



# **Commission for Children and Young People and Child Guardian Act 2000**

**Reprinted as in force on 1 January 2006**

**See endnote 7 for information about retrospectivity  
Reprint No. 4C revised edition**

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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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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.



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# **Commission for Children and Young People and Child Guardian Act 2000**

[as amended by all amendments that commenced on or before 1 January 2006]

**An Act to establish a Commission for Children and Young People and Child Guardian 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 and Child Guardian 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.

#### **4A Notes in text**

A note in the text of this Act is part of this Act.

## **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 and Child Guardian to promote and protect the rights, interests and wellbeing of children in Queensland.

### **6 Principles for administering this Act**

- (1) This Act is to be administered under the principle that the welfare and best interests of a child are paramount.
- (2) Subject to subsection (1), this Act is also to be administered under the following principles—
- (a) every child is a valued member of society;
  - (b) in decisions involving a child, the child's views and wishes should be taken into account in a way that has regard to the child's age and ability to understand;
  - (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

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- (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.

**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.

**7A Scope of Act relating to children in the child safety system**

To remove any doubt, it is declared that this Act applies to matters relating to children in the child safety system even if the children are no longer in the child safety system when the matters are dealt with under this Act.

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*Examples—*

- 1 Under section 15AA(1)(b), the commissioner may review the child safety department's handling of a case of a particular child in the child safety system even though the child is no longer in the child safety system at the time of the review.
- 2 Under section 32(a), a complaint may be made about a service provided to a child in the child safety system, even though the child is no longer in the child safety system when the complaint is made.

## **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.

## **Division 4                      Children in the child safety system**

### **11A    When is a child *in the child safety system***

- (1) A child starts being *in the child safety system* if the chief executive (child safety) becomes aware (whether because of receiving a notification or otherwise) of alleged harm or alleged risk of harm to the child.
- (2) A child stops being *in the child safety system* if—
  - (a) the chief executive (child safety) decides there is no ground for forming a reasonable suspicion that the child is in need of protection; or
  - (b) otherwise—
    - (i) the child is not the subject of an order under the *Child Protection Act 1999*; and
    - (ii) the chief executive (child safety) decides not to take action, or further action, relating to the child.

## **Part 2                              Commissioner, assistant commissioner and commission**

### **Division 1                      Establishment**

#### **12       Establishment of commissioner, assistant commissioner and commission**

- (1) There is to be a Commissioner for Children and Young People and Child Guardian.
- (2) There is to be an Assistant Commissioner.

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- (3) A commission called the ‘Commission for Children and Young People and Child Guardian’ is established.
- (4) The commission consists of the commissioner, the assistant 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 commission’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## **Division 2 Functions and powers**

### **15 Commissioner’s functions**

- (1) 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;<sup>1</sup>

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

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- (b) to monitor and review the way in which service providers respond to complaints about services provided by them to certain children;
- (c) the commissioner's monitoring functions under section 15AA;
- (d) to investigate matters relating to services provided to children in the child safety system;
- (e) to seek to resolve, with the chief executive (child safety), disputes about reviewable decisions under part 7A;
- (g) to advocate for children and, in advocating for children, to seek help from advocacy entities, service providers and other entities;
- (h) to promote the establishment by service providers of appropriate and accessible mechanisms for the participation of children in matters that may affect them;
- (i) to monitor and review laws, policies and practices that—
  - (i) relate to the delivery of services to children; or
  - (ii) otherwise impact on children;
- (j) to promote laws, policies and practices that uphold the principles underlying this Act;<sup>2</sup>
- (k) to encourage, facilitate and support the development and coordination of advocacy and other support services for children;
- (l) to promote awareness among children about advocacy entities, complaints agencies and other relevant entities;
- (m) to promote an understanding of, and informed public discussion about, the rights, interests and wellbeing of children;
- (n) to conduct, coordinate, sponsor, participate in and promote research about the rights, interests and wellbeing of children;

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<sup>2</sup> See section 6 (Principles for administering this Act).

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- (o) to administer a community visitor program;
  - (p) to record, analyse, research and report on information about child deaths;
  - (q) to screen persons employed, or proposed to be employed, in certain child-related employment;
  - (r) to screen persons carrying on, or proposing to carry on, certain child-related businesses;
  - (ra) to audit or monitor compliance with part 6;<sup>3</sup>
  - (s) to report on, and make recommendations about, matters relating to the commissioner's functions;
  - (t) other functions conferred on the commissioner under this or another Act.
- (2) The commissioner's *child guardian functions* are—
- (a) the monitoring functions under section 15AA; and
  - (b) the functions under subsection (1)(d) and (e); and
  - (c) the other functions, so far as they relate to children in the child safety system.

### 15AA Monitoring functions

- (1) The commissioner has the following functions (the *monitoring functions*)—
- (a) to monitor, audit and review the systems, policies and practices of the child safety department and other service providers that affect children in the child safety system;
  - (b) to monitor, audit and review the handling of individual cases of children in the child safety system by the child safety department and licensees under the *Child Protection Act 1999*;

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3 Part 6 (Screening for regulated employment and regulated businesses)



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- (c) to monitor compliance by the chief executive (child safety) with the *Child Protection Act 1999*, section 83.<sup>4</sup>

*Note—*

Part 2A includes powers of the commissioner that may be exercised to perform the monitoring functions, but only in relation to the service providers specified in section 31B.

- (2) To perform the monitoring functions, the commissioner may need to access, under part 2A, information or documents relating to individual cases.
- (3) The systems, policies and practices mentioned in subsection (1)(a) include systems, policies and practices for case handling.
- (4) However, to remove any doubt, it is declared that the monitoring functions under subsection (1)(a) do not include reviewing a decision taken in an individual case.
- (5) Also, subsection (1)(a) does not apply to—
- (a) the systems, policies and practices of the Director of Public Prosecutions or the police service that directly relate to decisions about whether or not to institute, or continue with, a proceeding for an offence; or
  - (b) the systems, policies and practices of the police service that directly relate to decisions about whether or not to apply for a protection order under the *Domestic and Family Violence Protection Act 1989*; or
  - (c) the systems, policies and practices of Legal Aid Queensland that directly relate to the content of legal advice given by Legal Aid lawyers.

## **15A Role of assistant commissioner**

The assistant commissioner is responsible to the commissioner for the proper performance of the commissioner's child guardian functions.

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<sup>4</sup> *Child Protection Act 1999*, section 83 (Additional provisions for placing Aboriginal and Torres Strait Islander children in care)

## **16 Commissioner's powers**

The commissioner has all necessary or convenient powers to perform the commissioner's functions, including the powers under parts 2A and 3.<sup>5</sup>

### **16A Assistant commissioner's powers**

- (1) The assistant commissioner has the powers of the commissioner under this Act that are necessary or convenient to perform the assistant commissioner's role.
- (2) For subsection (1), a provision of this Act about a power of the commissioner applies, with necessary changes, as if a reference to the commissioner were a reference to the assistant commissioner.
- (3) The assistant commissioner is subject to the directions of the commissioner in the exercise of the powers.

## **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**

- (1) 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;

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<sup>5</sup> Parts 2A (Powers and obligations relating to the commissioner's monitoring functions) and 3 (Complaints and investigations)

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- (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.
- (2) Also, in performing the commissioner's monitoring functions, the commissioner must—
- (a) to the greatest extent practicable—
    - (i) work cooperatively with service providers; and
    - (ii) help build their capacity to meet the needs of children in the child safety system; and

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*Example for subparagraph (ii)—*

The commissioner may prepare, and issue to service providers, guidelines about systems, policies or practices affecting children in the child safety system.

- (b) exercise the commissioner's powers in relation to service providers in a way that is fair and reasonable, having regard to—
  - (i) their capacity, and the resources available to them, to comply with requests or requirements made by the commissioner; and
  - (ii) for a service provider holding a licence to provide care services under the *Child Protection Act 1999*—its licence conditions and other requirements applying to it under that Act; and
- (c) respect and promote the role of Aboriginal and Torres Strait Islander service providers in supporting Aboriginal and Torres Strait Islander families and communities to care for their children; and
- (d) to the greatest extent practicable, enter into arrangements with service providers to facilitate the performance by the commissioner of the functions; and

*Example for paragraph (d)—*

The commissioner may agree with a service provider on a plan for how the commissioner will perform the commissioner's monitoring functions in relation to the service provider over the following year.

- (e) have sufficient regard to the sensitive nature of personal information, and access it only to the extent necessary to perform the functions.
- (3) Subsection (2) does not limit the commissioner's powers under this Act.

**19 Commissioner may use expert advisers or cooperate with other entities**

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

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- (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 (child safety) 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 (child safety), the police commissioner and the Crime and Misconduct Commission.

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- (4) A reference in subsection (2)(b) to a child who is, or may be, the victim of a criminal offence includes a child who was, or may have been, the victim of a criminal offence and who has died.
- (5) 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.<sup>6</sup>

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<sup>6</sup> See section 6 (Principles for administering this Act).

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- (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.<sup>7</sup>
- (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.

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<sup>7</sup> *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)

## **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



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- (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 3A Appointment of assistant commissioner**

### **28A Appointment of assistant commissioner**

- (1) The assistant commissioner is to be appointed by the Governor in Council.
- (2) Division 3 applies, with necessary changes, in relation to the assistant commissioner as if—
  - (a) a reference to the commissioner were a reference to the assistant commissioner; and
  - (b) a reference to the commissioner's duties were a reference to the assistant commissioner's role.

- (3) Without limiting the application of section 21(2) in relation to the assistant commissioner, a person is eligible for appointment as the assistant commissioner only if the person has knowledge of laws and practice relating to child protection.

## **Division 4                      Commission's staff**

### **29                      Commission's staff**

- (1) The commission's staff, other than community visitors,<sup>8</sup> 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.

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<sup>8</sup> For the appointment of community visitors, see section 81 (Appointment).

## **Part 2A**                      **Powers and obligations relating to the commissioner's monitoring functions**

### **Division 1**                      **Operation of part 2A**

#### **31A**    **Powers relate to monitoring functions**

The powers under this part may be exercised only to perform the commissioner's monitoring functions.

#### **31B**    **Service providers to which this part applies**

This part applies only to the following service providers (*relevant service providers*)—

- (a) the child safety department;
- (b) a service provider holding a licence to provide care services under the *Child Protection Act 1999* (a *licensee*);
- (c) a department that is mainly responsible for any of the following matters—
  - (i) Aboriginal and Torres Strait Islander policy;
  - (ii) administration of justice;
  - (iii) adult corrective services;
  - (iv) community services;
  - (v) disability services;
  - (vi) education;
  - (vii) housing services;
  - (viii) public health;
- (d) the Director of Public Prosecutions;
- (e) Legal Aid Queensland;

- (f) the Public Trust Office;
- (g) the police service.

## **Division 2                      Powers and obligations**

### **31C      Power to require information or documents**

- (1) The commissioner may give a written notice to a relevant service provider requiring the service provider to give the commissioner, within a stated reasonable time—
  - (a) information about a stated matter; or
  - (b) a stated document, or documents of a stated class, in the service provider's possession or control; or
  - (c) a copy of a document, or copies of documents, mentioned in paragraph (b).
- (2) A requirement may, for example, relate to—
  - (a) information, or a file containing information, about the service provider's provision of care to a particular child; or
  - (b) information about the service provider's internal complaints management system; or
  - (c) information that the commissioner reasonably needs to implement a plan for monitoring the service provider's operations.
- (3) The notice must state the purpose for making the requirement.
- (4) For subsection (1)(b)—
  - (a) a document is taken to be in the service provider's control if, under an agreement between the service provider and another entity, the other entity must give the document to the service provider for the purpose of the commissioner performing the commissioner's monitoring functions; but
  - (b) otherwise, a document is not taken to be in the service provider's control merely because of an agreement

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between the service provider and another entity under which the other entity must give the document to the service provider.

**31D Access to information and documents of the child safety department**

- (1) This section applies to a notice under section 31C given to the child safety department.
- (2) The notice must state the way in which the information or documents must be given.

*Examples of stated ways—*

- 1 sending the commissioner an electronic copy of a document
  - 2 allowing the commissioner to enter the department's premises and access information or documents
- (3) The stated way must be—
    - (a) reasonably necessary for achieving the stated purpose for making the requirement; and
    - (b) reasonable, having regard to the matters stated in section 18(2).

*Example—*

A notice requires the child safety department to give particular documents to the commissioner. The stated purpose for making the requirement is to audit the department's responses to notifications about suspected harm or risk of harm to children placed in the care of approved foster carers. The stated way in which the documents must be given is by allowing the commissioner to enter stated premises of the child safety department at a stated reasonable time to access the documents.

- (4) The department must comply with the notice.

**31DA Access to information and documents of a relevant service provider other than the child safety department**

- (1) This section applies to a notice under section 31C given to a relevant service provider other than the child safety department.

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- (2) The notice must state the way in which the commissioner seeks to have the information or documents given.

*Examples of stated ways—*

- 1 sending the commissioner an electronic copy of a document
  - 2 allowing the commissioner to enter the service provider's premises and access information or documents
- (3) The service provider is not required to give the information or documents in the stated way.
- (4) For a requirement to give a document, the service provider may comply with the requirement by giving the information contained in the document.
- (5) The service provider is not required to give information or a document to which section 31DB applies.
- (6) Otherwise, the service provider must comply with the notice.

*Example—*

The commissioner gives a notice to a licensee seeking particular documents by allowing the commissioner entry to the licensee's premises. The licensee does not have to allow the entry. But if the licensee does not allow the entry, the licensee must comply with the requirement, by the stated time, by giving the information contained in the documents or giving the documents in another way.

- (7) The notice must state the matters mentioned in subsections (3) to (5).

### **31DB Exempt information and documents**

- (1) This section applies to a relevant service provider other than the child safety department.
- (2) In response to a notice under section 31C, the service provider is not required to give the commissioner information or a document that is exempt under this section.
- (3) Information or a document is exempt if giving it could reasonably be expected to—
  - (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case; or

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- (b) prejudice an investigation under the *Coroners Act 2003*; or
  - (c) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
  - (d) endanger a person's life or physical safety; or
  - (e) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
- (4) Subsection (3) does not apply if giving the information or document would, on balance, be in the public interest.
- (5) Also, information or a document is exempt if—
- (a) it relates to a review of a matter, being conducted within the entity that is the relevant service provider, that has not been completed; and
  - (b) giving the information or document is likely to prejudice or interfere with the review.
- (6) For subsection (5)(a), a review is taken not to be completed until the end of any period allowed for an appeal from the review and the end of any appeal.
- (7) Also, for Legal Aid Queensland, information or a document is exempt to the extent it contains communications mentioned in the *Legal Aid Queensland Act 1997*, section 75.<sup>9</sup>
- (8) In this section—  
*review* includes investigation.

### **31E Help to obtain information or documents from a licensee**

- (1) This section applies if the commissioner considers a licensee has not complied with a notice under section 31C.

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<sup>9</sup> *Legal Aid Queensland Act 1997*, section 75 (Application of legal professional privilege to Legal Aid and Legal Aid lawyers)

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- (2) The commissioner may ask the chief executive (child safety) to take action, within a stated time, to facilitate access to the information or documents sought under the notice.
- (3) The chief executive (child safety) may, for example, facilitate access by obtaining a document under the *Child Protection Act 1999*, or under an agreement with the licensee, and giving it to the commissioner.
- (4) The stated time for taking the action must be reasonable, having regard to the matters stated in section 18(2).
- (5) The chief executive (child safety) must comply with the request.
- (6) The chief executive (child safety) must keep the commissioner informed of progress in facilitating the access, including by giving information about any delays or any inability to facilitate the access.

### **31EA Protection from liability for giving information**

- (1) This section applies to the giving of information to the commissioner, by a relevant service provider, for the purpose of the commissioner performing the commissioner's monitoring functions.
- (2) A person may give the information despite any other law that would otherwise prohibit or restrict the giving of the information.

*Examples of other laws—*

- *Education (General Provisions) Act 1989*, section 25
  - *Health Services Act 1991*, section 63
  - *Police Service Administration Act 1990*, section 10.1
- (3) If a person, acting honestly, gives the information to the commissioner, the person is not liable, civilly, criminally or under an administrative process, for giving the information.
  - (4) Also, merely because the person gives the information, the person can not be held to have—
    - (a) breached any code of professional etiquette or ethics; or



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- (b) departed from accepted standards of professional conduct.
- (5) Without limiting subsections (3) and (4)—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
    - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.
- (6) This section does not apply to a person giving information in contravention of the *Legal Aid Queensland Act 1997*, section 75.<sup>10</sup>
- (7) In this section—  
*information* includes a document.

**31EB Restricted use of confidential information accessed under this part**

- (1) This section applies to information, given to the commissioner for the purpose of the commissioner performing the commissioner's monitoring functions, to the extent the information comprises confidential information.
- (2) The commissioner may only use or disclose the information—
  - (a) to perform the commissioner's monitoring functions; or
  - (b) to refer a matter under section 20; or
  - (c) to undertake an investigation under part 3; or
  - (d) if authorised under another Act or required by law; or

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<sup>10</sup> *Legal Aid Queensland Act 1997*, section 75 (Application of legal professional privilege to Legal Aid and Legal Aid lawyers)

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- (e) with the written consent of the person to whom the information relates or, if the person is a child unable to consent, with the written consent of a parent or guardian of the child.
- (3) In this section—  
*information* includes a document.

### **31EC Commissioner to advise on-disclosure**

- (1) This section applies to information or a document that the commissioner has obtained from a relevant service provider for the purpose of performing the commissioner's monitoring functions.
- (2) The commissioner must advise the service provider before giving the information or document to another entity, unless the commissioner considers that doing so would not be in the best interests of a child to whom the information or document relates.

### **31F Periodic reporting**

A relevant service provider must give to the commissioner, at the times and in the way prescribed under a regulation, the information prescribed under a regulation about its systems, policies or practices affecting children in the child safety system.

### **31G Review of service**

- (1) This section applies if the commissioner—
  - (a) has a particular concern about—
    - (i) a relevant service provider's systems, policies or practices affecting children in the child safety system; or
    - (ii) the handling of individual cases of children in the child safety system by the child safety department or a licensee; and

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- (b) considers it would be appropriate, having regard to the matters stated in section 18(2), to exercise a power under this section to address the concern.
- (2) The commissioner may require the service provider to—
- (a) undertake a review of—
    - (i) if subsection (1)(a)(i) applies—the systems, policies or practices; or
    - (ii) if subsection (1)(a)(ii) applies—the handling of the individual cases; and
  - (b) give the commissioner a report about the review.
- (3) The commissioner may—
- (a) require the service provider to stop carrying out a review mentioned in subsection (2)(a); and
  - (b) assume responsibility from the service provider for the review; and
  - (c) require the service provider to give the commissioner reasonable help to complete the review.
- (4) The service provider must comply with a requirement under this section.
- (5) For a relevant service provider that is a licensee, the commissioner—
- (a) must inform the chief executive (child safety) before requiring the service provider to undertake a review; and
  - (b) may ask the chief executive (child safety) to help the service provider undertake the review; and
  - (c) must give the chief executive (child safety) a copy of the report about the review.

### **31H Recommendations**

- (1) The commissioner may make recommendations to a relevant service provider about matters arising from the commissioner's performance of the monitoring functions in relation to the service provider.

- (2) Before making the recommendations, the commissioner must give the service provider a written copy of the proposed recommendations and a reasonable opportunity to comment on them.
- (3) The commissioner must give a copy of the recommendations to the Minister responsible for the service provider.
- (4) The Minister responsible for a relevant service provider mentioned in section 31B(b) is the Minister responsible for the child safety department.

### **31I Report to Ministers about noncompliance**

- (1) This section applies if the commissioner considers a relevant service provider has—
  - (a) contravened a provision of this division; or
  - (b) failed to take appropriate action in response to a recommendation made under section 31H.
- (2) The commissioner may prepare a report about the matter and give it to the Minister responsible for the child safety department and the Minister responsible for the service provider.

*Note—*

Sections 60 to 63 establish a process for reports prepared by the commissioner to be tabled in the Legislative Assembly. The process includes giving an opportunity for an entity to respond to adverse comments in a report.

### **31J Noncompliance not an offence**

A person does not commit an offence only by failing to comply with this division.

## Part 3                      Complaints and investigations

### Division 1AA              Preliminary

#### 31K      Operation of pt 3

- (1) This part provides a process for making and resolving complaints about certain matters.
- (2) The commissioner may undertake an investigation to deal with a complaint.
- (3) Also, the commissioner may undertake an investigation, apart from the process for dealing with a complaint, relating to a service provided, or required to be provided, to a child in the child safety system.

### 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 in the child safety system; or
- (b) 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
- (c) while the child is in detention under the *Juvenile Justice Act 1992* or the *Bail Act 1980*; or
- (d) in the course of a program or service established under the *Juvenile Justice Act 1992*, section 302.<sup>11</sup>

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

### **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
  - (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

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- (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



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- 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—
- (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

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- (iv) is before an inquest or inquiry being held under the *Coroners Act 1958*;<sup>12</sup> 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.

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12 Now see the *Coroners Act 2003*, section 103.

- (4) In this section—  
*complaint* includes part of a complaint.

## **Division 3                      Investigations**

### **Subdivision 1                  Starting an investigation**

#### **41                      Investigation of complaint**

- (1) The commissioner may investigate a complaint after—
- (a) making it under section 37; or
  - (b) assessing it under section 38.
- (2) Before investigating a complaint, the commissioner must give a written notice to the service provider to which the complaint relates.
- (3) 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.

#### **42                      Other investigations**

- (1) The commissioner may investigate a matter relating to a service provided, or required to be provided, to a child in the child safety system if the commissioner believes—
- (a) the rights, interests or wellbeing of a child or children may be seriously affected if the investigation is not conducted; or
  - (b) the matter raises issues of public interest; or

- (c) the matter raises a significant issue about a law, policy or practice underlying the service, or about the need for a law, policy or practice to underlie the service.
- (2) Subsection (1) applies whether or not a complaint has been received about the matter.
- (3) The commissioner may make reasonably necessary inquiries to decide whether to investigate a matter.
- (4) Before exercising powers under this part for an investigation under this section, the commissioner must give a written notice to the service provider to whom the investigation relates.
- (5) The notice must state the following—
  - (a) the investigation that the commissioner is conducting or proposing to conduct;
  - (b) the subject matter of the investigation;
  - (c) in general terms, the powers that the commissioner may exercise under this part for the investigation.

## **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 child, to whom an investigation relates, who is or was in the child safety system; or
  - (d) 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), (c) and (d) 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—

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- (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 or Health Act 1937**

- (1) If the commissioner decides it is necessary for the commissioner to know the identity of a notifier, the commissioner must give written notice to the chief executive (child safety) requiring disclosure of the identity within a reasonable time stated in the notice.
- (2) The chief executive (child safety) must comply with the notice.
- (3) In this section—  
*notifier* means—
  - (a) a notifier mentioned in the *Child Protection Act 1999*, section 186; or
  - (b) a notifier mentioned in the *Health Act 1937*, section 76KH whose identity is known to the chief executive (child safety).

**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.



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- (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;
  - (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 an investigation if the commissioner is satisfied it would not be in the best interests

of a child or children to whom the investigation relates to continue it.

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

## **57 Notice of complaint 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) As soon as practicable after completing an investigation other than an investigation of a complaint, or ending it under section 56, the commissioner must prepare a written report and give a copy to—
  - (a) the chief executive (child safety); and
  - (b) if the report relates to the delivery of services to children by a service provider other than the child safety department—the service provider; and

- (c) if the commissioner considers it appropriate—the Minister responsible for a subject matter of the investigation.
- (3) A report under subsection (1) or (2) may recommend that a service provider (whether or not a service provider to which a complaint relates) take stated action within a stated time that is reasonable in the circumstances.
- (4) If the report makes a recommendation mentioned in subsection (3) 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 the following children—

- (a) a child residing at a residential facility or detention centre, or at an authorised mental health service under the *Mental Health Act 2000*;
- (b) a child in the custody or guardianship of the chief executive (child safety) under the *Child Protection Act 1999* who, under section 82 of that Act, has been placed in the care of an approved foster carer or someone else other than a parent of the child;
- (c) a child who, under an agreement entered into by the chief executive (child safety) and a parent of the child, has been placed in the care of someone other than a parent of the child.

**64A Meaning of *visitable site***

A *visitable site* is a place mentioned in section 64(a).

**64B Meaning of *visitable home***

A *visitable home* is a home in which a child mentioned in section 64(b) or (c) is residing.

**Division 2 Visits to visitable sites and homes**

**65 Commissioner must arrange regular and frequent visits**

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

**66 Requirement to visit visitable site 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

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- (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.

**66A Requirement to visit visitable home or communicate if asked**

- (1) A child residing in a visitable home may—
- (a) ask the commissioner to arrange for a community visitor to visit the home to perform the functions of a community visitor; or
  - (b) ask a carer of the child to arrange for a community visitor to visit the home to perform the functions of a community visitor; or
  - (c) inform a carer of the child that the child wishes to communicate with a stated community visitor.
- (2) If subsection (1)(b) applies, the carer must tell the commissioner about the request as soon as possible.
- (3) If subsection (1)(c) applies, the carer must take reasonable steps to inform the community visitor as soon as possible.
- (4) A community visitor must comply with a request to visit a visitable home, or communicate with a child residing at a visitable home, as soon as practicable after being informed of the request.



- (5) A person does not commit an offence only by failing to comply with subsection (2), (3) or (4).

## 67 Report after each visit

- (1) As soon as practicable after visiting a visitable site or visitable home, 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 a report about a visit to a visitable site, 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.
- (3) So far as the commissioner considers appropriate, the commissioner may give a copy of a report about a visit to a visitable home, or information from the report, to any of the following entities—
- (a) the chief executive (child safety);
  - (b) the chief executive of a department responsible for providing services to the child who is a subject of the report;
  - (c) a carer of the child;
  - (d) a service provider, holding a licence to provide care services under the *Child Protection Act 1999*, involved in the placement of the child in the home;
  - (e) the child.

- (4) 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) or (3) 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 and visitable homes—
- (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 assess the physical and emotional wellbeing of the children;
  - (f) for visitable sites—
    - (i) 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; and

- (ii) to observe the treatment of the children, including the extent to which their needs are met by staff of the sites; and
- (iii) to assess the morale of the staff of the sites; and
- (iv) for detention centres—to assess whether the programs for the release of children subject to detention orders adequately and appropriately prepare them for release;
- (g) for visitable homes—
  - (i) to assess their appropriateness for the accommodation of the children; and
  - (ii) to observe the treatment of the children, including the extent to which their needs are met by persons caring for them at the homes.
- (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 and visitable homes**

### **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) A community visitor may enter a visitable home if—
  - (a) a carer residing in the home consents to the entry; or
  - (b) the entry is authorised by a warrant.
- (3) For the purpose of asking a person who is in charge of a visitable site, or who is a carer residing in a visitable home,

for consent to enter, a community visitor may, without the person's consent or a warrant—

- (a) enter land around the site or home to an extent that is reasonable to contact the person; or
- (b) enter part of the site or home 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 who is in charge of a visitable site, or who is a carer residing in a visitable home, to consent to the community visitor entering the site or home under section 69(1)(a) or (2)(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) If—
- (a) an issue arises in a proceeding about whether a person who was in charge of a visitable site, or who was a carer residing in a visitable home, consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove a person mentioned in paragraph (a) consented.

## 71 Application for warrant

- (1) A community visitor may apply to a magistrate for a warrant for a visitable site or visitable home.
- (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 visitable site or visitable home.
- (2) The warrant must state—
  - (a) that a stated community visitor may, with necessary and reasonable help and force—
    - (i) enter the site or home 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 or home 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 or visitable home is intending to enter the site or home under the warrant.
- (2) Before entering the site or home, the community visitor must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is in charge of the visitable site, or who is a carer residing in the visitable home, 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 site or home;
  - (d) give the person an opportunity to allow the community visitor immediate entry to the site or home without using force.

## **Subdivision 3 Other powers**

### **74 Related powers for visitable sites**

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 visitable 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 staff of visitable site to produce documents**

- (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,

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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.

#### **76A Powers relating to visitable homes**

- (1) After entering a visitable home, a community visitor may do any of the following—
  - (a) look around the home and assess its appropriateness for the accommodation of the relevant child;
  - (b) have access to the relevant child;
  - (c) talk with the relevant child at an appropriate place out of the hearing of other persons at the home;
  - (d) require a carer residing in the home to give the visitor reasonable help to exercise the visitor's powers under paragraphs (a) to (c).
- (2) An appropriate place under subsection (1)(c) may be a place away from the visitable home (for example, a local park) where the child has asked to talk.
- (3) A person must comply with a requirement under subsection (1)(d).
- (4) A person does not commit an offence only by failing to comply with a requirement under subsection (1)(d).
- (5) In this section—

***relevant child*** means a child mentioned in section 64(b) or (c) residing at the home.



## **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; or
  - (c) including information about the child in a report to the commissioner under section 67(1).
- (2) 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 home before—
  - (a) asking a carer or someone else at the home a question about the child; or
  - (b) including information about the child in a report to the commissioner under section 67(1).
- (3) The child's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.
- (4) 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**

- (1) 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.
- (2) In exercising a power or performing a function in relation to a visitable home, a community visitor must act in a way that—

- (a) preserves, as far as practicable, the privacy of persons residing at the home and does not cause them unnecessary inconvenience; and
- (b) respects the wishes of any of the children residing in the home 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

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- (b) a demonstrated commitment to upholding the principles underlying this Act.<sup>13</sup>
- (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.
- (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 child safety department 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*;<sup>14</sup> or
  - (d) an approved foster carer.
- (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—

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<sup>13</sup> See section 6 (Principles for administering this Act).

<sup>14</sup> Now see the *Corrective Services Act 2000*, section 267.

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- (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.

## **Part 4A                      Child deaths**

### **Division 1                      Child Death Case Review Committee**

#### **Subdivision 1              Preliminary**

#### **89A      Definitions for div 1**

In this division—

*appointed members* see section 89F(1)(c).

*CDCRC* see section 89B.

*CDCRC member* means a person mentioned in section 89F(1)(a) or (b) or an appointed member.

*original reviews* means reviews carried out under the *Child Protection Act 1999*, chapter 7A<sup>15</sup> by the chief executive (child safety).

*policies* includes guidelines, procedures, protocols, standards and systems.

*review criteria* see section 89S.

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<sup>15</sup> *Child Protection Act 1999*, chapter 7A (Child deaths)

## Subdivision 2 Establishment and functions

### 89B Establishment

The Child Death Case Review Committee (the *CDCRC*) is established.

### 89C Functions

The CDCRC's functions are—

- (a) to review all reviews carried out under the *Child Protection Act 1999*, chapter 7A; and
- (b) in relation to matters arising out of its reviews under paragraph (a), to make recommendations to the chief executive (child safety) about—
  - (i) improving the child safety department's policies relating to the delivery of services to children and families; and
  - (ii) improving the relationships between the child safety department and other entities whose functions include having involvement with children and families; and
  - (iii) whether disciplinary action should be taken against officers or employees of the child safety department in relation to the child safety department's involvement with a child; and
- (c) to monitor the implementation of its recommendations under paragraph (b); and
- (d) if asked by the Minister, to give the Minister information about particular reviews, or classes or reviews, carried out under this part.

### 89D CDCRC must act independently

In performing the CDCRC's functions under this part, the CDCRC—

- (a) must act independently; and

- (b) is not under the control or direction of any other entity, including the Minister and the commissioner, in relation to the way it performs its functions.

### 89E CDCRC may use expert advisors

In performing its functions, the CDCRC may obtain help from anyone whom the CDCRC considers to be appropriately qualified to help.

*Example of when CDCRC may decide to obtain help—*

The CDCRC may be reviewing the chief executive (child safety's) review about a child who has died and whose mother has an intellectual disability. It may decide to obtain help from a person with expert knowledge of delivering services to persons with intellectual disabilities. The person's expert knowledge may help the CDCRC to evaluate an assessment in the chief executive (child safety's) review about the adequacy and appropriateness of the child safety department's involvement with the child.

## Subdivision 3 Membership

### 89F Membership

- (1) The CDCRC consists of—
  - (a) the commissioner; and
  - (b) the assistant commissioner; and
  - (c) not less than 5, and not more than 7, members appointed by the Minister (*appointed members*).
- (2) A person is eligible for appointment as an appointed member only if the Minister is satisfied—
  - (a) the person—
    - (i) has expertise in the field of paediatrics and child health, forensic pathology, mental health, investigations or child protection; or
    - (ii) is otherwise, because of the person's qualifications, experience or membership of an entity, likely to make a valuable contribution to the CDCRC; and



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- (b) the person is otherwise suitable for appointment to the CDCRC.
- (3) Without limiting the matters to which the Minister may have regard in deciding whether a person is otherwise suitable for appointment, the Minister—
  - (a) must not appoint a person if the person does not consent to a criminal history check before appointment; and
  - (b) may have regard to the person's criminal history.
- (4) The members of the CDCRC must include at least—
  - (a) 1 Aboriginal person; and
  - (b) 1 Torres Strait Islander.

**89G Provision relating to appointment of State Coroner as appointed member**

- (1) If the Minister proposes to appoint the State Coroner as an appointed member—
  - (a) the State Coroner is not required to consent under section 89F(3)(a) to a criminal history check before appointment; and
  - (b) section 89F(3)(b) does not apply to the Minister's consideration of the State Coroner's suitability for appointment.
- (2) Subsections (3) to (5) apply if the State Coroner is an appointed member.
- (3) The State Coroner may, by written notice given to the chairperson of the CDCRC, nominate a person to act as the State Coroner's deputy in relation to the CDCRC.
- (4) Subject to the terms of the notice, the deputy may act for the State Coroner as a CDCRC member at any time.
- (5) While the deputy is acting—
  - (a) the deputy has all the functions and powers of a CDCRC member; and
  - (b) this Act applies to the deputy as if the deputy were a CDCRC member.

### **89H Minister may obtain report from police commissioner**

- (1) This section applies to—
  - (a) a person who—
    - (i) the Minister proposes to appoint as a member of the CDCRC; and
    - (ii) has consented to a criminal history check under section 89F; or
  - (b) a person who is an appointed member.
- (2) However, this section does not apply if the person is the State Coroner.
- (3) The Minister 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.
- (4) Subject to subsection (5), the police commissioner must comply with the request.
- (5) The duty imposed on the police commissioner to comply with the request applies only to information in the police commissioner's possession or to which the police commissioner has access.
- (6) The Minister must destroy a report given to the Minister under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.

### **89I Application of Criminal Law (Rehabilitation of Offenders) Act 1986**

Sections 89F(3) and 89H apply to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

### **89J Conditions of appointment**

- (1) An appointed member holds office for the term, not more than 3 years, stated in the member's instrument of appointment.

- (2) An appointed member is appointed on a part-time basis only.
- (3) An appointed member is entitled to the fees and allowances fixed by the Minister, and otherwise holds office under the conditions of appointment fixed by the Minister.

### **89K Vacation of office of appointed member**

The office of an appointed member becomes vacant if the appointed member—

- (a) resigns office by signed notice given to the Minister; or
- (b) is removed from office as a member under section 89L.

### **89L Removal from office of appointed members**

- (1) The Minister may remove an appointed member from office if—
  - (a) the member is mentally or physically incapable of performing the member's duties; or
  - (b) the Minister is satisfied the member has neglected the member's duties or performed the member's duties incompetently or inefficiently; or
  - (c) the member is otherwise unsuitable to continue as a member; or
  - (d) for a member appointed because of the member's membership of an entity—the member ceases to be a member of the entity.
- (2) However, subsection (1) does not apply to an appointed member who is the State Coroner.

## **Subdivision 4 Chairperson**

### **89M Chairperson**

- (1) The commissioner is chairperson of the CDCRC.
- (2) The chairperson is to preside at all meetings of the CDCRC at which the chairperson is present.

- (3) If the chairperson is not present at a meeting of the CDCRC, a CDCRC member chosen by the members present at the meeting is to preside.

## **Subdivision 5      Conduct of business**

### **89N      Quorum**

- (1) A quorum for the CDCRC is the number equal to one-half of the number of CDCRC members for the time being holding office or, if one-half is not a whole number, the next higher whole number.
- (2) However, if the review being carried out by the CDCRC concerns—
  - (a) an Aboriginal child, there is not a quorum unless at least 1 CDCRC member present is an Aboriginal person; or
  - (b) a Torres Strait Islander child, there is not a quorum unless at least 1 CDCRC member present is a Torres Strait Islander.

### **89O      Conduct of meetings**

- (1) A question at a CDCRC meeting is decided by a majority of the votes of the CDCRC members present.
- (2) Each CDCRC member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

### **89P      Minutes**

The CDCRC must keep minutes of its meetings.

### **89Q      Disclosure of interests**

- (1) This section applies to a CDCRC member (the *interested person*) if—

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- (a) the interested person has a direct or indirect interest in an issue being considered, or about to be considered, by the CDCRC; and
  - (b) the interest could conflict with the proper performance of the person's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a CDCRC meeting.
- (3) Unless the CDCRC otherwise directs, the interested person must not—
  - (a) be present when the CDCRC considers the issue; or
  - (b) take part in a decision of the CDCRC about the issue.
- (4) The interested person must not be present when the CDCRC is considering whether to give a direction under subsection (3).
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
  - (a) be present when the CDCRC is considering whether to give a direction under subsection (3) about the interested person; or
  - (b) take part in making the decision about giving the direction.
- (6) If—
  - (a) because of this section, a CDCRC member is not present at a meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
  - (b) there would be a quorum if the member were present; the remaining persons present are a quorum of the CDCRC for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (7) A disclosure under subsection (2) must be recorded—
  - (a) in the CDCRC's minutes; and

- (b) if the disclosure relates to a review being carried out by the CDCRC, in the report prepared under section 89T by the CDCRC about the review.
- (8) Subsection (7)(b) is subject to section 89U(2).

### **89R Conduct of business**

Subject to this division, the CDCRC may conduct its business, including meetings, in the way it considers appropriate.

## **Subdivision 6 Reviews and reports**

### **89S Criteria to be used in carrying out review**

- (1) The CDCRC must develop criteria (*review criteria*) to be used in carrying out its reviews of original reviews.
- (2) In developing the review criteria, the CDCRC must consult the chief executive (child safety) and may consult other entities the CDCRC considers have a sufficient interest in the performance of its functions.
- (3) The review criteria must be published in the gazette.
- (4) The review criteria are a statutory instrument.

### **89T Carrying out review**

- (1) This section applies if the CDCRC is given a copy of a report of an original review under the *Child Protection Act 1999*, section 246D(2).<sup>16</sup>
- (2) The CDCRC must review the original review using the review criteria, and prepare a report about its review, as soon as practicable but, in any case, so that it can comply with section 89U(1).
- (3) For its review, the CDCRC may give a notice to the chief executive (child safety) requiring the chief executive (child

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<sup>16</sup> *Child Protection Act 1999*, section 246D (Report to be prepared and given to CDCRC)

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safety) to give the CDCRC a supplementary report relating to the original review.

- (4) Also, for its review, the CDCRC may have regard to a report that—
  - (a) is given, under the *Ombudsman Act 2000*, section 57B,<sup>17</sup> to the CDCRC; and
  - (b) relates to the child whose involvement with the child safety department is the subject of the review.
- (5) Without limiting what the CDCRC's report may contain, the report may recommend that the chief executive (child safety) take stated action within a stated time that is reasonable in the circumstances.

### **89U CDCRC to give copy of its report to certain persons**

- (1) Within 3 months after being given the report of an original review, the CDCRC must give a copy of its report to—
  - (a) the chief executive (child safety); and
  - (b) the commissioner.
- (2) The CDCRC's report must not include any information identifying, or that is likely to lead to the identification of, any individual.
- (3) However, the CDCRC may include with the copy of its report given to the chief executive (child safety) a separate document that allows the chief executive (child safety) to identify individuals mentioned in the report.

## **Subdivision 7 Recommendations**

### **89V Request to chief executive (child safety)**

The CDCRC may ask the chief executive (child safety) to notify the CDCRC, within a reasonable stated time, of the

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<sup>17</sup> *Ombudsman Act 2001*, section 57B (Report may be given to CDCRC)

steps taken to give effect to the recommendations contained in its report and, if no steps have been taken, the reasons for this.

**89W CDCRC may give report to Minister in certain circumstances**

- (1) This section applies if the CDCRC, after considering the response of the chief executive (child safety) given under section 89V, considers that no steps have been taken to give effect to the CDCRC's recommendations or the steps taken are inadequate or inappropriate.
- (2) The CDCRC may report on the matter to the Minister and the Minister to whom the chief executive (child safety) is responsible.
- (3) The CDCRC must attach the following to the report—
  - (a) a copy of the CDCRC's report on the review;
  - (b) the response of the chief executive (child safety) under section 89V about the matter.

**Subdivision 8 Other provisions**

**89X Confidentiality of information**

- (1) This section applies to a person who gains confidential information because of, or an opportunity given by—
  - (a) being a CDCRC member; or
  - (b) being a person who is giving, or has given, help to the CDCRC under section 89E; or
  - (c) providing administrative support to the CDCRC under section 89ZB.
- (2) The person must not—
  - (a) make a record of the information or intentionally disclose the information to anyone except—
    - (i) to the extent necessary to perform the person's functions relating to the CDCRC; or



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- (ii) if the person is the State Coroner, to a coroner for use by the coroner to help in an investigation under the *Coroners Act 2003*; or
  - (iii) if the person is the State Coroner's deputy under section 89G,<sup>18</sup> to the State Coroner or to a coroner for use by the coroner to help in an investigation under the *Coroners Act 2003*; or
- (b) recklessly disclose the information to anyone.
- Maximum penalty—100 penalty units.

**89Y 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 prepared by the CDCRC under this part that the publication is made in good faith and is, or purports to be, made for this Act or the *Child Protection Act 1999*.

**89Z Information not to be given in evidence**

- (1) A relevant person is neither competent nor compellable—
  - (a) to produce, in compliance with a requirement under an Act or legal process, any document in the person's possession or under the person's control created by, at the request of, or solely for the purpose of, the CDCRC; or
  - (b) to divulge or communicate, in compliance with a requirement under an Act, or legal process, information that came to the person's notice as a relevant person.
- (2) Subsection (1) does not apply to a requirement made in proceedings about an act or omission by the relevant person or the CDCRC.
- (3) In this section—
 

*relevant person* means a person who is, or was—

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<sup>18</sup> Section 89G (Provision relating to appointment of State Coroner as appointed member)

- (a) a CDCRC member; or
- (b) giving help to the CDCRC under section 89E; or
- (c) providing administrative support to the CDCRC under section 89ZB.

### **89ZA Annual report**

- (1) By 31 October in each year, the CDCRC must give to the Minister a report about the performance of the CDCRC's functions during the previous financial year.
- (2) The report must not include information that identifies, or is likely to identify, individuals referred to in reports under section 89T(2).
- (3) Within 14 sitting days after receiving the report, the Minister must table it in the Legislative Assembly.

### **89ZB Administrative support for CDCRC**

The commissioner must ensure the CDCRC has the administrative support services reasonably required for the CDCRC to carry out its functions effectively and efficiently.

## **Division 2                      Commissioner's functions relating to child deaths**

### **89ZC Register**

The commissioner must keep a register of child deaths in Queensland.

### **89ZD Access to information in the register for research purposes**

- (1) This section applies if a person wants access to information in the register to undertake research to help reduce the likelihood of child deaths.

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- (2) The person may access the information only with the commissioner's consent.
- (3) The commissioner may consent only if satisfied—
  - (a) the person is a genuine researcher; and
  - (b) the information is reasonably necessary for research mentioned in subsection (1).
- (4) The commissioner must not give the person access to identifying information unless the commissioner reasonably believes—
  - (a) the identifying information is necessary for the research to be effective; and
  - (b) the opportunity for increased knowledge that may result from the research outweighs the need to protect the privacy of any living or dead person.
- (5) The commissioner may impose conditions on the consent that the commissioner considers appropriate including, for example, a condition that the person must not disclose identifying information to anyone else or use the information other than for a stated purpose.
- (6) The person must comply with any condition imposed on the consent, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (7) In this section—

***genuine researcher*** means—

- (a) a person authorised under the *Health Act 1937*, section 154M<sup>19</sup> to conduct scientific research and studies for the purpose of reducing morbidity or mortality in Queensland; or

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19 *Health Act 1937*, section 154M (Authority to conduct scientific research and studies)

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- (b) a member of an approved quality assurance committee under the *Health Services Act 1991*, part 4, division 2;<sup>20</sup> or
- (c) another person who the commissioner considers is conducting genuine research.

***identifying information*** means information that identifies an individual.

### **89ZE Other functions relating to information about child deaths**

The commissioner also has the following functions to help reduce the likelihood of child deaths—

- (a) in relation to the information about child deaths recorded in the register—
  - (i) to classify the deaths according to cause of death, demographic information and other relevant factors; and
  - (ii) to analyse the information to identify patterns or trends;
- (b) to conduct research, alone or in cooperation with other entities;
- (c) to identify areas for further research by the commissioner or other entities;
- (d) to make recommendations, arising from keeping the register and conducting research under this division, about laws, policies and practices.

### **89ZF Reports**

- (1) By 31 October in each year, the commissioner must prepare, and give to the Minister, a report about the following matters for the previous financial year—

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<sup>20</sup> *Health Services Act 1991*, part 4 (Teaching hospitals and quality assurance), division 2 (Quality assurance)

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- (a) the results of analysing information included in the register;
  - (b) the commissioner's activities relating to research about child deaths;
  - (c) any persons given access to information in the register for research purposes;
  - (d) recommendations the commissioner has made about laws, policies or practices;
  - (e) the extent to which previous recommendations of the commissioner have been implemented.
- (2) The commissioner may also prepare, and give to the Minister, other reports arising from the performance of the commissioner's functions under section 89ZE.
  - (3) 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.
  - (4) 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.
  - (5) However, the commissioner is not required by subsection (4) to include a statement so far as it contains information that the commissioner considers should not be publicly disclosed on the ground that—
    - (a) 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
    - (b) the information concerns a matter before a court.
  - (6) 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.
  - (7) Within 14 sitting days after receiving a report under this section, the Minister must table it in the Legislative Assembly.

### **89ZG Government entity may enter into arrangement with commissioner**

- (1) A government entity may—
  - (a) enter into an arrangement with the commissioner about providing to the commissioner information or a document that the commissioner reasonably needs to perform the commissioner's functions under this division; and
  - (b) provide information or a document to the commissioner under the arrangement.
- (2) The government entity and the commissioner must, as far as practicable, protect the persons to whom the information or document relates from unjustified intrusion on their privacy.
- (3) The government entity may charge a fee for a service under the arrangement that is not more than the actual cost of providing the service.
- (4) This section does not apply to—
  - (a) the Children Services Tribunal; or
  - (b) the registrar under the *Births, Deaths and Marriages Registration Act 2003*; or
  - (c) the State Coroner or the chief executive of the department in which the *Coroners Act 2003* is administered.
- (5) A person does not, by providing access to information or a document under this section—
  - (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the information or document; or
  - (b) incur any civil liability in relation to the information or document.
- (6) To remove doubt, for the purpose of the *Health Services Act 1991*, section 63, it is declared an officer, employee or agent mentioned in that section is authorised to give information under this section.

## 89ZH Disclosure of information

The commissioner may disclose information obtained under this division, to the State Coroner, for use by a coroner to help in—

- (a) an investigation under the *Coroners Act 2003*; or
- (b) an inquiry into a death under the *Coroners Act 1958*.

## 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—

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- (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                      Screening for regulated  
   employment and regulated  
   businesses**

**Division 1                Preliminary**

**95 Main purpose of pt 6**

The main purpose of this part is to ensure that persons employed in particular employment, or carrying on particular



businesses, as prescribed under this Act undergo screening under this part.

**96 Safety and wellbeing of children to be paramount consideration**

Without limiting section 6,<sup>21</sup> 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
  - (b) the carrying on of a business of a type mentioned in schedule 1, part 2 (a *regulated business*).<sup>22</sup>
- (2) This part does not apply to the unpaid employment of a child, unless the child is a trainee student of an education provider and the employment is part of the course undertaken by the trainee student with the education provider.

**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*.

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21 Section 6 (Principles for administering this Act)

22 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 and Child Guardian Act 2000, pt 6) and 140 (Application of Commission for Children and Young People and Child Guardian Act 2000, pt 6).

**98A This part does not apply to person engaged in employment for the police service**

This part does not apply to the employment of a person who, within the meaning of the *Police Service Administration Act 1990*, section 5AA.3,<sup>23</sup> is a person engaged by the service, to the extent the person is performing a function mentioned in the *Police Service Administration Act 1990*, section 2.3.<sup>24</sup>

**98B Declaration relating to exemption to category of regulated employment or regulated business**

- (1) If employment of a person as mentioned in a section of schedule 1, part 1 is regulated employment of the person under that section, the employment remains regulated employment and it does not matter that—
  - (a) another section of schedule 1, part 1 expressly provides that employment of the person is not regulated employment; or
  - (b) another section of schedule 1, part 2 expressly provides that a business carried on by the person is not a regulated business.
- (2) If a person is carrying on a business as mentioned in a section of schedule 1, part 2 and carrying on the business is carrying on a regulated business under that section, carrying on the business remains carrying on a regulated business and it does not matter that—
  - (a) another section of schedule 1, part 2 expressly provides that a business carried on by the person is not a regulated business; or
  - (b) another section of schedule 1, part 1 expressly provides that employment of the person is not regulated employment.

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23 *Police Service Administration Act 1990*, section 5AA.3 (Meaning of *engaged by the service*)

24 *Police Service Administration Act 1990*, section 2.3 (Functions of service)

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*Examples for this section—*

- 1 A psychologist is employed at a school as a student counsellor and the psychologist is not a registered teacher or a volunteer who is a parent of a child attending the school. The employment of the psychologist at the school is regulated employment under schedule 1, part 1, section 3 even though, under schedule 1, part 1, section 5(2)(a), the employment of the psychologist is not regulated employment.
- 2 If a person carries on a business that includes private tutoring of children, the person is carrying on a regulated business under schedule 1, part 1, section 5 even if employment of the person is not regulated employment under schedule 1, part 1, section 3 because the person is a registered teacher.

## **Division 1A                      Interpretation**

### **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; and
  - (e) whether the agreement provides for the other person to carry out work on 1 occasion or on an ongoing basis, whether regularly or irregularly.
- (3) Also, for this section, the nature of the work is immaterial.
- (4) This section is subject to section 99A.

*Examples of employment—*

- 1 A person is engaged by a school as a cleaner under a written contract of employment.

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- 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.
- 4 A tour operator arranges with the parents of a family to provide a child accommodation service in their home to an international student.

**99A What is employment when education provider arranges trainee student to carry out work for someone else**

- (1) This section applies if—
  - (a) the first person mentioned in section 99 is an education provider; and
  - (b) the other person mentioned in section 99 is a trainee student of the education provider; and
  - (c) the work to be carried out is part of the course that the trainee student is undertaking with the education provider; and
  - (d) the work is to be carried out for someone else.
- (2) The education provider may apply for a prescribed notice about the trainee student for regulated employment as mentioned in section 100(1B).<sup>25</sup>
- (3) If the education provider applies for a prescribed notice about the trainee student as mentioned in subsection (2), the person for whom the trainee student is to carry out work, or carries out work, need not apply for the prescribed notice.
- (4) For section 99, the person for whom the trainee student is to carry out work, or carries out work, is employing the trainee student even though—
  - (a) the education provider applied for a prescribed notice about the trainee student; and

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25 Section 100 (Application for notice—regulated employment)

- (b) no agreement for the trainee student to carry out work is made expressly between the person and the trainee student.

### 99B 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.
- (2) A reference in this Act to employment of the person includes a reference to engagement of the person within the meaning of the *Child Care Act 2002*, section 58.<sup>26</sup>

### 99C What is a *serious offence*

- (1) A *serious offence* is—
  - (a) for each Act mentioned in schedule 2, an offence against a provision mentioned in column 1 of that schedule for that Act, subject to any limitation relating to the provision mentioned opposite in column 3; or
  - (b) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a); or
  - (c) an offence against a provision mentioned in schedule 2A that is an expired or repealed provision of the Criminal Code, subject to any qualification relating to the provision mentioned opposite in column 3; or
  - (d) an offence against a law at any time of another jurisdiction that substantially corresponds to an offence mentioned in paragraph (a), (b) or (c); or
  - (e) an offence that is a class 1 or 2 offence as defined under the *Child Protection (Offender Reporting) Act 2004* that is not otherwise a serious offence under this subsection.

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26 *Child Care Act 2002*, section 58 (Meaning of *engage*)

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*Note—*

Column 2 in schedules 2 and 2A is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

- (2) For this section, it is immaterial if a provision mentioned in schedule 2 or 2A, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

**99D What is a *serious child-related sexual offence***

- (1) A *serious child-related sexual offence* is—
- (a) an offence against a provision of the Criminal Code mentioned in schedule 2B, column 1; or
  - (b) an offence against a provision mentioned in schedule 2C, column 1, that is an expired or repealed provision of the Criminal Code, subject to any qualification relating to the provision mentioned opposite in column 3.

*Note—*

Column 2 in schedules 2B and 2C is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

- (2) However, an offence mentioned in subsection (1) is a serious child-related sexual offence only if, at the time of the offence, the person in relation to whom the offence was committed was—
- (a) for a provision that mentions or mentioned a specific age relevant to the offence—a child under that age; or
  - (b) otherwise—a child.
- (3) For this section, it is immaterial if a provision mentioned in schedule 2B or 2C, column 1 has been amended from time to time or that the provision was previously numbered with a different number.

**99E What is an *excluding offence***

An *excluding offence* is—

- (a) a serious child-related sexual offence; or
- (b) an offence against a provision mentioned in schedule 2, in relation to the entry for the *Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991* or *Classification of Publications Act 1991*; or
- (c) an offence against the Criminal Code, section 228A, 228B, 228C or 228D.<sup>27</sup>

### 99F Who is a *volunteer*

- (1) A *volunteer* is a person who is employed by another person and does not carry out any work for the other person for a financial reward.
- (2) In this section—  
*financial reward* does not include a payment that is a reimbursement for out-of-pocket expenses.

## Division 1B Risk management strategies

### 99G Risk management strategies about regulated businesses and persons employed in regulated employment

- (1) This section applies to each of the following—
  - (a) a person who carries on a regulated business;
  - (b) a person (an *employer*) who employs someone else in employment that is regulated employment.
- (2) For each year, a person to whom this section applies must develop and implement a written strategy about the regulated business and, if the person is an employer, for persons employed in regulated employment (a *risk management strategy*).

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<sup>27</sup> Criminal Code, section 228A (Involving child in making child exploitation material), 228B (Making child exploitation material), 228C (Distributing child exploitation material) or 228D (Possessing child exploitation material)

Maximum penalty—20 penalty units.

- (3) The purpose of a risk management strategy is to implement employment practices and procedures to promote the wellbeing of a child affected by the regulated business or employment and to protect the child from harm.
- (4) Without limiting subsection (3), a regulation may prescribe the matters that are to be included in a risk management strategy.
- (5) In this section—

*persons employed in regulated employment* includes each of the following who are employed in regulated employment—

- (a) persons for whom the employer has applied for a prescribed notice;
- (b) persons who hold a positive notice;
- (c) persons who need not hold a positive notice;
- (d) persons about whom the employer is notified under section 122B.<sup>28</sup>

## **Division 2                      Issue of prescribed notices for regulated employment or regulated businesses**

### **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 prescribed notice about the employee in relation to regulated employment.
- (1A) However, the employer need not make an application under subsection (1) about a person who is a trainee student of an education provider if—

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<sup>28</sup> Section 122B (Commissioner to give notice to employer about making employment-screening decision about employee)



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- (a) the employer proposes to start employing the trainee student; and
  - (b) the education provider has applied, under subsection (1B), for a prescribed notice about the trainee student.
- (1B) If, as part of a course undertaken by a trainee student of an education provider, the education provider proposes for the trainee student to perform work that is regulated employment, the education provider may apply to the commissioner for a prescribed notice about the trainee student in relation to regulated employment.
- (2) The application must be—
- (a) in the approved form; and
  - (b) signed by, or on behalf of, the employer or education provider; and
  - (c) signed by the relevant person; and
  - (d) accompanied by the prescribed fee.
- (3) The approved form must include provision for—
- (a) identifying information about the relevant person; and
  - (b) certification by the employer, education provider or a prescribed person that the employer, education provider or prescribed person has sighted documents, relating to proof of the relevant person's identity, prescribed under a regulation; and
  - (c) if the employer or education provider does not give the certification mentioned in paragraph (b), certification by the employer or education provider that the reason the employer or education provider did not sight the documents is only because—
    - (i) the relevant person's usual place of residence is more than 50km from the employer's business address or a place used by the education provider for conducting courses; or
    - (ii) the relevant person is a person with a disability that affects mobility; and

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- (d) the relevant person's consent to employment screening under this part.
- (4) On receiving the application, the commissioner may ask the employer, education provider or relevant person—
  - (a) for further information that the commissioner reasonably considers necessary to establish the relevant person's identity; or
  - (b) about why the employer or education provider did not sight the documents as mentioned in subsection (3)(c).<sup>29</sup>
- (5) If a relevant person is given a written request under subsection (4), the relevant person is taken to have withdrawn the application if—
  - (a) the request includes a warning that, if the request is not complied with within a stated time, the relevant person's application will be taken to have been withdrawn; and
  - (b) the relevant person does not comply with the request within the stated time; and
  - (c) the commissioner gives the relevant person a notice stating that the relevant person is taken to have withdrawn the application.
- (6) In this section—

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

***relevant person*** means—

  - (a) an employee as mentioned in subsection (1); or
  - (b) a trainee student of an education provider as mentioned in subsection (1B).

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<sup>29</sup> 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.

## **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 prescribed notice about the person in relation to the regulated business.
- (2) The application must be—
  - (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

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- (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.

**101A Notice of change of employment, or name and contact details in application under ss 100 or 101**

- (1) This section applies to a person if an application under section 100 or 101 is made for a prescribed notice about the person (the *relevant person*) and any of the following (each a *relevant change*) happens before the commissioner has issued a prescribed notice to the relevant person in relation to the application—
- (a) the relevant person's name or contact details, as stated in the application, change;
  - (b) the relevant person's employment, as stated in the application, ends;
  - (c) the relevant person stops carrying on the business as stated in the application.
- (2) The relevant person must give notice, in the approved form, to the commissioner of the relevant change within 14 days after the relevant change happens.
- Maximum penalty—10 penalty units.
- (3) The approved form mentioned in subsection (2) must provide for a relevant person to give notice withdrawing the person's consent to employment screening under this part.

**102 Decision on application**

- (1) This section applies if an application under section 100 or 101 is made for a prescribed notice about a person (the *relevant person*).
- (2) The commissioner must decide the application by issuing either of the following unless the application is withdrawn—

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- (a) a notice declaring the application for the prescribed notice is approved (a *positive notice*);
  - (b) a notice declaring the application for the prescribed notice is refused (a *negative notice*).
- (3) Subject to subsection (4), the commissioner must issue a positive notice to the relevant person if the commissioner—
- (a) is not aware of any police information or disciplinary information about the relevant person; or
  - (b) is not aware of a conviction of the relevant person for any offence but is aware that there is 1 or more of the following about the relevant person—
    - (i) investigative information;
    - (ii) disciplinary information;
    - (iii) a charge for an offence other than an excluding offence;
    - (iv) a charge for an excluding offence that has been dealt with other than by a conviction; or

*Note for subparagraph (iv)—*

See sections 119C and 123(3B) in relation to charges for excluding offences that have not been dealt with.
  - (c) is aware of a conviction of the relevant person for an offence other than a serious offence.
- (4) The commissioner is required to issue a positive notice under subsection (3)(b) or (c) 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.
- (5) If the commissioner is satisfied under subsection (4) that it is an exceptional case, the commissioner must issue a negative notice.
- (6) Subject to subsection (7), the commissioner must issue a negative notice to the relevant person if the commissioner is aware of—
- (a) a conviction of the relevant person for an excluding offence for which the court that convicted the relevant

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- person imposed an imprisonment order for the offence or made a disqualification order under section 126C; or
- (b) a conviction of the relevant person for a serious offence, other than an excluding offence dealt with in a way mentioned in paragraph (a).
- (7) The commissioner is required to issue a negative notice under subsection (6)(b) 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.
- (8) If the commissioner is satisfied under subsection (7) that it is an exceptional case, the commissioner must issue a positive notice.

**102A Decision-making under s 102 in relation to discretionary matters**

- (1) This section applies if the commissioner is deciding whether or not there is an exceptional case as mentioned in section 102(4) or (7).
- (2) If the commissioner is aware that a person has been convicted of, or charged with, an offence, the commissioner must have regard to the following—
- (a) in relation to the commission, or alleged commission, of an offence by the person—
- (i) whether it is a conviction or a charge; and
- (ii) whether the offence is a serious offence and, if it is, whether it is an excluding offence; and
- (iii) when the offence was committed or is alleged to have been committed; and
- (iv) the nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children; and
- (v) in the case of a conviction—the penalty imposed by the court and if it decided not to impose an imprisonment order for the offence, or decided not to make a disqualification order under section 126C, the court's reasons for its decision;

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- (b) anything else relating to the commission, or alleged commission, of the offence that the commissioner reasonably considers to be relevant to the assessment of the person.
- (3) If the commissioner is aware of investigative information about a person, the commissioner must have regard to the following—
- (a) when the acts or omissions constituting the alleged offence to which the investigative information relates were committed;
  - (b) anything else relating to the commission of the acts or omissions that the commissioner reasonably considers relevant to the assessment of the person.
- (4) If the commissioner is aware of disciplinary information about a person, the commissioner must have regard to the following—
- (a) the decision or order of the decision maker relating to the disciplinary information and the reasons for the decision or order;
  - (b) any decision or order of an entity to which a decision or order mentioned in paragraph (a) is appealed and the reasons for the decision or order;
  - (c) the relevance of the disciplinary information to employment, or carrying on a business, that involves or may involve children;
  - (d) anything else relating to the disciplinary information that the commissioner reasonably considers to be relevant to the assessment of the person.
- (5) In this section—
- appeal* includes review.

**102B Actions of commissioner after making decision on application**

- (1) After making a decision about an application under section 100 or 101, the commissioner must issue a prescribed notice to the relevant person.

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- (2) If the prescribed notice is a negative notice, the prescribed notice must be accompanied by a notice stating the following—
- (a) the reasons for the commissioner’s decision on the application;
  - (b) if the reasons do not include investigative information, a statement that the relevant person may apply to the Children Services Tribunal, within 28 days after the relevant person is given the notice, to have reviewed only a decision of the commissioner about whether there is an exceptional case as mentioned in section 102(4) or (7);
  - (c) if the reasons include investigative information, a statement that, within 28 days after the relevant person is given the notice, the relevant person—
    - (i) may appeal as mentioned in section 121C(2)<sup>30</sup> to a Magistrates Court about only the investigative information; or
    - (ii) may decide not to appeal under section 121C(2) but apply to the Children Services Tribunal to have reviewed only a decision of the commissioner about whether there is an exceptional case as mentioned in section 102(4) or (7);
  - (d) how the person may apply for the review to the Children Services Tribunal or appeal to the Magistrates Court.
- (3) The notice also must include a copy of section 121.<sup>31</sup>
- (4) After the commissioner issues the prescribed notice to the relevant person under this section, the commissioner must give written notice to the following stating whether the relevant person was given a positive notice or negative notice—
- (a) if the application was made by an employer of the relevant person—the employer;

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30 Section 121C (Decision by police commissioner that information is investigative information)

31 Section 121 (Person may apply for review of decision)



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- (b) if the application was made by an education provider about a trainee student—the education provider;
  - (c) if the commissioner is aware that the relevant person is a licensee, or the nominee of a licensee, under the *Child Care Act 2002*—the chief executive of the department in which that Act is administered;
  - (d) if the commissioner is aware that the relevant person is carrying on a regulated business as a religious representative and considers there is an entity within the relevant organised or recognised religious group with responsibility for supervising or disciplining the relevant person—the entity.
- (5) Within 14 days after a prescribed notice is issued under this section to a relevant person who previously held another prescribed notice, the relevant person must give the commissioner—
- (a) the previously held prescribed notice; and
  - (b) if the previously held prescribed notice was a positive notice—any positive notice blue card previously held by the relevant person.

Maximum penalty—10 penalty units.

- (6) In this section—

***relevant person*** means a person to whom an application under section 100 or 101 relates.

### **103 Commissioner to invite submissions from person about particular information**

- (1AA) This section applies if, for an application under section 100 or 101, the commissioner must decide whether or not there is an exceptional case as mentioned in section 102(4) or (7).
- (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—

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- (i) the police information about the person that the commissioner is aware of;
    - (ii) any disciplinary information about the person that the commissioner is aware of; and
  - (b) inviting the person to give the commissioner, within a stated time, a submission about why the commissioner should not issue a negative notice.
- (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.
  - (4) A submission mentioned in subsection (1)(b) may be made orally or in a language other than English if the commissioner considers a submission in that form is reasonable in the circumstances.

**104 Currency of prescribed notice and positive notice blue card**

- (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.
- (3) A positive notice blue card relating to a positive notice remains current for the same period as the positive notice.

## **Division 3                    Obligations and offences relating to prescribed notices**

### **Subdivision 1            Regulated employment as volunteers**

#### **104A    Application of subdiv 1**

This subdivision applies to employment of a volunteer.

#### **104B    Starting employment**

- (1) This section applies if—
  - (a) a person who is proposed to be employed (the *proposed employee*) does not have a current positive notice; and
  - (b) another person (the *employer*) proposes to employ the employee in regulated employment.
- (2) The employer must not employ the proposed employee in regulated employment unless—
  - (a) the employer has applied for a prescribed notice about the proposed employee; and
  - (b) a positive notice is issued to the proposed employee.

Maximum penalty for subsection (2)—10 penalty units.

### **Subdivision 1A        Regulated employment other than as volunteers**

#### **104C    Application of subdiv 1A**

This subdivision does not apply to employment of a volunteer.

#### **105     Continuing employment of certain regular employees**

- (1) This section applies if—

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- (a) a person (the *employee*) is employed in regulated employment under an agreement with another person (the *employer*); and
  - (b) after considering any agreement relating to the employment and the hours or times that the employee previously carried out work for the employer, the employer reasonably expects that the employee is likely to carry out work as part of the employment for—
    - (i) at least 8 consecutive days; or
    - (ii) at least once a week for each week during a period of 4 weeks; or
    - (iii) at least once a fortnight for each fortnight during a period of 8 weeks; or
    - (iv) at least once a month for each month during a period 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 prescribed notice, or further prescribed 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) it is less than 1 year since the employee last carried out the regulated employment for the employer; and
  - (c) in the course of proposed employment of the employee by the employer, the employer reasonably expects that the employee is likely to carry out work for any of the following after considering any agreement relating to the proposed employment and the person's employment

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during the period when the employee was last employed by the employer—

- (i) at least 8 consecutive days; or
  - (ii) at least once a week for each week during a period of 4 weeks; or
  - (iii) at least once a fortnight for each fortnight during a period of 8 weeks; or
  - (iv) at least once a month for each month during a period of 6 months; 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 prescribed notice about the employee.

Maximum penalty—10 penalty units.

### 106A Starting employment of new employees

- (1) This section applies if—
- (a) a person (the *employee*) is not employed in regulated employment; and
  - (b) the employee does not have a current positive notice; and
  - (c) another person (the *employer*) proposes to employ the employee in regulated employment; and
  - (d) the employer reasonably expects that the employee is likely to carry out work as part of the employment for any of the following after considering any agreement relating to the employment between the employer and employee—
    - (i) at least 8 consecutive days; or
    - (ii) at least once a week for each week during a period of 4 weeks; or
    - (iii) at least once a fortnight for each fortnight during a period of 8 weeks; or

- (iv) at least once a month for each month during a period of 6 months; and
  - (e) section 106 does not apply to the employment.
- (2) The employer must not employ the employee in regulated employment unless the employer has applied for a prescribed notice about the employee.

Maximum penalty for subsection (2)—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 prescribed notice about the employee and has been notified by the commissioner, other than as provided under paragraph (b), that the employee has withdrawn the employee's consent to employment screening under this part; or
  - (b) the employer has been given a notice of deemed withdrawal relating to the employee under section 123(3B); 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.

## **Subdivision 1B    Obligations if holder of negative notice or application for prescribed notice is withdrawn**

### **108    Person holding negative notice, or who has withdrawn consent to employment screening, not to apply for, or start or continue in, regulated employment**

- (1) 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—500 penalty units or 5 years imprisonment.

- (2) A person must not apply for, or start or continue in, regulated employment if an application about the person was made under section 100<sup>32</sup> but the person withdrew the person's consent, or is taken to have withdrawn the person's consent, to employment screening under this part before a prescribed notice was issued.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (3) However, if the person held a positive notice but a negative notice was substituted for the positive notice under section 119,<sup>33</sup> a court may not find the person contravened subsection (1) unless the court is satisfied that written notice of the substitution was given to the person.

## **Subdivision 2    Regulated business**

### **109    Carrying on regulated business**

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

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<sup>32</sup> Section 100 (Application for notice—regulated employment)

<sup>33</sup> Section 119 (Commissioner may cancel a prescribed notice and substitute another prescribed notice)

Maximum penalty—500 penalty units or 5 years imprisonment.

- (2) If the person is a corporation, each executive officer of the corporation whose principal place of residence is in Australia must have a current positive notice.

Maximum penalty—500 penalty units or 5 years imprisonment.

### **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 or charge for excluding offence**

- (1) This section applies to a person with a current positive notice immediately on the person's conviction for a serious offence or the person being charged with an excluding 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—500 penalty units or 5 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 prescribed notice, or further prescribed 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 prescribed notice.

Maximum penalty—100 penalty units.

- (3) This section does not limit section 111.

### **114 Change in criminal history of other persons**

- (1) This section applies if—
  - (a) a person has a current positive notice; and

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- (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 prescribed 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 prescribed 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 prescribed 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 positive notice and any positive notice blue card 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, and any positive notice blue card issued to the person, to the commissioner, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Division 4 Cancellation and replacement of prescribed notices**

### **118 Cancellation of negative notice and issuing of positive notice**

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

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- (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 including, in particular, any change in the person's circumstances since the negative notice was issued.
- (6) Sections 102, 102A, 102B and 103 apply to the application as if—
  - (a) the application were an application for a prescribed 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 negative notice to which the application relates and issue a positive notice to the person.

**119 Commissioner may cancel a prescribed notice and substitute another prescribed notice**

- (1) The commissioner may cancel a positive notice (the *cancelled notice*) about a person and substitute a negative notice if the commissioner is satisfied that—
  - (a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the commissioner should issue the negative notice; or

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- (b) it is appropriate to cancel the positive notice having regard to disciplinary information, or information received under section 122 or 122A(1),<sup>34</sup> about the person.
- (2) The commissioner may cancel a negative notice (the *cancelled notice*) and substitute a positive notice if the commissioner is satisfied that—
  - (a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the commissioner should issue the positive notice; or
  - (b) a penalty or order of a court of the type mentioned in section 119A(1), that required the commissioner to cancel the positive notice and issue a negative notice, is not upheld on appeal.
- (3) In making a decision under subsection (1) or (2), the commissioner must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 102, 102A and 102B<sup>35</sup> apply to the decision under this section.
- (4) Also, the commissioner must consider whether notice must be given under section 126B(2).<sup>36</sup>
- (5) If the commissioner proposes to substitute a negative notice as mentioned in subsection (1), the commissioner must first comply with section 103<sup>37</sup> as if—
  - (a) the reference in section 103(1) to deciding the application by issuing a negative notice were a reference

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34 Section 122 (Commissioner may obtain information from police commissioner) or 122A (Notice of change in police information about a person)

35 Sections 102 (Decision on application), 102A (Decision-making under s 102 in relation to discretionary matters) and 102B (Actions of commissioner after making decision on application)

36 Section 126B (Commissioner may give information to accreditation board about director of school's governing body)

37 Section 103 (Commissioner to invite submissions from person about particular information)

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- 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.
- (6) The commissioner may exercise a power under subsection (1) or (2)—
- (a) on application by the person to whom the cancelled notice was issued or the person who applied for the cancelled notice; or
  - (b) on the commissioner's own initiative.

**119A Cancellation if conviction for excluding offence and imprisonment or disqualification order**

- (1) This section applies if, after the commencement of this section, a person who is the holder of a positive notice, including a positive notice that is suspended under section 119C,<sup>38</sup> is convicted of an excluding offence and the court that convicts the person—
- (a) imposes an imprisonment order; or
  - (b) makes a disqualification order under section 126C.<sup>39</sup>
- (2) The commissioner must cancel the positive notice held by the person and substitute a negative notice.
- (3) At the time the commissioner gives the person the negative notice, the commissioner must give the person a further written notice stating—
- (a) there is no appeal under this Act against the decision of the commissioner to cancel the positive notice and substitute a negative notice; and

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38 Section 119C (Effect of charge for excluding offence pending charge being dealt with)

39 Section 126C (Disqualification order)

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- (b) the person can not apply under section 118<sup>40</sup> for the cancellation of the negative notice, even after 2 years; and
  - (c) the person may apply under section 119 for the cancellation of the negative notice if the decision to issue the cancelled notice was made under this section and the penalty or order mentioned in subsection (1)(a) or (b) is not upheld on appeal against the imposition of the penalty or making of the order and that is the only reason for an application under section 119.
- (4) Also, the commissioner must give written notice to the following stating the person was given a negative notice—
- (a) if the person is employed in regulated employment—the employer;
  - (b) if the person is a trainee student of an education provider—the education provider;
  - (c) if the relevant person is a licensee, the nominee of a licensee, or an adult occupant of a carer’s home that is a licensed home based service, under the *Child Care Act 2002*—the chief executive of the department in which that Act is administered;
  - (d) if the relevant person is carrying on a regulated business as a religious representative—an entity within the relevant organised or recognised religious group that the commissioner reasonably considers has responsibility for supervising or disciplining the relevant person.
- (5) Also, the commissioner must consider whether notice must be given under section 126B(2).<sup>41</sup>
- (6) There is no appeal under this Act against a decision of the commissioner under this section to cancel the positive notice and substitute a negative notice.

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40 Section 118 (Cancellation of negative notice and issuing of positive notice)

41 Section 126B (Commissioner may give information to accreditation board about director of school’s governing body)

- (7) In this section—  
*appeal* includes review.

**119B Cancellation if conviction for excluding offence but no imprisonment or disqualification order**

- (1) This section applies if, after the commencement of this section, a person who is the holder of a positive notice, including a positive notice that is suspended under section 119C, is convicted of an excluding offence but the court that convicts the person—
- (a) imposes a penalty that does not include an imprisonment order for the offence; or
  - (b) does not make a disqualification order under section 126C.<sup>42</sup>
- (2) The commissioner must cancel the person's positive notice and substitute 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 not to cancel the positive notice.
- (3) In making a decision under subsection (2), the commissioner must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 102, 102A and 102B<sup>43</sup> apply to the decision under this section.
- (4) Also, the commissioner must consider whether notice must be given under section 126B(2).<sup>44</sup>

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42 Section 126C (Disqualification order)

43 Sections 102 (Decision on application), 102A (Decision-making under s 102 in relation to discretionary matters) and 102B (Actions of commissioner after making decision on application)

44 Section 126B (Commissioner may give information to accreditation board about director of school's governing body)



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- (5) If the commissioner proposes to substitute a negative notice as mentioned in subsection (2), the commissioner must first comply with section 103<sup>45</sup> 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.

**119C Effect of charge for excluding offence pending charge being dealt with**

- (1) If, after the commencement of this section, a person who is the holder of a positive notice is charged with an excluding offence, the commissioner must suspend the positive notice by written notice given to the person.
- (2) The notice about the suspension must state the following—
- (a) the positive notice held by the person is suspended;
  - (b) the reason for the suspension;
  - (c) how long the suspension will continue;
  - (d) the effect of the suspension;
  - (e) the person must return the positive notice, and any positive notice blue card, to the commissioner within 7 days after the notice is given to the person.
- (3) Until a suspension is cancelled, the person whose positive notice is suspended and who is given a notice under subsection (1) must not do any of the following—
- (a) apply, start or continue to perform work that is regulated employment;
  - (b) start or continue to carry on a regulated business.

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45 Section 103 (Commissioner to invite submissions from person about particular information)

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Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) Within 7 days after a person is given notice under subsection (1), the person must return each of the following to the commissioner—
- (a) the positive notice;
  - (b) any positive notice blue card relating to the positive notice.

Maximum penalty—100 penalty units.

- (5) Also, the commissioner must give written notice to the following persons stating that the positive notice held by the person is suspended and the effect of the suspension—
- (a) if the person is employed in regulated employment—the employer;
  - (b) if the person is a trainee student of an education provider—the education provider;
  - (c) if the person is a licensee, the nominee of a licensee, or an adult occupant of a carer's home that is a licensed home based service, under the *Child Care Act 2002*—the chief executive of the department in which that Act is administered;
  - (d) if the person is carrying on a regulated business as a religious representative—an entity within the relevant organised or recognised religious group that the commissioner reasonably considers has responsibility for supervising or disciplining the relevant person.
- (6) Also, the commissioner must consider whether notice under subsection (5) must be given under section 126B(2).<sup>46</sup>
- (7) A notice under subsection (5) must state that a person to whom the notice is given under subsection (5) or (6)—
- (a) must not allow the person to perform work that is regulated employment; and

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<sup>46</sup> Section 126B (Commissioner may give information to accreditation board about director of school's governing body)

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- (b) must not terminate the person's employment or continued employment solely or mainly because the person's positive notice is suspended.
- (8) A person to whom a notice is given under subsection (5) or (6) must not allow the person to perform work that is regulated employment.  
Maximum penalty for subsection (8)—200 penalty units or 2 years imprisonment.
- (9) Without limiting subsection (3) and despite section 104(2), a positive notice remains current during the period of suspension even if it would otherwise end under section 104(2) during that period.

**119D Cancellation of suspension and issue of further prescribed notice**

- (1) This section applies to a positive notice held by a person that is suspended under section 119C (the *suspended notice*).
- (2) The suspension is cancelled if—
  - (a) the suspended notice is cancelled under section 119A(2) or 119B(2); or
  - (b) on application by the person for the cancellation of the suspension and issue of a further prescribed notice, the commissioner cancels the suspended notice and issues a further positive notice or a negative notice.
- (3) If, in relation to the charge of an excluding offence that resulted in the person's positive notice being suspended, the person—
  - (a) was not convicted of any offence or was convicted of an offence that is not a serious offence, the commissioner must issue a further 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 further positive notice; or
  - (b) was convicted of 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

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harm the best interests of children for the commissioner to issue a further positive notice.

- (3A) If the commissioner is satisfied that—
- (a) there is an exceptional case under subsection (3)(a), the commissioner must issue a negative notice; or
  - (b) there is an exceptional case under subsection (3)(b), the commissioner must issue a further positive notice.
- (4) In making a decision under subsection (3), the commissioner must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 102, 102A and 102B<sup>47</sup> apply to the decision under this section.
- (5) Also, the commissioner must consider whether notice must be given under section 126B(2).<sup>48</sup>
- (6) If the commissioner proposes to issue a negative notice, the commissioner must first comply with section 103.<sup>49</sup>

**120 Replacement of positive notice or positive notice blue card**

- (1) If a person's current positive notice, or current positive notice blue card, is lost or stolen, the person must apply for a replacement notice or card within 14 days after the loss or theft.

Maximum penalty—10 penalty units.

- (2) The application must be in the approved form and accompanied by the fee prescribed under a regulation for the application.
- (3) The commissioner must—

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<sup>47</sup> Sections 102 (Decision on application), 102A (Decision-making under s 102 in relation to discretionary matters) and 102B (Actions of commissioner after making decision on application)

<sup>48</sup> Section 126B (Commissioner may give information to accreditation board about director of school's governing body)

<sup>49</sup> Section 103 (Commissioner to invite submissions from person about particular information)

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- (a) cancel the lost or stolen notice or card; and
  - (b) issue a replacement notice or card to the person.
- (4) The commissioner may issue the replacement notice or card with a different registration number to the number of the lost or stolen notice or card.
- (5) If the person's lost or stolen notice or card is returned to, or otherwise recovered by, the person after the application for a replacement notice or card, within 14 days after receiving a replacement notice or card the person must give the replaced notice or card to the commissioner.

Maximum penalty—10 penalty units.

- (6) The commissioner must give written notice to the police commissioner about the fact that a current positive notice, or current positive notice blue card, has been lost or stolen.

**120A Change of details for prescribed notice or positive notice blue card**

- (1) This section applies if the holder of a positive notice or negative notice does any of the following (each of which is a *relevant change*)—
- (a) changes a name the holder has previously given to the commissioner;
  - (b) starts to use different name to the name or names the holder has previously given to the commissioner;
  - (c) changes contact details previously given to the commissioner.
- (2) The holder must give notice, in the approved form, to the commissioner about the relevant change within 14 days after the relevant change.

Maximum penalty—10 penalty units.

- (3) If the commissioner considers it is appropriate to do so, the commissioner may issue to the holder a replacement positive notice or replacement positive notice blue card.
- (4) If the commissioner issues to the holder a replacement positive notice, or replacement positive notice blue card,

within 14 days after receiving the replacement notice or card the holder must return the replaced notice or card to the commissioner.

Maximum penalty—10 penalty units.

- (5) The commissioner must cancel the previously held positive notice or positive notice blue card if the commissioner has issued a replacement notice or card.

## **Division 5                      Miscellaneous**

### **121      Person may apply for review of decision**

- (1) A person may apply to the Children Services Tribunal for a review of either of the following decisions of the commissioner—
- (a) a decision as to whether or not there is an exceptional case as mentioned in section 102(4) or (7), 119B(2) or 119D(3) if, because of the decision, the commissioner issued a negative notice, or refused to cancel a negative notice, about the person;
  - (b) a decision that the person had been charged with an excluding offence if, because of the decision, the positive notice held by the person was suspended under section 119C(1).
- (1A) An application to review a decision mentioned in subsection (1)(b) may only be made if the person claims he or she has not been charged with the relevant excluding offence.
- (2) If a person applies under subsection (1) to have a decision reviewed, the tribunal may not stay the operation of the decision.
- (3) To remove any doubt, it is declared that there is no appeal, or review, under this Act against a decision of the commissioner to issue, or refuse to cancel, a negative notice about a person other than a decision mentioned in subsection (1).

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- (4) This section does not limit section 121C.<sup>50</sup>
- (5) In this section—
  - issue a negative notice* includes substitute a negative notice after cancelling a positive notice.

**121A Police commissioner may decide that information about a person is investigative information**

- (1) The police commissioner may decide under this section that information about a person (the *investigated person*) is *investigative information* if—
  - (a) there is or was evidence of acts or omissions that, at the time of the acts or omissions, constituted a serious child-related sexual offence (the *alleged offence*) by the investigated person against a child or a person who was a child at the time of the offence (each of whom is a *complainant*); and
  - (b) the police investigated the alleged offence and the investigated person was formally notified about the investigation, including—
    - (i) by participating in an interview, or by being asked to participate in an interview, about the alleged offence; or
    - (ii) by otherwise being given an opportunity to answer allegations about the alleged offence; and
  - (c) there was sufficient evidence available that was capable of establishing each element of the alleged offence but a decision was made not to charge the investigated person because—
    - (i) the complainant died before the charge was brought; or
    - (ii) either or both of the following applied—
      - (A) the complainant was unwilling to proceed;

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<sup>50</sup> Section 121C (Decision by police commissioner that information is investigative information)

- (B) an adult who, at the relevant time, was the complainant's parent or guardian decided that, in the interests of the complainant, the matter should not proceed.
- (2) Evidence of acts or omissions includes information from a third party if the complainant did not make a formal complaint at or about the time of the investigation.

### **121B Police commissioner not to delegate power under s 121A**

Despite the *Police Service Administration Act 1990*, section 4.10, the police commissioner may not delegate the police commissioner's powers under section 121A.

### **121C Decision by police commissioner that information is investigative information**

- (1) This section applies if—
- (a) the police commissioner decides that information about a person is investigative information; and
  - (b) the investigative information is given, under section 122 or 122A,<sup>51</sup> to the commissioner;<sup>52</sup> and
  - (c) a negative notice is issued, or a positive notice is cancelled and a negative notice is substituted for it, after the investigative information is given to the commissioner.
- (2) The person may appeal to a Magistrates Court about the decision that information, given to the commissioner as investigative information, is investigative information.
- (3) However, an appeal under subsection (2) may only be made after the commissioner has issued a negative notice to the

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51 Section 122 (Commissioner may obtain information from police commissioner) or 122A (Notice of change in police information about a person)

52 The police commissioner is the commissioner of the police service and the commissioner is the Commissioner for Children and Young People and Child Guardian.



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person under section 102B(1) and within 28 days after the negative notice is given to the person.

- (4) The commissioner and police commissioner must be given a copy of the notice of appeal.
- (5) The Children Services Tribunal does not have jurisdiction to review a decision of the police commissioner that information about a person is investigative information or that information that is investigative information may be given to the commissioner.

### **121D Court to decide matters afresh**

- (1) A Magistrates Court hearing an appeal under section 121C is to decide afresh whether information given to the commissioner as investigative information about a person is investigative information.
- (2) A person who is the relevant complainant under section 121A must not be asked or called on by the investigated person under that section to give evidence in person before the court.
- (3) Subsection (2) does not prevent documentary evidence being tendered and received in evidence by the court.
- (4) After hearing an appeal under section 121C, the court may confirm or set aside the decision and the clerk of the court is to give the appellant notice of the decision.
- (5) For subsection (4), the court must have regard to the matters the police commissioner was required to have regard to under this Act when the police commissioner made the decision.

### **121E Consequence of decision on appeal**

- (1) If, on appeal, a Magistrates Court sets aside the police commissioner's decision under section 121A that information given to the commissioner about a person is investigative information, the person may apply under section 119<sup>53</sup> to cancel the negative notice issued to the person on the grounds

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53 Section 119 (Commissioner may cancel a prescribed notice and substitute another prescribed notice)

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that the decision to issue the negative notice was based on wrong information.

- (2) If the court confirms the decision appealed against, the notice under section 121D(4) must state that within 28 days after the date the person is given the notice, the person may apply to the Children Services Tribunal to have the commissioner's decision to issue the negative notice reviewed and how the person may apply for the review.

**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 prescribed 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 or to cancel a suspension of the person's positive notice under section 119C.
  - (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 police information exists, if any, in relation to the person.
- (2A) For subsection (2), the commissioner's request may include the following information—
- (a) the person's name and any other name that the commissioner believes the person may use or may have used;
  - (b) the person's gender and date and place of birth;
  - (c) if the person is currently the holder of a prescribed notice—any number or date relevant to the prescribed notice or a positive notice blue card;

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- (d) if the application relates to employment of the person—whether or not the person carries out the work as a volunteer;
  - (e) the status of the relevant application, applicant or prescribed notice, including, for example, by reference to subsection (1).
- (3) If there is police information about the person, the commissioner may ask the police commissioner for a brief description of the circumstances of a conviction, charge or investigative information mentioned in the police information.
  - (4) The police commissioner must comply with a request under this section unless the police commissioner is, under subsection (8), told not to provide the information.
  - (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.
  - (6) The police commissioner need not disclose investigative information about the person to the commissioner under this section if the police commissioner is reasonably satisfied that giving the information may do any of the following—
    - (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
    - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
    - (c) endanger a person's life or physical safety;
    - (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
  - (7) If the police commissioner gives investigative information about the person to the commissioner under this section, the police commissioner must give notice, in the approved form, to the person that—

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- (a) the police commissioner has decided that information about the person is investigative information; and
  - (b) investigative information has been given to the commissioner.
- (8) If the commissioner decides that information requested under subsection (2) about the person is no longer required, the commissioner must tell the police commissioner not to provide the information.
- (9) Information given to the police commissioner under this section must not be accessed or disclosed for any purpose except for a purpose under this part or any other purpose relevant to law enforcement.
- (10) Information given to the police commissioner under this section must not be used for any purpose except if—
- (a) for information other than information about a withdrawal—the use is for a purpose under this part or for any other purpose relating to child protection; or
  - (b) for information about a withdrawal—the use is for a purpose under this part.
- (11) However, subsections (9) and (10) do not apply to information the police commissioner obtained before the commissioner gave the information to the police commissioner under this section.

**122A Notice of change in police information about a person**

- (1) This section applies if, for a person in relation to whom either of the following happens, the police commissioner reasonably suspects the person is a person mentioned in section 122(1)(a) to (c)—
- (a) the person's criminal history changes;
  - (b) the police commissioner decides, under section 121A, that information about the person is investigative information (regardless of when the act or omission relevant to the investigative information happened or is alleged to have happened).

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- (1A) The police commissioner may notify the commissioner that—
- (a) the person’s criminal history has changed; or
  - (b) the police commissioner has decided that information about the person is investigative information.
- (2) The notice must state the following—
- (a) the person’s name and any other name that the police commissioner believes the person may use or may have used;
  - (b) the person’s gender and date and place of birth;
  - (c) a brief description of the conviction or charge to which the change relates, or of the investigative information.
- (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 (1A), may write to the person to inform the person of the person’s obligations under sections 112(2), 113(2) and 114(2).<sup>54</sup>
- (5) If the police commissioner gives investigative information to the commissioner under this section, the police commissioner must give notice, in the approved form, to the person that investigative information has been given to the commissioner.

**122B Commissioner to give notice to employer about making employment-screening decision about employee**

- (1) This section applies if—
- (a) the police commissioner, the holder of a prescribed notice (the *employee*) or another person gives notice to the commissioner that police information about the employee has changed; or

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<sup>54</sup> 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)

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- (b) the commissioner otherwise becomes aware that police information about the employee has changed.
- (2) However, this section does not apply if the change is that the employee has been convicted or charged with an excluding offence.
- (3) If the commissioner considers the change in police information may be relevant to child-related employment, the commissioner must give written notice to the person (the *employer*) who employs the employee in regulated employment—
  - (a) identifying the employee; and
  - (b) stating only that the commissioner is making an employment-screening decision in relation to the employee.
- (4) However, if the change in police information is a change in criminal history, the notice under subsection (3) must state whether or not—
  - (a) the change in criminal history is a charge or a conviction; and
  - (b) the offence is a serious offence or serious child-related sexual offence.
- (5) The employer may not dismiss the employee solely or mainly because the employer is given the notice.

**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 prescribed notice about another person (the *employee*); and
  - (b) has not yet issued the prescribed notice.
- (2) The employee may give a written notice to the commissioner withdrawing the employee's consent to employment screening under this part.

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- (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.
- (3A) Also, the employee is taken to have withdrawn his or her consent to employment screening under this part if—
- (a) the employer has given the commissioner written notice that the person is no longer employed by the employer or the commissioner can not obtain information, in writing, from the employer that the person is employed by the employer; and
  - (b) the employee has not given written notice to the commissioner about the end of the employment as required under section 101A;<sup>55</sup> and
  - (c) the commissioner gives the employee and the employer a notice of deemed withdrawal relating to the employee.
- (3B) Further, the employee is taken to have withdrawn his or her consent to employment screening under this part if—

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<sup>55</sup> Section 101A (Notice of change of employment, or name and contact details in application under ss 100 or 101)

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- (a) the employee gives the commissioner, or the commissioner gives the employee, written notice that the employee is charged with an excluding offence; and
  - (b) the commissioner gives the employee and the employer a notice of deemed withdrawal under this subsection relating to the employee.
- (4) If the employee withdraws his or her consent to employment screening under this part before the commissioner issues a prescribed notice about the employee—
- (a) the commissioner must not issue the prescribed notice; and
  - (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.
- (4A) For subsection (3A), an employer may give written notice to the commissioner that a stated person—
- (a) is employed, or continues to be employed, by the employer; or
  - (b) is no longer employed by 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, or continue 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,



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or continue to employ, the employee in regulated employment.

- (4) A person whose positive notice is suspended under section 119C<sup>56</sup> may be employed in employment that is not regulated employment until the charge for the excluding offence is dealt with and the commissioner cancels the suspension and issues a further prescribed notice.

## **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 information obtained under this part about a person**

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

## **126A Commissioner must give police commissioner a person's current address**

- (1) The commissioner must, on written application of the police commissioner, give the police commissioner information about an address for a person if—

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<sup>56</sup> Section 119C (Effect of charge for excluding offence pending charge being dealt with)

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- (a) the commissioner has an address for the person that is different to the address stated by the police commissioner in the application; and
  - (b) the police commissioner is, under this part, required to give a notice to the person.
- (2) Information given to the police commissioner under this section must not be used, disclosed or accessed for any purpose except to give a notice under this part to the person.

**126B Commissioner may give information to accreditation board about director of school's governing body**

- (1) The commissioner may, on written application of the accreditation board signed by the chairperson, give the accreditation board the following information about a director<sup>57</sup> of a school's governing body—
- (a) whether the director is the holder of a positive notice or negative notice;
  - (b) whether the director is an applicant under section 101.<sup>58</sup>
- (2) The commissioner must notify the accreditation board about the following—
- (a) if the commissioner issues a negative notice to a director of a school's governing body—the issue of the negative notice;
  - (b) if, under section 119C,<sup>59</sup> the commissioner suspends the positive notice of a director of a school's governing body—the suspension of the positive notice or the

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<sup>57</sup> *Education (Accreditation of Non-State Schools) Act 2001*, section 15 (Application of Commission for Children and Young People and Child Guardian Act 2000, pt 6) states—

For the *Commission for Children and Young People and Child Guardian Act 2000*, part 6, a person is taken to be a person carrying on a regulated business under that Act by being a director of the governing body of a provisionally accredited, or accredited, school.

<sup>58</sup> Section 101 (Application for notice—regulated business)

<sup>59</sup> Section 119C (Effect of charge for excluding offence pending charge being dealt with)

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cancellation of the suspension and issue of a further prescribed notice under section 119D.<sup>60</sup>

(3) In this section—

**accreditation board** means the Non-State Schools Accreditation Board established under the *Education (Accreditation of Non-State Schools) Act 2001*, section 105.

**chairperson** see the *Education (Accreditation of Non-State Schools) Act 2001*, schedule 3.

**director**, of a school's governing body, see the *Education (Accreditation of Non-State Schools) Act 2001*, schedule 3.

**issue a negative notice** includes substitute a negative notice after cancelling a positive notice.

## 126C Disqualification order

(1) This section applies if—

- (a) a person is convicted of an excluding offence; and
- (b) the court that convicted the person did not impose an imprisonment order for the offence.

(2) The court may, on application by the prosecutor or on its own motion, make an order (**disqualification order**) in relation to the person stating that the person may never hold a positive notice or apply for a prescribed notice.

(3) In this section—

**Crown prosecutor** includes—

- (a) the Attorney-General; and
- (b) the director of public prosecutions; and
- (c) another person, other than a police officer, appearing for the State.

**prosecutor** means—

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<sup>60</sup> Section 119D (Cancellation of suspension and issue of further prescribed notice)

- (a) in the context of a proceeding before, or an application to, a Magistrates Court—a police officer or Crown prosecutor; or
- (b) otherwise—a Crown prosecutor.

## Division 6                      Transitional

### 127      **Application of this part**

- (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 prescribed 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.

*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 prescribed 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—

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- (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 there is police information about the employee; and
    - (ii) if there is police information about the employee, what that information 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.



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- (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—

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- (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 7A Commissioner may apply for review of particular decisions

### 140A Meaning of *reviewable decision* for pt 7A

- (1) In this part—

*reviewable decision* means any of the following—

- (a) if, under the *Child Protection Act 1999*, section 14(1),<sup>61</sup> the chief executive (child safety) is required to take action under section 14(1)(a) or (b), a decision by the chief executive about the action;
- (b) a decision, under the *Child Protection Act 1999*, section 87(2),<sup>62</sup> by the chief executive (child safety) not to take action under that subsection;
- (c) a decision by the chief executive (child safety) to take, or not to take, a step for the purpose of ensuring a child who, under the *Child Protection Act 1999*, is placed in the care of an approved foster carer, licensed care service or departmental care service is cared for in a way that meets the statement of standards under section 122 of that Act;

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61 *Child Protection Act 1999*, section 14 (Chief executive may investigate alleged harm)

62 *Child Protection Act 1999*, section 87 (Chief executive to provide contact between child and child's parents)

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- (d) a decision that is a reviewable decision under the *Child Protection Act 1999*,<sup>63</sup> other than—
- (i) a decision about a licence under section 129 of that Act; or
  - (ii) a decision about a certificate of approval under section 136 of that Act; or
  - (iii) a decision about an authority under section 137, 138 or 140 of that Act.
- (2) For paragraph (a) of the definition *reviewable decision* in subsection (1), if the chief executive (child safety) is required to take action under the *Child Protection Act 1999*, section 14(1)(a) or (b) and fails to take the action, the failure is taken to be a decision by the chief executive (child safety) not to take any action.
- (3) For paragraph (c) of the definition *reviewable decision* in subsection (1), a failure by the chief executive (child safety) to decide to take a step for the purpose mentioned in that paragraph is taken to be a decision not to take the step.
- (4) Subsection (5) applies if, in the course of the commissioner seeking to have a reviewable decision resolved to the commissioner's satisfaction—
- (a) the chief executive (child safety) amends, or substitutes another reviewable decision for, the first reviewable decision and the amended reviewable decision or substituted reviewable decision does not resolve the matter to the commissioner's satisfaction; or
  - (b) in relation to a failure to take action or to decide to take a step as mentioned in subsection (2) or (3)—the chief executive (child safety) actually makes a reviewable decision and the reviewable decision does not resolve the matter to the commissioner's satisfaction.

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<sup>63</sup> See the *Child Protection Act 1999*, schedule 3 (Dictionary), definition *reviewable decision*. Reviewable decisions are in schedule 2 (Reviewable decisions and aggrieved persons) of that Act.

- (5) For section 140B, the amended or substituted reviewable decision, or the reviewable decision actually made, becomes the reviewable decision.

**140B Commissioner may apply for review of reviewable decisions**

- (1) This section applies if, in performing the commissioner's child guardian functions, the commissioner—
- (a) is dissatisfied with a reviewable decision; and
  - (b) has been unable to resolve the matter with the chief executive (child safety) to the commissioner's satisfaction.
- (2) The commissioner may apply to the Children Services Tribunal to have the reviewable decision reviewed.
- (3) The commissioner may apply to the Children Services Tribunal only if the commissioner is satisfied that to do so would be in the child's best interests.
- (4) Before the commissioner may apply to the Children Services Tribunal to have the reviewable decision reviewed, the commissioner must give the chief executive (child safety) a written notice stating—
- (a) the commissioner is dissatisfied with the decision; and
  - (b) the reasons the commissioner is dissatisfied with the decision; and
  - (c) the matter has not been resolved to the commissioner's satisfaction; and
  - (d) the commissioner intends to apply to the Children Services Tribunal for a review of the decision.

## **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**

#### **144A Positive notice blue card is evidence of holding positive notice**

If a person holds a current positive notice blue card, the card is evidence of the person holding a current positive notice.

#### **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, the assistant commissioner or a community visitor is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the commissioner or assistant 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 111<sup>64</sup> is an indictable offence that is a crime.
- (2) An offence against section 156<sup>65</sup> is an indictable offence that is a crime.
- (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—
  - (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

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64 Section 108 (Person holding negative notice, or who has withdrawn consent to employment screening, not to apply for, or start or continue in, regulated employment), 109 (Carrying on regulated business) or 111 (Effect of conviction for serious offence or charge for excluding offence)

65 Section 156 (Offence of taking a reprisal)

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- (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).<sup>66</sup>
- (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 a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

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<sup>66</sup> *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

### **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'.

### **151A Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

- (4) However, it is a defence for an executive officer to prove—
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

### **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, the assistant commissioner or a staff member; and
  - (b) in that capacity acquired information, or gained access to a document, under part 6<sup>67</sup> about someone else's criminal history.
- (2) This section also applies to a person who—
- (a) is, or has been, the commissioner, the assistant commissioner, a staff member or a selection panel member; and
  - (b) in that capacity acquired information, or gained access to a document, under part 7<sup>68</sup> 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.

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67 Part 6 (Screening for regulated employment and regulated businesses)

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

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- (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, the assistant commissioner or a staff member for the purpose of an employment-screening decision; or
  - (b) if subsection (2) applies—to the commissioner, the assistant 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.

- (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 assistant commissioner; or
  - (b) a member of the commission's staff; or

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- (c) a person consulted or employed by the commissioner or assistant 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 (child safety), 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 may—
  - (a) liaise with a complaints agency about the exercise by the commissioner and the complaints agency of their functions relating to complaints about services provided to children; and
  - (b) enter into an arrangement with the complaints agency aimed at avoiding inappropriate duplication of activities relating to those functions.

### 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

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- (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 assistant 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); or
    - (d) a member of the Child Death Case Review Committee.

### **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.

### **163A Annual report by commission**

The commission's annual report under the *Financial Administration and Audit Act 1977* for a financial year must include—

- (a) a report on the performance of the commissioner's child guardian functions during the year; and
- (b) a report on the operations of community visitors during the year.

### **164 Commissioner may enter into arrangement about giving and receiving information with police commissioner**

- (1) This section applies only to the extent that another provision under this Act allows the commissioner to give information to the police commissioner or the police commissioner to give information to the commissioner.

- (2) The commissioner and the police commissioner may enter into a written arrangement by which the information is given or received.
- (3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information, including on a daily basis.
- (4) However, if information is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

### **165 Delegation by commissioner or assistant 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) The assistant commissioner may delegate the assistant commissioner's powers under this Act to—
  - (a) an appropriately qualified member of the commission's staff; or
  - (b) another individual whom the assistant commissioner considers is an appropriately qualified person to exercise the powers delegated to the person.
- (3) 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**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about fees, including refunding or waiving fees, for this Act.

**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,<sup>69</sup> 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<sup>70</sup> of the repealed Act are taken to have been decided under section 23.<sup>71</sup>

### **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.

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

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

71    Section 23 (Terms and conditions of appointment)

## **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).<sup>72</sup>

## **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
  - (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.

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<sup>72</sup> Section 82 (Duration of appointment)

- (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,<sup>73</sup> under a licence under the *Child Care Act 1991*.
- (2) The person does not commit an offence against section 109<sup>74</sup> 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.

### 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

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

74      Section 109 (Carrying on regulated business)



schedule 1, section 10,<sup>75</sup> other than under a licence under the *Child Care Act 1991*.

- (2) The person does not commit an offence against section 109<sup>76</sup> 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 127<sup>77</sup> does not apply to the employment of the person.
- (3) If the employment is in a licensed child care service, sections 105 and 106<sup>78</sup> 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.

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

76 Section 109 (Carrying on regulated business)

77 Section 127 (Application of this part)

78 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.<sup>79</sup>
- (2) Section 127(2) does not apply to the employment of the employee.
- (3) Subject to subsections (4) and (5), section 105<sup>80</sup> 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*).

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<sup>79</sup> Schedule 1 (Regulated employment and businesses for employment screening), section 6A (Education programs conducted outside of school)

<sup>80</sup> Section 105 (Continuing employment of certain regular employees)

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- (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.

**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.<sup>81</sup>
- (2) Subject to subsections (3) and (4), the person does not commit an offence against section 109<sup>82</sup> 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.

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

82 Section 109 (Carrying on regulated business)

**Division 6****Transitional provisions for Child  
Safety Legislation Amendment Act  
2004****183 Commissioner**

- (1) Subject to this Act, the current commissioner continues in office under this Act as the Commissioner for Children and Young People and Child Guardian until the end of the term stated in the person's appointment.
- (2) Unless the context otherwise requires, a reference in a document to the Commissioner for Children and Young People is taken to be a reference to Commissioner for Children and Young People and Child Guardian.
- (3) In this section—

*commencement day* means the day the *Child Safety Legislation Amendment Act 2004*, section 39 commences.

*current commissioner* means the person who, immediately before the commencement day, was the Commissioner for Children and Young People.

**184 Commission**

- (1) The current commission continues as the Commission for Children and Young People and Child Guardian.
- (2) Unless the context otherwise requires, a reference in a document to the Commission for Children and Young People is taken to be a reference to Commission for Children and Young People and Child Guardian.
- (3) In this section—

*commencement day* means the day the *Child Safety Legislation Amendment Act 2004*, section 39 commences.

*current commission* means the office that, immediately before the commencement day, was the Commission for Children and Young People.

## 185 Child deaths

- (1) As far as is practicable, the commissioner must include, in the register under section 89ZC, a record of the child deaths that happened before the commencement day and on or after 1 January 2001.
- (2) The first report prepared under section 89ZF(1) is due by 31 October 2005 and must include the matters stated in section 89ZF(1) for the period from the commencement day to 1 July 2005.
- (3) In this section—

*commencement day* means the day the *Child Safety Legislation Amendment Act 2004*, section 80 commences.

## 186 References to child safety department

If the *Child Protection Act 1999* is administered only in a part of a department, a reference in this Act to the child safety department is a reference only to that part.

## 187 First report under s 89ZA

The first report prepared under section 89ZA is due by 31 October 2005 and must relate to the period starting on the day that section commences and ending on 30 June 2005.

## Division 7 Transitional provisions for the Commission for Children and Young People and Child Guardian Amendment Act 2004

## 188 Volunteers

- (1) This section applies to a person to whom section 104B<sup>83</sup> applies.

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83 Section 104B (Starting employment)

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- (2) Section 104B applies to the person even though the agreement about carrying out work, that is regulated employment, was entered into before the commencement of this section.
- (3) However if, before the commencement, the employee under section 104B started carrying out work and the relevant employer under the section applied for a prescribed notice about the employee—
  - (a) the employee may continue to be employed by the relevant employer until the earlier of the following—
    - (i) 1 year after the commencement;
    - (ii) the employee is issued with a negative notice by the commissioner or the application is withdrawn; and
  - (b) the employer may continue to employ the employee until the earlier of the following—
    - (i) 1 year after the commencement;
    - (ii) the employer is given notice by the commissioner that a negative notice has been issued to the employee or the application is withdrawn.

**189 Application of amendment of sch 1 to particular employment**

- (1) This section applies to a person who, immediately before the commencement of this section, was employed or was continuing to be employed in employment that, after the commencement, is regulated employment mentioned in schedule 1, part 1, section 3, 6C, 6E or 6F.<sup>84</sup>
- (2) To the extent that, under section 127(2), part 6 does not apply to the employment of a person mentioned in subsection (1), section 127(2) no longer applies, or does not apply, to the

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<sup>84</sup> Schedule 1 (Regulated employment and businesses for employment screening), part 1 (Regulated employment), section 3 (Schools—employees other than teachers and parents), 6C (Religious representatives), 6E (Emergency services cadet program) or 6F (School crossing supervisors)

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employment of the person and part 6 applies to the employment of the person.

- (3) However, despite part 6 applying to the employment, sections 105 and 106<sup>85</sup> do not apply to the employment of the person until the earliest of the following—
  - (a) 1 year after the commencement;
  - (b) if an application for a prescribed notice about the person is made within that year and is not withdrawn—the day a prescribed notice is issued to the person;
  - (c) if an application for a prescribed notice about the person is made within that year and is withdrawn—the day of the withdrawal.
- (4) In this section—

*employment* includes continuing employment.

**190 Employment that becomes regulated employment other than employment mentioned in s 189(1)**

- (1) This section applies to employment of a person that—
  - (a) was not regulated employment immediately before the commencement of section 189; and
  - (b) is regulated employment after that commencement.
- (2) Section 127(2) applies to the employment of the person unless the employment is regulated employment under schedule 1, part 1, section 3, 6C, 6E or 6F.
- (3) In this section—

*employment* includes continuing employment.

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

### **191 Carrying on regulated business**

- (1) This section applies to a person who, immediately before the commencement of this section, was carrying on a business mentioned in schedule 1, part 2, section 12, 13, 14 or 15.<sup>86</sup>
- (2) Sections 109 and 113<sup>87</sup> do not apply to the carrying on of the business until the earliest of the following—
  - (a) 1 year after the commencement of the section;
  - (b) if the person applies for a prescribed notice within that year and does not withdraw the application—the day a prescribed notice is issued to the person;
  - (c) if the person applies for a prescribed notice within that year but withdraws the application—the day of the withdrawal.

### **192 Provision because of the definition *serious offence***

- (1) This section applies to a decision made under this Act before the commencement of this section that involved a serious offence as that term was defined before the commencement.
- (2) It is declared that the change to the definition does not affect the decision made under this Act before the commencement.
- (3) To remove any doubt, it is declared that a person to whom a negative notice was issued because of the decision can not make an application to cancel the notice, as mentioned in section 118(3) or 119(3), before the end of 2 years after the issue of the notice.

### **193 Issue of positive notice blue card before commencement**

- (1) This section applies if, before the commencement of this section, the commissioner issued—

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86 Schedule 1 (Regulated employment and businesses for employment screening), part 2 (Regulated businesses), section 12 (Religious representatives), 13 (Child accommodation services including home stays), 14 (Sport and active recreation) or 15 (Hostel for children other than residential facility)

87 Sections 109 (Carrying on regulated business) and 113 (Change in criminal history of person carrying on regulated business)



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- (a) a document (however described) that, immediately before the commencement, was a current suitability notice; and
  - (b) a document purporting to be a positive notice blue card (the *purported blue card*) and the date stated on the document as its expiry date has not happened.
- (2) The purported blue card is a positive notice blue card for this Act.
  - (3) If the expiry date stated on the purported blue card was a day later than the expiry day for the relevant suitability notice, the purported blue card and suitability notice remain current until the date stated in the purported blue card.
  - (4) Subsection (3) applies despite section 104.<sup>88</sup>

**194 Charge for excluding offence not to apply to particular holders of positive notices**

- (1) This section applies to a person who, immediately before the commencement of this section—
  - (a) was the holder of a current positive notice; and
  - (b) had been charged with an offence that has not been dealt with.
- (2) If, immediately after the commencement, the offence is an excluding offence, section 119C<sup>89</sup> does not apply to the person.
- (3) However if, after the commencement, the person is convicted of the excluding offence with which the person was charged before the commencement, or another excluding offence, a

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<sup>88</sup> Section 104 (Currency of prescribed notice and positive notice blue card)

<sup>89</sup> Section 119C (Effect of charge for excluding offence pending charge being dealt with)

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court may make a disqualification order under section 126C and section 119A or 119B<sup>90</sup> may apply to the person.

**195 References to suitability notice**

In an Act or document, a reference to a suitability notice may, if the context permits, be taken to be a reference to a prescribed notice.

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<sup>90</sup> Section 126C (Disqualification order) and section 119A (Cancellation if conviction for excluding offence and imprisonment or disqualification order) or 119B (Cancellation if conviction for excluding offence but no imprisonment or disqualification order)

## **Schedule 1      Regulated employment and businesses for employment screening**

section 97

### **Part 1            Regulated employment**

#### **1            Residential facilities**

- (1) Employment is regulated employment if any of the usual functions of the employment is carried out, or is likely to be carried out, inside—
  - (a) a residential facility; or
  - (b) another place, other than a residential facility, at which a child accommodation service is provided under funding provided by the Commonwealth or by the department in which the *Education (General Provisions) Act 1989* is administered.
- (2) However, employment mentioned in subsection (1) is not regulated employment if—
  - (a) the employer is a government service provider; or
  - (b) the employment is part of a licensed care service as defined under the *Child Protection Act 1999*.

#### **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.

Schedule 1 (continued)

**3 Schools—employees other than teachers and parents**

- (1) Employment is regulated employment if the usual functions of the employment include or are likely to include—
  - (a) providing services at a school that are directed mainly towards children; or
  - (b) conducting activities at a school that mainly involve children.
- (2) However, employment mentioned in subsection (1) is not regulated employment if the employee is—
  - (a) a registered teacher; or
  - (b) a volunteer who is a parent of a child attending the school.

**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

### Schedule 1 (continued)

*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
    - (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

### Schedule 1 (continued)

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.

## 5 **Counselling and support services**

- (1) Employment is regulated employment if 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—
  - (a) the employee is physically present with the child while no-one else is present; or
  - (b) the employee is not physically present with the child.

*Example for paragraph (b)—*

employment that includes providing counselling to children over the telephone or via the Internet

### Schedule 1 (continued)

- (2) However, employment mentioned in subsection (1) is not regulated employment if—
- (a) the employee is a registered health practitioner; or
  - (b) the employment is part of a licensed care service as defined under the *Child Protection Act 1999*; or
  - (c) the employer is a government service provider and carries on a business that includes providing counselling or a similar support service.

## 6 Private teaching, coaching or tutoring

- (1) Employment is regulated employment if the usual functions of the employment include or are likely to include prescribed teaching.
- (2) However, employment mentioned in subsection (1) is not regulated employment if—
- (a) the employee is a registered teacher; or
  - (b) the employer is an education provider.
- (3) In this section—
- prescribed teaching*** means teaching, coaching or tutoring 1 child, or more than 1 child at the same time, on a commercial basis.

## 6A Education programs conducted outside of school

- (1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, providing services or conducting activities for—
- (a) an education program under the *Education (General Provisions) Act 1989*, section 30; or
  - (b) a program, provided by an entity, under arrangements approved under the *Education (General Provisions) Act 1989*, section 114A(1) or 114B(1).

### Schedule 1 (continued)

- (2) However, employment mentioned in subsection (1) is not regulated employment if—
- (a) the employee is a registered teacher; or
  - (b) the employer is a provider under the *Youth Participation in Education and Training Act 2003*, section 12.

#### **6B Child accommodation services including home stays**

- (1) Employment is regulated employment if the usual functions of the employment include, or are likely to include, a child accommodation service.
- (2) If accommodation constituting a child accommodation service is provided, or is to be provided, by a person in the person's home (a *home stay provider*), each adult residing in that home, other than the home stay provider, is taken to be a volunteer who is engaged in regulated employment.
- (3) However, employment mentioned in subsection (1) or (2) is not regulated employment if—
- (a) the home stay provider is a relative of the child who receives the child accommodation service to which the employment relates; or
  - (b) the employer is a government service provider and carries on a business that includes arranging a child accommodation service.
- (4) In this section—
- home*, of a person, includes the person's principal place of residence and any holiday home of the person.

#### **6C Religious representatives**

Employment is regulated employment if—

- (a) the employee is a religious representative; and
- (b) the usual functions of the employment include, or are likely to include—



### Schedule 1 (continued)

- (i) providing services, as a religious representative, directed mainly towards children; or
- (ii) conducting activities, as a religious representative, mainly involving children.

#### **6D Sport and active recreation**

- (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
    - (ii) conducting activities mainly involving children; and
  - (b) the services are provided, or the activities are conducted, as part of sport or active recreation.
- (2) However, employment mentioned in subsection (1) is not regulated employment if—
  - (a) the employment takes place at an amusement park; or
  - (b) the employer is a government entity; or
  - (c) the employee is a volunteer who is a parent of a child to whom the services are provided, or in relation to whom the activities are conducted, as part of the sport or active recreation; or
  - (d) the services are provided, or the activities are conducted, by or within a church, club, association or similar entity, as mentioned in section 4(1)(b) of this schedule.

#### **6E Emergency services cadet program**

- (1) Employment is regulated employment if the usual functions of the employment include or are likely to include—
  - (a) undertaking the role of an adult member in the cadet program managed by the department responsible for emergency services; and

### Schedule 1 (continued)

- (b) prescribed teaching.
- (2) In this section—  
*prescribed teaching* means teaching, coaching or tutoring 1 child, or more than 1 child at the same time.

#### **6F School crossing supervisors**

Employment is regulated employment if the usual functions of the employment include, or are likely to include, providing services as a crossing supervisor within the meaning of the *Transport Operations (Road Use Management) Act 1995*, section 138.<sup>91</sup>

#### **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.

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<sup>91</sup> *Transport Operations (Road Use Management) Act 1995*, section 138 (Scheme to facilitate children crossing streets)

Schedule 1 (continued)

## Part 2                      **Regulated businesses**

### **8            Counselling and support services**

- (1) 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.
- (2) However, a business mentioned in subsection (1) is not a regulated business if the usual activities mentioned in that subsection are licensed care services as defined under the *Child Protection Act 1999*.

### **9            Private teaching, coaching or tutoring**

- (1) A business is a regulated business if the usual activities of the business include, or are likely to include, teaching, coaching or tutoring 1 child, or more than 1 child at the same time, on a commercial basis.
- (2) However, a business mentioned in subsection (1) is not a regulated business if the business is conducted by an education provider.

### **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.

### Schedule 1 (continued)

#### **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
  - (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.

#### **12 Religious representatives**

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

- (a) providing services, as a religious representative, directed mainly towards or involving children; or
- (b) conducting activities, as a religious representative, directed mainly towards or involving children.

#### **13 Child accommodation services including home stays**

- (1) A business is a regulated business if the usual activities of the business include, or are likely to include, a child accommodation service and—
  - (a) the person who carries on the business provides the accommodation that constitutes the child accommodation service in the person's home; or

### Schedule 1 (continued)

- (b) the person who carries on the business provides the child accommodation service under an arrangement organised by a government service provider.
- (2) However, a business mentioned in subsection (1) is not a regulated business if the business is conducted at a boarding facility, residential facility or another place of the type mentioned in section 1(1)(b) of this schedule.
- (3) In this section—  
*home*, of a person, includes the person's principal place of residence and any holiday home of the person.

## 14 Sport and active recreation

- (1) A business is a regulated business if the usual activities of the business include, or are likely to include, sport or active recreation activities directed mainly towards or involving children.
- (2) However, a business mentioned in subsection (1) is not a regulated business if—
  - (a) the business takes place at an amusement park; or
  - (b) the activities are conducted by or within a church, club, association or similar entity, as mentioned in section 4(1)(b) of this schedule.

## 15 Hostel for children other than residential facility

- (1) A business is a regulated business if the usual activities of the business include, or are likely to include, operating a place, other than a residential facility, at which a child accommodation service is provided under funding provided by the Commonwealth or by the department in which the *Education (General Provisions) Act 1989* is administered.
- (2) However, a business mentioned in subsection (1) is not a regulated business if the employer is a government service provider.

## Schedule 2      Current serious offences

section 99C

### 1 *Classification of Computer Games and Images Act 1995*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
23	Demonstration of an objectionable computer game before a minor	
26(3)	Possession of objectionable computer game	
27(3) and (4)	Making objectionable computer game	
28	Obtaining minor for objectionable computer game	

### 2 *Classification of Films Act 1991*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
41(3)	Possession of objectionable film	
42(3) and (4)	Making objectionable film	
43	Procurement of minor for objectionable film	

### Schedule 2 (continued)

#### 3 *Classification of Publications Act 1991*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
12	Sale etc. of prohibited publication or child abuse photograph	Only if an offender was or could have been liable as mentioned in section 12, penalty, paragraph (c)
13	Possession of prohibited publication	Only if an offender was or could have been liable as mentioned in section 13, penalty, paragraph (c)
14	Possession of child abuse publication or child abuse photograph	
15	Exhibition or display of prohibited publication or child abuse photograph	
16	Leaving prohibited publication or child abuse photograph in or on public place	Only if an offender was or could have been liable as mentioned in section 16, penalty, paragraph (c)
17	Producing prohibited publication	Only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c) or 17(2), penalty, paragraph (c) or the offence is an offence under section 17(3) or (4)
18	Procurement of minor for RC publication or child abuse photograph	

### Schedule 2 (continued)

20	Leaving prohibited publication or child abuse photograph in or on private premises	Only if an offender was or could have been liable as mentioned in section 20, penalty, paragraph (c)
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#### 4 Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
208	Unlawful sodomy	
209	Attempted sodomy	
210	Indecent treatment of children under 16	
211	Bestiality	
213	Owner etc. permitting abuse of children on premises	
215	Carnal knowledge with or of children under 16	
216	Abuse of intellectually impaired persons	
217	Procuring young person etc. for carnal knowledge	
218	Procuring sexual acts by coercion etc.	



Schedule 2 (continued)

218A	Using internet etc. to procure children under 16	
219	Taking child for immoral purposes	
221	Conspiracy to defile	
222	Incest	
228	Obscene publications and exhibitions	Only if an offender was or could have been liable as mentioned in section 228(2) or (3)
228A	Involving child in making child exploitation material	
228B	Making child exploitation material	
228C	Distributing child exploitation material	
228D	Possessing child exploitation material	
229B	Maintaining a sexual relationship with a child	
229G	Procuring prostitution	Only if an offender was or could have been liable as mentioned in 229G(2)

Schedule 2 (continued)

229H	Knowingly participating in provision of prostitution	Only if an offender was or could have been liable as mentioned in 229H(2)
229I	Persons found in places reasonably suspected of being used for prostitution etc.	Only if an offender was or could have been liable as mentioned in 229I(2)
229L	Permitting young person etc. to be at place used for prostitution	
300	Unlawful homicide	Only if the unlawful killing is murder under section 302
306	Attempt to murder	
309	Conspiring to murder	
313	Killing unborn child	
315	Disabling in order to commit indictable offence	
316	Stupefying in order to commit indictable offence	
317	Acts intended to cause grievous bodily harm and other malicious acts	
320A	Torture	

## Schedule 2 (continued)

- 322 Maliciously  
administering  
poison with intent  
to harm
- 323A Female genital  
mutilation
- 323B Removal of child  
from State for  
female genital  
mutilation
- 324 Failure to supply  
necessaries
- 326 Endangering life of  
children by  
exposure
- 349 Rape
- 350 Attempt to commit  
rape
- 351 Assault with intent  
to commit rape
- 352 Sexual assaults
- 354 Kidnapping
- 354A Kidnapping for  
ransom
- 363 Child-stealing
- 363A Abduction of child  
under 16
- 364 Cruelty to children  
under 16

Schedule 2 (continued)

409	Definition of <i>robbery</i>	Only if an offender was or could have been liable as mentioned in section 411(2)
419	Burglary	Only if an offender was or could have been liable as mentioned in section 419(3)(b)(i) and (ii)
427	Unlawful entry of vehicle for committing indictable offence	Only if an offender was or could have been liable as mentioned in section 427(2)(b)(i) or (ii)

5 *Drugs Misuse Act 1986*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
5	Trafficking in dangerous drugs	
6	Supplying dangerous drugs	Only if the offence is one of aggravated supply as mentioned in section 6(2)
8	Producing dangerous drugs	Only if an offender was or could have been liable for a penalty as mentioned in section 8, penalty, paragraph (a) or (b)

## **Schedule 2A      Repealed or expired serious offences**

section 99C

### Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
212	Defilement of Girls under Twelve	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
214	Attempt to Abuse Girls under Ten	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
220	Unlawful Detention with Intent to Defile or in a Brothel	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
223	Incest by adult female	As the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i>
325	Endangering life or health of apprentices or servants	As the provision was in force from time to time before its repeal by the <i>Training and Employment Act 2000</i>

Schedule 2A (continued)

344	Aggravated assaults	As the provision was in force from 20 December 1946 to 30 June 1997 if the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the <i>Criminal Law Amendment Act 1945</i> , section 2A <sup>a</sup>
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a *Criminal Law Amendment Act 1945*, section 2A was inserted into the *Criminal Law  
Amendment Act 1945* by the *Criminal Law Amendment Act 1946*.

## **Schedule 2B      Current serious child-related sexual offences**

section 99D

### Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>
208	Unlawful sodomy
209	Attempted sodomy
210	Indecent treatment of children under 16
213	Owner etc. permitting abuse of children on premises
215	Carnal knowledge with or of children under 16
216	Abuse of intellectually impaired persons
217	Procuring young person etc. for carnal knowledge
218	Procuring sexual acts by coercion etc.
219	Taking child for immoral purposes
222	Incest
229B	Maintaining a sexual relationship with a child
229G	Procuring prostitution
349	Rape
350	Attempt to commit rape
351	Assault with intent to commit rape
352	Sexual assaults

## Schedule 2C Repealed or expired serious child-related sexual offences

section 99D

### Criminal Code

Provision of Act	Relevant heading	Qualification relating to the provision of the Act
212	Defilement of Girls under Twelve	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
214	Attempt to Abuse Girls under Ten	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
220	Unlawful Detention with Intent to Defile or in a Brothel	As the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
223	Incest by adult female	As the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i>
344	Aggravated assaults	As the provision was in force from 20 December 1946 to 30 June 1997 if the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the <i>Criminal Law Amendment Act 1945</i> , section 2A



## Schedule 4      Dictionary

### section 3

***active recreation***, for schedule 1, means a form of physical exertion or activity engaged in for the purpose of relaxation or enjoyment, that is not based on formal competition.

***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.

***amusement park***, for schedule 1, includes a park that is permanent or temporary but does not include an amusement arcade.

***appointed members***, for part 4A, division 1, see section 89A.

***approved form*** means a form approved under section 166.

***approved foster carer*** means an approved foster carer under the *Child Protection Act 1999*.

***assistant commissioner*** means the assistant commissioner appointed under section 28A.

***business*** includes a business or organisation in which profit is not the primary purpose of the activity constituting the business.

### Schedule 4 (continued)

**carer**—

- (a) in relation to a child residing in a visitable home, means a person in whose care the child has been placed; or
- (b) in relation to a child care service, see the *Child Care Act 2002*, section 56.

**CDCRC**, for part 4A, division 1, see section 89A.

**CDCRC member**, for part 4A, division 1, see section 89A.

**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;<sup>92</sup>
- (c) a complaint under the *Justices Act 1886*;
- (d) a charge by a court under the *Justices Act 1886*, section 42(1A),<sup>93</sup> or another provision of an Act;
- (e) an indictment.

**chief executive (child safety)** means the chief executive of the child safety department.

**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—

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

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

Schedule 4 (continued)

- (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.

**child guardian functions**, of the commissioner, see section 15(2).

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

**child safety department** means the department in which the *Child Protection Act 1999* is administered.

**child safety system** see the definition in the *child safety system*.

**commercial service** means a service operated on a commercial basis.

**commission** means the Commission for Children and Young People and Child Guardian.

**commissioner** means the Commissioner for Children and Young People and Child Guardian.

**community visitor** means a person appointed as a community visitor under this Act.

**complaints agency** means any of the following—

- (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*;

#### Schedule 4 (continued)

- (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 prescribed notice or a positive notice blue card, means current under section 104.

**dealt with**, in relation to a charge of an offence, means any of the following—

- (a) the person who is charged is convicted or acquitted of the charge;
- (b) the person who is charged is convicted of another offence in relation to which the acts or omissions were substantially the same as the acts or omissions of the charge of the offence;
- (c) the charge has been withdrawn or dismissed;

### Schedule 4 (continued)

- (d) a *nolle prosequi* or no true bill is presented in relation to the charge.

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

***disciplinary information*** means information received by the commissioner under any of the following—

- (a) the *Child Care Act 2002*, section 50A or 107A;
- (b) the *Child Protection Act 1999*, section 140A;
- (c) the *Education (Queensland College of Teachers) Act 2005*, section 285,<sup>94</sup> or the repealed *Education (Teacher Registration) Act 1988*, section 71B;<sup>95</sup>
- (d) the *Health Practitioners (Professional Standards) Act 1999*, section 384A;<sup>96</sup>
- (e) the *Nursing Act 1992*, section 139A.<sup>97</sup>

***disqualification order*** see section 126C.

***education provider*** means—

- (a) a university established by an Act or a law of the Commonwealth or another State; or
- (b) the university company within the meaning of the *Bond University Act 1987*; or

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94 *Education (Queensland College of Teachers) Act 2005*, section 285 (College may give information about teachers to commissioner for children in particular circumstances)

95 *Education (Teacher Registration) Act 1988*, section 71B (Board may notify Commissioner for Children and Young People and Child Guardian about particular information)

96 *Health Practitioners (Professional Standards) Act 1999*, section 384A (Board may notify Commissioner for Children and Young People and Child Guardian about particular information)

97 *Nursing Act 1992*, section 139A (Executive officer or council may notify Commissioner for Children and Young People and Child Guardian about particular information)

#### Schedule 4 (continued)

- (c) a registered training organisation within the meaning of the *Vocational Education, Training and Employment Act 2000*, section 19; or
- (d) an overseas higher education institution within the meaning of the *Higher Education (General Provisions) Act 2003*, schedule 2 in relation to which there is an approval under part 3 of that Act; or
- (e) a non-university provider within the meaning of the *Higher Education (General Provisions) Act 2003*, schedule 2 in relation to which there is an accreditation for an accredited course under part 4 of that Act; or
- (f) an interstate university within the meaning of the *Higher Education (General Provisions) Act 2003*, schedule 2 in relation to which there is an approval under section 63 of that Act.

**employment** means—

- (a) in relation to the engagement of a person under the *Child Care Act 2002*—see section 99B; or
- (b) in relation to a trainee student—see sections 99 and 99A; or
- (c) otherwise for part 6, part 9, division 7 or schedule 1—see section 99.

**employment-screening decision**, in relation to a person, means a decision about whether a positive notice or a negative notice should be issued to the person.

**excluding offence** see section 99E.

**executive officer**, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation.

**government entity** means a government entity under the *Public Service Act 1996*, section 21, and includes the police service to the extent it is not a government entity under that section.

### Schedule 4 (continued)

**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;<sup>98</sup>
- (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.<sup>99</sup>

**imprisonment order** means an order of a court that convicts a person for an offence, if the order includes a penalty that includes imprisonment for the offence, including imprisonment that is wholly or partially suspended.

**influence** includes attempt to influence.

**in the child safety system** see section 11A.

**investigative information**, about a person, see section 121A.

**jurisdiction**, other than in relation to this jurisdiction, means the Commonwealth, a State or a foreign jurisdiction.

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

99 *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)

*licensee*, for part 2A, see section 31B(b).

*monitoring functions*, of the commissioner, see section 15AA.

*negative notice* see section 102(2)(b).

*notice for information* see section 45(1).

*obstruct* includes hinder, resist and attempt to obstruct.

*original reviews*, for part 4A, division 1, see section 89A.

*parent* see section 158.

*police commissioner* means the commissioner of the police service.

*police information*, about a person, means the following—

- (a) the person's criminal history;
- (b) investigative information about the person.

*police service* means the Queensland Police Service.

*policies*, for part 4A, division 1, see section 89A.

*positive notice* see section 102(2)(a).

*positive notice blue card* means a document, in the form of a card, issued to a person who is the holder of a current positive notice at or about the time that the person is issued with the positive notice, that includes the following information—

- (a) the name of the person who is the holder of the positive notice;
- (b) a registration number for the person;
- (c) an expiry date for the positive notice;
- (d) the signature, or an electronic version of the signature, of the person to whom the positive notice is issued.

*prescribed department* means—

- (a) the department responsible for the care and protection of children; or
- (b) the department responsible for community services; or



Schedule 4 (continued)

- (c) the department responsible for disability services; or  
(d) the department responsible for mental health.

**prescribed notice** means a notice issued under section 102(2).

**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 who holds full registration, provisional registration or permission to teach under the *Education (Queensland College of Teachers) Act 2005*.

**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.

***relevant service providers***, for part 2A, see section 31B.

***religious representative*** means a person—

- (a) who is a member of—
  - (i) an organised religion; or
  - (ii) a religious group even if the group is not part of, or does not consider itself to be part of, an organised religion; and
- (b) who, because of the way the organised religion or religious group operates—
  - (i) holds a position in the religion or group that is supported by the religion or group, including financial support, in a way that allows the person—
    - (A) to devote himself or herself to promoting the religion's or group's objects or values; and
    - (B) to hold himself or herself out as a representative of the religion or group; or
  - (ii) is training to hold a position mentioned in subparagraph (i).

### Schedule 4 (continued)

**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.

**reviewable decision**, for part 7A, see section 140A.

**review criteria**, for part 4A, division 1, see section 89A.

**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*.

**serious child-related sexual offence** see section 99D.

**serious offence** see section 99C.

**service provider** see section 8.

**sport** means a form of human activity capable of achieving a result requiring physical exertion or physical skill that, because of its nature or organisation, is competitive and is generally recognised as sport.

**staff member**—

- (a) for part 7—see section 129; or

Schedule 4 (continued)

- (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.

**State Coroner** means the State Coroner under the *Coroners Act 2003*.

**trainee student**, of an education provider, means a person undertaking a course of study with the education provider.

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

**visitable home** see section 64B.

**visitable site** see section 64A.

**volunteer** see section 99F.

**woman** includes any female.

**work**, for part 6, includes the provision of a service, or the conduct of an activity—

- (a) as part of providing a child accommodation service; or
- (b) 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 1 January 2006. Future amendments of the Commission for Children and Young People and Child Guardian 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.

### 5 List of legislation

**Commission for Children and Young People and Child Guardian Act 2000 No. 60  
(prev Commission for Children and Young People Act 2000)**

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)

remaining provisions commenced 27 January 2004 (2003 SL No. 345)

**Child Safety Legislation Amendment Act 2004 No. 13 ss 1–2(1), pt 5, s 30 sch 1**

date of assent 24 June 2004

ss 1–2 commenced on date of assent

ss 59–78, 87(1) (to the extent it oms defs “carer” and “visitable site”), 87(2) (to the  
extent it ins defs “carer”, “visitable home” and “visitable site”) commenced 1  
September 2004 (2004 SL No. 141)

remaining provisions commenced 1 August 2004 (2004 SL No. 141)

**Child Safety Legislation Amendment Act (No. 2) 2004 No. 36 pts 1, 5**

date of assent 27 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 30 April 2005 (2005 SL No. 62)

**Commission for Children and Young People and Child Guardian Amendment Act  
2004 No. 49 ss 1–52**

date of assent 29 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 17 January 2005 (2004 SL No. 282)

**Criminal Code (Child Pornography and Abuse) Amendment Act 2005 No. 9 pts 1, 4**

date of assent 18 March 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 4 April 2005 (2005 SL No. 48)

**Child Safety Legislation Amendment Act 2005 No. 40 ss 1–2, 69 sch**

date of assent 1 September 2005

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

**Education (Queensland College of Teachers) Act 2005 No. 47 ss 1–2, 329 sch 2**

date of assent 2 November 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2006 (see s 2)

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date of assent 2 November 2005

ss 1–2 commenced on date of assent

sch 1 amdts 1–2 not yet proclaimed into force (see s 2)

remaining provisions commence 16 January 2006 (2005 SL No. 280)

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date of assent 2 November 2005

ss 1–2, 89 commenced on date of assent

remaining provision not yet proclaimed into force (see s 2)

later retrospective amending legislation—

**Child Safety (Carers) Amendment Act 2006 No. 17 ss 1–2(1), 40, 42**

date of assent 2 May 2006

ss 1–2(1) commenced on date of assent

remaining provisions commenced 17 January 2005 (see s 2(1))

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s 6 sub 2004 No. 49 s 50(3)

**Education programs conducted outside of school**

s 6A ins 2003 No. 88 s 8(1)  
sub 2004 No. 49 s 50(3)

**Child accommodation services including home stays**

s 6B ins 2004 No. 49 s 50(3)

**Religious representatives**

s 6C ins 2004 No. 49 s 50(3)

**Sport and active recreation**

s 6D ins 2004 No. 49 s 50(3)

**Emergency services cadet program**

s 6E ins 2004 No. 49 s 50(3)

**School crossing supervisors**

s 6F ins 2004 No. 49 s 50(3)

**Counselling and support services**

s 8 amd 2004 No. 49 s 50(4)

**Private teaching, coaching or tutoring**

s 9 amd 2004 No. 49 s 50(5)–(6)

**Child care**

s 10 ins 2002 No. 55 s 196 sch 1

**Education programs conducted outside of school**

s 11 ins 2003 No. 88 s 8(2)

**Religious representatives**

**s 12** ins 2004 No. 49 s 50(7)

**Child accommodation services including home stays**

**s 13** ins 2004 No. 49 s 50(7)

**Sport and active recreation**

**s 14** ins 2004 No. 49 s 50(7)

**Hostel for children other than residential facility**

**s 15** ins 2004 No. 49 s 50(7)

**SCHEDULE 2—CURRENT SERIOUS OFFENCES**

sub 2004 No. 49 s 51

amd 2005 No. 9 s 12

**SCHEDULE 2A—REPEALED OR EXPIRED SERIOUS OFFENCES**

ins 2004 No. 49 s 51

**SCHEDULE 2B—CURRENT SERIOUS CHILD-RELATED SEXUAL OFFENCES**

ins 2004 No. 49 s 51

**SCHEDULE 2C—REPEALED OR EXPIRED SERIOUS CHILD-RELATED  
SEXUAL OFFENCES**

ins 2004 No. 49 s 51

**SCHEDULE 3—CONSEQUENTIAL AMENDMENTS**

om R1 (see RA s 40)

**SCHEDULE 4—DICTIONARY**

def “**active recreation**” ins 2004 No. 49 s 52(2)

def “**adjunct care**” ins 2002 No. 55 s 196 sch 1

def “**amusement park**” ins 2004 No. 49 s 52(2)

def “**appointed members**” ins 2004 No. 13 s 87(2)

def “**approved foster carer**” ins 2004 No. 13 s 87(2)

def “**assistant commissioner**” ins 2004 No. 13 s 87(2)

def “**business**” ins 2004 No. 49 s 52(2)

def “**carer**” ins 2002 No. 55 s 196 sch 1

sub 2004 No. 13 s 87(1)–(2)

def “**CDCRC**” ins 2004 No. 13 s 87(2)

def “**CDCRC member**” ins 2004 No. 13 s 87(2)

def “**charge**” amd 2002 No. 55 s 196 sch 1 (amdt could not be given effect);  
2003 No. 19 s 3 sch

def “**chief executive (child safety)**” ins 2004 No. 13 s 87(2)

def “**chief executive (families)**” om 2004 No. 13 s 87(1)

def “**child care**” ins 2002 No. 55 s 196 sch 1

def “**child care centre**” ins 2002 No. 55 s 196 sch 1

def “**child care service**” ins 2002 No. 55 s 196 sch 1

def “**child guardian functions**” ins 2004 No. 13 s 87(2)

def “**child safety department**” ins 2004 No. 13 s 87(2)

def “**child safety system**” ins 2004 No. 13 s 87(2)

def “**commercial service**” ins 2002 No. 55 s 196 sch 1

def “**commission**” sub 2004 No. 13 s 87(1)–(2)

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- def “**commissioner**” sub 2004 No. 13 s 87(1)–(2)
- def “**complaints agency**” amd 2001 No. 69 s 378 sch 1; 2001 No. 73 s 96 sch 1
- def “**cousin**” ins 2002 No. 55 s 196 sch 1
- def “**current**” sub 2004 No. 49 s 52(1)–(2)
- def “**dealt with**” ins 2004 No. 49 s 52(2)
- def “**detention centre**” amd 1992 No. 44 s 341 sch 3 (ins 2002 No. 39 ss 115, 118)
- def “**disciplinary information**” ins 2004 No. 49 s 52(2)  
amd 2005 No. 47 s 329 sch 2
- def “**disqualification order**” ins 2004 No. 49 s 52(2)
- def “**education provider**” ins 2004 No. 49 s 52(2)
- def “**employing**” om 2004 No. 49 s 52(1)
- def “**employment**” ins 2004 No. 49 s 52(2)
- def “**employment-screening decision**” sub 2004 No. 49 s 52(1)–(2)
- def “**excluding offence**” ins 2004 No. 49 s 52(2)
- def “**executive officer**” ins 2004 No. 49 s 52(2)
- def “**government entity**” sub 2004 No. 36 s 56(1)
- def “**guardian**” ins 2002 No. 55 s 196 sch 1
- def “**imprisonment order**” ins 2004 No. 49 s 52(2)
- def “**in the child safety system**” ins 2004 No. 13 s 87(2)
- def “**investigative information**” ins 2004 No. 49 s 52(2)
- def “**jurisdiction**” ins 2004 No. 49 s 52(2)
- def “**licensee**” ins 2004 No. 13 s 87(2)
- def “**monitoring functions**” ins 2004 No. 13 s 87(2)  
amd 2004 No. 36 s 56(2)
- def “**negative notice**” sub 2004 No. 49 s 52(1)–(2)
- def “**original reviews**” ins 2004 No. 13 s 87(2)
- def “**police information**” ins 2004 No. 49 s 52(2)
- def “**police service**” ins 2004 No. 13 s 87(2)
- def “**policies**” ins 2004 No. 13 s 87(2)
- def “**positive notice**” sub 2004 No. 49 s 52(1)–(2)
- def “**positive notice blue card**” ins 2004 No. 49 s 52(2)
- def “**prescribed department**” amd 2004 No. 13 s 87(3)–(4)
- def “**prescribed notice**” ins 2004 No. 49 s 52(2)
- def “**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 2
- def “**registered teacher**” sub 2005 No. 47 s 329 sch 2
- def “**relative**” ins 2002 No. 55 s 196 sch 1
- def “**relevant service providers**” ins 2004 No. 13 s 87(2)
- def “**religious representative**” ins 2004 No. 49 s 52(2)
- def “**reviewable decision**” ins 2004 No. 13 s 87(2)
- def “**review criteria**” ins 2004 No. 13 s 87(2)
- def “**school**” sub 2001 No. 60 s 218 sch 1
- def “**serious child-related sexual offence**” ins 2004 No. 49 s 52(2)
- def “**serious offence**” sub 2004 No. 49 s 52(1)–(2)



def **“serious offence involving a child”** om 2004 No. 49 s 52(1)  
def **“sport”** ins 2004 No. 49 s 52(2)  
def **“staff member”** amd 2002 No. 55 s 196 sch 1  
def **“State Coroner”** ins 2004 No. 13 s 87(2)  
def **“suitability notice”** om 2004 No. 49 s 52(1)  
def **“teacher registration information”** ins 2003 No. 88 s 9  
om 2005 No. 47 s 329 sch 2  
def **“trainee student”** ins 2004 No. 49 s 52(2)  
def **“unit of public administration”** sub 2001 No. 69 s 378 sch 1  
def **“visitable home”** ins 2004 No. 13 s 87(2)  
def **“visitable site”** sub 2004 No. 13 s 87(1)–(2)  
def **“volunteer”** ins 2004 No. 49 s 52(2)  
def **“woman”** ins 2004 No. 13 s 87(2)  
def **“work”** sub 2004 No. 49 s 52(1)–(2)

## **7 Information about retrospectivity**

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. Any retrospective amendment that has not been consolidated is noted in footnotes to the text.