CHILD PROTECTION BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The object of the Bill is to provide for the protection of children.

The Bill responds to increased community expectation that:

- children be protected from abuse and neglect;
- children who are removed from home receive safe alternative care; and
- children who suffer abuse and neglect receive quality services which promote their emotional, physical, social and educational development.

In achieving its objective of protecting children, the Bill aims to:

- ensure that all children are protected from harm and the risk of harm, irrespective of the cause of the harm;
- assist families, including extended family members, to protect their children from harm;
- ensure that the views of children and families are taken into account when making decisions about the protection of children and that children and families have information and access to review of decisions affecting them;
- provide a range of orders to achieve the protection of children when, because a child does not have a parent able or willing to protect them, the State must discharge its obligation to intervene at the least intrusive level to ensure protection;
- promote a partnership between the State, non-government entities including Aboriginal and Torres Strait Islander entities, and the community in taking responsibility for and providing services for

the protection of children and support of families;

- recognise and articulate the entitlements and duties owed by the State to children and young people in care;
- regulate standards for the care of children placed in alternative care by the State so that children being cared for away from their own home receive a standard of care which meets general community expectations and the needs of the individual child.

Reasons for the Bill

This Bill will replace in its entirety the outdated and severely limited *Children's Services Act* of 1965. Enormous advances have been made in the understanding of the problem of child abuse and in the development of child protection practice since the enactment of the *Children's Services Act* over 30 years ago. Legislative reform will reflect improved service delivery methods and changing community values, including increased accountability for the exercise of statutory authority.

The introduction of new child protection legislation in Queensland will more adequately define the role of Government in protecting children and supporting families. New legislation will emphasise the role of families in protecting children, and recognise the need to involve parents and children in making decisions about meeting the child's needs. Provisions are required to ensure that the child's voice is heard throughout the child protection process, and that children are not further disadvantaged when they are placed in the custody or under the guardianship of the State.

The Bill ensures that families are supported and appropriately involved in ensuring the protection of their children. A range of orders are provided so that the least intrusive protective option can be used in each case.

The expectations of contemporary society about the quality of care which should be provided to children who are unable to live with their family are not reflected in the provisions of the *Children's Services Act 1965* relating to the regulation of alternative care. In addition, a variety of community services not envisaged by that Act are now available for children who must live away from their families for protective reasons. New legislative provisions are required to ensure that minimum standards of care are met when children in the custody or under the guardianship of the State are placed in alternative care.

New legislation will address the significant over-representation of indigenous children in care. The nationally accepted principles of the Aboriginal and Torres Strait Islander Child Placement Principle for the provision of child protection services to indigenous children and families will be given a legislative base.

The *Children's Services Act 1965* does not meet the requirements of the *Legislative Standards Act 1992*. New legislation will clarify appeal processes and emphasise accountability in planning and decision-making.

Estimated Cost for Government Implementation

Additional funds will be required for the legislation to be implemented effectively. New legislation is one component of the child protection reform which is needed to ensure Queensland children are adequately protected from abuse and neglect. A review of existing resources and service delivery is currently underway to identify additional resource requirements. It is anticipated that additional funds required to support the implementation of the legislation will be sourced from existing departmental funds and through the budgetary process.

Consultation

Consultation has occurred with the key government departments responsible for implementation of the Bill, namely the Department of Families, Youth and Community Care (DFYCC), Queensland Police Service (QPS), Department of Justice and Attorney-General (DJAG), and Queensland Health, as well as with the Brisbane Childrens Court Magistrate, Legal Aid Queensland, the Queensland Children's Commissioner and Education Queensland. In addition, extensive community consultation took place during September and October 1998.

The consultation has occurred on four levels:

- ministerial forums with key stakeholders;
- consultation with peak bodies and relevant government departments;
- regional community consultation meetings; and
- promotion of the consultation process to the general public.

In total, approximately 250 people attended ministerial information seminars and approximately 400 people attended 36 consultation meetings, in communities around the State. Participants represented the following interest groups:

- Child and family welfare sector
- Careproviders and care services
- Client representatives
- Non-government education sector
- Youth sector
- Health sector
- Legal sector
- Tertiary institutions
- Child care sector
- Aboriginal community
- Torres Strait Islander community

Extensive consultation with departmental staff has also occurred throughout each of the regions of the DFYCC.

The Exposure Draft of the Bill was made available via the DFYCC internet page to allow interested persons to access copies electronically. An e-mail address was also set up to allow interested persons to send submissions and comments electronically.

The Bill brings into effect the reforms which were seen as important by the community and key stakeholders.

Consistency with Fundamental Legislative Principles

Comment on consistency with the fundamental legislative principles of the *Legislative Standards Act 1992* is required in relation to the following provisions:

- clause 16 (Contact with child at immediate risk of harm)
- clause17 (Contact with child in school, child care centre, family day care etc)

- clause 18 (Child at immediate risk may be taken into custody)
- clause 92 (Report about person's criminal history etc)
- clause 143 (Inquiries about certain persons' suitability)
- clause 94 (Carrying out medical examinations or treatment).

All instances of departures from the fundamental legislative principles under the Bill have occurred in the context of a tension between the rights of individuals as safeguarded by the fundamental legislative principles and the competing right of a child to protection from harm. It is considered that in these specific circumstances, the right of a child to be protected from harm override other fundamental legislative principles. DJAG has expressed its view that the provisions of these clauses are reasonable, in all the circumstances, given the vulnerability of children and the overriding principle of the Bill that the child's right to protection is paramount.

The relevant clauses are discussed briefly below. They are outlined in more detail, including examples of their use, in the "Notes on Clauses" section of these Explanatory Notes.

Clause 16 (Contact with child at immediate risk of harm)

Clause 16 gives officers authority to enter premises without an order in certain defined circumstances. These powers are limited to specific circumstances where the child is at immediate risk of suffering significant harm and it is not appropriate to leave the premises to obtain an order because to do so is likely to:

- expose the child to harm while the officer is away; or
- result in the family leaving the premises with the child (or the child leaving) to avoid the investigation. When this occurs, it may be a considerable period of time before the family or child is located.

It is considered that in these circumstances, the rights of a child to be protected from immediate harm or current on-going harm override the fundamental legislative principle that power to enter premises should be conferred only with a warrant issued by a judicial officer.

When an officer uses these powers, the details including the actions taken and reasons must be recorded in a way which is accessible for inspection.

Clause 17 (Contact with child in school, child care centre, family day care etc)

Clause 17 allows officers to have contact with a child for the purpose of investigating an allegation of harm, while the child is at school or in child care and before the parents are made aware that investigation of an allegation is occurring. These are situations where prior knowledge by the parents of the contact with the child is likely to impede the investigation and result in the child remaining unprotected.

It is considered that in these circumstances, the rights of a child to be protected from harm override fundamental legislative principles in regard to the rights of individuals (in this case those of the parents).

Whenever an officer uses these powers, the details including the actions taken and reasons must be recorded on a register.

Clause 18 (Child at immediate risk may be taken into custody)

Clause 18 confers a power to take a child into the protective custody of the chief executive without first obtaining an order. The circumstances when this is authorised are specifically limited to those where an officer believes a child is likely to be harmed if the officer does not take immediate action to remove the child. This section also confers an authority to obtain a medical examination or treatment of the child without the consent of the parents while the child is in protective custody under this section. (See clause 94 about undertaking medical assessment).

When an officer takes a child into custody under this clause, they must apply for a temporary assessment order for the child within 8 hours of taking the child into custody. The effect of this clause is to limit the circumstances where an officer can take a child into custody without an order to those instances when an officer must take immediate action to protect a child from current significant harm. Action under this clause can be taken only in those minority of cases where it is not appropriate for an officer to "go away and come back with an order".

It is considered that in these circumstances, the power exercised under the Bill is sufficiently defined and is subject to appropriate review and is therefore consistent with the requirements of the *Legislative Standards Act 1992*.

Clause 92 (Report about person's criminal history etc) and clause 143 (Inquiries about certain persons' suitability).

Clause 92 and clause 143 allow information to be obtained which may be relevant to a recommendation or decision about a person's suitability:

- to be granted custody or guardianship of a child under a child protection order (clause 92); or
- to have a child in the custody or guardianship of the chief executive placed in their care (clause 143).

The clauses enable the commissioner of police to provide relevant information from police records which includes charges as well as convictions. Information from police records about domestic violence history is able to be provided. Also under these clauses the chief executive of the Transport Department is able to provide information about certain traffic violations.

It is considered that the provision of this information is justified in the context of making decisions about whether a child will be safe with a proposed carer and about the standards of care which that person could provide. It is particularly relevant in relation to charges of sexual offences against children where convictions are difficult to obtain, eg because of the need to rely upon child witnesses.

Clause 92(7) also allows evidence from police records (ie records of interview and formal police statements) to be provided for the purposes of assessing suitability of persons to whom the court is considering granting custody or guardianship of a child. This includes evidence about allegations against the person, limited to relevant offences, ie offences against a person (such as assault and sexual offences), related to illegal drug-taking or dealing, and certain offences against this Bill relating to unlawfully removing a child from custody.

Without this provision, the situation could arise where a vulnerable child, one who has been found to be in need of protection because of abuse or neglect, could be placed in the custody of a person known to the police as having been the subject of numerous allegations of sexual abuse of children but who has not been convicted because the children involved were too young to be reliable witnesses.

It is considered that the State's duty of care to children who have been found by the court to be in need of protection cannot be properly discharged

if significant information about persons in whose care these children may be placed cannot be made available to the DFYCC. These children are especially vulnerable because of their history of abuse or neglect and it is imperative that precautions are taken to ensure that they are not placed in further danger by arrangements made by the court or the DFYCC for their care.

It is considered that in these circumstances, the rights of a child to be protected from harm override fundamental legislative principles relating to consistency with the principles of natural justice.

Clause 94—carrying out medical examinations etc.

Clause 94 authorises doctors to carry out examination and treatment of a child when the child has been taken into custody under clause 18, even though the child's parents have not consented to the examination. Medical examination and treatment under a court order are also covered by this clause.

The ability to provide medical examination and treatment pursuant to the child being taken into custody under clause 18 is a departure from the general fundamental legislative principle that sufficient regard be given to the rights of individuals (in this case those of the parents). This is considered justified in situations where:

- the child needs to be given immediate medical care and it would be inappropriate to delay this until a temporary assessment order was obtained; or
- significant medical evidence relating to abuse or neglect of the child may be lost or destroyed if medical examination cannot commence immediately, ie prior to obtaining a temporary assessment order.

This clause also recognises the practical consideration that urgent medical treatment cannot be carried out without appropriate examination. However, clause 94 stipulates that the doctor may only carry out medical treatment that is reasonable in the circumstances.

This clause does not effect any rights held by the child, for example the common law right of children who are competent to make their own decisions to refuse medical treatment or examination.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

Part 1—Introduction

Clause 1 sets out the short title of the Bill.

Clause 2 provides for commencement of the provisions of the Bill.

Clause 3 provides information about the whereabouts in the Bill of the "Dictionary" and of key terms and concepts which are central to an understanding of the Bill.

Part 2—Purpose and Administration of Act

Clause 4 states the purpose of the Bill which is to provide for the protection of children.

Clause 5 sets out the principles which will guide the administration of the Bill. The guiding principles reflect national and international child protection practice directions.

The Bill's administration will be founded on the principles that every child has a right to protection from harm and that therefore the welfare and best interests of the child are paramount.

The Bill establishes the responsibility of the State to intervene to protect children while recognising that the primary responsibility for the care and protection of children rests with the family. The principles clarify how these competing factors should be balanced. For example, the Bill indicates that intervention should be at the least intrusive level necessary to protect the child and that intervention should be aimed at supporting the child's family to meet the child's protective needs.

The key principles outlined in clause 5 are reflected throughout the Bill.

Clause 6 sets out additional provisions which apply throughout the

administration of the Bill in relation to Aboriginal and Torres Strait Islander children and families. If the child is an Aboriginal or Torres Strait Islander child, decisions of an officer or court under this Bill should only be made after consultation with a "recognised Aboriginal or Torres Strait Islander agency". This term is defined in the Schedule 4 as the agency which reaches agreement with DFYCC that they are the appropriate agency for a particular community. The term "recognised Aboriginal or Torres Strait Islander agency" includes an organisation or an individual.

This clause recognises the special needs of indigenous children and their families and communities to receive services which meet the cultural and identity needs of indigenous children, and to avoid dislocation of children from their communities. It recognises the unique needs of Aboriginal and Torres Strait Islander families stemming from their history as indigenous Australians, as evidenced by the over-representation of indigenous children in care. The principles of the Aboriginal and Torres Strait Islander Child Placement Principle are embedded in this provision, which has application throughout the Bill.

This provision has been drafted in consultation with representatives of relevant indigenous organisations, including the State Aboriginal and Islander Child Care Agency (State AICCA), who support its intent.

Clause 7 outlines the functions of the chief executive which provide the framework for the proper administration of the Bill. These functions are part of the broader context within which the powers and obligations set out in the Bill are effected. The duties of the chief executive relate to the provision of services to prevent harm to children, to intervene at an early stage to assist vulnerable families, and to respond to the needs of children and families when harm or risk of harm occurs. The provision of all of these services occurs through administrative programs and does not require specific legislative powers. The powers of the Bill to protect children relate to the small percentage of circumstances where the chief executive is required to assume protective custody of children, or take action without the consent of parents.

Part 3—Basic Concepts

Clause 8 clarifies that the Bill applies to all children and young people

under 18 years old. The term **"child"** can be read as "young person" where the young person is under 18.

Clause 9 clarifies the meaning of the term **"harm"** as being any detrimental effect on the child's well-being, ie its common usage. However for the purposes of this Bill, “harm” is to be read as “significant” harm, ie the injury or other detrimental effect must be significant in nature. The type of harm may be physical, psychological or emotional. It may be the result of physical, psychological or emotional abuse or neglect of a child, or the result of sexual abuse or exploitation, but is not limited as to its cause.

Clause 10 defines the concept of **"a child in need of protection"** which is used particularly in Chapter 2, Part 4. A court must find a child "in need of protection" before making a child protection order in relation to the child.

The intention of the words "does not have a parent able and willing to protect the child from harm" is to limit the circumstances when the State can remove children from the custody and guardianship of their parents. If the child’s protection can be achieved by the parents (possibly with support and help from the State), it is not warranted to make an order for the State to assume custody or guardianship of the child.

This definition includes situations where the risk of harm is caused by the child’s own actions or someone outside the home. It includes circumstances where, despite a parent’s conscientious efforts and through no neglect or action on their part, the child remains exposed to risk of harm. It also includes circumstances where the parent does not have the capacity to care safely for the child despite a desire to do so, and circumstances where a child has no parent or family available to them.

Risk of harm includes circumstances where no harm has yet occurred but is likely to occur if no action is taken to protect the child. This may include circumstances where past evidence relating to other children indicates risk to the current child. It also includes circumstances where a child is abandoned, or where actions of the child or parent expose the child to risk of harm by others.

When determining whether a child is "a child in need of protection" the main focus of the court is upon the child’s needs and whether an order is required to meet them, rather than upon the parents’ actions, omissions or incapacity which may have led to the harm or risk of harm.

Clause 11 defines the meaning of the term **"parent".** Throughout most of the Bill, the word "parent" has a broad meaning and can include anyone caring in an ongoing way for the child like a parent, eg step-parents, or grandparents with whom the child lives.

"Parent" does not include temporary carers, eg relatives with whom the child stays for a few weeks or neighbours who mind the child each day. It does not include persons standing in temporary "loco parentis" for the parent, for example school principals.

The definition for Aboriginal and Torres Strait Islander parents is able to be interpreted broadly to include customary relationships within a community or tribal grouping.

Clause 12 describes the meaning of the term **"custody"** as it is used throughout this Bill.

A child may be in the custody of the chief executive or a relative:

- under the authority of the Bill alone (this is only possible under clause 18); or
- under an assessment order or a child protection order.

For a child in protective custody under the Bill, the officer taking the child into custody or person granted custody can do things and make decisions that relate to day-to-day matters concerning the child's care. This may include obtaining necessary medical care.

Clause 13 describes describes the meaning of the term **"guardianship"** as it is used throughout this Bill.

A child may be under the guardianship of the chief executive or a relative under a child protection order. A person who is granted guardianship of a child under this Bill has the right to make decisions that relate to day-to-day matters concerning the child's care, and has all the rights, powers and responsibilities in relation to the child, including making decisions about the long term care and development of the child, as does a person having parental responsibility under the *Family Law Act 1975.*

When the child is under the guardianship of the chief executive as the result of an order under the Bill, the chief executive becomes the legal guardian of the child, instead of the parents, for the term of the order. Similarly, if a relative becomes the guardian of the child as a result of an order under the Bill, the relative then becomes the only guardian for the

term of the order. "Guardian" means a person having parental responsibility as defined in part 7, division 2 of the *Family Law Act 1975.*

CHAPTER 2—PROTECTION OF CHILDREN

Part 1—Children at risk of harm

The preferred way of protecting the well-being of children is through the provision of information and support services to families.

However, despite the provision of preventative and early intervention services, and support services to families, some children will still be exposed to the risk of harm. These children and families require a transparent system of assessing and responding to the needs of the child and family.

The system used to protect individual children includes:

- receiving reports of alleged harm to a child;
- investigating these reports and assessing a child's need for protection; and
- if a child needs protection, determining what level of intervention if any is required to ensure the child's safety.

In most cases, action to assess reports of alleged harm (eg contact with the family and child, and if necessary medical examination) is carried out with the consent of the child and the child's parents. In a minority of cases, parents object to officers having contact with a child for the purpose of investigating an allegation of harm, or will not consent to procedures which may be considered necessary, eg medical examination of a child's injuries. In these cases, officers require the legal authority to take action to assess the child's need for protection and to safeguard the child's immediate welfare.

Officers administering the Bill are obliged to use all reasonable means to gain the consent and co-operation of parents in taking action to protect children (eg moving the child to a safe place if necessary while the matter is

assessed) and usually such actions are taken with parental consent. Where it is not possible to gain the voluntary consent and co-operation of a parent or child the Bill provides the means for authorised officers and police officers to fulfil the State's responsibility to protect children. This part outlines these authorities and defines and limits their use.

Clause 14 obliges the chief executive to take appropriate action when in receipt of allegations of harm to children. This may be through investigation and assessment of the allegations, or taking other appropriate action. Allegations are usually received as reports of concerns about a child and may include mandatory notifications.

Responses include investigation and assessment through contact with the child and family. When the allegation does not relate to significant harm, "other action" may be taken through the provision of protective advice to assist the notifier respond to the family's needs. For example, the notifier may be given information about resources which could be accessed by the family.

This clause also requires that departmental officers becoming aware of a possible criminal offence against a child must report the suspected offence to the police. When a criminal investigation and a child protection assessment are occurring in relation to the same matter, the responses of police and authorised officers are co-ordinated.

Clause 15 ensures that parents are given information about allegations concerning their child, and about the outcome of a child protection investigation, but also allows information to be withheld in certain circumstances.

The requirement that authorised officers or police investigating an allegation of harm must tell at least one of the child's parents what the allegations are does not include details about the person who reported the concerns (the notifier). Officers are not obliged to give details of matters to each of a child's parents because:

- in some cases where a child has four or more parents as defined in the Bill, this poses an onerous requirement; and
- in some cases the privacy of one parent would be violated without sufficient cause if the other parent was told of unsubstantiated allegations.

DFYCC practice standards require that all parents who are implicated in

the allegations are told about them, that the primary carer is always told, and that both parents are told if the allegations are substantiated. However, an officer is not required to tell parents all details of the allegations or investigation if to do so may jeopardise a criminal investigation of the matter, or if telling them would place the child at risk of harm.

Clause 16 gives authorised DFYCC officers and police officers authority to enter premises without an order in certain defined circumstances. These powers are limited to specific circumstances where the child is at immediate risk of significant harm and it is not appropriate to leave the premises to obtain an order because to do so is likely to:

- expose the child to significant harm while the officer is away; or
- result in the family leaving the premises with the child (or the child leaving) to avoid the investigation. When this occurs, it may be a considerable period of time before the family or child is located.

For example:

> *Officers investigating a report that a small child has been left alone in a house can hear sounds of a distressed child inside the house and no adult responds to their knocks on the door.*
>
> *A family is known to officers as having in the past "gone into hiding" with the child to avoid investigation of concerns about the child. If, on locating the child, officers are denied contact with the child, they must act immediately. If they go away to obtain an order, the family is likely to have left the premises by the time the officers return.*

It is considered that in these circumstances, the rights of a child to be protected from immediate harm or current ongoing harm override other legislative principles.

When an officer uses these powers, the details including the actions taken must be recorded in a register administered for that purpose. DFYCC officers will record this information using the centralised child protection information system administered by DFYCC; police officers will record the information on a register administered by the Queensland Police Service (QPS).

Clause 17 allows officers to have contact with a child for the purpose of investigating an allegation of harm, while the child is at school or in child

care and before the parents are made aware that an investigation is occurring These are situations where prior knowledge by the parents of the contact with the child is likely to impede the investigation and result in the child remaining unprotected. Examples include:

> *A child tells someone about his or her sexual abuse by a parent and the allegations are notified to the DFYCC. Because of the dynamics involved if the child is being sexually abused, the parent is likely to pressure the child into not talking to the officer about the alleged abuse. The officers investigating the matter decide to initially talk to the child at school.*
>
> *A child in childcare tells a group leader about serious emotional abuse by a parent. The child is very afraid of reprisal by the parent for having told someone. The officer believes the child will refuse to talk about the abuse if the parent is present or talks to the child before the officer does. The officers assessing the matter decide to initially talk to the child at childcare.*

Officers will negotiate with the person in charge of the school or child care centre e.g. the school principal, about a suitable time to visit the school and talk to the child. As with clause 16, whenever an officer uses these powers, the details including the actions taken must be recorded. DFYCC officers will record this information using the centralised child protection information system administered by DFYCC; police officers will record the information on a register administered by QPS.

Clause 18 confers a power to take a child into the protective custody of the chief executive without first obtaining an order. The circumstances when this is authorised are specifically limited to those where an officer believes a child is likely to be harmed if the officer does not take immediate action to remove the child. For example:

> *An officer investigating an allegation that a parent has physically harmed a child find the child has considerable bruising. The parent is angry about the child having told someone about the abuse. The officer believes the child will be beaten by the parent again if left in the parent's care that day.*
>
> *A child tells officers about being sexually abused by a parent. The parent denies the allegation and places a good deal of pressure on the child to retract the statement. The officers believe that the child will be subject to emotional abuse if left in the care of the*

parent when they leave.

A young person is located by police late at night in circumstances where there is considerable danger of sexual assault. The young person objects to going with police to a safe place. It is likely to be too late to act if police go away to obtain an order. The police take the young person into protective custody in order to remove her from the danger.

This section also confers an authority to obtain a medical examination or treatment of the child without the consent of the parents while the child is in protective custody under this section. (See clause 94 about undertaking medical assessment).

When an officer takes a child into custody under this clause, they must apply for a temporary assessment order for the child within 8 hours. The effect of this section is to limit the circumstances where an officer can take a child into custody without an order to those instances when an officer must take immediate action to protect a child from current harm. Action under this clause can be taken only in those minority of cases where it is not appropriate for an officer to "go away and come back with an order".

The temporary assessment order can be applied for by contacting a magistrate by telephone, facsimile, radio or any other electronic means.

Clause 19 ensures that when a child is taken into custody because of the need to act immediately, this overrides any other custody or guardianship order under the Bill which may be in existence. For example, a relative may have long-term guardianship of the child under a child protection order. If an officer believes immediate action is necessary to protect the child, the child may be taken into custody under section 18 despite the existing child protection order. However, the existing order only ceases to have effect for the time the child is in custody under clause 18.

Clause 20 ensures that if a child is taken into protective custody parents are given information about why this has occurred and what it means, ie that for a period of up to 8 hours or until a decision is made about an order, the child is in the custody of the chief executive.

Parents will usually be informed of where their child has been taken and in whose care they have been placed while in custody. However this clause, while it requires that the parents be given general information, does not require that they be given the details of the person with whom the child is

placed. When there is doubt as to whether giving this information could place the child or care provider in jeopardy, the information can be withheld.

Clause 21 allows action to be taken to protect the child in circumstances when the child needs to be moved from an unsafe situation but it is not considered necessary to override any of the parents' legal rights in relation to the child. This may apply when there is no parent present with the child, and the child is at risk if left where they are. For example:

> *a child is found wandering alone at night and the parents' circumstances are unknown;*
>
> *police attending a domestic violence incident find young children who were staying with friends in the home. Because of the violence occurring, they believe the children will be at risk of harm if left in the household. The children's parents are away.*

This section allows the child to be moved to a safe place and cared for until a parent or family member can collect the child. It can not be used if a parent is present with the child.

This section is an enabling section; it does not confer powers on the officers taking the action to override parental consent or to override the objection of a child whose level of maturity would enable him or her to consent to being moved, i.e. a child who is aged 12 years or older.

"Safe place" is not defined—it has its everyday meaning. The safe place to which a child may be taken until parents are located and resume care of the child will vary depending on the child's options, the circumstances and the geographic location. For many children it will be the home of a relative, friend or neighbour. For others, depending on the circumstances, it could be a hospital, childcare facility, or other formal or informal emergency care arrangement. A safe place for a child cannot include a watch-house—by law it is not permitted for a child who has not been charged with an offence to be placed in a watch-house.

Clause 22 protects notifiers of alleged harm to children from legal liability related to making the report of alleged harm. It also protects persons who give information in answer to questions asked of them in relation to an investigation of alleged harm to a child.

In addition, a person is not considered to have breached any code of professional conduct or ethics by notifying the DFYCC that they suspect a child has been harmed or is at risk of harm.

Protection from liability is not given if the person who notified alleged harm did so knowing that the allegations were false.

This section does not make reference to malicious allegations or allegations which are unsubstantiated, because there is no correlation in most cases between the intent of the notifier and the accuracy of a report. A report which was made for malicious reasons may nevertheless be accurate and lead to the protection of children who were at risk. On the other hand, a report found to be unsubstantiated may have been made with good intentions by a caller who honestly suspected a child needed protection.

Part 2—Temporary assessment orders

The purpose of temporary assessment orders is to authorise actions considered necessary as part of an investigation and assessment of harm, where it has not been possible to obtain the parents' consent. These are a new type of order which do not involve going to court. The term "assessment orders" denotes that these orders apply during the process of assessing whether or not a child needs protection. They allow a short period of investigative intervention without locking the family into an unnecessary court process when the level of ongoing protection required (if any) is not yet known. Temporary assessment orders apply the principle that intervention to protect a child should not include any action which is unwarranted in the circumstances.

Clause 23 limits the meaning of the term "parent" in this part to include only parents or others who by law have parental responsibility for the child. The term includes parents or others who would currently have legal parental responsibility if it were not for a child protection order granting custody or guardianship of the child to the chief executive or someone else.

The meaning of parent has been limited in this part because it deals only with parents whose legal rights may be affected by the provisions of this part, eg by the granting of custody or guardianship to the chief executive. Elsewhere in the Bill, "parent" is afforded a broader meaning to be inclusive of other persons parenting the child, eg step parents who care for the child but may not have legal parental responsibility.

Clause 24 explains that the purpose of a temporary assessment order is

to facilitate the process of investigation and assessment by enabling necessary actions to be taken when a parent's consent cannot be obtained.

Clause 25 sets out the procedure for an officer (authorised officer or police officer) to apply for a temporary assessment order. The application must indicate which powers are sought under the order, and the reasons for the application. The application is made to a magistrate, not to a court.

Clause 26 allows for an application for a temporary assessment order to be heard "ex parte". Many such orders will be made by telephone contact with a magistrate. The purpose of these orders would in many cases be defeated if they could not be made promptly without notice to the parents.

Clause 27 sets the matters to be considered by the magistrate in making the temporary assessment order. It ensures that an order is made only if it is necessary and only if it is not possible to obtain parental consent to do the things sought under the order. It also allows an order to be made in circumstances where parental consent can not be validly obtained (eg because a parent is psychiatrically ill).

Clause 28 sets out the provisions which may be included in a temporary assessment order. An order may include one or more of these provisions if warranted. If custody of the child is granted, the magistrate must be specifically satisfied that it is necessary to remove the child from home during the period of investigation and assessment. The order may direct a parent not to have contact with the child, or allow contact only when a stated category of person is present, eg "one of the mother's family", or "a worker from 'xyz' agency". The ability to direct a parent in this way presents an alternative to a custody order, in circumstances when a child has a protective parent but that parent needs assistance to enforce restrictions on an allegedly abusive parent.

The order may also give a power of entry if the court agrees that it is necessary, to enable contact with the child.

Clause 29 limits the duration of a temporary assessment order to 3 days. An order may however be made for a lesser time, and may be extended by application under clause 29. Three days will usually be sufficient time to enable a brief assessment of the child's circumstances to be completed, so that decisions about initial responses (if necessary) to the child's and family's needs can be taken.

Clause 30 provides for making the application by phone or by other

electronic means. This may be necessary in many circumstances when an officer is unable to go to the magistrate to obtain the order, eg when the application must be made over the weekend to a magistrate on call, or when the officer is in a location some distance from the courthouse. The procedure to be followed ensures that the original written application and the signed order are filed. At the same time, it provides that a copy of the order, completed by the officer after telephone consent by the magistrate, can be used to authorise powers exercised by the officer.

Clause 31 requires that an officer using a power of entry under a temporary assessment order must follow the procedure generally required for the exercise of power of entry under a warrant.

Clause 32 outlines the obligations of the officer to inform at least one of the child's parents about the order, the terms and effect of the order and their right of appeal. Clause 189 outlines the general obligations of officers to explain the terms and effects of orders to parents, a child's carer (in certain circumstances) and to the child themselves if of an age and capacity to understand.

Clause 33 ensures that the DFYCC is advised of any temporary assessment order obtained by police.

Clause 34 allows an officer to apply for one extension of a temporary assessment order if it is decided that a court assessment order or child protection order is required to protect the child but it is not possible to apply for the court assessment order or child protection order before the temporary assessment order would end (eg because the decision is made on Saturday and the order ends on Sunday). The order can be extended to the end of the next business day so that the safe custody of the child continues.

Clause 35 provides that a temporary custody order takes precedence over any other custody or guardianship order under the Bill which may be in existence (eg a relative may have custody or guardianship of the child under a child protection order) for the duration of the temporary custody order.

Part 3—Court assessment orders

These are a new type of order, the purpose of which is the same as that of temporary assessment orders discussed above. Court assessment orders

may authorise actions considered necessary as part of an investigation and assessment of harm where it has not been possible to obtain the parents' consent and it is considered that a period of more than a few days is required to complete the assessment about the level of ongoing protection (if any) required by the child.

Like temporary assessment orders, court assessment orders apply the principle that intervention to protect a child should not include action which is unwarranted in the circumstances. However they are for a longer period—up to four weeks—and for that reason must be made by a Childrens Court. This allows parents to make submissions to the court about the application.

Clause 36 limits the meaning of the term "parent" in this part to include only parents or others who by law have parental responsibility for the child. The term includes parents or others who would currently have legal parental responsibility if it were not for a child protection order granting custody or guardianship of the child to the chief executive or someone else.

The meaning of parent has been limited in this part because it deals only with parents whose legal rights may be affected by the provisions of this part, eg by the granting of custody or guardianship to the chief executive. Elsewhere in the Bill, "parent" is afforded a broader meaning to be inclusive of other persons parenting the child, eg step parents who care for the child but may not have legal parental responsibility.

Clause 37 explains the purpose of a court assessment order as identical to that of a temporary assessment order, ie to facilitate the process of investigation and assessment by enabling necessary actions to be taken when a parent’s consent cannot be obtained. Court assessment orders are used for this purpose when a period of longer than 3 days is considered necessary, and because their duration may be for four weeks, an “ex parte” order is not appropriate.

Clause 38 allows an authorised officer or police officer to apply to the Childrens Court for a court assessment order. The application must state the reasons for the order and the types of powers sought.

Clause 39 provides for the court registrar to set the date for hearing the application. The registrar must set the date as early as possible to minimise the detrimental effects of time delays in planning for the child.

Clause 40 provides that each of the child’s parents must receive a copy

of the application. The child must also be given information. Young persons who are the subject of an application would usually be given a copy of the application. Clause 166 also provides that notice need not be served on a parent if it is not practicable to do so, eg because the parent cannot be located. DFYCC practice standards require that the application is fully explained to the parents and the child.

Clause 41 names the parents as respondents. The child is not a respondent but is a party to the proceeding.

Clause 42 ensures that the Childrens Court can not proceed with hearing the application unless the parents have had reasonable notice. "Reasonable notice" is not defined because it may vary in specific circumstances, for example to allow access to legal advice and travel time which may vary in different parts of the state. This clause also recognises that in some cases it will not be practicable to give a parent notice, eg if they can not be located.

Clause 43 provides for the court to make a court assessment order and states the matters about which the court must be satisfied before making the order.

Clause 44 sets out the provisions which may be included in a court assessment order. An order may include one or more of these provisions if warranted. If custody of the child is granted, the magistrate must be specifically satisfied that it is necessary to remove the child from home during the investigation. The order may direct a parent not to have contact with the child, or allow contact only when a stated category of person is present, eg "one of the mother's family", or "a worker from 'xyz' agency". The ability to direct a parent in this way presents an alternative to a custody order, in circumstances when a child has a protective parent but that parent needs assistance to enforce restrictions on an allegedly abusive parent.

The order may also give a power of entry and search if the court agrees that it is necessary, to enable contact with the child.

Clause 45 requires that an officer using a power of entry under a court assessment order must follow the procedure generally required for the exercise of power of entry under a warrant.

Clause 46 limits the duration of a court assessment order to 4 weeks. The total time of 4 weeks includes any adjournment period. The order may be made for a lesser amount of time. An order may be extended once by application under clause 48.

Clause 47 outlines the obligations of the chief executive to provide the parties to the application with a copy of the order and information in writing that explains the terms and effect of the order and their appeal rights. Clause 189 outlines the general obligations of officers to explain the terms and effects of orders to parents, a child's carer (in certain circumstances) and to the child themselves, if of an age and capacity to understand.

Clause 48 allows for extension of a court assessment order but only for reasons to do with the best interests of the child. For example:

> *A relative is able to assume the child's care with agreement of the child's parents, and this could represent a resolution of the child's safety needs. However further time is required to assess the suitability of the relative who has only recently made the offer. It is in the child's interests to extend the court assessment order to allow assessment of the relative, rather than make application for a child protection order as the only other way to ensure interim protective custody of the child.*

The order can not be extended for reasons unrelated to the child's interests, eg because an officer was on leave and therefore unable to complete the assessment. The court assessment order can be extended for no longer than 4 weeks. The application procedure for an extension is the same as for the original order. Clause 96 provides that if the original order would end before an extension application is heard, the child's custody continues until the application for extension is heard.

Clause 49 allows an authorised officer to apply to vary or revoke a court assessment order. The procedures are the same as for the original application. Variation or revocation may be sought if the circumstances of the case change during the term of the order and some of its provisions are no longer required. There is no provision for a parent to apply to vary or revoke the order because of its short duration. The hearing of an a application by a parent which was contested by the DFYCC could take as long as the term of the order, and deflect the efforts of all concerned from the purpose of the order, ie to assess the child's and family's needs.

Part 4—Child Protection Orders

When, as a result of assessing a child's need for protection, the chief executive decides that it is necessary to take action to ensure the child's protection, this action will usually occur with the voluntary consent of the family. When intervening to protect the child, the chief executive will whenever possible work with the family to assist them to protect and guide the child. In most cases action taken to protect children does not require their removal from home and occurs with the co-operation of the child and child's family.

However, if a child needs protection and the use of voluntary options to work with the family to protect a child is not possible or not appropriate, a child protection order may be required to ensure the child's safety. This may occur, for example when:

- the level of harm to the child is such that the child can not remain safely with his or her family; or
- the family disagrees with a delegated officer's decision about the child needing protection.

In such cases, a Childrens Court may be asked to determine whether the child is a child in need of protection, and, if so, what type of child protection order will best meet the child's need.

Clause 50 limits the meaning of the term "parent" in this part to include only parents or others who by law have parental responsibility for the child. The term includes parents or others who would currently have legal parental responsibility if it were not for a child protection order granting custody or guardianship of the child to the chief executive or someone else.

The meaning of "parent" has been limited in this part because it deals only with parents whose legal rights may be affected by the provisions of this part, eg by the granting of custody or guardianship to the chief executive. Elsewhere in the Bill, "parent" is afforded a broader meaning to be inclusive of other persons parenting the child, eg step parents who care for the child but may not have legal parental responsibility.

Clause 51 explains that the purpose of a child protection order is to secure the protection of a child when the Childrens Court has found the child to be in need of protection. A "child in need of protection" is defined in clause 10. Although child protection orders vary in type, effect and duration, all have this common purpose.

Clause 52 allows an authorised officer to apply for a child protection

order and sets out the procedure for application. Only officers of the Department of Families, Youth and Community Care can make application for a child protection order. This recognises the role of the department as responsible for the protective custody of children, for the ongoing statutory intervention with children and families, and for determining which of the department's responses best meets the needs of the child and family.

Clause 53 provides for the court registrar to set the date for hearing the application. The registrar must set the date as early as possible to minimise the detrimental effects of time delays in planning for the child.

Clause 54 provides that each of the child's parents must receive a copy of the application. The child must also be given information. *Clause 189* provides that notice need not be served on a parent if it is not practicable to do so, eg because the parent cannot be located. *Clause 189(4)* provides that the child is to be given information appropriate to their age and ability to understand. Under clause 189(5) young persons who are the subject of an application would usually be given a copy of the application.

Departmental practice standards require that the application is fully explained to the parents and the child.

Clause 55 names the parents as respondents. The child is not a respondent but is a party to the proceeding.

Clause 56 ensures that the Childrens Court can not proceed with hearing the application unless the parents have had reasonable notice. "Reasonable notice" is not defined because it may vary in specific circumstances; for example to allow access to legal advice and travel time which may vary in different parts of the State. This clause also recognises that in some cases it will not be practicable to give a parent notice, eg if they can not be located.

Clause 57 provides for the court to make a child protection order if it is satisfied that a child is in need of protection ("a child in need of protection" is defined in clause 10), and that an order is the appropriate way in the circumstances of protecting the child. Clause 47 also sets pre-requisites to the making of a child protection order by the court. These aim to ensure that a child protection order is not made before there have been opportunities for the family to hear and discuss the reasons for the application, explore family options for the child's safety, and where possible resolve issues related to the application.

Clause 57(2) also seeks to ensures that if the court grants custody or

guardianship to a relative, steps have been taken to assess the suitability of the relative to have custody of the child.

Clause 57(3) sets additional pre-requisites for the making of a long-term guardianship order (ie to 18 years) because such orders are meant to achieve a long-term safety and care for the child. A long-term order can be made only if:

- the court is satisfied that it appears unlikely that a parent will be able to resume care of the child; or
- the order best meets the child's need for emotional security in the long-term (eg, if an older child in care has been with the same care provider family for many years, it may best meet the child's emotional needs in the long-term to remain with the care providers, even though the child may now have a parent able to provide adequate care. To move the child now may cause lasting emotional damage to the child).

Clause 57(4) guards against children growing up in long-term care as "wards of the state" if a suitable alternative order can be made.

Clause 58 sets out the child protection orders which the court may make. The following are illustrative examples:

a) *an order may direct a parent not to leave the child in the care of a particular person convicted of seriously harming a child;*

b) *an order may direct a parent who has harmed the child not to have contact with the child, or allow the parent contact only when a stated category of person is present, eg "one of the mother's family", or "a worker from 'xyz' agency";*

c) *an order may require the chief executive to supervise the parents' care of the child in relation to necessary medical care for the child;*

d)(i) *an order may grant protective custody of the child to an aunt for twelve months;*

d)(ii) *an order may grant custody of the child to the chief executive for eighteen months;*

e) *an order may grant long term guardianship of the child (ie to 18 years of age) to the chief executive;*

f)(i) an order may grant long term guardianship of the child (ie to 18 years of age) to a grandmother;

f)(ii) an order may grant long term guardianship of the child (ie to 18 years) to a person who has been the child's careprovider for a number of years.

Clause 59 provides for the duration of child protection orders. Orders which direct a parent and orders for protective supervision by the chief executive may be up to one year in duration. Orders granting custody or guardianship may be up to 2 years duration, except for long-term orders granting guardianship, which expire when the child turns 18.

Clause 60 describes the chief executive's obligation to provide copies of the child protection order to the parties and to give them information in writing that explains the terms and effect of the order and their appeal rights.

Clause 61 allows for authorised officers to apply for extensions of child protection orders (other than long-term guardianship orders). The application procedure is the same as for the original child protection order. Clause 96 provides that if an application is made to extend a child protection order for custody or guardianship and the order would end before the extension application is heard, the child's custody or guardianship continues until the application is decided.

Clause 62 allows any party to an order, including parents, the child, or a person granted custody or guardianship of the child, to apply to vary an order, to revoke an order, or to substitute another less stringent order in place of the existing order.

Clause 62(2)(a) and *(b)* prevent any party other than the chief executive DFYCC applying for a more stringent order to replace an existing order, or for an extension of an existing order.

Clause 62(2)(c) and clause *62(3)* limit the making of "repeat" applications by parties for revocation or variation of orders.

Clause 62(5) sets procedures to be followed if a parent or other "interested person" applies to revoke or vary the order. Other interested persons (eg the other parent) must be advised by the chief executive about the application. This is to ensure that notice is properly given to all parties entitled to it.

Clause 62(6) ensures that the court must consider the child's protective needs before deciding to revoke an order.

Part 5—Adjournments of proceedings and court ordered conferences

Clause 63 enables the court to adjourn proceedings; however the court must state the reason for the adjournment and give directions. This seeks to ensure that adjournment periods are effectively used and do not occur unless necessary. The court is required to adhere to the principle that applications should be decided without undue delay because it is detrimental to children to have decision-making about their lives "put on hold".

Clause 64 enables the court to make interim orders to apply during a period of adjournment. For the period of the adjournment, these orders have the same effect as the corresponding child protection orders (see clause 58). However custody of a child during adjournment for a court assessment order can not be given to anyone other than the chief executive because of the purpose and short length of those orders.

Clause 65 enables the court to make procedural orders about actions to be carried out during a period of adjournment. These are actions to assist with the clarification and resolution where possible of issues related to the child's protection, and may result in reports for the information of the court in deciding the application.

Clause 65 also provides that the court may order the child be separately legally represented (see clause 107).

Clause 66 provides for the arrangement of a court ordered conference.

Clause 67 provides that all parties to an application (ie the applicant, the parents and other respondents if any, and the child) may attend a conference with their legal representative, and a representative of a recognised Aboriginal or Torres Strait Islander agency if the child is an indigenous child. Children do not usually attend but would be represented by their separate legal representative if they have one.

Clause 68 aims to ensure that parents can hold open discussion at conferences without fear of what they say being used in any criminal hearing relating to the harm to the child.

Clause 69 provides for the filing of a report on the outcome of the conference with the court and for the immediate recommencement of the hearing before the court if practicable.

Part 6—Obligations and rights under orders

Clause 70 places a responsibility on the chief executive to service child protection orders. For all such orders (other than for long-term guardianship) the chief executive must work with the child's family towards resolving the child's protective needs and for this purpose must have regular contact with them. (Contact must also occur with children subject to long-term guardianship of the chief executive. However in these cases, resolution of the child's protective needs is seen as having been achieved through the making of the order).

If the child is in custody or short-term guardianship, the child's protection needs will be met by returning the child home if this is possible and in the child's best interests. In some cases, work with the family will result in the child's needs being met in another way, eg the parents supporting a decision in favour of a long-term order for the child. The responsibilities of the chief executive under clause 70 also apply when custody has been granted to a relative.

Contact with family members may be by telephone, or similar means, when it is not practicable to have face-to-face contact, eg because the person lives too far away.

Clause 71 obliges the chief executive to ensure the charter of rights for a child in care is complied with for children in the custody or under the guardianship of the chief executive. The Charter is contained in schedule 1. All children in care must be told about the Charter, and given a written copy unless they are too young to understand it.

Clause 72 states that the chief executive will provide assistance to a child or young person, who has been in the custody or guardianship of the chief executive, in the transition to independence. This assistance may include, for example:

- *providing information about identity and personal history*
- *assistance in finding suitable accommodation*
- *assistance to access income support (eg Austudy)*
- *assistance in accessing education or training*
- *financial assistance*.

Clause 73 describes the application of division 2 as relating to child protection orders requiring supervision.

Clause 74 sets out the obligations and powers relating to orders for the chief executive to supervise the parents' care of the child in relation to stated matters. This clause aims to ensure that an authorised DFYCC officer is able to have access to the child for the purpose of the order.

Clause 75 authorises a delegated officer supervising a child's care under a child protection order for protective supervision to issue directives to a parent to do (or not to do) certain things. Any directive must be in writing and must directly relate to the matters stated in the order as requiring supervision. The following are illustrative examples:

> *The stated matter may be to ensure the safety of a child, through proper supervision—the directive under clause 75 may require the parent to ensure the child does not have unsupervised contact with a particular person considered a risk to the child;*
>
> *The stated matter may be the child's need for therapy to address significant developmental delays—the directive under clause 75 may direct the parent to ensure the child attends for medical appointments at a specialist clinic;*
>
> *The stated matter may be the child's need for adequate physical care while an infant—the directive under clause 75 may require a parent who has seriously neglected their baby to accept the services of a resource worker in order to learn about a baby's physical needs.*

Because a direction under this clause is given for the purpose of fulfilling the requirements of a child protection order, which can be appealed to the court if parents oppose it, grounds for administrative appeal are limited to arguing that the direction does not relate directly to the matters stated in the order as requiring supervision. The direction cannot be stayed pending outcome of an appeal because it is grounded in the order of the court and a stay may frustrate the intent of the court order.

Clause 76 obliges family members who are granted custody of a child under a child protection order (other than long-term) to allow authorised DFYCC officers to service the order by having access to the child, and by working with them and with the child's parents to resolve the child's protection needs.

Clause 77 obliges family members who are granted custody or guardianship of a child under a child protection order to give information to the child's parents and to facilitate contact between the parents and the child. This obligation applies to child protection orders granting long-term guardianship, as well as orders for custody. However the court may approve non-compliance with this provision if compliance would risk the child's or care provider's safety. This authority is vested in the court rather than the relatives' discretion because the parents would not otherwise be able to appeal the decision to prevent or limit contact.

Clause 78 outlines the application of division 4.

Clause 79 notes the authority of the chief executive to make decisions about where a child who is under the custody or guardianship of the chief executive will live, ie in whose care. This clause mentions the most common placements, ie licensed care services, approved careproviders (foster parents), and others such as relatives. Clause 79 does not limit where the chief executive may place a child.

Clause 80 gives effect to the principle that placements for Aboriginal and Torres Strait Islander children in protective custody must be culturally appropriate and maintain the child's cultural identity (as stated in clauses 5 and 6). It gives a legislative base to the intent of the *Aboriginal and Torres Strait Islander Child Placement Principle*. This includes consultation with a recognised Aboriginal or Torres Strait Islander agency and adherence to the hierarchy of placement options when making decisions about where to place the child.

Clause 81 states that when an approved careprovider agrees to care for a child, the careprovider and the chief executive will enter into a written agreement for the child's care. This "placement agreement" contains terms about matters relating to meeting the child's particular needs and also generic terms which put beyond doubt the right of the authorised DFYCC officer to have contact with the child.

Clause 82 obliges a delegated officer to inform parents where a child has been placed while under an assessment order (temporary assessment order or court assessment order), unless telling the parent/s where the child is would be a risk to the child's or care provider's safety.

Clause 83 obligates a delegated officer to inform parents where a child has been placed and with whom, while under a child protection order. The child's parents, and the child, have the right to appeal the placement decision

to a tribunal. Information about the placement can be withheld if giving it would risk the child's or care provider's safety. The child's parents also have the right to appeal the decision to not inform them of where their child is placed.

Clause 83 also provides that the chief executive is not obliged to provide written notice of where the child is living if the child is in a placement for a brief period only. This decision not to provide notice is not appealable because appeal would be irrelevant given the short length of the placement. For example:

> *It would be impracticable to give written advice to the parents when a child is placed with care providers for a week only as an emergency placement (though verbal information may be provided); the child will have been moved by the time any appeal is started.*

Clause 84 relates to the chief executive's obligation to provide opportunity for contact between the child and family members. However the chief executive is not required to take unreasonable steps and is not compelled to allow physical contact if this would risk the child's or care providers' safety. It is also recognised that it may sometimes by impracticable for the chief executive to comply with a request for contact. For example:

> *it may be impracticable to arrange contact with the child while the care providers have the child away with them on holidays;*
>
> *if contact has to be supervised, it may be impracticable to provide it every weekend.*

Parents may appeal against a decision to limit contact with the child.

This clause does not compel the chief executive to meet the costs of family contact as part of providing "opportunity for contact".

Clause 85 obliges the chief executive to review the arrangements in place for a child's care, at least every 6 months. This clause applies to instances where the chief executive has custody or guardianship of the child under a child protection order.

Clause 86 describes the chief executive's right to move a child from a carer if it is considered to be in the child's best interests. The term "carer" includes both approved careproviders (foster parents) and others such as relatives with whom a child is placed.

Clause 87 states that when the chief executive has decided to remove a child from a carer, the carer and the child (depending on age and capacity to understand) must receive written notice which outlines the reasons for the decision and advises of appeal rights when appropriate (refer to clause 88). The chief executive need not provide the written notice if the child has been with the carer for less than 7 days or removal of the child has been planned with the carer as part of the careprovider agreement (refer to clause 81).

Clause 88 outlines the rights of carers to appeal decisions to remove a child from their care. In all instances appeal is allowed if the stated reason for the removal of the child is that the carer is no longer considered to be a suitable person to care for the child. In other circumstances, approved careproviders may appeal the removal of a child only if the child was placed with them under a long term child protection order, ie the intent was that the placement would be long-term.

The lack of appeal against the removal from approved careproviders of children under short-term orders is because the intent of such orders is to safely reunite children with their family whenever possible. A decision to return a child home necessarily involves removal of the child from the careprovider and in such cases appeal against the removal is inappropriate.

Clause 89 advises the application of division 4.

Clause 90 enables the chief executive to arrange for the public trustee to manage the property of a child in care. This may occur, for example, if the child is the beneficiary of an estate which gives the child real estate property or substantial money. The term "incapacitated person" is a defined term under the *Public Trustee Act 1978*.

Clause 91 enables section 60 of the *Public Trustee Act 1978* to be applied in relation to a child in care at the request of the chief executive. This may occur if, for example, the child is a beneficiary of an estate managed by someone on the child's behalf, and the chief executive has reason to suspect that the trust is being managed to the detriment of the child.

Part 7—General

The provisions under this part are general provisions used to give effect to the requirements of other provisions.

Clause 92 allows information to be obtained which may be relevant to a recommendation or decision about a person's suitability to be granted custody or guardianship of a child under a child protection order. It enables the commissioner of police to provide relevant information from police records which includes charges as well as convictions. Information from police records pertaining to criminal matters and domestic violence history is able to be provided. Also under this clause the chief executive of transport is able to provide information about certain traffic violations.

It is considered that the provision of this information is justified in the context of making decisions about whether a child is likely to be safe with a proposed carer and about the standards of care which that person could provide. It is particularly relevant in relation to charges of sexual offences against children where convictions can be difficult to obtain, eg because of the need to rely upon child witnesses.

The following are illustrative examples of information which may suggest that a person is not suitable to care for a child under an order for their protection:

> *a person may have been charged with sexual offences against children where the evidence is compelling but police were unable to obtain a conviction because the court considered the children too young to give reliable evidence;*
>
> *a person has had a number of domestic violence orders made against them, but does not disclose this in discussion with officers assessing his or her suitability to have the care of a child. The existence of the orders and the circumstances in which they were made may indicate that a child placed with the person may be at risk of exposure to domestic violence;*
>
> *a person's criminal history may show some convictions for serious offences (eg burglary) and that numerous other similar charges which were not proceeded with after plea bargaining in relation to the most serious offence—the total history may suggest that the person is a habitual offender;*
>
> *a person's traffic history may show that they have lost their license a number of times for drink driving—this may indicate a history of alcohol abuse which is inconsistent with a suitable standard of care for children and a further practical concern that they will not be licensed to drive the child to appointments etc.*

Clause 92(7) also allows evidence from police records (ie records of interview and police statements) to be provided by the police commissioner to the chief executive for the purposes of assessing suitability of persons to be given custody or guardianship of a child who has been abused or neglected. This includes evidence about allegations against the person. This evidence is limited to relevant offences, ie offences against a person (such as assault including sexual assault), related to illegal drug-taking or dealing, and certain offences against this Bill relating to unlawfully removing a child from custody.

The words "to which the commissioner has access" enable the provision of information from police records in other States, territories or countries.

Clause 93 obliges a delegated officer to convene a family meeting when the officer has decided to intervene to protect a child and is able to take this action without a court order (ie it is possible and appropriate to work with the family while the child remains in their custody). In these circumstances, when an officer has, in their role as a statutory child protection officer, assessed a child as requiring protection by the state, a family meeting is required to provide a formal opportunity for the family to be advised of the reasons for the officer's decision, to have their say about the matters, and to receive relevant written information.

A delegated officer is also required to convene a family meeting if one is ordered by the court.

Family meetings cannot be held unless at least one parent attends. A representative of a recognised Aboriginal or Torres Strait Islander agency may attend if the child is an indigenous child. The child will attend only if this is considered by the convening officer to be in the child's interests (younger children do not usually attend), but the child must be given appropriate information. The attendance of other persons is at the officer's discretion because of the primary purpose of family meetings to facilitate involvement of the child's parents in making decisions about their child's future safety. In practice, relatives and support persons usually attend.

Clause 94 authorises doctors to carry out the actions required by a court order or authorised under the Bill. This relates to medical treatment, examination or assessment under clauses 18, 28, 44 and clause 65. A parent's or guardian's consent (including the chief executive's) is not required. However this clause does not effect any rights held by the child, for example their common law rights, if they are competent to make

decisions for themselves, to refuse treatment.

A medical practitioner can not be held liable in relation to the preparation of the report (eg for its contents, if they are the honest professional opinion of the author). However, he or she has the same liability as would have applied if the examination etc had been carried out with consent (eg, the doctor could still be held liable for a negligent medical action).

Clause 95 authorises a qualified practitioner (eg, a psychologist or social worker) to carry out a social assessment of the child and family required by a court order under clause 65. A qualified practitioner can not be held liable in relation to the preparation of the report (eg for its contents, if they are the honest professional opinion of the author).

Clause 96 applies throughout chapter 2 "Protection of children" to circumstances when a child is already in custody or guardianship under an order which is due to expire, and application for another order for custody or guardianship or extension has been made but cannot be heard by the magistrate or court before the existing order ends. This clause allows the custody or guardianship of the child to continue until the application for a further order or extension is heard. This protects the child by ensuring there is no "gap" in the protective custody between one order and the next.

CHAPTER 3—CHILDRENS COURT PROCEEDINGS

Part 1—Preliminary

Clause 97 describes the application of part 1.

Clause 98 clarifies meaning of the word "order" in chapter 3.

Part 2—Jurisdiction

Clause 99 outlines how the Childrens Court must be constituted when exercising its jurisdictions. Appeals from the decisions of Childrens Court

magistrates can be heard only by a Childrens Court judge. The jurisdiction of the Childrens Court when constituted by two justices of the peace (magistrate court) is limited to deciding applications for court assessment orders or making interim orders, and does not include deciding a child protection application.

Clause 100 allows the hearing of a matter in the Childrens Court to proceed even though a criminal matter relating to the same circumstances is pending. This is to ensure that decisions related to a child's need for protection are not delayed and take precedence if necessary over the timing of a criminal hearing on the same matter. This is in line with the principle in clause 63(3).

Part 3—Procedural provisions

Clause 101 states that the paramount consideration of the court in exercising jurisdiction under the Bill must be the welfare and best interests of the child. This principle applies to all decisions made within the court's jurisdiction under this Bill. In addition, the court is required to adhere to the provisions of clause 6(3) in relation to Aboriginal and Torres Strait Islander children.

Clause 102 provides that the court is not bound by the rules of evidence and need only be satisfied of matters on the "balance of probabilities" (rather than satisfied "beyond reasonable doubt"). The court is inquisitorial, and may use whatever means it wishes to inform itself. For example, the court may accept a submission from interested family members, or may ask to speak to the child in the magistrate's office.

Clause 103 requires the court to take reasonable steps to ensure that the child (if present in court), the parents and other parties understand the proceedings. This includes the appropriate use of an interpreter if any party experiences difficulty communicating in English and a person to facilitate communication if a party has a disability which would limit their taking part in the proceedings.

Clause 104 provides that the court can receive expert advice to assist it in its deliberations. For example, in a highly complex medical matter the court may request a medical expert to clarify the implications of material before

the court.

Clause 105 allows the child, the child's parents and any other party (eg a relative who has been granted custody of the child) to be legally represented. It also allows for the parent or other party to appoint someone as an agent to "stand in" as their proxy, eg if they are unable to attend court, and to present their views and wishes to the court.

Clause 106 ensures that the court does not proceed with hearing of an application unless the parents have had a chance to arrange legal representation. The parents will have had "reasonable opportunity to obtain legal representation" if they have had time to apply for legal aid, even if they have not been granted legal aid.

Clause 107 provides for the separate legal representation of a child. The court may order that the child be separately represented in any case, but is obliged to consider whether such an order should be made in all cases in which the parents or the child oppose the application. The style of separate representation is similar to that which is provided by separate child's representatives in the Family Court. The separate representative has an obligation to the court to act in the child's interests, and is not obliged to act on any instructions of the child.

Clause 108 allows for a lawyer to represent more than one child (eg, within the same family) unless the court orders otherwise.

Clause 109 protects a child from being called to appear in the court and give evidence, unless the court permits this to happen. The clause also restricts the circumstances in which the court can grant permission. This clause recognises the extreme emotional distress and damage that can occur for a child when they are asked to testify against their own parents or in relation to harm which they have endured. It also recognises that it is contrary to strengthening positive family relationships for this to happen. The child's statement (if any) and views must be put before the court, but in an appropriate way which does not call the child to give evidence in court.

Clause 110 enables the court to take submissions from persons who are not parties to the proceedings, if court considers the person has useful information to provide. (However, this does not imply that any person who is not a party can be present in court without leave of the court).

Clause 111 allows a Childrens Court magistrate to transfer proceedings to another Childrens Court. This may be appropriate, for example, if the

child and family have moved.

Clause 112 enables the court to hear two or more applications together (eg for two children in the same family).

Clause 113 provides for each party to pay their own costs. There is no provision for costs to be ordered against the State as the applicant because of the complexity of this statutory role on behalf of the people of Queensland. If an application results in withdrawal or is dismissed because an order is considered by the court to be unnecessary, this does not mean that the application was unwarranted. It may represent a positive resolution of the protection issues during the court process, an outcome which may have been aided by the court application.

If costs were to be awarded against the State as applicant, financial considerations could become the determinant factor in deciding whether to make application for an order, instead of the child's current need for protection.

Part 4—Court Appeals

Clause 114 allows any of the parties to appeal a decision of a court on an application for an order. This includes the child who may appeal in their own right, or through a separate legal representative.

Clause 115 sets out the procedure for making an appeal.

Clause 116 allows for the appellate court to stay a decision which is being appealed. If an appealed decision is not stayed, it can be implemented even though it is being appealed.

Clause 117 provides for the appeal to be decided on the Childrens Court records of the original hearing, except that a Childrens Court judge hearing the appeal can order a new hearing or partial hearing.

Clause 118 lists the powers of the appellate court to confirm, vary or set aside decisions and to make new decisions.

CHAPTER 4—INTERSTATE TRANSFERS OF GUARDIANSHIP AND CUSTODY OF CHILDREN

Clause 119 defines the meaning of "parent" for the purpose of this chapter.

Clause 120 outlines the procedure for the chief executive to accept a transfer of a custody or guardianship order for a child from another state. When the chief executive assumes custody or guardianship by signing a declaration, the interstate order becomes a Queensland child protection order as if made under this Bill. The duration of the order is translated to be consistent with a child protection order under this Bill.

Clause 121 requires the chief executive to advise the child and the child's parents of the making of the declaration, ie that the order is now a Queensland child protection order.

Clause 122 enables the chief executive to arrange a transfer of guardianship of a child under the chief executive's custody or guardianship from Queensland to another state. Written notice of the planned transfer must be given to the child, the child's parents, and, if applicable, the carers. The chief executive must consider any submissions they make that the transfer should not be made. Transfer of guardianship decisions can be appealed to a tribunal.

CHAPTER 5—REGULATION OF CARE

Part 1—Standards of care

Clause 123 obliges the chief executive to ensure that when a child is placed with an approved care provider or in a care service, the care is of an adequate standard. The Statement of Standards requires the chief executive to, as far as possible, meet the material, educational, psychological and other needs of children placed in out-of-home care by the DFYCC.

The Statement of Standards is a central provision of the part dealing with regulation of care because adherence or ability to adhere to those of the standards which are within the care provider's means are used to assess the suitability of care providers and services.

The Statement of Standards is consistent with the provisions of the United Nations *Convention on the Rights of the Child*. Corporal punishment or punishment which frightens or threatens a child is prohibited because, among other reasons, children in care for protective reasons may have experienced treatment of this type and are particularly vulnerable.

Part 2—Licensing of care services and approval of care providers

Clause 124 establishes the purpose of this part.

Clause 125 ensures that a license can only be held by an organisation, not by an individual.

Clause 126 sets out the procedure for application or renewal of a license to provide a care service. The organisation must name an individual as the "nominee" for the license, ie the person administratively responsible for the license.

Clause 127 prohibits the chief executive from granting the application for license unless satisfied that the organisation, and those persons managing and providing the services (ie caring for children) are suitable. In assessing whether persons are "suitable", the chief executive may consider criteria under a regulation, including their ability to meet the stated standards, and can take into account information about a person's criminal and other histories (clause 143). Any child protection records about the person held by the department may also be taken into account.

Clause 128 requires a license to be issued if approval of the application is granted and enables a license to include reasonable conditions (for example, limiting the type of care which can be provided—a care provider may be approved only to care for babies).

Clause 129 limits the duration of a license to 3 years.

Clause 130 sets out the procedures to be followed if the chief executive

refuses a license.

Clause 131 establishes that the nominee of a license holder is responsible for ensuring suitable standards of care.

Clause 132 provides that only an individual can be an approved care provider (foster parent), although two or more individuals can be jointly approved. If a couple is to care jointly for the child, both must be approved as care providers.

Clause 133 sets out the procedure for application or renewal of a certificate of approval as a care provider. Applicants for approval as care providers must make application to the DFYCC.

Clause 134 prohibits the application being granted unless the applicant is suitable to be a care provider and all adult members of their household are suitable to associate on a daily basis with children. In assessing whether persons are "suitable", the approving officer may consider criteria under a regulation, including the applicants' ability to meet the stated standards, and can take into account information about a person's criminal and other histories (clause 143). Any child protection records about the person held by DFYCC may also be taken into account.

Clause 135 requires a certificate of approval to be issued if approval as a care provider is granted. Conditions may apply to the approval.

Clause 136 sets the duration of the initial and subsequent certificates of approval.

Clause 137 sets out the procedure for refusal of an application for a certificate of approval.

Clause 138 sets out the procedure for licensees or approved care providers to apply for an amendment to the conditions of their license or approval. Throughout the rest of this division both licenses and certificates of approval are referred to generically as "authorities".

Clause 139 enables licenses and approvals to be amended by the chief executive, for example if standards of care are not being met or conditions are not being adhered to. The procedure for amending the license or approval is set out.

Clause 140 sets out the grounds on which a license or approval may be suspended or cancelled.

Clause 141 sets out the procedure for suspending or cancelling a license

or certificate of approval. The holder of the license or approval must be given written notice of the reasons for the proposal to suspend or cancel the license and have at least 28 to respond. Decisions to suspend or cancel licenses or approvals may be appealed to a tribunal.

Clause 142 outlines the procedure to be followed if a license or approval is to be amended, suspended or cancelled. The amendment, suspension or cancellation takes effect on the day the new authority is given out (or later if stated) and cannot be backdated.

Clause 143 authorises criminal history and other checks to be made by the chief executive for the purpose of determining the suitability of persons to provide care for children. It applies to persons managing and providing care services at a licensed service, to care provider applicants and to the adult members of their household. It authorises the commissioner of police to provide information about a person's criminal history and domestic violence history and the chief executive for transport to provide information about a person's traffic history (see clause 92 and discussion under the heading "*Fundamental legislative principles*" about why such checks are justified). Departmental child protection records may also be considered in determining the suitability of persons.

Clause 143 does not enable the provision of police records about alleged offences, as is possible under clause 92(7), because children placed with approved care providers will have regular contact by authorised DFYCC officers (clause 92(7) applies when persons may be granted custody or guardianship of children).

Clause 144 provides that failure to advise of a decision about an application within 90 days may be taken as notice of a decision to refuse the application.

Clause 145 makes it an offence to contravene a condition of a license or a certificate of approval.

Clause 146 enables an authorised officer to request a licensee or approved care provider to produce their license or certificate of approval.

Clause 147 provides for an authorised officer to enter and inspect the premises of a licensed care service at any reasonable time to ensure that the provisions of the Bill are being complied with.

CHAPTER 6—ADMINISTRATION

Part 1—Authorised officers

Clause 148 provides for the chief executive to appoint authorised officers (DFYCC employees and other persons by regulation) for the purpose of carrying out duties under the Bill.

Clause 149 provides for the powers of an authorised officer to be limited.

Clause 150 provides for stating an authorised officer's conditions of appointment.

Clause 151 requires an authorised officer to have a departmental identity card for the period of their appointment.

Clause 152 requires an authorised officer to show their identity card before exercising a power under the Bill or, if this is not practicable, as soon as possible afterwards.

Clause 153 provides that, if something is damaged when exercising a power under the Bill (for example if something in the home is broken when a child is being taken into custody), an authorised officer must give written notice about the damage to the owner.

Clause 154 provides that if a person incurs loss or expense to property because a power was exercised under this Bill, they can claim compensation. This clause does not relate to indirect loss or loss other than property, eg it does not include loss of income or the incurring of medical or legal expenses.

Part 2—General

Clause 155 enables the chief executive to delegate powers under the Bill to departmental employees.

Clause 156 enables the chief executive to approve forms for use under this Bill.

Clause 157 relates to co-ordination of government departments and community agencies involved in providing child protection services. It makes the chief executive responsible for ensuring that roles and responsibilities of departments and agencies are co-ordinated at a broad policy and planning level; and at the level of taking action to protect individual children.

This clause ensures that mechanisms to co-ordinate statutory child protection intervention services, such as the proposed Child Protection Council, the inter-departmental Co-ordinating Committee on Child Abuse and existing Suspected Child Abuse and Neglect (SCAN Teams), must exist.

Clause 158 allows for the financial support by the chief executive of children in the chief executive's custody or placed in alternative care for reasons related to their protection and welfare. There is provision for the chief executive to help meet expenses of the transition of a child from custody or guardianship under the Bill to independence. These expenses may in some cases be incurred after a young person turns eighteen years, and may include, for example, a contribution towards establishing a household or towards tertiary education costs.

CHAPTER 7—ENFORCEMENT AND LEGAL PROCEEDINGS

Part 1—Offences

Clause 159 makes it an offence to obstruct an officer exercising powersunder this Bill. However it is expressly allowed that a child who resists being taken into custody for the child's own protection cannot be charged with an offence under this section.

Clause 160 makes it an offence to impersonate an authorised officer.

Clause 161 makes it an offence to remove a child under custody or guardianship of the chief executive from the care of the person with whom

the child has been placed.

Clause 162 makes it an offence to remove a child from someone who has custody or guardianship under this Bill. It is also an offence to keep a child whom someone else has unlawfully removed.

Clause 163 makes it an offence to unreasonably refuse to allow an authorised DFYCC officer to enter a house to check on the well-being of a child under an order giving custody or guardianship to the chief executive.

Clause 164 makes it an offence to take a child under a custody or guardianship order interstate, with the intention of preventing this Bill from applying to the child.

Clause 165 makes it an offence for a parent to contravene an order directing that they not have contact with the child. A person who has been given notice of an order, eg by it being sent to their last known address, is taken to know about the order.

Part 2—Warrant for apprehension of child

Clause 166 enables an authorised officer or police officer to apply for a warrant for the retrieval of a child. This may be necessary when a child has been unlawfully taken from the person with whom they were placed, or when it has not been possible to take custody of a child even though an order granting custody or guardianship has been made.

Clause 167 allows the issuing of a warrant by a magistrate. The warrant authorises the officer to enter any places where the child is thought to be. It may not be known exactly where the child is at the time of issuing the warrant, and therefore its authority must enable the officer to enter any place the child is thought to be while searching for the child. It would not be practicable to have to seek a specific order relating to another place each time the child was moved.

Clause 168 sets out the procedure to be followed after a warrant is issued by phone or fax etc. It ensures that the sworn application and signed warrant are filed and allows a copy of the warrant to be used by the officer in the same way as a the signed warrant.

Clause 169 requires that an officer using a power of entry under a

warrant must follow normal procedure for the exercise of power of entry under warrants.

Part 3—Powers of authorised officers

Section 170 clarifies the application of part 3.

Section 171 authorises DFYCC officers, in the circumstances outlined in clause 170, to seize (ie take with them, as evidence) anything that may otherwise not be available at a later date as evidence.

Section 172 sets out the procedure to be followed if a thing has been seized by an authorised officer. These are standard procedures.

Section 173 allows the court to order the forfeiture of a seized thing.

Section 174 deals with the status of forfeited things.

Section 175 allows authorised DFYCC officers to take photographs as evidence, in the circumstances outlined in clause 148, ie the same circumstances as they are authorised to seize things.

Part 4—Evidence and legal proceedings

Clause 176 provides that proof is not required for a Childrens Court to accept that an authorised officer is authorised under this Bill or that a document tendered under the signature of an authorised officer or the chief executive is in fact signed by them. Clause 176 also provides a list of statements which, if certified by the chief executive, can be taken as evidence that the statement is true. For example:

> *If a statement signed by a delegated officer certifies that a licence was issued on a particular date, this can be taken as evidence of the matter—no further proof is required.*

Clause 177 provides for offences under the Bill to be dealt with as summary offences.

Clause 178 limits the time within which a proceeding for an offence can be commenced.

Part 5—Confidentiality

Clause 179 provides some definitions used in this part only. "Publish" can mean any public means of communication, eg speaking at a public meeting, but does not include communication which is not accessible by the public. "Act" in this part includes reference to the *Children's Services Act 1965* so that records created under that Act are covered by the Bill's confidentiality provisions.

Clause 180 ensures that confidentiality is maintained about the identity of persons who notify statutory authorities of their concerns about possible harm to a child. The clause prohibits officers who are aware of the notifier's details from disclosing them, except to others requiring the information to perform duties under this Act, or if ordered by a court or tribunal. It also prohibits the questioning of an officer in a court or tribunal proceeding about the identity of the notifier unless the court or tribunal gives leave. The identity of the notifier is also protected during the process by which the court or tribunal considers whether to grant leave to disclose the information.

This clause is essential for the effectiveness of the system for the protection of children in Queensland. Statutory authorities with responsibility to protect children rely upon members of the public to report concerns about children. In most cases, notifiers will not report or disclose information unless they can be assured that their identity will be protected. Any lessening of this standard would erode public confidence in Queensland's child protection system.

Clause 181 is the central confidentiality clause of the Bill. It prohibits DFYCC employees, police officers, and other persons performing duties under the Bill who obtain personal information, for example information from child protection case records, from disclosing the information. The prohibition applies to persons both directly and indirectly involved in the administration of the Bill, eg staff of the department and Minister, employees of licensees, and approved careproviders.

However the clause allows disclosure for purposes related to a person's duties under the Bill, and for purposes directly related to the welfare of any child. Such disclosure may not be directly related to the protection of the child it concerns, but may be disclosed in relation to the protection or welfare of another child or children. For example:

> *A parent may have seriously neglected an infant in their care, and now a second child is about to be born. Information about the first child can be disclosed for the purpose of ensuring the protection of the second infant.*

Clause 181 also enables disclosure of personal information if the disclosure relates to co-operating with other government entities which have responsibilities relating to the protection of children. For example:

> *A family where the children are considered at risk of harm moves interstate. Information about the family may be disclosed to the other state welfare department when they locate the family, to assist that department to protect the children.*

Similarly, information about a child may be disclosed to a non-government agency. For example:

> *An agency provides protective services to children referred by the DFYCC. To enable them to provide the assistance required to help the family meet the child's needs, the DFYCC provides information held by the department about the child's needs..*

Information may also be given to a person if it is information about them.

Clause 182 ensures that personal information which is given to someone under clause 181 must be treated confidentially by that person. However the person may give the information to someone else if this is necessary for the protection or welfare of the child. For example:

> *A school principal given information by an officer about a child may pass on necessary parts of it to teachers of the child to enable them to help support and safeguard the child.*

Under this clause "purposes directly related to a child's protection and welfare" can include purposes related to assessing or reviewing a child's need for protection, and may relate to other members of the child's family whose welfare is linked to that of the child.

Clause 183 makes it an offence to publish information which would identify a child living in Queensland as being a child who has been harmed by someone within their own family. This provision recognises the emotional trauma to a child (even many years later) of seeing or hearing themselves publicly identified as a child whose family mistreated them. The repercussions extend to the attitudes of others with whom the child has

contact, eg a child being embarrassed or bullied because other children at school, for example, have had access via the media to very personal information about what happened within the child's home.

For the same reasons, clause 183 also makes it an offence to identify a child as the subject of investigation of a child protection allegation under this Bill or the subject of an application or order under this Bill, unless approved by the chief executive for publication.

Clause 184 protects personal client records by ensuring that subpoenas are targeted to the documents required and do not catch up irrelevant personal documents. This clause also protects the confidentiality of documents which have been supplied in response to a subpoena, when in the control of the court registrar or other agency.

Clause 184(1)(b) provides that records or documents from the department which are in the possession of another government entity are included in the provisions of clause 184 relating to subpoena of records.

Clause 185 allows an officer involved in administering the Bill to refuse to disclose certain information to a court or a tribunal. The circumstances relate to the safety of a child or family member, or to identifying a notifier, or to the disclosure of highly personal information and jeopardising the trust of the child or family member. Provision exists for the court or tribunal to order the disclosure if it is satisfied that the information is relevant to the proceedings, and that the arguments in favour of disclosing it outweigh the arguments against. However this clause does not override clause 180 in relation to the identity of a notifier.

Clause 186 prohibits the public reporting of proceedings under this Bill in the Childrens Court (which is not open to the public), unless approved by the court. The Childrens Court is a closed court to protect the privacy of children.

Clause 187 prohibits the publication of any identifying information about a child who is a victim or witness in a court proceeding about a sexual offence. A court may also order the prohibition of identifying information about a child in any other court proceedings relating to offences against the child or in which the child is a witness.

Clause 188 enables personnel of a health service under the *Health Services Act 1991* (eg a hospital or public clinic) to release information from the health service records to give to the chief executive. This may be

necessary, for example, when a hospital has information directly relevant to the assessment of a child's protection needs. It may include information about another person (eg a parent) when the information relates to the child's welfare.

Part 6—General

Clause 189 provides that when required to explain an order or declaration or to serve notice on someone, the chief executive need only comply to the extent "reasonably practicable" in the circumstances. For example, in the circumstance where a parent cannot be located or contacted it is not reasonably practicable to serve notice.

Children must be told or notified of matters, but in a way which is appropriate to their age and ability to understand the information. This includes the child being entitled to receive the information in writing if:

- the child is entitled to be told about matters where notice to parents is required in writing, and
- the child or young person is considered by the authorised officer to have the maturity and competence to deal appropriately with the written information.

Clause 190 provides that if a police officer or authorised officer is required to do something, the task can be performed by another officer with the same delegations or powers.

Clause 191 provides protection from civil liability for a police officer or authorised officer (or someone acting under their direction) acting properly and honestly in an official capacity under the Bill.

CHAPTER 8—MISCELLANEOUS

Clause 192 enables an aggrieved person for an appealable decision to appeal to the Children's Services Tribunal.

Clause 193 enables the Governor in Council to approve regulations under this Bill and lists the matters about which a regulation may be made.

CHAPTER 9—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

Part 1—Repeals

Clause 194 repeals the *Children's Services Act 1965* in its entirety.

Clause 195 permits a reference to the *Children's Services Act 1965* in existing Acts or documents to be read as a reference to this Bill, if relevant.

Part 2—Savings and transitional provisions

Clauses 196 to 203 provide for the transition of existing orders under the *Children's Services Act 1965*. These are existing 'care and protection' orders, 'protective supervision' orders, 'care and protection' orders under a section 47 or section 134 declaration, 'care and control' orders under section 61 and 'supervision' orders under section 61. Provision is also made for the transition of existing licenses for care services and certificates of approval for care providers.

CHAPTER 10—AMENDMENTS

Clause 204 states that schedule 3 lists consequential and other amendments to other Acts.

SCHEDULE 1—CHARTER OF RIGHTS FOR A CHILD IN CARE

Schedule 1 describes the obligations of the chief executive to children and

young people who are in the custody or guardianship of the chief executive under a child protection order. The Charter acknowledges the special vulnerability of children who do not have a parent able and willing to protect them and reflects the obligation of the State to provide care for these children in a way that ensures their rights, as documented in the Charter, are met. The matters stipulated in the Charter are provided for in other sections of the Bill. Their listing in the Charter using language which may differ from that used elsewhere in the Bill can not be taken to limit any of the provisions contained in the body of the Bill.

SCHEDULE 2—APPEALABLE DECISIONS AND AGGRIEVED PERSONS

Schedule 2 lists all decisions under the Bill which are able to be appealed to the Children's Services Appeals Tribunal. The aggrieved persons, ie the persons entitled to appeal, are listed alongside each decision.

SCHEDULE 3—AMENDMENT OF ACTS

Schedule 3 lists the Acts which are amended by the Bill.

SCHEDULE 4—DICTIONARY

Schedule 4 defines terms used in the Bill.