

# **Commission for Children and Young People and Child Guardian Amendment Bill 2004**

## **Explanatory notes for Amendments to be moved during consideration in detail by The Honourable Peter Beattie MP**

### **Title of the Bill**

Commission for Children and Young People and Child Guardian Amendment Bill 2004

### **Objectives of the Amendments**

It is proposed to make a number of minor amendments to the Commission for Children and Young People and Child Guardian Amendment Bill 2004 (Bill). The amendments will clarify the operation of the blue card system.

### **Consultation**

The following agencies were consulted on the amendments:

- Commission for Children and Young People and Child Guardian;
- Department of Justice and Attorney-General;
- Department of Education and the Arts;
- Queensland Health; and
- Queensland Police Service

## **Notes on Provisions**

Clause 1 amends *Clause 15* of the Bill by amending section 102(3)(b) to clarify the instances in which the Commissioner for Children and Young People and Child Guardian (Commissioner) must issue a positive notice.

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The clause redrafts the subsection and directs the Commissioner regarding charges, which were inadvertently omitted from the Bill.

Section 102(3)(b) now provides that the Commissioner must issue a positive notice to a person if the Commissioner is not aware of a conviction for any offence but is aware that there is one or more of the following about the person (unless under section 102(4) it is an exceptional case in which it would not be in the best interests of children to issue a positive notice) –

- i investigative information (defined under section 121A of the Bill);
- ii disciplinary information (defined in the dictionary in amended Schedule 4 of the Bill);
- iii a charge for an offence other than an excluding offence (defined under section 99E of the Bill); or
- iv a charge for an excluding offence that has been dealt with other than by a conviction – other sections of the Bill direct the Commissioner regarding convictions for excluding offences.

The clause also inserts a note for amended section 102(3)(b)(iv) directing the reader to sections 119C and 123(3B) of the Bill in relation to charges for excluding offences pending finalisation.

Clause 2 amends *Clause 15* of the Bill by rewording section 102(6)(b) to clarify the meaning of the subsection. Section 102(6)(b) now states that the Commissioner must issue a negative notice to a person (unless under section 102(7) it is an exceptional case in which it would not harm the best interests of children to issue a positive notice), if the Commissioner is aware of a conviction of the person for a serious offence, other than an excluding offence dealt with as mentioned in section 102(6)(a). Section 102(6)(a) directs the Commissioner to issue a negative notice to a person if the person is convicted of an excluding offence for which the sentencing court ordered a custodial sentence or made a disqualification order banning the person from ever holding or applying for a positive notice (blue card).

Clause 3 amends *Clause 32* of the Bill by amending section 119C(2)(c) to delete references to cancellation of a suspension under section 119D, as a suspension may also be cancelled by the Commissioner under sections 119A and 119B. Amended section 119C(2)(c) now simply requires the Commissioner to advise the person how long the suspension will continue, which will necessitate an explanation of the process for applying to have the suspension cancelled.

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Clause 4 amends *Clause 32* of the Bill by amending section 119C(3) to delete references to cancellation of a suspension under section 119D, as a suspension may also be cancelled by the Commissioner under sections 119A and 119B.

Clause 5 amends *Clause 32* of the Bill by inserting new subsection (9) into section 119C, which provides that despite being suspended, a person's blue card remains current even if it would otherwise expire during the suspension period (blue cards remain valid for two years from the date of issue). This is a mechanical section to enable the Commissioner to formally cancel the blue card and substitute a negative notice, even after the card's expiry date.

Clause 6 amends *Clause 32* of the Bill by replacing subsections (1), (2), and (3) of section 119D and inserting new subsection (3A), to clarify the steps the Commissioner must take regarding a person whose positive notice was suspended because of a charge for an excluding offence, which has now been finalised other than by a conviction for an excluding offence (in these circumstances sections 119A or 119B applies).

Amended section 119D(1) provides that the section applies to a suspended blue card.

Amended section 119D(2), provides that a suspension is only cancelled if the suspended blue card is cancelled under sections 119A and 119B because the person was convicted of an excluding offence, or if the Commissioner cancels the blue card and issues a further positive notice or a negative notice.

Amended section 119D(3) directs the Commissioner to issue either a further positive notice or a negative notice depending on the outcome of the charge of the excluding offence and what is appropriate in the best interests of children. That is, if the person is not convicted or is convicted of an offence other than a serious offence, the Commissioner must issue a positive notice unless it is an exceptional case in which it would not be in the best interests of children to do so. If satisfied it is an exceptional case, the Commissioner must, under section 119D(3A)(a), issue a negative notice.

However, if the person is convicted of a serious offence, the Commissioner must issue a negative notice unless it is an exceptional case in which it would not harm the best interests of children to issue a positive notice. If satisfied it is an exceptional case, the Commissioner must, under section 119D(3A)(b), issue a further positive notice.

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Clause 7 amends *Clause 35* of the Bill by amending section 122(2A)(e) to include reference to the status of a prescribed notice and to reflect the new ability of the Commissioner to suspend a blue card and for a sentencing court to make a lifetime disqualification order preventing a person from ever holding or applying for a blue card. This amendment permits the Commissioner, when obtaining information from the Police Commissioner about a blue card application, to give details not only of the status of the application or the applicant, that is, if the person holds a blue card, has applied for a blue card, has been issued with a negative notice, has applied to have a negative notice or suspension cancelled, but now also whether a disqualification order has been made against the person and the status of the prescribed notice, that is, if the positive notice has been suspended or cancelled.

Clause 8 amends *Clause 35* of the Bill by inserting a new subsection (11) into section 122, which was inadvertently omitted from the Bill. New section 122(11) relates to sections 122(9) and (10), which limit the access, disclosure and use of information given by the Commissioner to the Police Commissioner for the purposes of obtaining police information about an applicant for a blue card. Section 122(11) provides that if the Police Commissioner obtained the information prior to the Commissioner giving it to the Police Commissioner, sections 122(9) and (10) do not apply. That is, notwithstanding sections 122(9) and (10), the Police Commissioner is permitted to access, disclose, or use the information without being subject to these limitations, if the Police Commissioner had the information before the Commissioner's request was made.

Clause 9 amends *Clause 37* of the Bill by omitting the reference to an excluding offence in section 122B(4)(b). Section 122B describes the notice which the Commissioner must give an employer when undertaking further employment screening of an employee (who holds a blue card), because of information subsequently received by the Commissioner. The reference to excluding offences is deleted from section 122B because section 119C applies if a current blue card holder is charged with an excluding offence. Section 119C stipulates the form of the notice about the suspension which the Commissioner must send to the card holder, the employer, and other relevant persons.

Clause 10 amends *Clause 41* of the Bill by amending section 126C(2) to explain the meaning of a disqualification order for the purposes of the blue card. A disqualification order is an order a sentencing court may make about a person convicted of an excluding offence but not sentenced to a

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period of imprisonment, which states that the person may never hold or apply for a blue card, or apply for a prescribed notice.

Clause 11 amends the Schedule of Acts amended under *Clause 53* specifically, the *Nursing Act 1992*. Section 139A(1)(d) is amended to clarify that the Queensland Nursing Council may give relevant disciplinary information to the Commissioner regarding the cancellation under section 70(1)(c) or suspension under section 70(2), of a relevant person's registration or enrolment, because of a decision made under another jurisdiction.