

Queensland



COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000

**Reprinted as in force on 27 January 2004
(includes commenced amendments up to 2003 Act No. 88)**

Reprint No. 2E

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

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YOUNG PEOPLE ACT 2000**

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COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000

[as amended by all amendments that commenced on or before 27 January 2004]

An Act to establish a Commission for Children and Young People to promote and protect the rights, interests and wellbeing of children in Queensland

PART 1—PRELIMINARY

Division 1—Introduction

1 Short title

This Act may be cited as the *Commission for Children and Young People Act 2000*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Dictionary

The dictionary in schedule 4 defines particular words used in this Act.

4 Act binds all persons

(1) This Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and all the other States.

(2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

Division 2—Object, underlying principles and scope of Act**5 Object of Act**

The object of this Act is to establish the Commission for Children and Young People to promote and protect the rights, interests and wellbeing of children in Queensland.

6 Principles underlying this Act

(1) The following principles underlie this Act—

- (a) every child is a valued member of society;
- (b) in decisions involving a child—
 - (i) the best interests of the child are the paramount concern; and
 - (ii) the child's views and wishes should be taken into account in a way that has regard to the child's age and maturity;
- (c) every child is entitled—
 - (i) to be treated in a way that respects the child's dignity and privacy; and
 - (ii) to be cared for in a way that protects the child from harm and promotes the child's wellbeing; and
 - (iii) to express the child's concerns and grievances and to have them dealt with in a way that is fair and timely and promotes the child's participation; and
 - (iv) to receive information and help to enable the child to exercise the child's entitlements; and
 - (v) to have access to services necessary to meet the child's needs;
- (d) the family has the primary responsibility for the upbringing and development of its children, and should be supported in that role.

(2) This Act must be administered under the principles.

7 Scope of Act not limited to acts against persons who are children when commissioner involved, or to future acts

(1) This Act is not limited to—

- (a) matters about persons who are children at the time the commissioner is involved; or
- (b) matters that happen after this Act commences.

Example for paragraph (a)—

A 17 year old child makes a complaint about a matter. The commissioner may continue to perform the commissioner's functions and exercise the commissioner's powers in relation to the matter after the child turns 18.

(2) Without limiting subsection (1)—

- (a) the commissioner may perform the commissioner's functions or exercise the commissioner's powers in relation to something that happened when a person was a child, even if the person is no longer living; and
- (b) a person may complain about something that happened when another person was a child, even if the other person is no longer living.

Division 3—Service providers

8 Meaning of “service provider”

A “**service provider**” is a government service provider or private service provider.

9 Meaning of “government service provider”

A “**government service provider**” is a government entity or a local government.

10 Meaning of “private service provider”

A “**private service provider**” is an entity, other than a government service provider, that provides a service for which the funding is—

- (a) wholly or partly provided by the State or a local government; or
- (b) wholly or partly administered by the State.

11 Services provided by a service provider

A reference in this Act to a service provided by a service provider is a reference to a service provided—

- (a) directly by the service provider; or
- (b) under an arrangement that involves a written agreement to which the service provider is a party.

Example for paragraph (b)—

Services provided to children under foster care arrangements.

PART 2—COMMISSIONER AND COMMISSION FOR CHILDREN AND YOUNG PEOPLE

Division 1—Establishment

12 Establishment of commissioner and commission

- (1) There is to be a Commissioner for Children and Young People.
- (2) An office called the Commission for Children and Young People is established.
- (3) The commission consists of the commissioner and the staff of the commission.

13 Control of commission

The commissioner is to control the commission.

14 Application of other Acts

- (1) The commission is—

- (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
- (b) a statutory body under the *Financial Administration and Audit Act 1977*; and
- (c) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the commissioner's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Division 2—Functions and powers

15 Commissioner's functions

The commissioner has the following functions—

- (a) to receive, seek to resolve, monitor and investigate complaints about services provided to certain children by service providers;¹
- (b) to monitor and review the way in which service providers respond to complaints about services provided by them to certain children;
- (c) to advocate for children and, in advocating for children, to seek help from advocacy entities, service providers and other entities;
- (d) to promote the establishment by service providers of appropriate and accessible mechanisms for the participation of children in matters that may affect them;
- (e) to monitor and review laws, policies and practices that—
 - (i) relate to the delivery of services to children; or
 - (ii) otherwise impact on children;
- (f) to promote laws, policies and practices that uphold the principles underlying this Act;²

1 See section 32 (Subject matter of complaints) for the complaints that the commissioner deals with under this Act.

2 See section 6 (Principles underlying this Act).

- (g) to encourage, facilitate and support the development and coordination of advocacy and other support services for children;
- (h) to promote awareness among children about advocacy entities, complaints agencies and other relevant entities;
- (i) to promote an understanding of, and informed public discussion about, the rights, interests and wellbeing of children;
- (j) to conduct, coordinate, sponsor, participate in and promote research about the rights, interests and wellbeing of children;
- (k) to conduct independent inspections of visitable sites;
- (l) to screen persons employed, or proposed to be employed, in certain child-related employment;
- (m) to screen persons carrying on, or proposing to carry on, certain child-related businesses;
- (n) to report on, and make recommendations about, matters relating to the commissioner's functions;
- (o) other functions conferred on the commissioner under this or another Act.

16 Commissioner's powers

The commissioner has all necessary or convenient powers to perform the commissioner's functions.

17 Commissioner must act independently etc.

(1) In performing the commissioner's functions and exercising the commissioner's powers, the commissioner—

- (a) must act independently and in a way that promotes and protects the rights, interests and wellbeing of children; and
- (b) is not under the control or direction of the Minister.

(2) Subsection (1) is not limited by section 18, 19 or 20.

18 Way in which commissioner is to perform commissioner's functions

In performing the commissioner's functions, the commissioner must do the following—

- (a) consult with children in ways that promote their participation in decision making by the commissioner;
- (b) listen to, and seriously consider, the concerns, views and wishes of children;
- (c) adopt work practices that ensure the commission is accessible to children;
- (d) be sensitive to the ethnic or cultural identity and values of children including, in particular, Aboriginal and Torres Strait Islander children;
- (e) give priority to the needs and interests of children—
 - (i) who are in, or may enter, out-of-home care or detention in a detention centre; or
 - (ii) who have no appropriate person to act on their behalf; or
 - (iii) who are not able to protect their rights, interests or wellbeing; or
 - (iv) who are disadvantaged because of a disability, geographic isolation, homelessness or poverty;
- (f) consult with the following entities about the work of the commission—
 - (i) advocacy entities;
 - (ii) complaints agencies;
 - (iii) service providers;
 - (iv) other entities concerned with the rights, interests and wellbeing of children;
- (g) liaise with other entities about the resolution of complaints referred to the entities under this Act.

19 Commissioner may use expert advisers or cooperate with other entities

(1) In performing the commissioner's functions, the commissioner may—

- (a) obtain help from anyone whom the commissioner considers to be appropriately qualified to give the help; and
- (b) cooperate with any service provider or other entity providing services or dealing with issues affecting children.

(2) For subsection (1), the commissioner may enter into arrangements, with a Minister responsible for administering an Act under which a government service provider is established, to secure the service provider's cooperation.

Example—

The commissioner may enter into arrangements to secure a service provider's cooperation to obtain information about services or issues affecting children.

20 Referral of matters or offences to other persons

(1) This section applies to information received by the commissioner in performing the commissioner's functions.

(2) If, based on the information, the commissioner considers—

- (a) a child may be a child in need of protection under the *Child Protection Act 1999*, the commissioner must refer the matter to the chief executive (families) or the police commissioner; or
- (b) a child is, or may be, the victim of a criminal offence, the commissioner must—
 - (i) refer the matter to the police commissioner; and
 - (ii) if the matter may involve relevant criminal activity, refer the matter to the Crime and Misconduct Commission.

(3) To remove doubt, it is declared that the commissioner may refer a matter to other entities and may refer a matter to more than 1 entity.

Example—

The commissioner may refer a matter to the chief executive (families), the police commissioner and the Crime and Misconduct Commission.

(4) In this section—

“**criminal paedophilia**” see *Crime and Misconduct Act 2001*, schedule 2.

“**organised crime**” see *Crime and Misconduct Act 2001*, schedule 2.

“**relevant criminal activity**” means—

- (a) criminal paedophilia; or
- (b) organised crime; or
- (c) something that is—
 - (i) preparatory to the commission of criminal paedophilia or organised crime; or
 - (ii) undertaken to avoid detection of or prosecution for criminal paedophilia or organised crime.

Division 3—Appointment of commissioner and related provisions

21 Appointment of commissioner

(1) The commissioner is to be appointed by the Governor in Council.

(2) A person is eligible for appointment as the commissioner only if the person has—

- (a) knowledge, and experience working with children, in a relevant subject area; and
- (b) a demonstrated commitment to upholding the principles underlying this Act.³

(3) A person can not be appointed as the commissioner if the person—

- (a) does not consent to a criminal history check before the appointment; or
- (b) has a conviction for an indictable offence.

(4) For subsection (3), the *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6, 8 and 9, do not apply in relation to the appointment of the commissioner.⁴

³ See section 6 (Principles underlying this Act).

⁴ *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6 (Non-disclosure of convictions upon expiration of rehabilitation period), 8 (Lawful to deny certain convictions) and 9 (Duty to disregard certain convictions)

(5) The commissioner is to be appointed under this Act and not under the *Public Service Act 1996*.

(6) In this section—

“**relevant subject area**” means child protection, children’s rights, child welfare, community services, education, law, medicine, psychology or social work.

22 Duration of appointment

(1) Subject to sections 26 and 27, the commissioner holds office for the term stated in the instrument of appointment.

(2) The term stated in the instrument of appointment must not be longer than 5 years.

(3) However, a person appointed as commissioner is eligible for reappointment.

23 Terms and conditions of appointment

(1) The commissioner is to be paid the remuneration and allowances decided by the Governor in Council.

(2) The commissioner holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

24 Preservation of rights

(1) This section applies if a public service officer is appointed as the commissioner.

(2) The person retains and is entitled to all rights that have accrued to the person because of employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as commissioner were a continuation of service as a public service officer.

(3) At the end of the person’s term of office or on resignation—

- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as commissioner; and

- (b) the person's service as commissioner is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

25 Leave of absence

The Minister may grant leave of absence to the commissioner on the terms and conditions the Minister considers appropriate.

26 Resignation

The commissioner may resign by signed notice given to the Minister.

27 Termination of appointment

(1) The Governor in Council may end the commissioner's appointment if the commissioner—

- (a) becomes incapable of satisfactorily performing the commissioner's duties; or
- (b) is guilty of misconduct that could warrant dismissal from the public service if the commissioner were a public service officer; or
- (c) is absent from duty or from the State, without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in a year.

(2) The Governor in Council must end the commissioner's appointment if the commissioner—

- (a) is convicted of an indictable offence, whether in Queensland or elsewhere; or
- (b) engages in paid employment outside the duties of office without the Minister's approval.

28 Acting commissioner

(1) The Governor in Council may appoint a person to act as commissioner—

- (a) during a vacancy in the office; or

- (b) during any period, or during all periods, when the commissioner is absent from duty or from the State or can not, for another reason, perform the duties of the office.

(2) A person can not be appointed to act as commissioner unless the Governor in Council could appoint the person as commissioner under section 21.

Division 4—Commission’s staff

29 Commission’s staff

(1) The commission’s staff, other than community visitors,⁵ are to be employed under the *Public Service Act 1996*.

(2) The commissioner may arrange with the chief executive of a department, or with another unit of public administration, for the services of officers or employees of the department or other unit to be made available to the commission.

30 Criminal history screening of commission’s staff

Part 7 deals with criminal history screening of the commission’s staff.

31 Staff subject only to direction of commissioner

The commission’s staff are not subject to direction by any person, other than the commissioner, about—

- (a) the way in which the commissioner’s powers are to be exercised; and
- (b) the priority to be given to matters relating to the commissioner’s functions.

⁵ For the appointment of community visitors, see section 81 (Appointment).

PART 3—COMPLAINTS

Division 1—Making complaints

32 Subject matter of complaints

A complaint may be made, or dealt with under this part, only so far as the complaint relates to a service provided, or required to be provided, to a child—

- (a) while the child is the subject of an order under the *Child Protection Act 1999*; or
- (b) while the chief executive (families) is taking action under the *Child Protection Act 1999* to ensure the child's protection; or
- (c) while the child is subject to a conditional release order, supervised release order, intensive supervision order, community service order or probation order under the *Juvenile Justice Act 1992*; or
- (d) while the child is in detention under the *Juvenile Justice Act 1992* or the *Bail Act 1980*; or
- (e) in the course of a program or service established under the *Juvenile Justice Act 1992*, section 302.⁶

33 Basis of complaints and who may complain

(1) A complaint may be made to the commissioner—

- (a) that a service provider has not provided, or is not providing, a service to a child or children that the service provider is required to provide; or
- (b) that a service provider has provided, or is providing, a service to a child or children in a way that is contrary to the rights, interests or wellbeing of the child or children.

(2) The complaint may be made by—

- (a) a child to whom the complaint relates; or

⁶ *Juvenile Justice Act 1992*, section 302 (Programs and services for children)

- (b) any person (including a member of an advocacy entity or another child) acting for, and in the interests of, a child or children to whom the complaint relates.

34 Time limit for making complaint

A person may only make a complaint about a matter within 1 year after the person first becomes aware of the matter.

35 Identity of complainant

(1) A person making a complaint must give the commissioner—

- (a) the person's name and address; and
- (b) any other information relating to the person's identity that the commissioner reasonably requires.

(2) However, the commissioner may accept a complaint from a complainant who does not comply with subsection (1) if the commissioner reasonably believes it is in the public interest to do so.

36 Complaint may be made in writing or orally

(1) A person may make a complaint to the commissioner—

- (a) orally, whether in person or by telephone, radio or another form of communication; or
- (b) in writing, whether by giving a document or by sending the writing by facsimile, email or another form of communication.

(2) If an adult makes a complaint orally, the commissioner—

- (a) must ask the adult to make the complaint in writing within a reasonable period of time stated in the request; and
- (b) may assess the complaint, but must not otherwise deal with it until the written complaint is received.

(3) If a child makes a complaint orally, the commissioner—

- (a) may provide help to the child to make the complaint in writing; and
- (b) may assess or otherwise deal with the complaint, whether or not the child makes the complaint in writing.

37 Initiation of complaints in name of commissioner

(1) This section applies if—

- (a) the commissioner becomes aware of a matter the commissioner considers may be the subject of a complaint; and
- (b) a complaint about the matter has not been made under this division; and
- (c) the commissioner believes—
 - (i) the rights, interests or wellbeing of a child or children may be seriously affected if a complaint about the matter is not made, and it is not reasonable to require the child or children affected by the matter to complain to a complaints agency or another government entity; or
 - (ii) the matter raises issues of public interest; or
 - (iii) the matter raises a significant issue about a law, policy or practice underlying the relevant service, or about the need for a law, policy or practice to underlie the relevant service.

Examples for paragraph (b)—

- 1. No-one has contacted the commissioner about the matter.
- 2. An adult has made a complaint about the matter orally and has not confirmed it in writing.
- 3. A person has contacted the commissioner about the matter but can not make a complaint because it is more than 1 year since the person first became aware of the matter.

(2) The commissioner may make a complaint in the commissioner's name about the matter.

Division 2—Assessing complaints and deciding further action**38 Assessment of complaint**

(1) The commissioner must assess a complaint within the following times—

- (a) if the commissioner seeks more information under subsection (2) to assess the complaint—within 28 days after obtaining the information;
- (b) otherwise—within 28 days after receiving the complaint.

(2) If the commissioner needs more information to properly assess a complaint, the commissioner must seek the information as soon as practicable.

(3) This section does not apply to a complaint in the commissioner's name.

39 Action following assessment

(1) After assessing a complaint made under division 1, or making a complaint in the commissioner's name, the commissioner must take 1 or more of the following actions—

- (a) if the service provider to whom the complaint relates (the **“relevant provider”**) has a complaint handling mechanism that the commissioner considers would be appropriate for the complainant to use—refer the complaint to the relevant provider;
- (b) refer the complaint to a complaints agency, another government service provider responsible for regulating the relevant provider, or another appropriate entity;
- (c) seek to resolve the complaint in a way the commissioner considers appropriate;
- (d) investigate the complaint;
- (e) decide, under section 40, not to deal with the complaint.

(2) When deciding the action to take, the commissioner must consider whether the action should be taken urgently because the rights, interests or wellbeing of a child or children may be adversely affected if action is delayed.

(3) The commissioner's functions and powers relating to a complaint are not affected by the referral of the complaint to another entity.

(4) In this section—

“complaint” includes part of a complaint.

40 Grounds for not dealing with complaint

(1) The commissioner must not deal with a complaint, or continue dealing with a complaint, if the commissioner is satisfied of any of the following—

Commission for Children and Young People Act 2000

- (a) the complaint is frivolous or otherwise lacks substance;
 - (b) the subject matter of the complaint—
 - (i) has already been adequately dealt with by the commissioner; or
 - (ii) has already been adequately dealt with, or would be more appropriately dealt with, by the relevant provider, another government service provider responsible for regulating the relevant provider or another entity; or
 - (iii) is before, or has already been decided by, the Children Services Tribunal; or
 - (iv) is before an inquest or inquiry being held under the *Coroners Act 1958*; or
 - (v) is, or has been, otherwise the subject of a legal proceeding;
 - (c) any dealing, or further dealing, with the complaint is unnecessary or unjustifiable in all the circumstances of the case;
 - (d) the basis of the complaint is not related to the interests of the child or children on whose behalf the complaint is alleged to be made;
 - (e) the complainant has failed, without reasonable excuse, to satisfactorily cooperate with attempts made or arranged by the commissioner to resolve the complaint.
- (2) Also, the commissioner may decide not to deal with a complaint, or may stop dealing with a complaint, if—
- (a) the complainant does not comply with a request by the commissioner for information about the complaint or about the complainant's identity; or
 - (b) the complainant withdraws the complaint; or
 - (c) the commissioner considers it would be inappropriate to deal or continue to deal with the complaint, having regard to—
 - (i) the resources available to deal with the complaint; and
 - (ii) the relevance of the subject matter of the complaint to the rights, interests and wellbeing of children in Queensland at the time of the commissioner's consideration of the complaint and in the future.

(3) If the commissioner decides not to deal with a complaint, or continue dealing with a complaint, the commissioner must give written notice of the decision, and the reasons for the decision, to the complainant as soon as practicable.

(4) In this section—

“**complaint**” includes part of a complaint.

Division 3—Investigating complaints

Subdivision 1—Starting an investigation

41 Commissioner may investigate complaint

The commissioner may investigate a complaint after—

- (a) making it under section 37; or
- (b) assessing it under section 38.

42 Notice to service provider

(1) Before investigating a complaint, the commissioner must give a written notice to the service provider to which the complaint relates.

(2) The notice must state the following—

- (a) that a complaint has been made;
- (b) the particulars of the complaint;
- (c) that the commissioner intends to investigate the complaint;
- (d) that the service provider may make a written submission about the complaint within a reasonable time stated in the notice.

Subdivision 2—Access to child and information for investigation**43 Access to child**

(1) The commissioner may, by written notice, require a person to provide access to a child who is or whom the commissioner reasonably believes is—

- (a) a complainant; or
- (b) a child on whose behalf or in whose interests a complaint has been made; or
- (c) a witness to a matter being investigated by the commissioner.

(2) The notice must state the time and place at which access must be provided.

(3) A person to whom a notice is given under subsection (1) must comply with the notice, unless the person has a reasonable excuse for not complying.

Maximum penalty—50 penalty units.

(4) It is a reasonable excuse for a person not to comply with a notice that the child to whom access is required has indicated to the commissioner that he or she does not wish to communicate with the commissioner in relation to the complaint or matter being investigated.

(5) Subsection (1)(a) and (c) apply to a child whether or not the child may, under section 32, be the subject of a complaint.

44 Security directions about visiting detention centres etc.

(1) The chief executive of the department responsible for the administration of the *Juvenile Justice Act 1992* may give directions to a person, about the conduct of visits to a detention centre, that the chief executive considers necessary for maintaining the security of the centre.

(2) The police commissioner may give directions to a person, about the conduct of visits to a watch-house or lockup, that the police commissioner considers necessary for maintaining the security of the place.

(3) If a person visits a child in a detention centre, watch-house or lockup, under a notice given under section 43, the person must comply with any relevant directions given under subsection (1) or (2).

45 Notice for information

(1) The commissioner may give a notice (a “**notice for information**”) under this section to a person, other than a child, for the purpose of carrying out the commissioner’s functions for an investigation.

(2) The notice may require the person—

- (a) to give information by statutory declaration, by a stated reasonable time, about a stated matter; or
- (b) to attend before the commissioner at a stated reasonable time and place—
 - (i) to give information and answer questions about a stated matter; or
 - (ii) to produce a stated document or other thing; or
- (c) if it does not appear to the commissioner to be reasonable to require the person to attend before the commissioner in person, but it is reasonable to require the person to communicate with the commissioner by telephone conferencing, videoconferencing or another form of telecommunication—to communicate with the commissioner in a stated way and at a stated reasonable time about a stated matter.

(3) The person must comply with the notice, unless the person has a reasonable excuse for not complying.

Maximum penalty—50 penalty units.

(4) The notice need not state the matter of the investigation if the commissioner is satisfied that, in the particular circumstances of the investigation, stating the matter may prejudice the effectiveness of the investigation.

(5) The stating of a matter, or the failure to state a matter, in the notice does not prevent the commissioner from questioning the person about a matter relating to the investigation.

(6) If the person gives the commissioner a document or other thing, as required by the notice, the commissioner—

- (a) may inspect the document or other thing and make a reproduction of it; and
- (b) must return the document or other thing to the person as soon as practicable.

46 Identity of notifier under Child Protection Act 1999

(1) If the commissioner decides it is necessary for the commissioner to know the identity of a notifier mentioned in the *Child Protection Act 1999*, section 186, the commissioner must give written notice to the chief executive (families) requiring disclosure of the identity within a reasonable time stated in the notice.

(2) The chief executive (families) must comply with the notice.

Subdivision 3—Defences for failing to comply with notice for information**47 Application of sdiv 3**

This subdivision applies to a person who is given a notice for information by which the person is required to give information or produce a document or other thing.

48 Witness privilege

The person is not required to give the information, or produce the document or other thing, if the person objects on the ground of a privilege the person would be entitled to claim against giving the information, or producing the document or other thing, were the person a witness in a prosecution for an offence in the Supreme Court.

49 Notice for information given to law enforcement agency

(1) If the person is the police commissioner, the police commissioner need not comply with the notice to the extent the police commissioner considers that giving the information, or producing the document or other thing, would compromise the security of an investigation by the police service.

(2) If the person is the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*, it need not comply with the notice to the extent its chairperson considers that giving the information, or producing the document or other thing, would compromise the security of an investigation by it.

50 Claim of unjustifiable exercise of power

The person is not required to comply with the notice if a Supreme Court judge decides that, on balance, the purpose for which the information was required to be given, or the document or other thing was required to be produced, does not justify—

- (a) the adverse effect on the person's financial interests that would result from complying with the notice; or
- (b) the intrusion on the privacy of an individual by disclosure of private or confidential matters relating to the individual that would result from complying with the notice.

51 Supreme Court applications

(1) The person may apply to a Supreme Court judge for a decision about—

- (a) the validity of a claim of privilege under section 48; or
- (b) whether, under section 50, the person is not required to comply with the notice.

(2) The application must be made under the rules of court or, to the extent the rules do not provide, as directed by a Supreme Court judge.

(3) The application must be heard in closed court.

(4) The applicant has the burden of proof on the application.

(5) In deciding the application, a Supreme Court judge may make all orders necessary for the practical operation of this subdivision including, for example—

- (a) excusing the person from giving or producing, or ordering the person to give or produce, the whole or part of the information, document or other thing; or
- (b) amending the notice.

(6) Costs of the application are to be borne by the commissioner, unless the judge orders otherwise on the ground that a claim to withhold the information, document or other thing was frivolous, vexatious or lacking in substance.

Subdivision 4—Other offences**52 Commissioner may require oath or affirmation**

(1) This section applies if the commissioner gives a notice for information to a person, requiring the person to—

- (a) attend before the commissioner at a stated time and place; or
- (b) communicate with the commissioner in a stated way and at a stated time about a matter stated in the notice.

(2) The commissioner may require the person to either take an oath or make an affirmation and may administer the oath or affirmation.

(3) The person must comply with a requirement under subsection (2).

Maximum penalty—10 penalty units.

(4) If subsection (1)(b) applies, the commissioner may make arrangements appearing to the commissioner to be appropriate in the circumstances for administering the oath or affirmation to the person.

(5) Also, the commissioner may allow the person to give information by tendering a written statement, verified, if the commissioner directs, by oath or affirmation.

53 False or misleading statements

A person must not state anything to the commissioner, in response to a notice for information, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

54 False or misleading documents

(1) A person must not give to the commissioner, in response to a notice for information, a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the commissioner, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

55 Obstructing or improperly influencing investigation

A person must not obstruct or improperly influence the conduct of an investigation.

Maximum penalty—100 penalty units.

Subdivision 5—Matters at end of investigation

56 Ending an investigation in child's best interests

(1) The commissioner may stop investigating a complaint if the commissioner is satisfied it would not be in the best interests of a child or children to whom the complaint relates to continue the investigation.

(2) Subsection (1) does not limit the commissioner's power to deal with the complaint in another way.

57 Notice of investigation result

As soon as practicable after completing an investigation of a complaint, or ending an investigation of a complaint under section 56, the commissioner must give written notice of the commissioner's decision or proposed action in relation to the complaint to the complainant.

58 Report after investigation

(1) As soon as practicable after completing an investigation of a complaint, or ending an investigation of a complaint under section 56, the commissioner must prepare a written report and give a copy to—

- (a) the chief executive of the department that deals with the subject matter of the complaint; and
- (b) if the commissioner considers it appropriate—the Minister responsible for the subject matter of the complaint; and

- (c) if the report relates to a complaint about the delivery of services to children by a private service provider—the service provider.

(2) The report may recommend that a service provider (whether or not the service provider to which the complaint relates) take stated action within a stated time that is reasonable in the circumstances.

(3) If the report makes a recommendation mentioned in subsection (2) and the commissioner is not satisfied the service provider has taken the stated action within the stated time, the commissioner may give a copy of the report, and the commissioner's comments—

- (a) if the service provider is a government service provider—to the Minister responsible for the service provider or the Act under which the service provider is established; or
- (b) if the service provider is a private service provider—to—
 - (i) the Minister responsible for the government entity that provides funding to, or administers the funding for, the service provider; or
 - (ii) the local government that provides funding to the service provider.

59 No liability for defamation if report made in good faith

It is a lawful excuse for the publication of any defamatory statement made in a report that the publication is made in good faith and is, or purports to be, made for this Act.

Subdivision 6—Reports and tabling them

60 Application of sdiv 6

This subdivision applies only to reports prepared by the commissioner under this Act.

61 Commissioner may ask Minister to table report

(1) The commissioner may, by written notice, ask the Minister to table a report in the Legislative Assembly if—

- (a) at least 28 days before finalising the report, the commissioner—

- (i) gives a draft of the report to the Minister; and
- (ii) tells the Minister in writing that the commissioner intends to ask the Minister to table the report; and
- (b) in finalising the report, the commissioner—
 - (i) considers any written response from the Minister about the draft; and
 - (ii) to the extent practicable, carries out any further consultation that the Minister asks for; and
 - (iii) includes in the report any written comments from the Minister that the Minister asks be included; and
- (c) the report does not include any information identifying, or that is likely to lead to the identification of, a person as a complainant or a child who is, or has been, the subject of a complaint under this Act.

(2) The Minister must table the report within 14 sitting days of receiving the notice.

(3) To remove doubt, it is declared that the Minister may not require the commissioner to change the contents of the report before it is tabled, other than by including the Minister's comments.

62 Confidential reports

(1) This section applies if the commissioner asks the Minister to table a report under section 61.

(2) The commissioner may also give the Minister a second report about the same matter, containing information that the commissioner considers should not be publicly disclosed on the ground that—

- (a) disclosure of the information may not be in the best interests of a child involved in the matter; or
- (b) disclosure of the information may adversely affect the outcome of an inquiry or investigation by a complaints agency or the police service, or an investigatory body established under a law of the Commonwealth; or
- (c) the matter dealt with in the second report is before a court.

63 Response to adverse comment

(1) The commissioner must not include in a report any comments adverse to an entity identifiable from the report, unless the entity has been given a copy of the comments and given a reasonable opportunity to respond to them.

(2) If the entity gives the commissioner a written statement in response to the comments and asks that the statement be included in the report, the commissioner must include the statement in the report.

(3) However, if the report will be made public, the commissioner is not required by subsection (2) to include a statement so far as it contains information that the commissioner considers should not be publicly disclosed for a reason mentioned in section 62(2)(a) to (c).

PART 4—COMMUNITY VISITORS

Division 1—Preliminary

64 Purpose of pt 4

The purpose of this part is to provide for community visitors to promote and protect the rights, interests and wellbeing of children residing at the following places (“**visitable sites**”)—

- (a) residential facilities;
- (b) detention centres;
- (c) authorised mental health services under the *Mental Health Act 2000*.

Division 2—Visits to visitable sites

65 Commissioner must arrange regular and frequent visits

The commissioner must make arrangements for each visitable site to be visited by a community visitor regularly and frequently.

66 Requirement to visit or communicate if asked

(1) A child residing at a visitable site may—

- (a) ask the commissioner to arrange for a community visitor to visit the site to perform the functions of a community visitor; or
- (b) ask a staff member of the site to arrange for a community visitor to visit the site to perform the functions of a community visitor; or
- (c) inform a staff member of the site that the child wishes to communicate with a stated community visitor.

(2) If subsection (1)(b) applies, the staff member must tell the commissioner about the request as soon as practicable.

Maximum penalty—10 penalty units.

(3) If subsection (1)(c) applies, the staff member must take reasonable steps to inform the community visitor as soon as practicable.

Maximum penalty—10 penalty units.

(4) A community visitor must comply with a request to visit a site, or communicate with a child residing at a site, as soon as practicable after being informed of the request.

67 Report after each visit

(1) As soon as practicable after visiting a visitable site, a community visitor must prepare, and give to the commissioner, a report about the visit.

(2) So far as the commissioner considers appropriate, the commissioner may give a copy of the report, or information from the report, to any of the following entities—

- (a) a person in charge of the site;
- (b) a government service provider responsible for regulating the site;
- (c) the chief executive of an entity responsible for operating the site;
- (d) the chief executive of a department responsible for providing funding or services to the site;
- (e) the chief executive of a department responsible for providing services to children residing at the site;

- (f) a child who is a subject of the report and who asks for the copy or information.

(3) However, the commissioner must not give confidential information about a person (the “**relevant person**”) to an entity, other than the relevant person, under subsection (2) unless—

- (a) the relevant person authorises the commissioner to give the information; and
- (b) the relevant person is an adult when giving the authorisation.

Division 3—Functions and powers

Subdivision 1—Functions

68 Functions

(1) A community visitor has the following functions relating to children residing at visitable sites—

- (a) to develop trusting and supportive relationships with the children, so far as is possible;
- (b) to advocate on behalf of the children by listening to, giving voice to, and facilitating the resolution of, their concerns and grievances;
- (c) to seek information about, and facilitate access by the children to, support services appropriate to their needs provided by service providers;
- (d) to assess the adequacy of information given to the children about their rights;
- (e) to inspect the sites and assess their appropriateness for the accommodation of the children or the delivery of services to them, having regard to relevant State and Commonwealth laws, policies and standards;
- (f) to observe the treatment of the children, including the extent to which their needs are met by staff of the sites;
- (g) to assess the physical and emotional wellbeing of the children;
- (h) to assess the morale of the staff of the sites;

- (i) for detention centres—to assess whether the programs for the release of children subject to detention orders adequately and appropriately prepare them for release.

(2) A community visitor also has the function of giving advice and reports to the commissioner about anything relating to the visitor's functions and powers.

Subdivision 2—Power of entry to visitable sites

69 Power of entry

(1) A community visitor may enter a visitable site if—

- (a) a person in charge of the site consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant.

(2) For the purpose of asking a person in charge for consent to enter, a community visitor may, without the person's consent or a warrant—

- (a) enter land around the site to an extent that is reasonable to contact the person; or
- (b) enter part of the site the community visitor reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the person.

70 Consent to entry

(1) This section applies if a community visitor intends to ask a person in charge of a visitable site to consent to the community visitor entering the site under section 69(1)(a).

(2) Before asking for the consent, the community visitor must tell the person—

- (a) the purpose of the entry; and
- (b) that the person is not required to consent.

(3) If the consent is given, the community visitor may ask the person to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) that the person has been told—
 - (i) the purpose of the entry; and
 - (ii) that the person is not required to consent; and
- (b) the purpose of the entry; and
- (c) that the person gives the community visitor consent to enter the place and exercise powers under this division; and
- (d) the time and date the consent was given.

(5) If the person signs the acknowledgment, the community visitor must immediately give a copy to the person.

(6) A court must find that a person in charge of a visitable site did not consent to a community visitor entering the site under this division if—

- (a) an issue arises in a proceeding before the court whether a person in charge of the site consented to the entry under section 69(1)(a); and
- (b) an acknowledgment is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that a person in charge of the site consented to the entry.

71 Application for warrant

(1) A community visitor may apply to a magistrate for a warrant for a visitable site.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the community visitor gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

72 Issue of warrant

(1) The magistrate may issue a warrant only if the magistrate is satisfied the community visitor can not properly carry out the visitor's functions without gaining entry to the site.

(2) The warrant must state—

- (a) that a stated community visitor may, with necessary and reasonable help and force—
 - (i) enter the visitable site and any other place necessary for entry; and
 - (ii) exercise the community visitor's powers under this division; and
- (b) the hours of the day or night when the site may be entered; and
- (c) the date, within 14 days after the warrant's issue, the warrant ends.

73 Warrants—procedure before entry

(1) This section applies if a community visitor named in a warrant issued under this subdivision for a visitable site is intending to enter the site under the warrant.

(2) Before entering the site, the community visitor must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person in charge of the site by producing the community visitor's identity card or another document evidencing the community visitor's appointment;
- (b) give the person a copy of the warrant;
- (c) tell the person the community visitor is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the community visitor immediate entry to the place without using force.

Subdivision 3—Other powers**74 Related powers**

After entering a visitable site, a community visitor may—

- (a) inspect the site; or
- (b) inspect or copy a document held at the site that relates to a child residing at the site or the operations of the site.

75 Powers in relation to staff of sites

(1) A community visitor may, at any reasonable time, require a staff member of a visitable site to give the visitor reasonable help to—

- (a) obtain information about the site and its operation; or
- (b) have access to a child residing at the site; or
- (c) talk with a child residing at the site, out of the hearing of staff and management of the site and other persons at the site; or
- (d) exercise the visitor's powers under section 74.

(2) The staff member must comply with the requirement, unless the staff member has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) If the requirement is to give information or produce a document, it is a reasonable excuse for the staff member not to comply with the requirement that complying with the requirement might tend to incriminate the staff member.

(4) A staff member does not commit an offence against subsection (2) unless, when making the requirement, the visitor warns the staff member it is an offence to fail to comply with the requirement unless the staff member has a reasonable excuse.

76 Power to require documents to be produced

(1) A community visitor may require a staff member of a visitable site to produce for inspection, at a reasonable time and place nominated by the visitor, a document held at the site that relates to a child residing at the site or the operations of the site.

(2) The staff member must produce the document, unless the staff member has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) A staff member does not commit an offence against subsection (2) unless, when making the relevant requirement, the visitor warns the staff member it is an offence to fail to comply with the requirement unless the staff member has a reasonable excuse.

(4) The visitor may keep the document to copy it.

(5) If the visitor copies the document, the visitor may require the staff member responsible for keeping the document to certify the copy as a true copy of the document.

(6) The visitor must return the document to the staff member as soon as practicable after copying it.

(7) However, if a requirement is made of the staff member under subsection (5), the visitor may keep the document until the staff member complies with the requirement.

Subdivision 4—Exercise of powers

77 Child's views and wishes

(1) To the greatest extent practicable, a community visitor must seek, and take into account, the views and wishes of a child residing at a visitable site before—

- (a) asking a staff member of the site a question about the child; or
- (b) inspecting, taking extracts from, or making copies of, a document held at the site that relates to the child.

(2) The child's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

(3) The child's views and wishes should be taken into account in a way that has regard to the child's age and maturity.

78 Community visitor to respect privacy of children residing at a site

In exercising a power or performing a function in relation to a visitable site, a community visitor must act in a way that—

- (a) preserves, as far as practicable, the privacy of children residing at the site; and
- (b) respects the wishes of any of the children who does not wish to communicate with the visitor.

79 Commissioner's directions about the exercise of powers

A community visitor is subject to the commissioner's directions in the exercise of a power.

80 Security directions about visiting detention centres

(1) The chief executive of the department in which the *Juvenile Justice Act 1992* is administered may give directions to a community visitor, about the conduct of visits to a detention centre, that the chief executive considers necessary for maintaining the security of the centre.

(2) The community visitor must comply with the directions when visiting the centre.

Division 4—Appointment of community visitors

81 Appointment

(1) The commissioner may appoint community visitors.

(2) An appointment may be on a full-time, part-time or casual basis.

(3) A person is eligible for appointment as a community visitor only if the commissioner considers the person has—

- (a) the knowledge, experience and skills needed to perform a community visitor's functions; and
- (b) a demonstrated commitment to upholding the principles underlying this Act.⁷

(4) In appointing community visitors, the commissioner must take into account the desirability of the community visitors reflecting the social and cultural diversity of children in Queensland.

⁷ See section 6 (Principles underlying this Act).

(5) A person may not hold office as a community visitor while the person is—

- (a) a member of the police service; or
- (b) a public service employee employed in the department in which the *Child Protection Act 1999* is administered or a department whose primary responsibilities include health, disability services or correctional institutions; or
- (c) engaged in any capacity in relation to a correctional institution, other than as an official visitor under the *Corrective Services Act 1988*.

(6) A community visitor is a member of the commission's staff.

(7) A community visitor is appointed under this Act and not under the *Public Service Act 1996*.

82 Duration of appointment

(1) A community visitor—

- (a) holds office for the period, not more than 2 years, stated in the appointment; and
- (b) is eligible for reappointment; and
- (c) may resign at any time by giving a signed notice of resignation to the commissioner.

(2) The commissioner may terminate the appointment of a community visitor if the commissioner is satisfied the community visitor—

- (a) has become physically or mentally incapable of satisfactorily performing the duties of a community visitor; or
- (b) has performed the community visitor's duties carelessly, incompetently or inefficiently; or
- (c) is guilty of misconduct that could warrant dismissal from the public service if the community visitor were a public service officer; or
- (d) has been found guilty of an offence the commissioner reasonably considers makes the person inappropriate to perform the duties of a community visitor.

(3) The commissioner must terminate the appointment of a community visitor if the commissioner is satisfied the community visitor is a person who may not hold office as a community visitor under section 81(5).

83 Terms of appointment

(1) The commissioner must decide the remuneration and allowances payable to community visitors.

(2) A community visitor is entitled to be paid the remuneration and allowances decided by the commissioner.

(3) To the extent this Act does not state the terms on which a community visitor holds office, the community visitor holds office on the terms decided by the commissioner.

Division 5—Identity cards

84 Identity card

(1) The commissioner must give each community visitor an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the visitor; and
- (b) be signed by the visitor; and
- (c) identify the person as a visitor for this Act.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other Acts.

85 Failure to return identity card

A person who ceases to be a community visitor must return the person's identity card to the commissioner as soon as possible (but within 21 days) after the person ceases to be a community visitor, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

86 Production or display of identity card

A community visitor may exercise a power in relation to another person only if the visitor—

- (a) first produces his or her identity card for the person's inspection; or
- (b) has the visitor's identity card displayed so it is clearly visible to the other person.

*Division 6—Miscellaneous***87 Obstruction of visitor in exercise of powers**

A staff member of a visitable site must not obstruct a community visitor in the exercise of a power, unless the staff member has a reasonable excuse.

Maximum penalty—50 penalty units.

88 Privacy of correspondence between community visitor and residents

A staff member of a visitable site must not open, read, copy or remove any correspondence sent, or being sent, between a community visitor and a child residing at the site, unless the child asks the staff member to do so.

Maximum penalty—20 penalty units.

89 Annual report by commissioner

The commissioner must include in the commission's annual report for a financial year a report on the operations of community visitors during the year.

PART 5—ADVISORY COMMITTEES

90 Establishment

The commissioner may establish as many of the following committees as the commissioner considers appropriate—

- (a) expert advisory committees;
- (b) youth advisory committees;
- (c) other advisory committees.

91 Membership

(1) An advisory committee has the membership decided by the commissioner.

(2) The commissioner may appoint a person to an expert advisory committee only if the commissioner is satisfied the person has expertise, relevant to children, in the field of the arts, child protection, child psychology and development, disabilities, education, employment, health, law, sports or vocational education and training.

92 Functions

(1) An advisory committee's function is to help the commissioner effectively and efficiently perform the commissioner's functions by—

- (a) for an expert advisory committee—advising the commissioner on matters in relation to which the committee has expertise; or
- (b) for a youth advisory committee—advising the commissioner, from a youth perspective, on matters relevant to this Act; or
- (c) for another committee—advising the commissioner on matters referred to it by the commissioner.

(2) It is not an advisory committee's function to advise the commissioner on the day-to-day management of the commission.

93 Dissolution

The commissioner may dissolve an advisory committee at any time.

94 Other matters

The commissioner may decide matters about an advisory committee that are not provided for under this Act, including, for example, the way a committee must conduct meetings or report to the commissioner.

**PART 6—EMPLOYMENT SCREENING FOR
CHILD-RELATED EMPLOYMENT***Division 1—Preliminary***95 Purpose of pt 6**

The purpose of this part is to ensure that only suitable persons are employed in certain child-related employment or carry on certain child-related businesses.

96 Safety and wellbeing of children to be paramount consideration

Without limiting section 6,⁸ the paramount consideration in making a decision under this part is a child's entitlement to be cared for in a way that protects the child from harm and promotes the child's wellbeing.

97 Employment and businesses regulated by this part

(1) This part concerns—

- (a) employment of a type mentioned in schedule 1, part 1 (“**regulated employment**”); and

8 Section 6 (Principles underlying this Act)

- (b) the carrying on of a business of a type mentioned in schedule 1, part 2 (a “**regulated business**”).⁹

(2) This part does not apply to the unpaid employment of a child.

98 This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

This part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

99 What is employment

(1) For this part, a person is employing another person if the first person has an agreement with the other person for the other person to carry out work.

(2) It is immaterial for this section—

- (a) whether the agreement is written or unwritten; and
- (b) whether the work is carried out voluntarily or for financial reward; and
- (c) what a person’s motivation is for carrying out the work; and
- (d) the time for which the person is engaged to carry out the work.

Examples of ‘employment’—

1. A person is engaged by a school as a cleaner under a written contract of employment.
2. A person orally agrees with the manager of a club to coach a children’s sporting team during a season.
3. The manager of a counselling organisation agrees with an adult student that the student attend the organisation’s office each day during a semester and carry out various duties, on a voluntary basis, in order to obtain work experience.
4. A person is engaged by another person to provide religious instruction to children for 1 day.

⁹ For non-State schools, see also the *Education (Accreditation of Non-State Schools) Act 2001*, sections 15 (Application of Commission for Children and Young People Act 2000, pt 6) and 140 (Application of Commission for Children and Young People Act 2000, pt 6).

*Division 2—Issue of suitability notices***100 Application for notice—regulated employment**

(1) A person (the “**employer**”) who proposes to start employing, or continue employing, another person (the “**employee**”) in regulated employment, may apply to the commissioner for a suitability notice stating whether the employee is a suitable person for child-related employment.

(2) The application must be—

- (a) in the approved form; and
- (b) signed by, or on behalf of, the employer; and
- (c) signed by the employee; and
- (d) accompanied by the prescribed fee.

(3) The approved form must include provision for—

- (a) identifying information about the employee; and
- (b) certification by the employer that the employer has complied with subsection (4); and
- (c) the employee’s consent to employment screening under this part.

(4) Before making the application, the employer must sight the documents, relating to proof of the employee’s identity, prescribed under a regulation.

(5) On receiving the application, the commissioner may ask the employer or employee, orally or in writing, for further information that the commissioner reasonably needs to establish the employee’s identity.¹⁰

101 Application for notice—regulated business

(1) A person who proposes to carry on, or continue carrying on, a regulated business may apply to the commissioner for a suitability notice stating whether the person is a suitable person for child-related employment.

(2) The application must be—

10 See section 123 (Withdrawal of employee’s consent to employment screening) in relation to an employee failing to comply with a written request for further identifying information.

- (a) in the approved form; and
- (b) signed by the person; and
- (c) accompanied by the prescribed fee.

(3) The approved form must include provision for—

- (a) identifying information about the person; and
- (b) certification by a prescribed person that the prescribed person has sighted the documents, relating to proof of the person's identity, prescribed under a regulation.

(4) The person may withdraw the application at any time before it is decided.

(5) On receiving the application, the commissioner may ask the person, orally or in writing, for further information that the commissioner reasonably needs to establish the person's identity.

(6) The person is taken to have withdrawn the application if—

- (a) the commissioner gives the person a notice—
 - (i) asking the person to provide, within a reasonable stated time, stated information that the commissioner reasonably needs to establish the person's identity; and
 - (ii) warning the person that, if the person does not comply with the request, the person's application will be taken to have been withdrawn; and
- (b) the person does not comply with the request within the stated time; and
- (c) the commissioner can not establish with certainty the person's identity; and
- (d) the commissioner gives the person a notice stating that the person is taken to have withdrawn the application.

(7) In this section—

“prescribed person” means a justice, commissioner for declarations, lawyer or police officer.

102 Decision on application

(1) If an application for a suitability notice about a person is made under section 100 or 101, the commissioner must decide the application by issuing—

- (a) a suitability notice declaring the person to be a suitable person for child-related employment (a “**positive notice**”); or
- (b) a suitability notice declaring the person to be an unsuitable person for child-related employment (a “**negative notice**”).

(2) If the commissioner is not aware of any convictions or charges of the person for any offence or any teacher registration information about the person, the commissioner must issue a positive notice.

(3) If the commissioner is not aware of any convictions of the person for any offence but is aware of a charge of the person for an offence or any teacher registration information about the person, the commissioner must issue a positive notice unless the commissioner is satisfied it is an exceptional case in which it would not be in the best interests of children for the commissioner to issue a positive notice.

(4) If the commissioner is aware of a conviction of the person for a serious offence, the commissioner must issue a negative notice unless the commissioner is satisfied it is an exceptional case in which it would not harm the best interests of children for the commissioner to issue a positive notice.

(5) If the commissioner is aware of a conviction or charge of the person for an offence, the commissioner must decide the application having regard to the following matters relating to the commission, or alleged commission, of the offence by the person—

- (a) whether it is a conviction or a charge;
- (b) whether the offence is a serious offence;
- (c) when the offence was committed or is alleged to have been committed;
- (d) the nature of the offence and its relevance to child-related employment;
- (e) anything else the commissioner reasonably considers to be relevant to the assessment of the person.

(6) On deciding the application, the commission must issue the suitability notice to the person to whom it relates and, if the application is

made by the person's employer, must give a copy of the notice to the employer.

(7) A negative notice issued to the person must be accompanied by a notice stating—

- (a) the reasons for the commissioner's decision on the application; and
- (b) that, within 28 days after receiving the notice, the person may apply to the Children Services Tribunal to have the decision reviewed; and
- (c) how the person may apply for the review.

103 Commissioner to invite submissions from person about particular information

(1) If the commissioner proposes to decide the application by issuing a negative notice, the commissioner must give the person a written notice—

- (a) stating the following—
 - (i) information about the person's criminal history of which the commissioner is aware;
 - (ii) any teacher registration information about the person; and
- (b) inviting the person to give the commissioner, within a stated time, a submission (oral or written) about the information or about the person's suitability for child-related employment.

(2) The stated time must be reasonable and, in any case, at least 7 days after the commissioner gives the notice to the person.

(3) Before deciding the application, the commissioner must consider any submission received from the person within the stated time.

104 Currency of notice

(1) A negative notice remains current until it is cancelled under division 4.

(2) A positive notice remains current for 2 years after it is issued, unless it is earlier cancelled under division 4.

Division 3—Obligations and offences relating to suitability notices***Subdivision 1—Regulated employment*****105 Continuing employment of certain regular employees**

(1) This section applies if—

- (a) a person (the “**employee**”) is employed in regulated employment under an agreement with another person (the “**employer**”); and
- (b) in the course of the employment, or in the course of regulated employment under any other previous agreements with the employer made within the previous year, the employee has carried out work—
 - (i) at least once a week over the course of 1 month; or
 - (ii) at least once a fortnight over the course of 2 months; or
 - (iii) at least once a month over the course of 6 months; and
- (c) the employee does not have a current positive notice.

(2) The employer must not continue to employ the employee in regulated employment unless the employer has applied for a suitability notice, or further suitability notice, about the employee.

Maximum penalty—10 penalty units.

106 Starting employment of certain regular employees

(1) This section applies if—

- (a) a person (the “**employee**”) is not employed in regulated employment but has previously been employed in regulated employment under 1 or more agreements with another person (the “**employer**”); and
- (b) in the course of the regulated employment under the previous agreement or agreements, the employee has carried out work—
 - (i) at least once a week over the course of 1 month; or
 - (ii) at least once a fortnight over the course of 2 months; or
 - (iii) at least once a month over the course of 6 months; and

- (c) it is less than 1 year since the employee last carried out the regulated employment mentioned in paragraph (b); and
- (d) the employee does not have a current positive notice.

(2) The employer must not employ the employee in regulated employment unless the employer has applied for a suitability notice about the employee.

Maximum penalty—10 penalty units.

107 Prohibited employment

(1) This section applies if a person (the “**employee**”) does not have a current positive notice.

(2) A person (the “**employer**”) must not employ, or continue to employ, the employee in regulated employment if—

- (a) the employer has applied for a suitability notice about the employee and has been notified by the commissioner that the employee has withdrawn the employee’s consent to employment screening under this part; or
- (b) the employer is aware that the employee has a conviction for a serious offence; or
- (c) the employer is aware that a negative notice has been issued to the employee and is current.

Maximum penalty—

- (a) for paragraph (a)—10 penalty units; or
- (b) for paragraphs (b) and (c)—100 penalty units.

108 Unsuitable person not to apply for, or start or continue in, child-related employment

A person must not apply for, or start or continue in, regulated employment if a negative notice has been issued to the person and is current.

Maximum penalty—

- (a) if the person has a conviction for a serious offence involving a child—500 penalty units or 5 years imprisonment; or

- (b) if the person has a conviction for a serious offence that did not involve a child—200 penalty units or 2 years imprisonment; or
- (c) otherwise—100 penalty units or 1 year's imprisonment.

Subdivision 2—Regulated business

109 Carrying on regulated business

A person must not carry on a regulated business unless the person has a current positive notice.

Maximum penalty—

- (a) if the person has a conviction for a serious offence involving a child—500 penalty units or 5 years imprisonment; or
- (b) if the person has a conviction for a serious offence that did not involve a child—200 penalty units or 2 years imprisonment; or
- (c) if paragraphs (a) and (b) do not apply and a negative notice has been issued to the person and the notice is current—100 penalty units or 1 year's imprisonment; or
- (d) otherwise—10 penalty units.

Subdivision 3—Changes in criminal history

110 Acquiring a criminal history

For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

111 Effect of conviction for serious offence

(1) This section applies to a person with a current positive notice if the person is convicted of a serious offence.

(2) Until the notice is cancelled and a further positive notice is issued to the person, the following applies—

- (a) if the person is employed in regulated employment, the person must not carry out any work in the course of the employment;

- (b) if the person is not in regulated employment, the person must not start regulated employment;
- (c) the person must not start or continue carrying out a regulated business.

Maximum penalty—

- (a) if the conviction is for a serious offence involving a child—500 penalty units or 5 years imprisonment; or
- (b) otherwise—200 penalty units or 2 years imprisonment.

112 Change in criminal history of employee

(1) This section applies to a person employed in regulated employment if there is a change in the person's criminal history.

(2) The person must immediately disclose to the person's employer that there has been a change in the person's criminal history.

Maximum penalty—100 penalty units.

(3) On receiving the disclosure, the employer must not continue to employ the person in regulated employment without applying for a suitability notice, or further suitability notice, about the person.

Maximum penalty—100 penalty units.

(4) To remove doubt, it is declared that—

- (a) it is not a requirement of subsection (2) that the person give the person's employer any information about the change other than that a change has happened; and
- (b) it is not a requirement of subsection (3) that the employer stop employing the person on receiving the disclosure.

113 Change in criminal history of person carrying on regulated business

(1) This section applies to a person carrying on a regulated business if there is a change in the person's criminal history.

(2) The person must immediately apply for a further suitability notice.

Maximum penalty—100 penalty units.

114 Change in criminal history of other persons

(1) This section applies if—

- (a) a person has a current positive notice; and
- (b) there has been a change in the person's criminal history since the notice was issued; and
- (c) the person is not employed in regulated employment or carrying on a regulated business.

(2) Before starting regulated employment, the person must notify the person's proposed employer that there has been a change in the person's criminal history since the person's current suitability notice was issued.

Maximum penalty—100 penalty units.

(3) On receiving the disclosure, the employer must not employ the person in regulated employment without applying for a further suitability notice about the person.

Maximum penalty—100 penalty units.

(4) Before starting to carry on a regulated business, the person must apply for a further suitability notice.

Maximum penalty—100 penalty units.

Subdivision 4—General**115 False or misleading disclosure**

A person must not—

- (a) give another person who is proposing to employ the person in regulated employment information for this part that is false or misleading in a material particular; or
- (b) state anything to the commissioner for this part that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

116 False or misleading documents

(1) A person must not give the commissioner a document for this part containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the commissioner, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

117 Return of notice to commissioner

(1) This section applies to a person with a current positive notice if—

- (a) the person is convicted of a serious offence; or
- (b) the commissioner cancels the notice and issues a negative notice to the person.

(2) The person must immediately return the positive notice to the commissioner, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Division 4—Cancellation and replacement of suitability notices**118 Cancellation of suitability notice on application**

(1) This section applies if the commissioner has issued a negative notice to a person and the notice is current.

(2) The person may apply to the commissioner to cancel the notice.

(3) The application may not be made less than 2 years after the issue of the notice or any previous application by the person under this section.

(4) The application must be—

- (a) in the approved form; and
- (b) signed by the person; and

(c) accompanied by the prescribed fee.

(5) The person may state in the application anything the person considers relevant to the commissioner's decision about whether the person is a suitable person for child-related employment including, in particular, any change in the person's circumstances since the negative notice was issued.

(6) Sections 102 and 103 apply to the application as if—

- (a) the application were an application for a suitability notice; and
- (b) a reference in the provisions to issuing a positive notice were a reference to granting the application; and
- (c) a reference in the provisions to issuing a negative notice were a reference to refusing the application.

(7) If the commissioner grants the application, the commissioner must cancel the suitability notice to which the application relates and issue a positive notice to the person.

119 Cancellation of notice—wrong, incomplete or new information

(1) The commissioner may cancel a suitability notice (the “**first notice**”) and substitute another suitability notice (the “**new notice**”) if the commissioner is satisfied—

- (a) the decision on the application for the first notice was based on wrong or incomplete information; and
- (b) based on the correct or complete information, the commissioner should issue the new notice.

(1A) Also, the commissioner may cancel a positive notice about a person and substitute a negative notice (also the “**new notice**”), having regard to any of the following information about the person—

- (a) teacher registration information;
- (b) information received by the commissioner under section 122A(1).

(2) However, if the commissioner proposes to substitute a negative notice, the commissioner must first comply with section 103, as if—

- (a) the reference in section 103(1) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and

(b) the reference in section 103(3) to deciding the application were a reference to substituting a negative notice for a positive notice..

(3) An application for cancellation of the first notice may be made by the person about whom it was issued or the person who applied for it.

(4) Subsection (1) applies whether or not anyone applies for the cancellation.

(5) The commissioner must issue the new notice to the person about whom it is issued and, if the applicant is someone else, give a copy to the applicant.

120 Cancellation of notice on issue of new notice

(1) This section applies if the commissioner receives an application for a further suitability notice about a person for whom there is a current suitability notice.

(2) The commissioner must cancel the current suitability notice when issuing the further suitability notice.

Division 5—Miscellaneous

121 Person may apply for review of decision

(1) A person may apply to the Children Services Tribunal to have either of the following decisions by the commissioner reviewed—

- (a) a decision to issue a negative notice about the person;
- (b) a decision refusing an application to cancel a negative notice about the person.

(2) If a person applies under subsection (1) to have a decision reviewed, the tribunal may not stay the operation of the decision.

122 Commissioner may obtain information from police commissioner

(1) This section applies to a person if—

- (a) the person has a current positive notice; or
- (b) the commissioner has received an application for a suitability notice about the person and the application has not been

withdrawn and the person has not withdrawn his or her consent to employment screening under this part; or

- (c) the person has applied to the commissioner to cancel a negative notice about the person.

(2) The commissioner may ask the police commissioner for information, or for access to the police commissioner's records, to enable the commissioner to learn what the person's current criminal history (if any) is.

(3) If the person has a criminal history, the commissioner may ask the police commissioner for a brief description of the circumstances of a conviction or charge mentioned in the criminal history.

(4) The police commissioner must comply with a request under this section.

(5) However, the duty imposed on the police commissioner to comply with a request applies only to information in the police commissioner's possession or to which the police commissioner has access.

122A Notice of change in criminal history

(1) If the police commissioner reasonably suspects that a person who is charged with an offence is a person mentioned in section 122(1)(a) to (c), the police commissioner may notify the commissioner about the change in the person's criminal history.

(2) The notice must state the following—

- (a) the person's name and address;
- (b) the person's date of birth;
- (c) the offence the person was charged with;
- (d) particulars of the offence;
- (e) the date of the charge.

(3) The commissioner may confirm the police commissioner's suspicions under subsection (1).

(4) If the person is a person to whom section 112(1), 113(1) or 114(1) applies, the commissioner, on receiving notice under subsection (1), may

write to the person to inform the person of the person's obligations under sections 112(2), 113(2) and 114(2).¹¹

123 Withdrawal of employee's consent to employment screening

(1) This section applies if the commissioner—

- (a) has received an application from a person (the “**employer**”) for a suitability notice about another person (the “**employee**”); and
- (b) has not yet issued the suitability notice.

(2) The employee may give a written notice to the commissioner withdrawing the employee's consent to employment screening under this part.

(3) The employee is taken to have withdrawn his or her consent to employment screening under this part if—

- (a) the commissioner gives the employee a notice—
 - (i) asking the employee to provide, within a reasonable stated time, stated information that the commissioner reasonably needs to establish the employee's identity; and
 - (ii) warning the employee that, if the employee does not comply with the request, the commissioner may give the employee a notice of deemed withdrawal; and
- (b) the employee does not comply with the request within the stated time; and
- (c) the commissioner can not establish with certainty the employee's identity; and
- (d) the commissioner gives the employee and the employer a notice of deemed withdrawal relating to the employee.

(4) If the employee withdraws his or her consent to employment screening under this part before the commissioner issues a suitability notice about the employee—

- (a) the commissioner must not issue the suitability notice; and

11 Section 112 (Change in criminal history of employee), 113 (Change in criminal history of person carrying on regulated business) or 114 (Change in criminal history of other persons)

- (b) if the employee withdraws consent by giving a written notice to the commissioner, the commissioner must give written notice of the withdrawal to the employer.

(5) In this section—

“notice of deemed withdrawal”, relating to the employee, means a written notice stating that the employee is taken to have withdrawn his or her consent to employment screening under this part.

124 Compliance with requirement to end, or not start, a person’s regulated employment

(1) This section applies if it would be a contravention of a provision of this part for a person (the **“employer”**) to employ another person (the **“employee”**) in regulated employment.

(2) The employer must comply with the provision despite another Act or law or any industrial award or agreement.

(3) The employer does not incur any liability because, in compliance with the provision, the employer does not employ the employee in regulated employment.

125 Guidelines for dealing with information

(1) The commissioner must make guidelines, consistent with this Act, for dealing with information obtained by the commissioner under this part.

(2) The purpose of the guidelines is to ensure—

- (a) natural justice is afforded to the persons about whom the information is obtained; and
- (b) only relevant information is used in making employment-screening decisions; and
- (c) employment-screening decisions, based on the information, are made consistently.

(3) The commissioner must give a copy of the guidelines to a person on request.

126 Use of criminal history information

The commissioner must not use information obtained under this part, about a person's criminal history, other than for this part.

126A What is employment in child care

(1) This section applies to the employment of a person as a carer in, or staff member of, a child care service.¹²

(2) A reference in this Act to employment is a reference to engagement within the meaning of the *Child Care Act 2002*, section 58.

Division 6—Transitional

127 Initial application of this part

(1) For 1 year after this part commences, it does not apply to the unpaid employment of an adult.

(2) This part does not apply to the employment of a person under an agreement entered into before the time this part would otherwise start to apply to the employment.

(3) This section applies subject to section 128.

128 Application for suitability notice for current employee

(1) This section applies if—

- (a) on the commencement of division 3, subdivision 1, a person (the “**employer**”) was employing another person (the “**employee**”) in regulated employment; and
- (b) the employer knows, or reasonably suspects, the employee has a criminal history that may make the employee unsuitable for child-related employment.

12 See schedule 1 (Regulated employment and businesses for employment screening), section 3A (Child care).

Example—

An allegation is made to the employer about the employee. The matter of the allegation is relevant to the employee's suitability for child-related employment and the employer reasonably considers the allegation to be reliable.

(2) The employer may apply to the commissioner for a suitability notice about the employee.

(3) The application must be—

- (a) in the approved form; and
- (b) signed by, or on behalf of, the employer; and
- (c) accompanied by the prescribed fee.

(4) The approved form must include provision for—

- (a) identifying information about the employee; and
- (b) the information supporting the employer's knowledge or suspicion mentioned in subsection (1)(b).

(5) On receiving the application, the commissioner may give a notice to the employee stating—

- (a) the information mentioned in subsection (4)(b); and
- (b) that the commissioner proposes to ask the police commissioner for access to the police commissioner's records to enable the commissioner to learn—
 - (i) whether the employee has a criminal history; and
 - (ii) if the employee has a criminal history, what the criminal history is; and
- (c) inviting the employee to give the commissioner, within a stated time, a submission (oral or written) about the matters raised in the application.

(6) The stated time mentioned in subsection (5)(c) must be reasonable and, in any case, at least 7 days after the commissioner gives the notice to the employee.

(7) The commissioner may proceed to deal with the application as if it had been made under section 100 if—

- (a) the commissioner gives the employee a notice under subsection (5); and

- (b) having regard to the information in the application and any submissions received from the employee in response to the notice given to the employee, the commissioner is satisfied—
 - (i) the employer has a reasonable basis for the knowledge or suspicion mentioned in subsection (1)(b); and
 - (ii) that, if the employee has the criminal history mentioned in the application, the commissioner would be likely to decide the employee is unsuitable for child-related employment; and
- (c) the employee is still employed by the employer in regulated employment.

(8) If the commissioner proceeds to deal with the application under subsection (7), this Act applies to the application as if it had been made under section 100.

PART 7—CRIMINAL HISTORY CHECKS OF COMMISSION’S STAFF

Division 1—Preliminary

129 Purpose of pt 7

The purpose of this part is to enable the commissioner to obtain the criminal history of, and related information about, a person who is or who proposes to be a member of the commission’s staff (a “**staff member**”), so that the commissioner can assess the person’s suitability to be, or continue to be, a staff member.

130 This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

This part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

131 Commissioner to advise of duties of disclosure etc.

Before a person is engaged as a staff member, the commissioner must tell the person—

- (a) of the person's duties of disclosure under this part; and
- (b) that the commissioner may obtain the information about the person mentioned in section 136; and
- (c) that guidelines for dealing with information obtained by the commissioner under this part are available from the commissioner on request.

Division 2—Disclosure of criminal history**132 Person seeking to be a staff member must disclose criminal history**

A person seeking to be a staff member must disclose to the commissioner, before being engaged—

- (a) whether or not the person has a criminal history; and
- (b) if the person has a criminal history—the person's complete criminal history.

133 Staff member must disclose changes in criminal history

(1) If there is a change in a staff member's criminal history, the staff member must immediately disclose to the commissioner the details of the change.

(2) For a staff member who does not have a criminal history, there is taken to be a change in the staff member's criminal history if the staff member acquires a criminal history.

134 Requirements for disclosure

(1) To comply with section 132 or 133, a person must give the commissioner a disclosure in the approved form.

(2) The information disclosed by a person about a conviction or charge of an offence in the person's criminal history must include—

- (a) the existence of the conviction or charge; and
- (b) when the offence was committed or alleged to have been committed; and
- (c) the details of the offence or alleged offence; and
- (d) for a conviction, whether or not a conviction was recorded and the sentence imposed on the person.

135 False or misleading disclosure or failure to disclose

(1) A person must not—

- (a) give the commissioner a disclosure for this division that is false or misleading in a material particular; or
- (b) fail to give the commissioner a disclosure as required under section 133, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) Subsection (1)(a) does not apply to a person if the person, when giving the document—

- (a) tells the commissioner, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

Division 3—Commissioner may obtain information from other entities about criminal history and certain investigations

136 Commissioner may obtain report from police commissioner

(1) This section applies to a person who—

- (a) is a staff member; or
- (b) seeks to be a staff member and has given the commissioner a disclosure for the purposes of division 2.

(2) The commissioner may ask the police commissioner to give the commissioner the following information about the person—

- (a) a written report about the person's criminal history;

- (b) a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history;
- (c) information about an investigation relating to the possible commission of a serious offence by the person.

(3) Subject to subsections (4) and (5), the police commissioner must comply with the request.

(4) The duty imposed on the police commissioner to comply with the request—

- (a) applies only to information in the police commissioner's possession or to which the police commissioner has access; and
- (b) in relation to information mentioned in subsection (2)(c)—applies only to information recorded on a central electronic database kept by the police commissioner.

(5) The police commissioner must not give information about an investigation relating to the possible commission of a serious offence by the person if—

- (a) the police commissioner is reasonably satisfied that giving the information—
 - (i) may prejudice or otherwise hinder an investigation to which the information may be relevant; or
 - (ii) may lead to the identification of an informant; or
 - (iii) may affect the safety of a police officer, complainant or other person; or
- (b) for an investigation that has been completed—the investigation has not led, and the police commissioner is reasonably satisfied it is unlikely to lead, to a reasonable suspicion that the person committed a serious offence; or
- (c) for an investigation that has not been completed—the police commissioner is reasonably satisfied the investigation is unlikely to lead to a reasonable suspicion that the person committed a serious offence.

137 Prosecuting authority to notify commissioner about committal, conviction etc.

(1) This section applies if a person is charged with an indictable offence and the police commissioner or the director of public prosecutions (a “prosecuting authority”) is aware that the person is a staff member.

(2) If the person is committed by a court for trial for an indictable offence, the prosecuting authority must, within 7 days after the committal, give written notice to the commissioner of the following—

- (a) the person’s name;
- (b) the court;
- (c) particulars of the offence;
- (d) the date of the committal;
- (e) the court to which the person was committed.

(3) If the person is convicted before a court of an indictable offence, the prosecuting authority must, within 7 days after the conviction, give written notice to the commissioner of the following—

- (a) the person’s name;
- (b) the court;
- (c) particulars of the offence;
- (d) the date of the conviction;
- (e) the sentence imposed by the court.

(4) If the person is convicted of an indictable offence, and has appealed the conviction, and the appeal is finally decided or has otherwise ended, the prosecuting authority must, within 7 days after the decision or the day the appeal otherwise ends, give written notice to the commissioner of the following—

- (a) the person’s name;
- (b) particulars of the offence;
- (c) the date of the decision or other ending of the appeal;
- (d) if the appeal was decided—
 - (i) the court in which it was decided; and
 - (ii) particulars of the decision.

(5) If the prosecution process ends without the person being convicted of an indictable offence, the prosecuting authority must, within 7 days after the end, give written notice to the commissioner about the following—

- (a) the person's name;
- (b) if relevant, the court in which the prosecution process ended;
- (c) particulars of the alleged offence;
- (d) the date the prosecution process ended.

(6) For subsection (5), a prosecution process ends if—

- (a) an indictment is presented against the person and—
 - (i) a nolle prosequi is entered on the indictment; or
 - (ii) the person is acquitted; or
- (b) the prosecution process has otherwise ended.

(7) A reference in this section to a conviction of an indictable offence includes a summary conviction of an indictable offence.

Division 4—Controls on use of information about criminal history and certain investigations

138 Use of information obtained under this part

(1) This section applies to the commissioner in considering information about a person received under this part.

(2) The information must not be used for any purpose other than assessing the person's suitability to be, or continue to be, a staff member.

(3) When making the assessment, the commissioner must have regard to the following matters relating to information about the commission, or alleged or possible commission, of an offence by the person—

- (a) when the offence was committed, is alleged to have been committed or may possibly have been committed;
- (b) the nature of the offence and its relevance to the person's proposed duties or duties as a staff member;
- (c) anything else the commissioner considers relevant to the assessment of the person.

139 Person to be advised of information obtained

(1) This section applies to information obtained by the commissioner about a person, under this part, from the police commissioner.

(2) Before using the information to assess the person's suitability to be, or continue to be, a staff member, the commissioner must—

- (a) disclose the information to the person; and
- (b) allow the person a reasonable opportunity to make representations to the commissioner about the information.

140 Guidelines for dealing with information

(1) The commissioner must make guidelines, consistent with this Act, for dealing with information obtained by the commissioner under this part.

(2) The purpose of the guidelines is to ensure—

- (a) natural justice is afforded to the persons about whom the information is obtained; and
- (b) only relevant information is used in assessing the persons' suitability to be, or continue to be, staff members; and
- (c) decisions about the suitability of persons, based on the information, are made consistently.

(3) The commissioner must give a copy of the guidelines, on request, to a person seeking to be engaged, or engaged, as a staff member.

PART 8—GENERAL***Division 1—When commissioner may give notice other than in writing*****141 Application of div 1**

This division applies if, under this Act, the commissioner is required to give written notice to a person about a decision made or action taken by the commissioner.

142 Person asks for notice other than in writing

(1) This section applies if the person asks the commissioner not to notify the person by written notice but to use another way of communication.

(2) The commissioner must communicate with the person in the requested way, to the extent it is reasonable for the commissioner to do so, instead of giving the written notice.

143 Written notice inappropriate

(1) This section applies if the commissioner considers—

- (a) if the written notice is given—
 - (i) the rights, interests or wellbeing of a child may be adversely affected; or
 - (ii) the health or safety of the person, or of someone else, may be put at risk; or
 - (iii) an investigation by the commissioner will be prejudiced; or
- (b) for another reason, it would not be appropriate to give the written notice in the circumstances.

(2) The commissioner may communicate with the person in a way the commissioner considers appropriate instead of giving the written notice.

(3) If the person asks the commissioner to give the written notice to the person's lawyer or other nominated representative, the commissioner must do so.

144 Commissioner must keep record

If, under this division, the commissioner does not give the written notice, the commissioner must keep a written record of—

- (a) the reasons for not giving the written notice; and
- (b) the way the commissioner told the person about the decision or action; and
- (c) when the commissioner told the person about the decision or action; and
- (d) the substance of the communication.

Division 2—Evidence and legal proceedings**145 Evidentiary provisions**

(1) This section applies to a proceeding under or in relation to this Act.

(2) Unless a party, by reasonable notice, requires proof of—

- (a) the appointment of a community visitor under this Act; or
- (b) the authority of a community visitor to do something under this Act;

the appointment or authority must be presumed.

(3) A signature purporting to be the signature of the commissioner or a community visitor is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the commissioner stating any of the following matters is evidence of the matter—

- (a) a stated document is a copy of a notice given or issued under this Act;
- (b) on a stated day, a stated person was given a stated notice under this Act.

146 Indictable and summary offences

(1) An offence against section 108, 109 or 111¹³ is an indictable offence if the person charged with the offence has a conviction for a serious offence involving a child.

(2) An offence against section 156¹⁴ is an indictable offence.

(3) Otherwise, an offence against this Act is a summary offence.

147 Proceedings for indictable offences

(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

13 Section 108 (Unsuitable person not to apply for, or start or continue in, child-related employment), 109 (Carrying on regulated business) or 111 (Effect of conviction for serious offence)

14 Section 156 (Offence of taking a reprisal)

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(2) A magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the magistrate considers the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).¹⁵

(4) The maximum penalty that may be summarily imposed for an indictable offence is 150 penalty units or 2 years imprisonment.

148 Limitation on who may summarily hear indictable offence proceedings

(1) A proceeding must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making

¹⁵ *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

149 Proceeding for offences

A proceeding for an offence against this Act, other than an indictable offence, must be taken in a summary way under the *Justices Act 1886*.

150 When proceeding may start

A proceeding for an offence against this Act may be started within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

151 Allegations of false or misleading information or statements

In a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading statement, it is enough for a charge to state that the information or statement was, without specifying which, 'false or misleading'.

Division 3—Confidentiality

152 Confidentiality of information about criminal history

(1) This section applies to a person who—

- (a) is, or has been, the commissioner or a staff member; and
- (b) in that capacity acquired information, or gained access to a document, under part 6¹⁶ about someone else's criminal history.

(2) This section also applies to a person who—

- (a) is, or has been, the commissioner, a staff member or a selection panel member; and

16 Part 6 (Employment screening for child-related employment)

- (b) in that capacity acquired information, or gained access to a document, under part 7¹⁷ about someone else's criminal history or about an investigation relating to the possible commission of a serious offence by someone else.

(3) The person must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

(4) Subsection (3) does not apply to the disclosure of information, or giving of access to a document, about a person—

- (a) if subsection (1) applies—to the commissioner or a staff member for the purpose of an employment-screening decision; or
- (b) if subsection (2) applies—to the commissioner, a staff member or selection panel member for the purpose of assessing the person's suitability to be, or continue to be, a staff member; or
- (c) if the person is an adult—with the person's consent; or
- (d) if the disclosure or giving of access is otherwise required under an Act.

(5) In this section—

“selection panel member” means a member of a panel formed to make a recommendation to the commissioner about a person's engagement as a staff member.

“staff member” means a member of the commission's staff.

153 Confidentiality of other information

(1) This section applies to confidential information other than information mentioned in section 152(1)(b) or (2)(b).

(2) If a person gains confidential information through involvement in this Act's administration, the person must not—

- (a) make a record of the information or intentionally disclose the information to anyone, other than under subsection (4); or
- (b) recklessly disclose the information to anyone.

Maximum penalty—100 penalty units.

17 Part 7 (Criminal history checks of commission's staff)

(3) A person gains information through involvement in this Act's administration if the person gains the information because of being, or an opportunity given by being—

- (a) the commissioner; or
- (b) a member of the commission's staff; or
- (c) a person consulted or employed by the commissioner for an investigation of a complaint; or
- (d) a member of an advisory committee.

(4) A person may make a record of confidential information or disclose it to someone else—

- (a) for this Act; or
- (b) to discharge a function under another law; or
- (c) for a proceeding in a court or tribunal; or
- (d) if authorised under a regulation or another law; or
- (e) if—
 - (i) the person is authorised in writing by the person to whom the information relates; and
 - (ii) the person to whom the information relates is an adult when the authorisation is given; and
 - (iii) the information does not identify, and is unlikely to lead to the identification of, a person as a child who is, or has been, the subject of a complaint under this Act.

154 Disclosure of information about investigations

(1) Section 153 does not prevent the commissioner from disclosing information to a person or to members of the public, about an issue the subject of an investigation by the commissioner, if the commissioner is satisfied the disclosure—

- (a) is necessary and reasonable in the public interest; and
- (b) is unlikely to prejudice the investigation.

(2) In a disclosure under subsection (1), the commissioner may express an opinion expressly or impliedly critical of an entity only if the commissioner has given the entity an opportunity to answer the criticism.

Division 4—Reprisals**155 Meaning of “taking a reprisal”**

(1) A person “takes a reprisal” if—

- (a) the person causes, or attempts or conspires to cause, detriment to another person; and
- (b) a substantial reason for the person doing the thing mentioned in paragraph (a) is the belief that the other person or someone else—
 - (i) has made, or may make, a complaint to the commissioner; or
 - (ii) has helped, or may help, the commissioner.

(2) A reference in subsection (1) to causing detriment includes inducing a person to cause detriment.

156 Offence of taking a reprisal

A person must not take a reprisal.

Maximum penalty—150 penalty units or 2 years imprisonment.

157 Damages entitlement for reprisal

(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.

(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.

(3) If the claim for the damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

Division 5—Miscellaneous**158 Meaning of “parent”**

(1) A “parent” of a child is the child’s mother, father or someone else, other than the chief executive (families), having or exercising parental responsibility for the child.

(2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.

(3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.

(4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

159 Relationship with complaints agencies

(1) This Act does not prevent a complaints agency performing its principal function under the Act under which the complaints agency is established.

(2) The commissioner must liaise with each complaints agency about the exercise by the commissioner and the complaints agency of their respective functions relating to complaints about services provided to children.

160 Complaints agency or other government service provider to inform commissioner about actions taken for complaint

(1) This section applies if—

- (a) the commissioner refers a complaint, about services provided by a service provider to a child, to a complaints agency or other government service provider; and
- (b) the commissioner, by written notice to the agency or service provider, asks for information about the way in which the agency or service provider is dealing or has dealt with the complaint.

(2) The agency or service provider must inform the commissioner about any action taken for dealing with the complaint or, if it is resolved, the resolution of the complaint.

(3) Subsection (2) applies despite any express provision in an Act establishing a complaints agency that makes it an offence for anyone involved with administration of the Act to disclose the information.

161 Protection from liability

(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

“official” means—

- (a) the commissioner; or
- (b) a member of the commission’s staff; or
- (c) a person acting under the direction of a person mentioned in paragraph (a) or (b).

162 Whistleblowers’ protection

(1) A person is not liable, civilly, criminally or under an administrative process, for disclosing to the commissioner information that would help the commissioner in assessing or investigating a complaint.

(2) Without limiting subsection (1)—

- (a) in a proceeding for defamation the discloser has a defence of absolute privilege for publishing the disclosed information; and
- (b) if the discloser would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice, the discloser—
 - (i) does not contravene the Act, oath, rule of law or practice by disclosing the information; and
 - (ii) is not liable to disciplinary action for disclosing the information.

(3) A person’s liability for the person’s own conduct is not affected only because the person discloses it to the commissioner.

163 Other reports relating to commissioner's functions

The commissioner may provide the Minister with a report on any issue relating to the exercise of the commissioner's functions under this Act.

164 Review of pt 6

(1) The Minister must ensure the operation of part 6¹⁸ is reviewed.

(2) The review must start within 2 years of the commencement of the part.

(3) Within 3 years of the commencement of the part, the Minister must prepare a report on the outcome of the review and table the report in the Legislative Assembly.

165 Delegation by commissioner

(1) The commissioner may delegate the commissioner's powers under this Act to—

- (a) an appropriately qualified member of the commission's staff; or
- (b) another individual whom the commissioner considers is an appropriately qualified person to exercise the powers delegated to the person.

(2) In this section—

“appropriately qualified” includes having qualifications, experience or standing appropriate to exercise the power.

Example of 'standing'—

A staff member's classification level in the public service.

166 Approved forms

The commissioner may approve forms for use under this Act.

167 Regulation-making power

The Governor in Council may make regulations under this Act.

18 Part 6 (Employment screening for child-related employment)

PART 9—REPEAL AND TRANSITIONAL PROVISIONS

Division 1—Repeal

168 Repeal of Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996

The *Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996* is repealed.

Division 2—Transitional provisions on repeal of Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996

169 Meaning of “commencing day”

In this division—

“commencing day” means the day section 168 commences.

170 Commissioner

(1) This section applies to the person who, immediately before the commencing day, was the Children’s Commissioner under the repealed Act.

(2) Subject to sections 26 and 27,¹⁹ the person continues in office as the commissioner under this Act until the end of the term stated in the person’s appointment under the repealed Act.

(3) The remuneration, allowances and terms of appointment decided for the person under section 12 of the repealed Act²⁰ are taken to have been decided under section 23.²¹

19 Sections 26 (Resignation) and 27 (Termination of appointment)

20 *Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996*, section 12 (Terms of appointment)

21 Section 23 (Terms and conditions of appointment)

171 Continuation of commission and staff

(1) The Children's Commission established under the repealed Act is continued in existence as the commission under this Act.

(2) The staff of the Children's Commission established under the repealed Act continue as the staff of the commission under this Act.

172 Continuation of certain complaints

(1) This section applies to a complaint made under part 3 of the repealed Act that—

- (a) immediately before the commencing day, had not been finally dealt with under the repealed Act; and
- (b) if this Act had commenced at the relevant time, could have been made under this Act.

(2) The commissioner must continue to deal with the complaint as if it had been made under this Act.

173 Official visitors

(1) A person who, immediately before the commencing day, held office as an official visitor under the repealed Act continues to hold office as a community visitor, on the conditions applying to the person immediately before the commencing day, until the end of the term stated in the person's appointment.

(2) Subsection (1) applies subject to section 82(2) and (3).²²

Division 3—Transitional provisions for amendment of Juvenile Justice Act 1992**174 Official visitors**

(1) A person who, immediately before the commencement, held office as an official visitor under the *Juvenile Justice Act 1992*—

- (a) continues to hold office as a community visitor until the end of the term stated in the person's appointment; and

22 Section 82 (Duration of appointment)

- (b) while the person continues to hold office under paragraph (a), continues to be entitled to the remuneration and allowances to which the person was entitled immediately before the commencement.

(2) Subsection (1) applies subject to section 82(2) and (3).

(3) In this section—

“**commencement**” means the commencement of schedule 3, amendments of the *Juvenile Justice Act 1992*.

Division 4—Transitional provisions for Child Care Act 2002

175 Meaning of “commencement day”

In this division—

“**commencement day**” means the day this section commences.

176 Carrying on licensed child care service

(1) This section applies to a person who, immediately before the commencement day, was carrying on a business mentioned in schedule 1, section 10,²³ under a licence under the *Child Care Act 1991*.

(2) The person does not commit an offence against section 109²⁴ by continuing to carry on the business without a current positive notice—

- (a) until the day the licence is next due to expire; and
- (b) if the person applies for a suitability notice before the licence is next due to expire and does not withdraw the application, until the application is decided.

23 Schedule 1 (Regulated employment and businesses for employment screening), section 10 (Child care)

24 Section 109 (Carrying on regulated business)

177 Carrying on other regulated child care business

(1) This section applies to a person who, immediately before the commencement day, was carrying on a business mentioned in schedule 1, section 10,²⁵ other than under a licence under the *Child Care Act 1991*.

(2) The person does not commit an offence against section 109²⁶ by continuing to carry on the business without a current positive notice—

- (a) until the day that is 6 months after the commencement day; and
- (b) if the person applies for a suitability notice within 6 months after the commencement day and does not withdraw the application, until the application is decided.

178 Employment in child care

(1) This section applies to a person who, immediately before the commencement day, was employed in employment mentioned in schedule 1, section 3A.

(2) Section 127²⁷ does not apply to the employment of the person.

(3) If the employment is in a licensed child care service, sections 105 and 106²⁸ do not apply to the employment until the day the licence is renewed or the day that is 6 months after the commencement day, whichever is later.

(4) If the employment is not in a licensed child care service, sections 105 and 106 do not apply to the employment until the day that is 6 months after the commencement day.

25 Schedule 1 (Regulated employment and businesses for employment screening), section 10 (Child care)

26 Section 109 (Carrying on regulated business)

27 Section 127 (Initial application of this part)

28 Sections 105 (Continuing employment of certain regular employees) and 106 (Starting employment of certain regular employees)

***Division 5—Transitional provisions for Education and Other Legislation
(Student Protection) Amendment Act 2003***

179 Definitions for div 5

In this division—

“amending Act” means the *Education and Other Legislation (Student Protection) Amendment Act 2003*.

“commencement” means commencement of this section.

180 Outstanding applications for suitability notice

If an application for a suitability notice was made, but not decided, before the commencement, the application must be decided as if the application had been made after the commencement.

181 Employment mentioned in sch 1, s 6A

(1) This section applies if a person (the **“employee”**), immediately before the commencement, was employed by another person (the **“employer”**) in employment mentioned in schedule 1, section 6A.²⁹

(2) Section 127(2) does not apply to the employment of the employee.

(3) Subject to subsections (4) and (5), section 105³⁰ does not apply to the continued employment of the employee by the employer during the period ending 3 months after the commencement (the **“3 months period”**).

(4) Subsection (5) applies if the employer, while continuing to employ the employee, applies for a suitability notice about the employee during the 3 months period.

(5) Section 105 does not apply to the continued employment of the employee by the employer until—

- (a) if the application is withdrawn—the day of the withdrawal; or
- (b) the day the employer receives a suitability notice about the employee, after the application is decided.

²⁹ Schedule 1 (Regulated employment and businesses for employment screening), section 6A (Education programs conducted outside of school)

³⁰ Section 105 (Continuing employment of certain regular employees)

182 Carrying on business mentioned in sch 1, s 11

(1) This section applies to a person who, immediately before the commencement, was carrying on a business mentioned in schedule 1, section 11.³¹

(2) Subject to subsections (3) and (4), the person does not commit an offence against section 109³² by continuing to carry on the business without a current positive notice during the period ending 3 months after the commencement (the “**3 months period**”).

(3) Subsection (4) applies if the person, while continuing to carry on the business, applies for a suitability notice about the person during the 3 months period.

(4) The person does not commit an offence against section 109 by continuing to carry on the business without a current positive notice until—

- (a) if the application is withdrawn—the day of the withdrawal; or
- (b) the day the person receives a suitability notice, after the application is decided.

31 Schedule 1 (Regulated employment and businesses for employment screening), section 11 (Education programs conducted outside of school)

32 Section 109 (Carrying on regulated business)

SCHEDULE 1

REGULATED EMPLOYMENT AND BUSINESSES FOR EMPLOYMENT SCREENING

section 97

PART 1—REGULATED EMPLOYMENT

1 Residential facilities

Employment is regulated employment if—

- (a) any of the usual functions of the employment is carried out, or is likely to be carried out, inside a residential facility; and
- (b) the employer is not a government service provider.

2 Schools—boarding facilities

Employment is regulated employment if—

- (a) any of the usual functions of the employment is carried out, or is likely to be carried out, inside a boarding facility at a school; and
- (b) the employee is not a registered teacher.

3 Schools—employees other than teachers and parents

Employment is regulated employment if—

- (a) the usual functions of the employment include, or are likely to include—
 - (i) providing services at a school that are directed mainly towards children; or
 - (ii) conducting activities at a school that mainly involve children; and
- (b) the employee is neither a registered teacher nor a volunteer who is a parent of a child enrolled at the school.

SCHEDULE 1 (continued)

3A Child care

(1) Employment is regulated employment if—

- (a) it is employment as a carer in, or staff member of, a child care service; and
- (b) the employee is not a volunteer who is a parent of a child to whom child care is regularly provided in the course of the service.

(2) Employment is regulated employment if—

- (a) any of the usual functions of the employment is carried out, or is likely to be carried out, at a child care centre while child care is being provided at the centre; and
- (b) the employee is not a volunteer who is a parent of a child to whom child care is regularly provided at the centre.

(3) Employment is regulated employment if—

- (a) the usual functions of the employment include, or are likely to include, providing child care in the course of a commercial service other than a child care service; and

Examples of a service mentioned in paragraph (a)—

- 1. Babysitting service.
- 2. Nanny service.
- 3. A service, conducted by a hotel or resort, to provide child care to children who are short term guests.
- 4. A service for providing adjunct care.
- (b) the employee is not a volunteer who is a parent of a child to whom child care is regularly provided in the course of the service.

4 Churches, clubs and associations involving children

(1) Employment is regulated employment if—

- (a) the usual functions of the employment include, or are likely to include—
 - (i) providing services directed mainly towards children; or

SCHEDULE 1 (continued)

- (ii) conducting activities mainly involving children; and
- (b) the services are provided, or the activities are conducted, by or within a church, club, association or similar entity; and
- (c) the employer is a not a government entity.

(2) However, employment mentioned in subsection (1) is not regulated employment if—

- (a) the employment is unpaid; and
- (b) the employee is a parent of a child who—
 - (i) if subsection (1)(a)(i) applies—receives the services to which the employment relates or similar services provided by someone else within the church, club, association or other entity; or
 - (ii) if subsection (1)(a)(ii) applies—participates in the activities to which the employment relates or similar activities conducted by someone else within the church, club, association or other entity.

Examples—

1. A sporting club has teams for adults and children of various ages. A person is employed by the club, as a volunteer, to coach one of the children's teams. The person does not have any children. Under subsection (1), the coaching is regulated employment.
2. Same facts as in example 1, except that the person has a child on the team that the person is coaching. Under subsection (2), the coaching is not regulated employment because the child is participating in the sporting activities conducted at the club to which the coaching relates.
3. Same facts as in example 1, except that the person has a child on another of the club's teams, which is coached by another employee of the club. Under subsection (2), the person's coaching is not regulated employment because the child is participating in sporting activities, conducted by someone else at the club, that are similar to the activities to which the person's coaching relates.
4. Same facts as in example 1, except that the person has a child who receives child-minding services provided by another employee of the club. In this case, the coaching is regulated employment. Subsection (2) does not apply because the services the child is receiving (child minding) are not similar to the activities to which the coaching relates.

SCHEDULE 1 (continued)

5 Counselling and support services

Employment is regulated employment if—

- (a) the usual functions of the employment include, or are likely to include, providing counselling or a similar support service to a child in a situation where—
 - (i) the employee is physically present with the child while no-one else is present; or
 - (ii) the employee is not physically present with the child; and
- (b) the employee is not a registered health practitioner; and
- (c) the employer—
 - (i) is not a government service provider; and
 - (ii) carries on a business that includes providing counselling or a similar support service.

Example for paragraph (a)(ii)—

Employment that includes providing counselling to children over the telephone or via the internet.

6 Private teaching, coaching or tutoring

(1) Employment is regulated employment if—

- (a) the usual functions of the employment include or are likely to include prescribed teaching; and
- (b) the employee is not a registered teacher; and
- (c) the employer—
 - (i) is not a government service provider; and
 - (ii) carries on a business that includes providing prescribed teaching.

(2) In this section—

“prescribed teaching” means teaching, coaching or tutoring a child, individually, on a commercial basis.

SCHEDULE 1 (continued)

6A Education programs conducted outside of school

Employment is regulated employment if—

- (a) the usual functions of the employment include, or are likely to include, providing services or conducting activities for—
 - (i) an education program under the *Education (General Provisions) Act 1989*, section 30;³³ or
 - (ii) a program, provided by an entity, under arrangements approved under the *Education (General Provisions) Act 1989*, section 114A(1) or 114B(1);³⁴ and
- (b) the employee is not a registered teacher; and
- (c) the employer is not a provider under the *Youth Participation in Education and Training Act 2003*, section 12.

7 Regulation about usual functions of employment

(1) For this part, a regulation may make provision about whether a function of employment is a usual function.

(2) Without limiting subsection (1), a regulation may—

- (a) state the employment, or type of employment, to which the regulation applies; and
- (b) declare that a stated function of the employment is, or is not, a usual function of the employment.

(3) A regulation under this section may describe a function of employment by reference to the frequency with which it is carried out, or in another way.

33 *Education (General Provisions) Act 1989*, section 30 (Placement of certain students in alternative education program)

34 *Education (General Provisions) Act 1989*, section 114A (Flexible arrangements—non-State school) or 114B (Flexible arrangements—State educational institution)

SCHEDULE 1 (continued)

PART 2—REGULATED BUSINESSES**8 Counselling and support services**

A business is a regulated business if the usual activities of the business include, or are likely to include, a person, other than a registered health practitioner, providing counselling or a similar support service to a child in a situation where—

- (a) the person is physically present with the child while no-one else is present; or
- (b) the person is not physically present with the child.

9 Private teaching, coaching or tutoring

A business is a regulated business if the usual activities of the business include, or are likely to include, teaching, coaching or tutoring a child, individually, on a commercial basis.

10 Child care

A business is a regulated business if the usual activities of the business include, or are likely to include—

- (a) conducting a child care service or another commercial service that includes providing child care; or
- (b) carrying out activities in premises or a vehicle in which there are children to whom child care is being provided.

11 Education programs conducted outside of school

A business is a regulated business if—

- (a) the usual activities of the business include, or are likely to include, providing services or conducting activities for—
 - (i) an education program under the *Education (General Provisions) Act 1989*, section 30; or

SCHEDULE 1 (continued)

- (ii) a program provided, by the entity carrying on the business, under arrangements approved under the *Education (General Provisions) Act 1989*, section 114A(1) or 114B(1); and
- (b) the entity carrying on the business is not a provider under the *Youth Participation in Education and Training Act 2003*, section 12.

SCHEDULE 2**OTHER SERIOUS OFFENCE PROVISIONS OF THE
CRIMINAL CODE**

schedule 4, definition “serious offence”, paragraph (b)

1. Section 211 (Bestiality)
2. Section 219 (Taking child for immoral purposes)
3. Section 221 (Conspiracy to defile)
4. Section 228 (Obscene publications and exhibitions)
5. Section 238 (Contamination of goods)
6. Section 239 (Hoax contamination of goods)
7. Section 240 (Dealing in contaminated goods)
8. Section 300 (Unlawful homicide)
9. Section 307 (Accessory after the fact to murder)
10. Section 308 (Threats to murder in document)
11. Section 309 (Conspiring to murder)
12. Section 311 (Aiding suicide)
13. Section 314 (Concealing the birth of children)
14. Section 324 (Failure to supply necessities)
15. Section 327 (Setting mantraps)
16. Section 355 (Deprivation of liberty)
17. Section 359 (Threats)
18. Section 359E (Punishment of unlawful stalking)
19. Section 363 (Child-stealing)
20. Section 363A (Abduction of child under 16)
21. Section 364 (Cruelty to children under 16)

SCHEDULE 2 (continued)

- 22.** Section 415 (Demanding property, benefit or performance of services with threats)
- 23.** Section 416 (Attempts at extortion by threats)
- 24.** Section 417 (Procuring execution of deeds etc. by threats)
- 25.** Section 417A (Taking control of aircraft).

SCHEDULE 4**DICTIONARY**

section 3

“adjunct care” means child care provided to a child—

- (a) in conjunction with a meeting, function or other activity involving a relative or guardian of the child other than the paid employment of the relative or guardian; and
- (b) on the premises in which the meeting, function or other activity is taking place; and
- (c) for not more than 3 hours on each occasion the care is provided.

“advisory committee” means a committee established under part 5.

“advocacy entity” means an entity that provides advocacy services for, or otherwise represents—

- (a) particular children; or
- (b) the interests of children generally.

“approved form” means a form approved under section 166.

“carer”, in relation to a child care service, see the *Child Care Act 2002*, section 56.

“charge”, of an offence, means a charge in any form, including, for example, the following—

- (a) a charge on an arrest;
- (b) a notice to appear served under the *Police Powers and Responsibilities Act 2000*, section 214;³⁵
- (c) a complaint under the *Justices Act 1886*;

³⁵ *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

SCHEDULE 4 (continued)

- (d) a charge by a court under the *Justices Act 1886*, section 42(1A),³⁶ or another provision of an Act;
- (e) an indictment.

“chief executive (families)” means the chief executive of the department in which the *Child Protection Act 1999* is administered.

“child accommodation service” means a service for which the main purpose is to provide accommodation for children but does not include—

- (a) the care of children by an approved foster carer under the *Child Protection Act 1999* acting in that capacity; or
- (b) the provision of accommodation to children under residential tenancy agreements under the *Residential Tenancies Act 1994*.

“child care” means care of a child provided—

- (a) by someone other than a relative or guardian of the child; and
- (b) for reward; and
- (c) in the course of a service for regularly providing care of children.

“child care centre” means the premises in which child care is provided under a licence for a centre based service under the *Child Care Act 2002*.

“child care service” see the *Child Care Act 2002*, section 5.

“Children Services Tribunal” means the Children Services Tribunal established under the *Children Services Tribunal Act 2000*.

“commercial service” means a service operated on a commercial basis.

“commission” means the Commission for Children and Young People.

“commissioner” means the Commissioner for Children and Young People.

“community visitor” means a person appointed as a community visitor under this Act.

“complaints agency” means any of the following—

³⁶ *Justices Act 1886*, section 42 (Commencement of proceedings)

SCHEDULE 4 (continued)

- (a) the ombudsman under the *Ombudsman Act 2001*;
- (b) the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*;
- (c) the Anti-Discrimination Commissioner under the *Anti-Discrimination Act 1991*;
- (d) the Health Rights Commissioner under the *Health Rights Commission Act 1991*;
- (e) the adult guardian under the *Guardianship and Administration Act 2000*.

“confidential information” includes information about a person’s affairs but does not include—

- (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

“conviction” means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

“cousin” includes second cousin.

“criminal history”, of a person, means—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act; and
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

“current”, for a suitability notice, means current under section 104.

“detention centre” means a detention centre established under the *Juvenile Justice Act 1992*, section 262.

“employing”, for part 6, see section 99.

“employment-screening decision” means a decision whether a person is a suitable person for child-related employment.

SCHEDULE 4 (continued)

“government entity” see the *Public Service Act 1996*, section 21.

“government service provider” see section 9.

“guardian”, of a child, means any of the following persons—

- (a) a person who is recognised in law as having all the duties, powers, responsibilities and authority relating to the child that, by law, parents have relating to their children;³⁷
- (b) a person in whose favour a parenting order is in force under the *Family Law Act 1975* (Cwlth);
- (c) a carer of the child under the *Child Protection Act 1999*;
- (d) a person who is entitled to the care and custody of the child under the *Adoption of Children Act 1964*.

“harm” has the meaning given in the *Child Protection Act 1999*, section 9.³⁸

“influence” includes attempt to influence.

“negative notice” means a suitability notice declaring a person to be an unsuitable person for child-related employment.

“notice for information” see section 45(1).

“obstruct” includes hinder, resist and attempt to obstruct.

“parent” see section 158.

“police commissioner” means the commissioner of the police service.

“positive notice” means a suitability notice declaring a person to be a suitable person for child-related employment.

37 See the *Family Law Act 1975* (Cwlth), part 7 (Children), division 2 (Parental responsibility).

38 *Child Protection Act 1999*, section 9—

9 What is “harm”

(1) **“Harm”**, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.

(2) It is immaterial how the harm is caused.

(3) Harm can be caused by—

- (a) physical, psychological or emotional abuse or neglect; or
- (b) sexual abuse or exploitation.

SCHEDULE 4 (continued)

“prescribed department” means—

- (a) the department responsible for the care and protection of children; or
- (b) the department responsible for disability services; or
- (c) the department responsible for mental health.

“private service provider” see section 10.

“registered health practitioner” means a person registered under any of the following Acts—

- *Chiropractors Registration Act 2001*
- *Dental Practitioners Registration Act 2001*
- *Dental Technicians and Dental Prosthetists Registration Act 2001*
- *Medical Practitioners Registration Act 2001*
- *Medical Radiation Technologists Registration Act 2001*
- *Occupational Therapists Registration Act 2001*
- *Optometrists Registration Act 2001*
- *Osteopaths Registration Act 2001*
- *Pharmacists Registration Act 2001*
- *Physiotherapists Registration Act 2001*
- *Podiatrists Registration Act 2001*
- *Psychologists Registration Act 2001*
- *Speech Pathologists Registration Act 2001*.

“registered teacher” means a person registered as a teacher under the *Education (Teacher Registration) Act 1988*.

“regulated business”, for part 6, see section 97.

“regulated employment”, for part 6, see section 97.

“relative”, of a child—

- (a) means the child’s parent, grandparent, great grandparent, brother, sister, uncle, aunt, niece, nephew or cousin; and

SCHEDULE 4 (continued)

- (b) for an Aboriginal child—includes a person who, under Aboriginal tradition, is regarded as a relative mentioned in paragraph (a); and
- (c) for a Torres Strait Islander child—includes a person who, under Island custom, is regarded as a relative mentioned in paragraph (a); and
- (d) for a child with a parent who is not a natural parent—includes anyone who would be a relative mentioned in paragraph (a) if the parent were a natural parent.

Example for paragraph (d)—

The daughter of a child's step-parent is a relative of the child.

“relevant provider”, for part 3, see section 39.

“repealed Act” means the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*.

“residential facility” means a place at which a child accommodation service is provided—

- (a) by a prescribed department; or
- (b) under funding provided by a prescribed department; or
- (c) under funding provided by the Commonwealth and administered by a prescribed department; or
- (d) under a licence under the *Child Protection Act 1999*; or
- (e) to children who are, under the *Child Protection Act 1999*, in the custody or guardianship of the chief executive of the department in which that Act is administered, if the place is prescribed under a regulation made for this paragraph.

“school” means—

- (a) a State school within the meaning of the *Education (General Provisions) Act 1989*; or
- (b) a school that is provisionally accredited, or accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*.

SCHEDULE 4 (continued)

“serious offence” means—

- (a) an offence against a provision mentioned in the schedule to the *Penalties and Sentences Act 1992*;³⁹ or
- (b) an offence against a provision of the Criminal Code mentioned in schedule 2; or
- (c) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a) or (b); or
- (d) an offence against a law of another jurisdiction that substantially corresponds to an offence mentioned in paragraphs (a) to (c).

“serious offence involving a child” does not include a serious offence for which a child is the alleged offender.

“service provider” see section 8.

“staff member”—

- (a) for part 7—see section 129; or
- (b) of a visitable site, means—
 - (i) a person in charge of the site;
 - (ii) another person who is concerned with, or takes part in, the management of the site;
 - (iii) another person who is a member of the staff at the site; or
- (c) in relation to a child care service, see the *Child Care Act 2002*, section 57.

“suitability notice” means a suitability notice issued under section 102.

“teacher registration information”, about a person, means information about the person received by the commissioner under the *Education (Teacher Registration) Act 1988*, section 71B.

“unit of public administration” means a unit of public administration under the *Crime and Misconduct Act 2001*.

“visitable site” see section 64.

³⁹ *Penalties and Sentences Act 1992*, schedule (Serious violent offences)

SCHEDULE 4 (continued)

“work”, for part 6, includes the provision of a service, or the conduct of an activity, in the course of a religious vocation.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 27 January 2004. Future amendments of the Commission for Children and Young People Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to 2001 Act No. 16	1 May 2001	6 July 2001
1A	to 2001 Act No. 60	1 October 2001	12 October 2001
1B	to 2001 Act No. 73	3 December 2001	7 December 2001
1C	to 2001 Act No. 73	1 January 2002	4 January 2002
1D	to 2001 Act No. 73	1 February 2002	1 February 2002
1E	to 2001 Act No. 73	1 March 2002	1 March 2002
1F	to 2001 Act No. 73	1 May 2002	10 May 2002
1G	to 2001 Act No. 73	12 May 2002	24 May 2002
2	to 2001 Act No. 73	12 May 2002	7 June 2002
			(Column discontinued) Notes
2A	to 2003 Act No. 19	9 May 2003	
2B rv	to 2003 Act No. 19	1 July 2003	
2C	to 2003 Act No. 19	1 September 2003	
2D	to 2003 Act No. 88	5 January 2004	
2E	to 2003 Act No. 88	27 January 2004	

5 List of legislation

Commission for Children and Young People Act 2000 No. 60

date of assent 24 November 2000

ss 1–2 commenced on date of assent

pt 6 (except for ss 101, 109, 111(2)(c), 113, 114(4)) commenced 1 May 2001 (2001 SL No. 1)

ss 101, 111(2)(c), 114(4) commenced 1 October 2001 (2001 SL No. 1)

ss 109, 113 commenced 1 February 2002 (2001 SL No. 1)

sch 1 commenced 1 May 2001 (2001 SL No. 1)

remaining provisions commenced 2 February 2001 (2001 SL No. 1)

amending legislation—

Chiropractors Registration Act 2001 No. 3 ss 1–2, 241 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 73)

Dental Practitioners Registration Act 2001 No. 4 ss 1–2, 267 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 258)

Dental Technicians and Dental Prosthetists Registration Act 2001 No. 5 ss 1–2, 247 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 74)

Medical Practitioners Registration Act 2001 No. 7 ss 1–2, 302 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 30)

Medical Radiation Technologists Registration Act 2001 No. 8 ss 1–2, 237 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 12 May 2002 (automatic commencement under AIA s 15DA(2))

Occupational Therapists Registration Act 2001 No. 9 ss 1–2, 239 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 259)

Optometrists Registration Act 2001 No. 10 ss 1–2, 237 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 260)

Pharmacists Registration Act 2001 No. 12 ss 1–2, 245 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 261)

Physiotherapists Registration Act 2001 No. 13 ss 1–2, 242 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 262)

Podiatrists Registration Act 2001 No. 14 ss 1–2, 238 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 76)

Psychologists Registration Act 2001 No. 15 ss 1–2, 255 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 77)

Speech Pathologists Registration Act 2001 No. 16 ss 1–2, 236 sch 2

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 263)

Education (Accreditation of Non-State Schools) Act 2001 No. 60 ss 1, 2(2), 218 sch 1

date of assent 21 September 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (see s 2(2))

Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

Ombudsman Act 2001 No. 73 ss 1–2, 96 sch 1

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2001 (2001 SL No. 224)

Juvenile Justice Amendment Act 2002 No. 39 pts 1, 6

date of assent 29 August 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2002 SL No. 350)

Juvenile Justice Act 1992 No. 44 s 341(3) (prev 262(3)) sch 3 (this Act is amended, see amending legislation below)

amending legislation—

Juvenile Justice Amendment Act 2002 No. 39 ss 1–2, 115, 118 (amends 1992 No. 44 above)

date of assent 29 August 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2002 SL No. 350)

Child Care Act 2002 No. 55 ss 1–2, 196 sch 1

date of assent 1 November 2002

ss 1–2 commenced on date of assent

sch 1, amdt 7 (amdt could not be given effect)

remaining provisions commenced 1 September 2003 (2003 SL No. 188)

Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch

date of assent 9 May 2003

commenced on date of assent

Evidence (Protection of Children) Amendment Act 2003 No. 55 pts 1, 4

date of assent 18 September 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 5 January 2004 (2003 SL No. 280)

**Education and Other Legislation (Student Protection) Amendment Act 2003 No. 88
pts 1–2**

date of assent 18 November 2003

ss 1–2 commenced on date of assent

pt 2 hdg, ss 3, 6 (other than to the extent it ins new s 119(1A)(a)) commenced
5 January 2004 (2003 SL No. 345)ss 4–5, 6 (to the extent it ins new s 119(1A)(a)), 7–9 commenced 27 January 2004
(2003 SL No. 345)**6 List of annotations****Application of other Acts****s 14** amd 2001 No. 69 s 378 sch 1**Referral of matters or offences to other persons****s 20** amd 2001 No. 69 s 378 sch 1**Subject matter of complaints****s 32** amd 2002 No. 39 s 143; 1992 No. 44 s 341 sch 3 (ins 2002 No. 39 ss 115, 118)**Notice for information given to law enforcement agency****s 49** amd 2001 No. 69 s 378 sch 1**Decision on application****s 102** amd 2003 No. 88 s 4**Commissioner to invite submissions from person about particular information****prov hdg** amd 2003 No. 88 s 5(1)**s 103** amd 2003 No. 88 s 5(2)**Cancellation of notice—wrong, incomplete or new information****prov hdg** amd 2003 No. 88 s 6(1)**s 119** amd 2003 No. 88 s 6(2)–(3)**Notice of change in criminal history****s 122A** ins 2003 No. 55 s 8**What is employment in child care****s 126A** ins 2002 No. 55 s 196 sch 1**PART 9—REPEAL AND TRANSITIONAL PROVISIONS****Division 4—Transitional provisions for Child Care Act 2002****div hdg** ins 2002 No. 55 s 196 sch 1**PART 10—CONSEQUENTIAL AMENDMENTS****pt hdg** om R1 (see RA s 40)**Meaning of “commencement day”****s 175** prev s 175 om R1 (see RA s 40)

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Carrying on licensed child care service**s 176** ins 2002 No. 55 s 196 sch 1

Carrying on other regulated child care business

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Employment in child care

s 178 ins 2002 No. 55 s 196 sch 1

Division 5—Transitional provisions for Education and Other Legislation (Student Protection) Amendment Act 2003

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SCHEDULE 1—REGULATED EMPLOYMENT AND BUSINESSES FOR EMPLOYMENT SCREENING**Child care**

s 3A ins 2002 No. 55 s 196 sch 1

Churches, clubs and associations involving children

s 4 amd 2002 No. 55 s 196 sch 1

Education programs conducted outside of school

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Child care

s 10 ins 2002 No. 55 s 196 sch 1

Education programs conducted outside of school

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SCHEDULE 3—CONSEQUENTIAL AMENDMENTS

om R1 (see RA s 40)

SCHEDULE 4—DICTIONARYdef “**adjunct care**” ins 2002 No. 55 s 196 sch 1def “**carer**” ins 2002 No. 55 s 196 sch 1def “**charge**” amd 2002 No. 55 s 196 sch 1 (amdt could not be given effect);
2003 No. 19 s 3 schdef “**child care**” ins 2002 No. 55 s 196 sch 1def “**child care centre**” ins 2002 No. 55 s 196 sch 1def “**child care service**” ins 2002 No. 55 s 196 sch 1def “**commercial service**” ins 2002 No. 55 s 196 sch 1def “**complaints agency**” amd 2001 No. 69 s 378 sch 1; 2001 No. 73 s 96
sch 1def “**cousin**” ins 2002 No. 55 s 196 sch 1def “**detention centre**” amd 1992 No. 44 s 341 sch 3 (ins 2002 No. 39
ss 115, 118)def “**guardian**” ins 2002 No. 55 s 196 sch 1def “**registered health practitioner**” amd 2001 No. 3 s 241 sch 2; 2001 No. 4
s 267 sch 2; 2001 No. 5 s 247 sch 2; 2001 No. 7 s 302 sch 2; 2001 No. 8
s 237 sch 2; 2001 No. 9 s 239 sch 2; 2001 No. 10 s 237 sch 2; 2001 No. 12
s 245 sch 2; 2001 No. 13 s 242 sch 2; 2001 No. 14 s 238 sch 2; 2001 No. 15
s 255 sch 2; 2001 No. 16 s 236 sch 2def “**relative**” ins 2002 No. 55 s 196 sch 1def “**school**” sub 2001 No. 60 s 218 sch 1def “**staff member**” amd 2002 No. 55 s 196 sch 1

def **“teacher registration information”** ins 2003 No. 88 s 9
def **“unit of public administration”** sub 2001 No. 69 s 378 sch 1