that the prohibition does not apply if the circumstances prescribed under subclause (2) apply.

Clause 59 provides protections against civil and criminal liability, and administrative processes (for example, disciplinary action) for persons who, acting in good faith and without negligence, give information under chapter 4 or chapter 5, or in relation to a reportable allegation or reportable conviction to the entities listed under subclause (1)(b).

Subclause (3) clarifies that the person cannot be held to have breached any code of professional etiquette or ethics, nor have departed from standards of professional conduct.

The Royal Commission made recommendations for state and territory governments to ensure legislation provides comprehensive protection for individuals who make reports in good faith about child sexual abuse in institutional contexts (recommendations 7.5 and 7.6, Volume 7,

Final Report). This clause reflects these recommendations by providing comprehensive protections for individuals who provide information in good faith and without negligence under this Act.

Clause 60 establishes comprehensive protections against reprisal or detriment to a person who provides, or may provide, information under this Act to a relevant entity listed under subclause (6). These protections reflect the intent of the Royal Commission's recommendations (recommendations 7.5 and 7.6, Volume 7, Final Report) to ensure persons who share information or make a report do not suffer detriment from another person because of it.

Clause 61 establishes an offence for a contravention of clause 60, where a person takes a reprisal against a person who provides or may provide information under the Act, with a maximum penalty of 100 penalty units.

Chapter 6 Investigation and enforcement

Part 1 General provisions about authorised officers

Division 1 Appointment

Clause 62 states that this chapter provides for the appointment of authorised officers and the powers of authorised officers who are suitably qualified to assist the Commission with compliance under this Act.

Clause 63 sets out the functions of an authorised officer under the Act: to investigate, monitor and enforce compliance; investigate or monitor whether occasions have arisen for the exercise of powers; and to facilitate the exercise of powers.

Clause 64 provides that the Commission may appoint, by written instrument, appropriately qualified persons as authorised officers where they are a staff member of the Commission, a public service employee or a person prescribed by regulation.

Subclause (2) clarifies that in appointing an authorised officer, the Commission must be satisfied that the person is appropriately qualified.

The Commission may be satisfied a person is appropriately qualified where the person has demonstrated the necessary skills and expertise to be an authorised person by having undertaken appropriate training to perform the role of authorised officer and where the person has prior experience in exercising the functions or powers of an authorised officer.

Where a person is proposed to be an authorised officer exercising powers under clause 44 to interview a child or children, the person must also have appropriate qualifications, training or experience in interviewing children, including child victims of alleged abuse. It is intended that only persons with these qualifications are permitted to exercise powers under clause 44. This is to ensure appropriate protections for children who may be interviewed in relation to a reportable conduct matter, by ensuring a person has the skill necessary to prevent further risk of trauma.

Clause 65 specifies that an authorised person holds office on the conditions stated in their instrument of appointment or a signed notice given to the authorised officer by the

Commission, or a regulation. The powers of an authorised officer may be limited by the instrument of appointment, the signed notice or a regulation.

Clause 66 provides that an authorised officer's appointment ends when: the term of office specified in the conditions under which a person holds office ends (*condition of office*); the term ends under another condition of office; or the authorised officer resigns from office under clause 67.

Subclause (2) specifies that subclause (1) does not limit the way the Commission may end the office of an authorised officer. For example, section 25 of the *Acts Interpretation Act 1954* provides implied incidental powers of appointment on the Commission, including that the power to appoint an authorised officer incudes the power to remove or suspend, at any time, a person appointed as an authorised officer.

Clause 67 states that an authorised officer may resign by signed written notice to the Commission.

Division 2 Identity cards

Clause 68 provides that the Commission is to issue an identity card to each authorised officer. The identity card must provide a recent photo of the officer, contain the officer's signature, identify the officer as an authorised officer under the Act, and provide the expiration date for the card.

Clause 69 requires an authorised officer to produce or display their identity card if exercising a power in relation to a person in the person's presence. Where it is not practicable to produce the identity card within the person's presence, the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity. This is to ensure their identity can be proven to a person, and thereby their authority to exercise powers under the Act.

Clause 70 requires an authorised person to return the identity card within 21 days of ceasing to be an authorised officer. Failure to do so may incur a maximum penalty of 40 penalty units.

Division 3 Miscellaneous provisions

Clause 71 provides that a reference to the exercise of a power by an authorised officer, other than to exercise a specific power, means a reference to all or any of an authorised officer's powers.

Clause 72 provides that a reference to a document includes any image or writing produced from an electronic document, or an image or writing not yet produced from an electronic document, but one that is capable of being produced with or without the aid of anything else.

Part 2 Entry of places by authorised officers

Division 1 Power to enter

Clause 73 provides a general power of authorised officers to enter places.

The purpose of providing for powers of entry is to ensure authorised officers have adequate investigative powers to obtain necessary information for the purpose of compliance with CSS and RCS obligations, and to determine whether any offences under the Act have been committed.

Consistent with the Royal Commission's view that oversight bodies take a responsive and risk-based approach when monitoring or enforcing compliance, the powers of authorised officers to enter places are intended to be exercised as part of a proportionate and responsive approach.

For CSS compliance, clause 14(1)(b) is intended to emphasise that support, guidance and information are to be the first response, with stronger regulatory powers considered where proportionate to the risk and characteristics of a child safe entity.

The power for authorised officers to enter places will support the Commission's ability to conduct its functions under chapter 3, part 4, to administer, oversee and monitor compliance with the RCS.

Subclause (1) provides that an authorised officer may enter a place in prescribed circumstances, including if: an occupier of the place consents under division 2 to the entry and section 76 has been complied with; the place is a public place and entry is made when the public place is open to the public; the entry is authorised under a warrant and section 83 has been complied with (if there is an occupier of the place); or the place is a business and it is open for entry or business.

Subclause (2) provides the definition of a *place of business* for subclause (1)(d) which does not include the place where a person resides.

Subclause (3) clarifies that if the power of entry arose only with consent, the power is subject to the conditions of the consent and ceases when the consent is withdrawn. This clarifies consent to enter can be withdrawn at any time by the occupier.

Subclause (4) provides that where the entry is under a warrant, the power is subject to the terms of the warrant.

Subclause (5) clarifies the meaning of *public place*.

Division 2 Entry by consent

Clause 74 provides that this division applies when an authorised officer intends to seek consent of an occupier to enter a place under clause 73(1)(a).

Clause 75 provides that an authorised officer may enter a premises without the consent of the occupier or a warrant, for the purpose of asking for consent to enter. For the purpose of seeking consent to enter, an authorised person may enter the land around a premises where reasonable,

or enter part of the place considered to be ordinarily accessible to members of the public to contact an occupier of the place.

Clause 76 outlines the matters an authorised person must address before asking for consent to enter a place. The authorised officer must explain the purpose of the entry, including powers to be exercised, as well as advising the occupier that they may decline to give consent for entry or withdraw consent given at any time.

Clause 77 provides that an authorised officer may ask the occupier to sign an acknowledgement of their consent to enter a place. The acknowledge must state the matters listed under subclause (2).

Subclause (3) provides that if the occupier signs the acknowledgement, the authorised officer must immediately give a copy of the signed acknowledgement to the occupier.

Subclause (4) clarifies that if an issue arises in a proceeding about whether the occupier consented to the entry, and a signed acknowledgement complying with subclause (2) is not produced in evidence, the onus of proof is on the person relying on the lawfulness of entry to prove the occupier consented.

Division 3 Entry under warrant

Clause 78 provides that an authorised person may apply to a magistrate for a warrant to enter a place. The authorised officer must prepare a written application that states the grounds upon which the warrant is sought, and the application must be sworn. A magistrate may refuse to consider an application until the authorised officer provides the magistrate with the information about the application that the magistrate requires.

It is intended that an authorised officer only seek a warrant to enter a place, including without consent, as part of a proportionate and responsive approach to significant non-compliance with the Act. It is intended that entry with consent be considered in the first instance where appropriate, prior to seeking to a warrant to exercise powers at a place.

Clause 79 provides that a magistrate must be satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next seven days, a particular thing or activity that may provide evidence of an offence before issuing a warrant. The warrant must also state the prescribed particulars under this section.

Clause 80 provides that an authorised officer may apply for a warrant by phone, fax, email, radio, video-conferencing, or another form of electronic communication if the authorised officer considers it is necessary due to urgent or other special circumstances, such as the remote location of the officer.

Clause 81 provides additional procedures for the electronic application of a warrant under clause 80, including that the magistrate may issue the warrant if they are satisfied it was necessary and appropriate to make the application under clause 80.

This clause clarifies procedures after the magistrate issues the warrant. A magistrate may provide a copy of an original warrant to an authorised officer by sending a copy by fax or email; or provide the authorised officer with the information required to be stated in the warrant under

clause 79(2) and have the authorised officer complete a form of warrant. A copy of the warrant, or the form of warrant completed by the authorised officer, is referred to as a duplicate warrant and is valid as the original warrant.

Similar to clause 77(4), subclause (5) provides that if an issue arises in a proceeding about whether powers were exercised as authorised by a warrant, and the original warrant is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the power to prove the warrant authorised its exercise.

Clause 82 provides that a warrant, including a duplicate warrant, is not invalidated by a defect in the warrant unless the defect affects the substance of the warrant in a material particular.

Clause 83 outlines the entry procedures that must be followed by an authorised person prior to entering a place under a warrant. The authorised officer must do or make reasonable attempts to do the things prescribed under subclause (2), but does not need to comply if the authorised officer reasonably believes that to do so would frustrate the execution of a warrant (including a duplicate warrant).

Part 3 Other authorised officers' powers and related matters

Division 1 General powers of authorised officers after entering places

Clause 84 provides that powers under this division may only be exercised if an authorised officer enters a place under the stated sections.

Clause 85 allows for an authorised officer to exercise any of the following powers:

- search any part of the place;
- inspect, examine or film any part of the place or anything at the place;
- take for examination a thing, or a sample of or from a thing, at the place;
- place an identifying mark in or on anything at the place;
- take an extract from, or copy, a document at the place, or take the document to another place to copy;
- produce an image or writing from an electronic document at the place or, take a thing to another place to produce an image or writing from an electronic document;
- take to, into or onto the place and use any person, equipment and materials the authorised officer requires for exercising the authorised officer's powers; and
- remain at the place for the time necessary to achieve the purpose of the entry.

The powers conferred on authorised officers are intended to be exercised to support the functions of the Commission and the main purposes of the Act.

In relation to CSS compliance, these powers are intended to be exercised consistent with the principle provided under clause 14(1)(b), where they are the most effective and proportionate means of assisting child safe entities to implement and comply with the CSS and Universal Principle. This reflects the intent that the first response of the Commission to non-compliance or potential non-compliance by a child safe entity is to provide information, education or guidance.

However, it is important that stronger regulatory powers are available so that authorised officers can appropriately investigate or enforce compliance with the Act, particularly where there is an increasing risk of harm to children engaging with an entity or demonstrated non-compliance by a person or entity with the Act.

Subclause (2) clarifies the authorised officer can do anything necessary to exercise a power.

Subclauses (3) provide that if the authorised officer takes a document from the place, it must be copied and returned to the place as soon as practicable.

Subclause (4) similarly provides that if the authorised officer takes a thing from a place to produce an image or writing from an electronic document, the authorised officer must produce the image or writing from the document and return the original document or thing to the place as soon as possible.

This is intended to balance the property rights of owners, to provide that the authorised officer can seek evidence required for an investigation while ensuring that the owner of the document has their property returned as soon as practicable.

Subclause (5) provides definitions for the terms *examine*, *film* and *inspect* for the purposes of this section.

Clause 86 allows an authorised officer to require an occupier or person at the place to provide reasonable help to exercise the authorised officers powers under clause 85(1). For example, an authorised officer may ask a person to copy or produce a document or give information. The authorised officer must warn the person it is an offence not to comply with a requirement for help unless the person has a reasonable excuse.

Clause 87 establishes an offence for a person to fail to provide reasonable help required by an authorised person under clause 86(1) without a reasonable excuse, with a maximum penalty of 50 penalty units.

A reasonable excuse is not intended to be limited by the provision in consideration of the varying circumstances that an excuse may be reasonable. However, it is not a reasonable excuse for a person to contravene a requirement for help where such help may tend to incriminate the person or expose them to a penalty. Where the help may tend to incriminate a person, clause 97 applies to provide limited immunity for use of the information given to comply with this requirement.

Subclause (4) provides that if an authorised person fails to warn an individual as required in subclause (3), and the individual fails to comply with the requirement to help, the individual cannot be convicted of the offence against subclause (1).

Division 2 Other information-obtaining powers of authorised officers

Clause 88 provides nothing in this chapter requires an entity to disclose information that is protected by legal professional privilege.

Clause 89 provides that an authorised officer may require a person to state their name and residential address, and may also request the person provide evidence of their name and

residential address (for example, with government-issued identification or otherwise) if they expect the person to have or be able to give such evidence.

This clause applies if an authorised officer: finds a person committing an offence against the Act; finds a person in circumstances that lead the authorised officer to reasonably suspect the person has just committed an offence against the Act; or has information that leads the authorised officer to reasonably suspect a person has just committed an offence against the Act.

The authorised officer is required to give the person a warning that it is an offence to not comply with this request once made.

Clause 90 provides it is an offence to contravene a request for personal details without a reasonable excuse. A maximum penalty of 50 penalty units applies for contravention of this requirement. However, a person may not be convicted of this offence unless the person is found guilty of committing an offence under this Act in relation to which the request for personal details was made.

Clause 91 applies if an authorised officer reasonably believes an offence against this Act has been committed and a person may be able to give information about the offence. The clause further applies where an authorised officer reasonably believes a relevant person may be able to provide information prescribed under subclause (2).

The authorised officer may give written notice to the person requiring them to provide information, or a reproduction of the information where kept, stored or recorded electronically, within a stated period of at least 14 days. The authorised officer may also give notice to the person requiring them to attend before the authorised officer at a reasonable time stated in the notice to answer questions or produce documents related to the offence or matter.

Subclause (4) prescribes the definition of *relevant person* for this clause.

Clause 92 establishes offences for failing to comply with a request for information or attendance respectively under clauses 91(3)(a) and 91(3)(b) respectively, unless the person has a reasonable excuse, with a maximum penalty of 50 penalty units for each offence.

Subclause (3) clarifies that it is not a reasonable excuse for a person to fail to comply with a requirement where complying may tend to incriminate the person or expose them to a penalty. Where compliance with clause 91(3)(a) or (b) may tend to incriminate a person, clause 97 applies to provide limited immunity for use of the information.

Subclause (4) requires the authorised officer to inform the person in a reasonable way that the person must comply with a requirement under this section even where compliance may tend to incriminate the person or expose them to a penalty, and that there is limited immunity against future use of the information or document given to comply.

Subclause (5) provides that if an authorised officer fails to notify an individual in line with subclause (4), and the individual fails to comply with the request, the individual cannot be convicted of the offence under this section.

Part 4 Miscellaneous provisions relating to authorised officers

Division 1 Damage

Clause 93 provides that in exercising powers an authorised officer must have regard to their actions and take all reasonable steps to cause as little inconvenience as possible and do as little damage as possible.

Clause 94 requires that if an authorised officer, or a person acting under the direction of an authorised officer (the *assistant*), damages a thing while exercising a power, the authorised officer is required to give notice of the damage to the owner or person in control of the thing. This does not apply to damage that is trivial or if the authorised officer believes there is no-one in possession of the thing or it has been abandoned.

However, if it is not practicable for the authorised officer to give notice of the damage to the owner or person in control of the thing, the authorised officer must leave the notice where the damage happened and ensure it is in a conspicuous position in a reasonably secure way.

If the authorised officer reasonably suspects giving notice may frustrate or hinder an investigation or the performance of another function of the authorised officer, the authorised officer may delay giving the notice for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place.

Subclause (8) prescribes that the notice must state the particulars of the damage and that the person can apply for compensation under clause 95. If the authorised officer believes the damage was caused by a latent defect in the thing or was the result of circumstances beyond the authorised officer or assistant's control, the authorised officer may state the belief in the notice.

Division 2 Compensation

Clause 95 provides that a person may claim compensation from the State if the person incurs a loss because of an authorised officer exercising a power that has resulted in damage or loss, including a loss arising from compliance with a requirement made of the person under part 3.

Subclauses (2)-(5) provide for matters relating to a proceeding of a court for an order of compensation, including matters prescribed by regulation.

Subclause (6) clarifies that clause 93 does not provide for a statutory right of compensation other than under this clause.

Subclause (7) defines *loss* for this clause as including costs and damage.

Division 3 Offence to obstruct authorised officers

Clause 96 provides it is an offence for obstructing an authorised officer, or a person helping an authorised officer, in exercising a power without a reasonable excuse. A maximum penalty of 40 penalty units applies for contravention.

If a person has obstructed an authorised officer or a person assisting them, and the authorised officer decides to proceed with exercising the power, they must warn the person of this offence and that their conduct is considered an obstruction.

Subclause (3) defines the meaning of *obstruct* for this section to include hinder, resist, attempt to obstruct and threaten to obstruct.

Division 4 Immunity

Clause 97 provides that if an individual produces information to an authorised officer under clause 86 or 91 that tends to incriminate the individual or expose them to a penalty, the information or evidence thereby derived is not admissible as evidence in a proceeding against the individual. This evidential immunity would not apply if the information the individual produces is related to a proceeding about the false or misleading nature of the information.

This ensures an appropriate balance between the rights of individuals to not be obliged to incriminate themselves with the purposes of the Act with ensuring the Commission is able to obtain fulsome information from a person which may be critical to an investigation into compliance with the Act.

Chapter 7 Review of decisions

Clause 98 prescribes the decisions of the Commission that are *reviewable decisions* for this Act, consistent with natural justice principles for persons or entities affected by a decision of the Commission.

Clause 99 provides a person or entity who receives an information notice (defined under Schedule 3) for a reviewable decision may apply for an internal review of the decision. The application must be in the approved form and made within 28 days after the information notice is given, or within an extended period if given by the Commission. An application for internal review does not stay the operation of the reviewable decision.

Clause 100 provides that, after receiving an application for internal review, the Commission must: review the decision and make a decision (an *internal review decision*) to either confirm, revoke or vary the decision; and give the applicant written notice of the internal review decision.

Subclause (2) provides that if the internal review decision by the Commission is not the decision the applicant sought, then the Commission must give the applicant a QCAT information notice that complies with section 157(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

Subclause (3) clarifies that the Commission is taken to have affirmed the decision that has been internally reviewed if the Commission does not give a QCAT information notice to the applicant and has not asked the applicant for further information within 28 days after receiving their application.

Subclause (4) specifies that where the Commission does ask the applicant for further information, but does not give the applicant written notice for the internal review decision 28

days after receiving the further information, the Commission is taken to have confirmed the decision.

Subclause (5) clarifies that an application for internal review must not be dealt with by the person who made the reviewable decision or a person in a less senior office than the person who made the reviewable decision.

Clause 101 provides that a person or entity that is given a QCAT information notice following the outcome of an internal review may apply for a review of the decision (external review) as provided for under the QCAT Act.

Chapter 8 General

Part 1 Offences

Clause 102 establishes an offence for a person to give an official information that the person knows is false or misleading in a material particular, with a maximum penalty of 100 penalty units. It is irrelevant whether the information was given in response to a specific power under the Act.

Subclause (3) clarifies that it is not an offence if a person gives information in a document to an official and: tells the official how the document is false or misleading to the best of their ability; and gives the correct information, where they have or can reasonably obtain the correct information.

Subclause (4) defines an official as a staff member of the Commission, the principal commissioner or a commissioner, or an authorised officer.

Clause 103 establishes an offence to conceal, destroy, mutilate or alter – or send, cause to be sent or conspire with someone else to send out of the state – a relevant document. A maximum penalty of 100 penalty units applies for contravention of the provision. The definition of *relevant document* for this clause is defined under subclause (1).

Subclause (3) provides a defence to a prosecution under subsection (2) for the defendant to prove that they did not act with intent to defeat the purposes of chapter 2 or 3, or to delay or obstruct an investigation under chapter 3 or 6.

Part 2 Reporting

Clause 104 enables the Commission to prepare a report about a matter relevant to the performance of the Commission's functions under this Act, and the procedures for preparing and tabling a report.

The Commission may give the report to the Minister, with a recommendation as to whether it should be tabled in the Legislative Assembly, as soon as practicable after preparing the report. Where the Commission does not recommend the report be tabled, the Commission must give reasons for this recommendation.

Subclause (2) prescribes the matters to be considered by the Minister in deciding whether to table the report in the Legislative Assembly, including where the report includes confidential

information, information that may prejudice an investigation or prosecution of an offence, or anything else relevant to considering whether tabling the report is in the public interest. It is not intended that where a report contains confidential information that the information be published in contravention of clause 58.

Similar to its existing ability to publish special reports under section 29K of the FCC Act, where the Commission decides to prepare a report under this section, it is intended that the report should only be publicly released if the Minister is satisfied that it is in the public interest to do so. The Commission must not publish a report prepared under this clause unless the Minister has first tabled the report in the Legislative Assembly.

Clause 105 provides that the Commission must not include adverse information about an entity in a report prepared under clauses 104 unless the Commission has given the entity the subject of the adverse information a copy of the information and a reasonable opportunity to make a submission to the Commission about it.

Subclause (2) clarifies that if an entity makes a submission, the Commission must have regard to the submission prior to finalising the report and must not include the adverse information in the report unless the entity's submission (or a summary of the entity's submission) is also included in the report.

Subclause (3) further states that if the Commission also proposes to recommend that a particular entity take particular action within a report, the Commission must consult with the entity and any other entities likely to be affected by the recommendation before finalising the report.

This provision supports natural justice principles by ensuring that an entity identifiable from the report must be provided with an opportunity to respond to any proposed adverse information.

Part 3 Proceedings

Clause 106 provides evidentiary aids for proceedings by clarifying that a certificate signed by a commissioner that states any of the prescribed matters is evidence of the matter.

Part 4 Miscellaneous

Clause 107 provides for delegations of functions or powers of the Commission or the head of a reporting entity to prescribed persons under the Act.

Subclause (1) provides that the Commission may delegate its functions and powers under the Act to an appropriately qualified staff member of the Commission.

Subclause (2) provides the head of a reporting entity may delegate the functions under chapter 3 regarding the RCS to an appropriately qualified person. This ability to delegate may be useful for large, multi-site entities or to enable the entity to engage an external resource to undertake a particular function, such as an investigation.

Clause 108 provides that the Commission may make guidelines to assist entities about matters relating to the operation with this Act or the Commission's functions. This is intended to enable

the Commission to meet its functions under chapter 2 and 3 respectively, in providing guidance material for child safe entities, reporting entities, sector regulators or the community regarding the CSS and Universal Principle, or RCS obligations.

Subclause (2) provides that the Commission may make guidelines about the implementation of, and compliance with, the CSS and Universal Principle.

This reflects the function of the Commission to promote continuous improvement and best practice approaches to implementation of the CSS and Universal Principle, including with appropriate sector-specific guidelines to assist child safe entities in implementing the CSS and Universal Principle in a way that reflects the unique characteristics of their organisation. These guidelines should also be developed in consultation with sector regulators as part of the functions of the Commission to collaborate with sector regulators under clause 13, to ensure guidelines reflect the unique service delivery environments of sectors with child safe entities.

With regards to the Universal Principle, any guidance developed to support child safe entities with implementation and compliance is intended to be led by Aboriginal and Torres Strait Islander peoples both within and external to the Commission.

Subclause (3) provides that the Commission must publish any guidelines on its website to enable public access.

Clause 109 provides that the Minister must review the effectiveness of the Act as soon as practicable from 1 July 2030 (three years after full implementation of the Act), with a report to be tabled in the Legislative Assembly providing the results of the review once completed. The legislative review provides the opportunity for an evaluation of the Act, including whether it is appropriately achieving its purposes and objectives, whether any issues have been identified through implementation, and whether it provides sufficient clarity to entities regarding obligations and scope.

Clause 110 provides a general head of power for the Governor-in-Council to make regulations under the Act.

Chapter 9 Transitional provisions

Clause 111 provides that a person who employs someone else in regulated employment, or a person that carries on a regulated business, within the meaning of the WWC Act, is not required to develop and implement a written strategy (RMS) about the person's employees or regulated business under chapter 7, part 3 of the WWC Act once the person becomes a child safe entity under this Act.

These RMS requirements under the WWC Act no longer apply to the person once the child safe entity is required to implement and comply with clause 11.

Clause 112 determines how conduct engaged in before the commencement of the RCS is to be managed. Generally, the Act, including chapter 3 does not apply to alleged conduct or a conviction that is engaged in before the commencement of the RCS. However, it will apply if (after the commencement of the RCS) a new notification is made, regarding a reportable allegation or conviction that may involve reportable conduct that occurred prior to the start

date, about a worker who is performing work for the reporting entity when the allegation or notification is made.

Subclause (5) defines start date to mean the commencement date for that reporting entity, depending on when it comes within scope of obligations under the RCS under clause 2 and Schedule 2. Further, a reporting entity may voluntarily comply with chapter 3 in relation to conduct engaged in by a worker before the commencement.

Chapter 10 Legislation amended

Part 1 Amendment of this Act

Clause 113 clarifies that this part amends the Act.

Clause 114 amends the long title of the Act.

Part 2 Amendment of Evidence Act 1977

Clause 115 provides that this part amends the Evidence Act.

Clause 116 amends section 21AZB of the Evidence Act to authorise a commissioner to possess or deal with a recording, as defined under section 21AY of the Evidence Act, for the purpose for which it was requested under clause 52(1)(b)(i) of this Bill.

Clause 117 amends section 93AA of the Evidence Act to enable a commissioner to possess or deal with a criminal statement or transcript under section 93A of the Evidence Act, to the extent necessary for a purpose for which the statement or transcript was requested under section 52(1)(b)(i) of this Bill.

Clause 118 amends section 103Q of the Evidence Act to enable a commissioner to possess or deal with a recorded statement or transcript of a recorded statement where necessary for a purpose for which the statement or transcript was requested under section 52(1)(b)(i) of this Bill.

Part 3 Amendment of Family and Child Commission Act 2014

Clause 119 clarifies this part amends the FCC Act.

Clause 120 amends section 9 of the FCC Act to provide that the Commission has any other functions conferred to it under this Act.

The provision also clarifies that the Commission must avoid unnecessary duplication of its functions under the FCC Act and this Act with the Child Death Review Board's performance under part 3A of the FCC Act.

Clause 121 amends section 18 of the FCC Act to clarify the functions of a commissioner of the Commission are to ensure the Commission performs its functions under the FCC Act and this Act effectively and efficiently.

Clause 122 amends section 40 of the FCC Act to provide that the Commission is to include in its annual report for each financial year matters relating to this Act. Such matters include the performance of the Commission's functions under chapters 2 and 3; and trends in entities' compliance with, or outcomes of investigations carried out under, chapters 2 and 3 respectively.

The Commission may also include information, opinion and recommendations about any matter relating to the Commission's functions under this Act and the FCC Act in its annual report.

Part 4 Amendment of Working with Children (Risk Management and Screening) Act 2000

Clause 123 clarifies this part amends the WWC Act.

Clause 124 amends the long title of the WWC Act to reflect the repeal of RMS requirements.

Clause 125 amends the short title of the WWC Act to refer to the "*Working with Children Check Act 2000*". This is intended to reflect the repeal of RMS requirements under the Bill under clause 127.

Clause 126 amends section 5 to repeal reference to RMS within the object of the WWC Act.

Clause 127 omits chapter 7, part 3 to repeal RMS requirements from the WWC Act. This is intended to reflect the transitional provision that entities that are subject to CSS obligations under the Bill will no longer be required to implement RMS.

Clause 128 amends the WWC Act to insert new section 343A to provide that when the chief executive (working with children) issues a negative notice to a person, or cancels a negative notice issued to a person, and the chief executive is aware that the person is the subject of a finding of reportable conduct under chapter 3 of this Act, the chief executive must provide written notice of the issuing or cancellation of a negative notice for the person to the Commission.

This supports the Commission in performing its functions in identifying trends in compliance with chapter 3, including identifying trends in outcomes of reportable conduct findings for a person's WWCC status where known.

Clause 129 inserts a transitional provision to clarify that a proceeding for an offence against former sections 171 or 172 of the WWC Act may still be continued or commenced against a person after chapter 7, part 3 is repealed.

Part 5 Other amendments

Clause 130 provides that references to "*Working with Children (Risk Management and Screening) Act 2000"* under each provision of legislation mentioned under schedule 4, part 1 will be replaced with new references to "*Working with Children Check Act 2000"* in response to the amended short title of that Act under clause 125.

Similar amendments are made to references to "*Working with Children Act*" in legislation listed under schedule 4, part 2, which are replaced with references to "*Working with Children Check Act 2000*".

Clause 131 provides schedule 5 amends the legislation it mentions.

Schedule 1 Child safe entities

Schedule 1 sets out a list of child safe entities intended to be subject to CSS obligations (clause 11), as provided under section 10 of the Act.

Schedule 2 Reporting entities

Schedule 2 sets out the scope of reporting entities, as provided under section 29(b)(i) of the Act.

Schedule 3 Dictionary

Schedule 3 provides the dictionary for certain terms used in the Act.

Schedule 4 Consequential amendments

Part 1 References to Working with Children (Risk Management and Screening) Act 2000

Part 1 amends the legislation mentioned to refer to the '*Working with Children Check Act 2000'* in line with clause 130.

Part 2 References to Working with Children Act

Part 2 amends the legislation mentioned to refer to the '*Working with Children Check Act 2000'* in line with clause 130.

Schedule 5 Other amendments

Schedule 5 omits references to "*Working with Children Act*" under the legislation listed in line with clause 131.