CHILD PROTECTION AMENDMENT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of Legislation

The object of the Bill is to amend the *Child Protection Act 1999* to:

- provide for a scheme for the transfer of child protection proceedings and orders between Queensland and those other Australian States and Territories and New Zealand which have enacted a similar arrangement. The scheme established in the Bill intends to:
  - — enable children to move between the States, Territories and New Zealand while retaining the protection of the relevant child welfare agencies;
  - — enable the transfer of confidential case information from the referral agency to the receiving agency;
  - — enable a consistent approach to the assessment of potential carers, and better ensure that placements are appropriate for the child; and
  - — enable registration and administration of child protection orders in the Court of the State or Territory in which the child resides;
- implement certain recommendations of the Inquiry into Abuse of Children in Queensland Institutions ('the Forde Inquiry') to help ensure the safety of children in residential facilities for the care of children under the custody or guardianship of the chief executive;
- clarify some clauses of the *Child Protection Act 1999* and rectify minor omissions and anomalies in the Act.

REASONS FOR THE BILL

The interstate transfer of child protection orders and proceedings

As child protection is the responsibility of the States and Territories, problems arise when children who have a child protection order made in one State move to another State. In 1996, representatives of the child welfare agencies and social services of the New Zealand and Australian State and Territory governments identified the difficulties currently experienced with the movement of children and young people with child protection orders between the States, Territories and New Zealand.

These difficulties include:

- the differences in child protection legislation between the various jurisdictions do not provide for consistent care and support for children and young people who move between them;
- a child protection order made in one State is not enforceable in another jurisdiction to which the child has moved.

Problems also arise because there is no current capacity for child protection proceedings to be transferred between jurisdictions. The need for transfer arises in circumstances where a child relocates interstate after proceedings have commenced. The current process where proceedings in the original jurisdiction must be withdrawn and proceedings in the new jurisdiction re-commenced is costly and time-consuming.

Most States and Territories, including Queensland, have provisions in child protection legislation for the administrative transfer of the guardianship of children under child protection orders. However, these administrative orders are not enforcable as they are not registered in the receiving State as Court orders and a receiving State is not required to accept responsibility for a child or to comply with or service a child protection order made in another State.

There is currently no legislation or other arrangement enabling the transfer of child protection proceedings or orders between the States and Territories and New Zealand that is consistent across those jurisdictions. This means that there is no consistency in the management of movements between jurisdictions and inequity in the support and care of children in need of protection.

In October 1996, the Community Services Ministers' Council (CSMC), representing the community services Ministers of New Zealand and the Australian States and Territories, agreed that reciprocal legislation and protocols aimed at resolving these cross jurisdictional problems should be prepared and implemented. The proposed legislative scheme and protocols would allow:

- child protection orders to be transferred between jurisdictions either administratively by the relevant Department or judicially by the Childrens Court; and
- child protection proceedings commenced in one jurisdiction to be transferred to a Childrens Court in another jurisdiction.

A Model Bill was prepared by Victoria in consultation with New Zealand and the other States and Territories through a national working group. The Model Bill was approved by CSMC on 5 August 1999.

Administrators of the child welfare agencies signed a formal Protocol for the transfer of child protection orders and proceedings in October 1999.

This Protocol came into effect on 1 November 1999 and contains these general principles, which also underpin the Bill:

- Decisions regarding the transfer of orders and proceedings should be made in accordance with each State's or Territory's case planning principles;
- The interests of the child are paramount;
- Delay is contrary to the interests of the child and should, where possible, be minimised;
- Planning and interstate placement, whether the child or young person is subject to a child protection order or not, should include the thorough involvement of the receiving State prior to placement; and
- A child protection order should generally be enforceable and effective pursuant to the child protection legislation of the State where the child resides.

Amendments arising from the Forde Inquiry

The Bill also implements those parts of the Government's response to the recommendations of the Forde Inquiry which are appropriate to include in the *Child Protection Act 1999*. Other responses will be implemented through the Regulation of the *Child Protection Act 1999* and through administrative changes. The matters which require amendment of the *Child Protection Act 1999* include:

- a mandatory requirement for persons employed in residential care facilities for children in the custody or guardianship of the chief executive to report suspected abuse or neglect;
- an obligation upon the chief executive to regularly inspect licensed residential care facilities to ensure adequate standards of care are met; and
- an obligation on the chief executive to ensure access by children in licensed residential facilities to advocacy services.

Amendments to correct minor omissions and anomalies

The Bill will amend the *Child Protection Act 1999* prior to its proclamation, to correct minor errors or omissions which have been identified during processes of preparation for proclamation. These include:

- clarification of intent where it has been identified that the wording of a clause should be improved (eg amendment to clause 17, to put it beyond doubt that entry to schools by officers, and their remaining on the premises, must be with consent);
- rectifying unintended omissions of the Act consistent with its intent (eg allowing for the variation of a temporary assessment order in the same way as variation of other orders has been provided);
- correcting some typographical errors and improving drafting style.

The Bill will also preserve Section 69A of the *Children's Services Act 1965* prohibiting the tattooing of children. It is intended that this matter will be the subject of further policy consideration, and that in the meantime the existing offence provision will remain in place.

ESTIMATED COST FOR GOVERNMENT IMPLEMENTATION

There are no additional funding requirements arising from the Bill. The new jurisdiction of the Childrens Court relating to interstate transfer will have minimal impact on the operating costs of the court.

CONSULTATION

Consultation has occurred with key government departments responsible for implementation of the Bill, namely Families, Youth and Community Care Queensland (FYCCQ), Queensland Police Service, Department of Justice and Attorney-General, as well as the Brisbane Childrens Court Magistrate, Legal Aid Queensland and the Children's Commission of Queensland. PeakCare Queensland Inc. has been consulted in relation to the amendments arising from recommendations of the Forde Inquiry.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINICPLES

While the Bill is generally consistent with the fundamental legislative principles of the *Legislative Standards Act 1992*, the following clauses raise fundamental legislative principle issues which have been the subject of discussion with the Department of Justice and Attorney General during consultation on the Bill.

Clause 43—proposed section 191N (Limited time for applying for judicial review)

This proposed section applies to applications for statutory orders for review under sections 21, 22 and 23 of the *Judicial Review Act 1991* and applications for review under section 43. The effect of the clause will be to:

- reduce the time allowed under section 46 of the *Judicial Review Act 1991* in which to apply for review under section 43, from 3 months to 28 days; and
- ensure that, in all cases, an application for a statutory order for review under sections 21, 22 and 23 must be made within 28 days after the date of the decision.

The proposed section also provides that the Supreme Court cannot extend the time for applying for review.

The purpose of the restriction of the period in which judicial review of an administrative decision to transfer a child protection order may be sought is to—

- reduce the length of time which a child must wait before the child's order can be transferred to the place which has been assessed as the most appropriate for the child, and
- to create certainty as to the time the decision becomes final.

It may be suggested that this clause may impact on the rights and liberties of individuals as it shortens the time ordinarily allowed to apply for review. However, it is considered that the clause will still provide for an appropriate mechanism for review while ensuring that decisions affecting children will be made and implemented without long delay.

A transfer decision cannot be effected until the review period has passed because a core element of the reciprocal scheme is that a transferred order cannot be registered in the receiving State until the jurisdiction of the sending State has been exhausted, ie until the decision to transfer is no longer subject to possible appeal or review in the sending State. This 'core' provision was included in the Model Bill and has been included in the Queensland Bill to avoid the confusion and uncertainty of two States exercising jurisdiction over the same matter. One of the major problems the reciprocal scheme seeks to remedy is the current confusion as to which State has case planning responsibilities when children with child protection orders move to another State. This confusion has resulted in less than adequate services being provided to children in need of protection.

In any event, Clause 43 (proposed section 191L) of the Bill provides that the chief executive would be unable to administratively transfer a child protection order unless the written consent of the following persons is first given—

- if the child is aged 12 or more, the child
- the child's parents (includes both the child's natural parents and any other person having custody or guardianship of the child under the child protection order)
- the child's carer, if the carer has moved or is moving interstate with the child.

Therefore, in all cases, administrative transfers will only occur with the consent of the persons most affected by the decisions and in the vast majority of cases, no review application will be made. However, the review period affects all cases, as no transfer decision can be effected until the review period has passed. The shortening of the review period allows delay to be minimised in those majority of cases where no application for review is made.

Clause 43—proposed section 191ZP (Appeal against decision of Childrens Court)

The Bill establishes a new jurisdiction in the Childrens Court to determine applications to transfer child protection orders or proceedings. This jurisdiction does not currently exist.

Under this proposed section, the time for appealing a decision of the Childrens Court to transfer a child protection order or proceeding is 10 business days after notice of the decision is given. The standard period for appealing other decisions of the Childrens Court made under the *Child Protection Act 1999* is 28 days from the date of the decision. The proposed section also provides that the appellate court cannot extend the time for appeal.

The reasons for the shorter than usual appeal period are the same as those for the proposed restricted time in which to make a judicial review application. Again, because it is a requirement of the reciprocal scheme that a transferred order or proceeding not be registered in the receiving State until the appeal period had passed, this would result in many children being required to wait for a 28 day appeal period to pass in circumstances where it is unlikely that the decision will be appealed.

The shortened appeal period and restricted judicial review period is consistent with the best interests of children subject to transfer decisions, in that it will—

- maximise certainty and stability for children by ensuring decisions about their care are implemented as expeditiously as possible and by reducing the time children may wait in temporary placements before they can move to their planned interstate placement;

- if the child has already been placed interstate, reduce the length of time in which there is uncertainty about the roles of each State in administering the order and supporting the child and family; and
- still ensure that aggrieved persons/parties (including the child) have access to review.

The proposed sections represent an appropriate balance between:

- the rights of individuals to have decisions reviewed, and
- the interests of children to have decisions about their welfare put into effect in an expeditious manner.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the schedule of the Bill to commence on proclamation and excludes the application of the *Acts Interpretation Act 1954*, section 15DA, to the schedule. The schedule will, upon proclamation, repeal the current Chapter 4 (which is re-enacted in this Bill) dealing with the interstate transfer of guardianship and custody of children between Queensland and non-participating states.

Clause 3 provides that the Bill amends the *Child Protection Act 1999* ('the principal Act').

Clause 4 amends section 7 (Chief executive's functions) of the principal Act by adding a further function to the chief executive's functions. It provides that a function of the chief executive is to ensure that children living in licensed residential services have access to advocacy services and cooperate with those services in addressing the children's concerns.

Clause 5 amends section 17 (Contact with children in school, child care centre, family day care etc) of the principal Act to put beyond doubt that both entry to and remaining on the premises must be lawful, ie with the consent of the person in charge.

Clause 6 replaces section 23 (Meaning of "parent" in pt 2) of the principal Act by omitting the current definition of 'parent' and inserting a new definition. This amendment is required to remedy an inadvertent exclusion from the definition of persons who have custody of a child under a child protection order.

Clause 7 amends section 28 by omitting reference to "reasonable conditions". This amendment is due to legal advice that this wording would have the unintended consequence that orders could be made "conditional", ie the order itself would become invalid if parents or others failed to adhere to a "condition" of the order. The omission of these words has no bearing on the ability of the court to make an appropriate order and there is agreement between the Brisbane Childrens Court magistrate, Crown Law and the Office of the Queensland Parliamentary Counsel that it should be omitted.

Clause 8 omits section 34 (Extension of temporary assessment orders) of the principal Act and inserts a new section 34 (Extension of temporary assessment orders) to enable the extension of temporary assessment orders within a three day maximum period. This may apply in circumstances where, for example, the period for a temporary assessment order authorising medical examination was initially six hours and the examination indicates that medical monitoring over a twenty-four hour period is required. The amendment is consistent with the intent of the original provision. It is a more appropriate alternative than the existing requirement of applying for a second order.

Clause 9 inserts a new section 34A (Variation of temporary assessment orders) into the principal Act to enable the variation of an existing temporary assessment order. This may be required where, for example, the original order authorised entry and contact with the child, and, as a result of that contact, the child is taken into protective custody. The ability to seek variation of the existing temporary assessment order to apply for the authority to keep the child in the custody of the chief executive is preferable to the alternative procedure of applying for a second temporary assessment order. The amendment is consistent with the intent of the original provision.

Clause 10 replaces section 36 (Meaning of "parent" in pt 3) of the principal Act by omitting the current definition of 'parent' and inserting a new definition. This amendment is required to remedy an inadvertent exclusion from the definition of persons who have custody of a child.

Clause 11 amends section 40 (Notice of application) of the principal Act by inserting the requirement that, if a police officer is an applicant for a court assessment order, the police officer must notify the chief executive of the application. This rectifies an inadvertent omission.

Clause 12 amends section 44 by omitting reference to "reasonable conditions". The reasons are the same as outlined under Clause 7 above.

Clause 13 amends section 48 (Extension of court assessment orders) of the principle Act by omitting subsections 48(2) and 48(4) and inserting a new subsection 48(4) to ensure that extension of a court assessment order can only occur before the existing order ends. This rectifies the anomaly whereby the period between application for extension of a court assessment order and mention of the matter in the court had no stated time limit. The amendment is consistent with the intent of the Act that court assessment orders are strictly time limited.

Clause 14 inserts a new section 49A (Effect of court assessment order on existing child protection order) into the principal Act to clarify that a court assessment order prevails over an existing child protection order for a child to the extent of any inconsistency between the court assessment order and the child protection order. This is consistent with the intent of the Act (as stated at section 35 in relation to temporary assessment orders) and rectifies an inadvertent omission.

Clause 15 replaces section 50 (Meaning of "parent" in pt 4) of the principal Act by omitting the current definition of 'parent' and inserting a new definition. This amendment is required to remedy an inadvertent exclusion from the definition of persons who have custody of a child. This exclusion would have meant that persons having custody of a child under the Act would not be respondents to applications made by an authorised officer under section 61 or section 62 of the principal Act.

For example, under the current definition of 'parent', if an authorised officer applied to the Childrens Court for revocation of a child protection order granting custody of a child to a suitable person who is a member of the child's family under section 58(1)(d)(i), that person would not be a respondent to the application.

Clause 16 amends section 57 (Making of child protection order) of the principal Act to clarify that paragraph 57(1)(e) relates to the protection sought to be achieved by a specific child protection order could not be achieved by a less intrusive order. This improved wording is more

appropriate than the existing wording when more than one child protection order is made concurrently in relation to a child. The amendment also makes a consequential amendment to section 57(5) of the principal Act.

Clause 17 inserts a new section 57A (Extraterritoriality) into the principal Act to clarify the power of the Childrens Court to make a child protection order where the events causing the child to be in need of protection happened outside of Queensland or partly outside Queensland.

Clause 18 omits section 58 (Provisions of child protection orders) of the principal Act and inserts a new section 58. The new wording clarifies the intent that each sub-section of section 58 represents a type of child protection order which can be made by the court. The new clause also omits reference to "reasonable conditions" for the same reasons as outlined under Clause 7 above.

Clause 19 amends section 62 (Variation and revocation of child protection orders) of the principal Act by omitting section 62(2)(b). This amendment rectifies a drafting error—the type of application referred to in the sub-section is not legally possible and therefore the sub-section is without meaning. The amendment also clarifies that the definition of 'child protection order' excludes interim orders made under section 64 from the operation of the section, making it clear that it is not possible to apply to revoke or vary an interim order (parents can, of course, oppose the making of an interim order).

Clause 20 amends section 65 (Court's other powers on adjournment of proceedings for child protection orders) of the principal Act to provide clearer wording for the sub-section relating to an order about family contact. It also rectifies a typographical error.

Clause 21 amends section 92 to update reference to the transport legislation referred to in that clause, as the former *Traffic Act 1949* has been replaced.

Clause 22 amends section 94 (Carrying out medical examinations or treatment) of the principal Act to clarify that a doctor must give a report to the chief executive or commissioner of police about the medical examination or treatment of a child when it has been authorised by an assessment order, in addition to the like circumstances covered by the sub-section.

Clause 23 amends section 96 (Chief executive's custody or guardianship of child continues pending decision on application for order) of the principal Act. The current section 96 ensures that, when an application for extension of a custody or guardianship order is made, the chief executive's custody or guardianship of the child continues until the application is decided by the Childrens Court even though the expiry date of the original order has passed. The amendment includes orders granting custody of the child to a family member within the ambit of the provision, consistent with the intent of the provision. The amendment also omits reference to "variation" as this wording is unnecessary—an application for variation would of necessity have to be decided before an order ended.

Clause 24 amends the heading of Chapter 3 (Childrens Court proceedings) of the principal Act by omitting the word 'Childrens'. This is because the Chapter also provides for court appeals in the appellate court. The definition of 'appellate court' in Schedule 4 of the Act includes the Court of Appeal, where the decision appealed against was made by the Childrens Court constituted by a judge.

Clause 25 amends section 113 (Costs) of the principal Act, by omitting the words "other than the child". This rectifies an anomaly whereby the child, as a party to the proceedings, would never meet his/her own costs. This would apply even though in reality all children are eligible to be legally aided—the applicant department or the child's parents would have to meet the costs of Legal Aid Queensland or any private barrister engaged by the child despite his/her eligibility for legal aid.

Clause 26 amends section 115 (How to start an appeal) of the principle Act by omitting subsection 115(2) which required the registrar of the appellant court to give the magistrate who made the decision a copy of the appeal notice. The Office of the Queensland Parliamentary Counsel advises that this sub-section is unnecessary.

Clause 27 omits Chapter 4 (Interstate transfers of guardianship and custody of children) of the principal Act. This Chapter with some consequential amendments is re-enacted as Chapter 7A, part 7.

Clause 28 amends section 143(5) to update reference to the transport legislation referred to in that section, as the former *Traffic Act 1949* has been replaced.

Clause 29 inserts new sections 147A (Regular inspections of licensed residential facilities) and 147B (Obligation to report harm to children in residential care) into the principal Act. These new sections implement the relevant responses of the Government to the recommendations of the Forde Inquiry. They apply to children under the custody or guardianship of the chief executive placed in residential care facilities which are licensed under the principal Act.

Clause 30 replaces section 161 (Offence to remove child from carer) and section 162 (Offence to remove a child from custody and guardianship) of the principal Act. The intent of those sections is preserved. A new subsection (3) has been included in both sections.

In section 161, the new subsection (3) declares that the section applies whether the act of removing or keeping the child occurs within or outside Queensland. The purpose of this amendment is to clarify that removing a child from a carer with whom the child has been placed under a Queensland child protection order is an offence under the Act where the removal or the keeping of the child occurred outside Queensland.

In section 162, the new subsection (3) declares that the section applies whether the act of removing or keeping the child occurs within or outside Queensland. The purpose of this amendment is to clarify that removing a child from the custody or guardianship of a person under a Queensland child protection order is an offence under the Act where the removal or the keeping of the child occurred outside Queensland.

The clause also inserts a new section 161A (Offence to remove child from carer—order made in another State) into the principal Act. It provides that it is an offence to remove a child who is in the custody or guardianship of the interstate officer under a child welfare law or interstate law of another State from the care of the child's carer in Queensland. It also provides that it is offence to keep a child in Queensland who has been unlawfully taken from the care of the child's carer. This clause mirrors the current offence provision in section 161 but applies it to children with child protection orders of other States. The same penalty will apply to this offence as to an offence under section 161.

The clause also inserts a new section 162A (Offence to remove child from custody or guardianship—order made in another State) into the principal Act. It provides that it is an offence to remove a child from the custody or guardianship of a person who has the custody or guardianship of

the child under a child welfare law or interstate law of another State. It also provides that it is offence to keep a child in Queensland who has been unlawfully removed from the custody or guardianship of the child's guardian. This clause mirrors the current offence provision in section 162 but applies it to children with child protection orders of other States. The same penalty will apply to this offence as to an offence under section 162.

Clause 31 inserts a new Chapter 7 Part 1A (Prosecution of certain interstate offences) into the principal Act. Notes for this new Part are as follows—

Part 1A—Prosecution of Certain Interstate Offe

Proposed section 165A requires consultation with the chief executive prior to the commencement of proceedings for an offence under sections 161 to 162A of the principal Act. An exception to this requirement is where the police officer believes it is reasonably necessary in the circumstances to arrest the alleged offender before consulting with the chief executive.

The intent of this section is to ensure that matters relevant to the child's interests and welfare are taken into account prior to a decision to proceed with criminal charges in relation to removal of the child from custody, and related offences. For example, the preservation of the child's relationship with their family, which may be damaged by the proceedings, may be the more important consideration.

Proposed section 165B ensures that if a person has been convicted or acquitted of an offence against a child welfare law or interstate law of another State, the person cannot be prosecuted for an offence under the principal Act for the same act or omission

Clause 32 inserts a new section 169A (Interstate warrants—arrangements for apprehended child until Magistrate is available) into the principal Act. This Clause applies where a police officer apprehends a child in Queensland pursuant to a warrant issued in another State under the child welfare law of that State and it is not reasonably possible to bring the child before a Magistrate on the day of apprehension. The Clause enables the police officer to make arrangements for the safe care of the child until such time as it is reasonably possible for the police officer to take the child before a Magistrate. In doing so, the police officer may use the help of the chief executive. For example the police officer may arrange with the chief executive for a foster carer to care for the child in the interim.

Clause 33 replaces the existing heading for Chapter 7, Part 3 (General powers of authorised officers) of the principal Act and inserts a new heading reflecting changes to this part.

Clause 34 amends section 170 (Application of pt 3) of the principal Act to clarify that the part applies to police officers as well as authorised officers of Families, Youth and Community Care Queensland.

Clause 35 amends the heading of Chapter 7, Part 3, division 2 (Power of seizure of authorised officers) of the principal Act to make the word "officer" inclusive of police officers.

Clause 36 amends section 171 (Power of seizure) of the principal Act to use the generic word "officer" to apply to both police officers and authorised officers. The effect of this and subsequent consequential changes in this part is to give police the same powers as afforded authorised officers to seize things which may be required as evidence in proceedings on an application for a child protection order. These powers had not been included for police as it had been considered that they were available under the *Police Powers Act*. Clarification that the *Police Powers Act* covers seizure of evidence for criminal prosecution, but not for child protection proceedings, has resulted in this amendment.

Clause 37 amends section 172 (Procedure after seizure of thing) of the principal Act, for the same reason as outlined in relation to clause 36.

Clause 38 amends the heading of Chapter 7, Part 3, division 3 (Other powers of authorised officers on entry) of the principal Act for the same reason as outlined in relation to clause 36.

Clause 39 amends section 175 (Power to photograph) of the principal Act for the same reason as outlined in clause 36 in relation to seizure

Clause 40 amends section 176 (Evidentiary provisions)of the principal Act by adding a subsection providing that a document or copy of a document purporting to be the consent of the interstate officer or delegate of the interstate officer, is evidence of the consent.

Clause 41 amends section 180 (Confidentiality of notifiers of harm) of the principal Act to enable disclosure of notifier information to another State authority where a child has moved to that State and such disclosure is necessary to enable that authority to perform its duties towards the child under its child welfare law. The amendment also ensures that information

received from other States identifying the original notifier is protected in the same way as if that notification was made and received directly by the chief executive or authorised officer.

Clause 42 amends section 189 (Compliance with provisions about explaining and giving documents) of the principal Act by inserting a new subsection applying the section to the new Chapter 7A dealing with interstate transfers.

Clause 43 inserts a new Chapter 7A into the principal Act.

Notes for the provisions of this new Chapter follow:

CHAPTER 7A—INTERSTATE TRANSFERS OF CHILD PROTECTION ORDERS AND PROCEEDINGS

Part 1—Preliminary

Division 1—Explanation, purpose and guiding principles

Proposed section 191A (Explanation and purpose) explains the purpose of the Chapter which is to provide for the transfer of orders and proceedings between Queensland and other States and New Zealand so that children under those orders or subject to those proceedings may be protected and so that proceedings may be determined in the most appropriate jurisdiction. The clause also explains the legal effect of a transferred order or proceeding.

Proposed section 191B (Further guiding principle) provides that the Chapter is to be administered under the principle that it is desirable for a court order relating to the protection of a child to have effect and be enforced in the state in which the child resides. It also requires the Childrens Court when exercising its jurisdiction or powers under the chapter to observe this principle. This principle is in addition to the general principles for the administration of the Act as a whole, which are listed in section 5 and the Court's paramount consideration in section 101.

Division 2—Interpretation provisions about child protection order

Proposed section 191C (References to Queensland orders) defines the terms 'home order' and 'proposed interstate order'.

Proposed section 191D (Reference to "child protection order" includes certain orders of other States) defines the term 'child protection order' to include orders made under a child welfare law or interstate law of another State for the purposes of this Chapter.

Division 3—Corresponding laws of other State

Proposed section 191E (Meaning of "law" for div 3) defines 'law' and extends the application of the *Acts Interpretation Act 1954*, section 14H, to a law of New Zealand for the purpose of a regulation made under this division.

Proposed section 191F (Child welfare laws) provides that a regulation may declare a law of another State to be a child welfare law of that State.

Proposed section 191G (Interstate laws) provides that the Governor in Council may declare by regulation:

- a law of another State to be an interstate law
- a State to be a participating State
- the holder of a state office to be an interstate officer.

Division 4—Meaning of "parent"

Proposed section 191H (Meaning of "parent" for ch7A) defines the term 'parent' in Parts 1 to 6 of this Chapter. This definition mirrors the definition in section 50 in the principal Act. It also defines the term 'parent' for Part 7. This definition mirrors the definition for the current Chapter 4 of the principal Act.

Part 2—Transfer of an order to another State

The Bill provides for the transfer of child protection orders to participating States either administratively by the chief executive or judicially by the Childrens Court.

Division 1 –Orders that may be transferred

Proposed section 191I (Orders that may be transferred) sets out those child protection orders made under the Act which can be transferred to a participating State under this Part. Interim orders made under section 64 of the principal Act and orders granting long term guardianship of a child to someone other than the chief executive are excluded.

Interim orders under section 64 of the principal Act are excluded because they are made during proceedings for a child protection order. If a child has moved interstate or it is planned for a child to move interstate during the conduct of proceedings in relation to the protection of that child, then the proceeding itself should be transferred to the State to which the child is moving.

Child protection orders granting long term guardianship of a child to a person other than the chief executive are excluded because these orders do not involve the State in the care of the child nor do they give the State responsibility for the child. If a person having the guardianship of a child wishes to relocate with the child to another State, the order may be registered in the Family Court of Australia under the *Family Law Act 1975.*

Child protection orders granting custody of a child to a suitable person who is a member of the child's family are included in the scheme. This is because these orders are short term orders of less than 2 years duration and section 70 of the principal Act places obligations on the chief executive to meet the child's protection needs under this order.

Division 2—Administrative transfers

Proposed section 191J (Chief executive may transfer order) provides that the chief executive may transfer a child protection order to a participating State if certain conditions are met.

A child protection order may only be transferred administratively if an order to the same or similar effect could be made under the child welfare law of the participating State to which the order is to be transferred. However, in determining whether an order is of the same or similar effect, the chief executive must not take into account the period of time for which such an order could be made in the participating State. This is because the time periods for similar types of orders under the child welfare laws of the various jurisdictions vary widely. For example:

Because the child's parents have moved to South Australia, it is considered in the best interests of the child to also move to South Australia. The child is on a Queensland child protection order granting short term guardianship of the child to the chief executive. The order was made for a period of 2 years and has 18 months to run. South Australia's Child Protection Act 1993 currently provides for a similar order which can only be made for a period not exceeding 12 months. It is not the intention of this clause to prevent the administrative transfer of the order (provided all other conditions are met) solely on the basis that the lengths of the orders are not the same.

An administrative transfer of an order also can only be made if the order is not subject to any court proceedings in Queensland, for example an appeal under section 114 of the principal Act or an application for variation or revocation under section 62 of the principal Act.

Also the order can only be transferred with the written consent of the interstate officer of the participating State to the transfer and the proposed terms of the order to be transferred and with the consent of those persons whose consent to the transfer is required under clause 191N.

Proposed section 191K (Provisions of proposed interstate order) enables the chief executive to vary the order to the extent the chief executive is satisfied is reasonably necessary because of the transfer. However, the proposed interstate order must be of the same or similar effect as the home order. For example, if the home order is an order made under section 58(d)(ii) granting custody of the child to the chief executive, the chief executive cannot make a proposed interstate order which grants guardianship of the child. The proposed interstate order must only contain provisions which could be included in an order of that type under the child welfare law of the State to which the order is proposed to be transferred.

- The clause also requires the chief executive to state in the proposed interstate order the period of time for which it is to have effect in the participating State.

Proposed section 191L (Persons whose consent is required) provides that the order may not be transferred unless—

- the child, if the child is 12 years of age or older
- the child's parents,
- the child's carer, if the carer has moved or is moving interstate with the child,

have given their written consent to the transfer and to the terms of the proposed interstate order. The clause requires the chief executive to explain to the persons whose consent is required why the chief executive considers it is appropriate to transfer the order and the terms and effect of the proposed interstate order before obtaining their consent. However the consent of a parent is not required if reasonable efforts fail to locate the parent (section 189 of the principal Act applies).

Proposed section 191M (Notice of decision) requires the chief executive to give written notice of the decision to transfer the order and a copy of the proposed interstate order to the child, any other person whose consent is required under clause 191N and anyone else the chief executive considers ought to be notified. The notice must be given within 3 business days after the day of the decision. The notice must state the date of the decision and that if the person wishes to make a judicial review application in relation to the decision they must do so and give notice of the application to the chief executive within 28 days after the day of the decision. The reasons for this proposed section are discussed under the heading "Consistency with fundamental legislative principles" earlier in this document.

Proposed section 191N (Limited time for applying for judicial review) limits the time in which a person may make a judicial review application to 28 days after the day of the decision. The clause provides that the Supreme Court may not extend the time for making the application. The clause also provides that an application for judicial review is taken not to have been made until notice of the application is given to the chief executive and that the application stays the operation of the chief executive's decision. The reasons for this proposed section are discussed under the heading "Consistency with fundamental legislative principles" earlier in this document.

Division 3—Judicial transfers

Proposed section 191O (Application for transfer) enables an authorised officer to apply to the Childrens Court for an order transferring a child protection order to a participating State and sets out the requirements in relation to the application.

Proposed section 191P (Procedural matters) applies certain procedural provisions in the principal Act to the application.

Proposed section 191Q (Court may transfer order) sets out the requirements for the making of an order to transfer the child protection order to the participating State.

Proposed section 191R (Provisions of proposed interstate order) requires the Childrens Court to decide the provisions of the proposed interstate order if it decides to order the transfer of the child protection order. It also sets out the matters the court must be satisfied of in relation to the making of the proposed interstate order. The clause also requires the court to decide the time period for which the proposed interstate order is to have effect in the participating State and to state that time in the proposed interstate order. It requires that the time stated in the proposed interstate order must not be more than the maximum time for which an order of that type could be made under the child welfare law of the participating State.

Proposed section 191S (Notice of decision) sets out the notice requirements in relation to a decision of the court to transfer a child protection order.

Division 4—Effect of transfer and registration

Proposed section 191T (Application of div 4) explains that the division applies where a child protection order is transferred to a participating State and registered under the interstate law of that State.

Proposed section 191U (Order ceases to have effect in Queensland) provides that the child protection order ceases to have effect in Queensland.

Proposed section 191V (Order may be revived in Queensland) provides for the revival of the child protection order in Queensland if the registration of the order is revoked under an interstate law of the participating State to which the order had been transferred.

Part 3—Transfer of an order to Queensland

Proposed section 191W (Application of pt 3) explains that part 3 applies to the transfer of a child protection order from a participating State to Queensland.

Proposed section 191X (Chief executive's consent to transfer) requires the written consent of the chief executive to the transfer and to the provisions of the order. The clause requires the chief executive to give consent unless the chief executive is satisfied that the order could not be made under chapter 2, part 4 of the *Child Protection Act 1999* or the transfer or the provisions of the order would not be in the child's best interests.

Proposed section 191Y (Filing and registration of order) relates to the filing and registration of an order transferred to Queensland. Before doing so the chief executive must be satisfied that that the period for appealing or applying for review of the interstate transfer decision under the interstate law has expired and that the decision is not subject to appeal, review or a stay.

Proposed section 191Z (Effect of registration) sets out the effects of registering the order in the Childrens Court.

Proposed section 191ZA (Revocation of registration) provides for the process by which the registration of the child protection order which has been transferred from a participating State may be revoked.

Part 4—Transfer of proceedings to another State

Proposed section 191ZB (Application for transfer) enables an authorised officer to apply to the Childrens Court for an order transferring a child protection proceeding to a participating State and sets out the requirements in relation to the application.

Proposed section 191ZC (Registrar to fix time and place for hearing) requires the registrar of the Childrens Court to fix the time and place for hearing the application immediately once the application is filed. In doing so, the registrar is required to have regard to the principle that it is in the best interests of the child for the application to be heard as early as possible.

Proposed section 191ZD (Notice of application) sets out the notice requirements for the application.

Proposed section 191ZE (Court may transfer proceeding) enables the Childrens Court to order the transfer of the proceedings to the participating State if the interstate officer of the participating State has given written consent to the transfer.

Proposed section 191ZF (Considerations for Childrens Court) sets out the matters the Court must consider in deciding whether to order the transfer of the proceeding. *Proposed section 191ZG* (Court may make interim order) enables the Childrens Court to make an interim order about the custody or supervision of the child for an interim period of not more than 30 days if the court orders the transfer of the proceeding to the participating State.

Proposed section 191ZH (Notice of decision to transfer) sets out the notice requirements in relation to a decision of the court to transfer a child protection order.

Proposed section 191ZI (Effect of registration of order) provides that if the court's order transferring the proceeding is registered in the participating State, the proceeding is discontinued in the Childrens Court in Queensland and any interim order made by the court on ordering the transfer ceases to have effect in Queensland.

Part 5—Transfer of proceedings to Queensland

Proposed section 191ZJ (Application of pt 5) provides that Part 5 applies to the transfer of a child protection proceeding to Queensland from a participating State.

Proposed section 191ZK (Chief executive's consent to transfer) requires the written consent of the chief executive to the transfer and to the provisions of the order. The clause requires the chief executive to give consent unless the chief executive is satisfied that the transfer would not be in the child's best interests.

Proposed section 191ZL (Filing and registration of interstate transfer decision) relates to the filing and registration of an order transferred to Queensland. It requires the chief executive to file a copy of the interstate transfer decision and any associated interim order in the Childrens Court in Queensland. Before doing so the chief executive must be satisfied that that the period for appealing or applying for review of the interstate transfer decision under the interstate law has expired and that the decision is not subject to appeal, review or a stay.

Proposed section 191ZM (Effect of registration of interstate transfer decision) sets out the effect of registering the interstate transfer decision in the Childrens Court in Queensland.

Proposed section 191ZN (Effect of registration of associated interim order) sets out the effect of registering the associated interim order in the Childrens Court in Queensland.

Proposed section 191ZO (Revocation of registration) provides for the process by which the registration of the child protection order which has been transferred from a participating State may be revoked.

Part 6—Miscellaneous

Division 1—Appeals

Proposed section 191ZP (Appeal against decision of Childrens Court) sets out the process for appeals against a decision of the Childrens Court about an application to transfer a child protection order or an application to transfer a child protection proceeding to a participating State.

Proposed section 191ZQ (Interim orders) provides that if an interim order was made by the Childrens Court when it made an order transferring a child protection proceeding to a participating State, then the interim order is not affected merely because there is an appeal against the transfer order. The appellate court may stay, vary, revoke or extend the time of an interim order. It may also make any interim order that the Childrens Court could make on ordering the transfer of a proceeding.

Division 2—Court files

Proposed section 191ZR (Transfer of court file) relates to the transfer of the Childrens Court file to the participating State if the Childrens Court has made an order transferring a child protection order or proceeding to the participating State.

Part 7—Interstate transfer for non-participating States

This part re-enacts the current Chapter 4 of the principal Act with some consequential changes.

Proposed section 191ZS (Definitions for pt 7) defines particular words for this part.

Proposed section 191ZT (Transfer from a non-participating State) re-enacts the current section 120 of the principal Act. It outlines the procedure for the chief executive to accept a transfer of custody or guardianship order for a child from a non-participating 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 the principal Act. The duration of the order is translated to be consistent with a child protection order under the principal Act.

Proposed section 191ZU (Notice of declaration) re-enacts the current section 121 of the principal Act. It 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.

Proposed section 191ZV (Transfer to a non-participating State) re-enacts the current section 122 of the principal Act. It enables the chief executive to arrange a transfer of guardianship of a child under the chief executive's custody or guardianship from Queensland to a non-participating 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 the tribunal.

Proposed section 191ZW (Effect of State becoming a participating State) clarifies that a child protection order made by declaration under clause 191ZT is not affected if the State in which the order was originally made becomes a participating State.

Clause 44 inserts a new section 193A (Numbering and renumbering of Act) into the principal Act to require that the next reprint of the Act be numbered and renumber as permitted by the *Reprints Act 1992*, section 43.

Clause 45 amends the heading of Chapter 9 by omitting the word "Repeals". This amendment is consequential to the amendment made by Clause 56.

Clause 46 omits Chapter 9, part 1 (Repeals). This amendment is consequential to the amendment made by Clause 56.

Clause 47 omits the heading of Chapter 9, part 2 (Savings and Transitional Provisions) as it is no longer necessary. This amendment is consequential to the amendment made by Clause 56.

Clause 48 amends section 196 (Definitions for pt 2) of the principal Act, by changing the wording of the heading and including the definition of the "replaced Act" to replace reference to the "repealed Act". These amendments are consequential to the amendment made by Clause 56.

Clause 49 amends section 197 (Existing section 47 declarations and care and protection orders) of the principal Act by replacing a reference to the 'repealed Act' with a reference to the 'replaced Act'. This amendment is consequential to the amendment made by Clause 56.

Clause 50 amends section 199 (Existing section 134 declarations) of the principal Act by changing the section number reference and adding a definition of "interstate order".

Clause 51 amends section 200 (Licensed institutions under repealed Act) of the principal Act by replacing references to the 'repealed Act' with references to the 'replaced Act'. This amendment is consequential to the amendment made by Clause 56.

Clause 52 amends section 201 (Approved foster parents) of the principal Act by replacing a reference to the 'repealed Act' with a reference to the 'replaced Act'. This amendment is consequential to the amendment made by Clause 56.

Clause 53 replaces section 202 (Existing applications and proceedings for care and protection proceedings) to re-word the section and clarify that all existing applications commenced in the Childrens Court but not completed at the time of proclamation will be deemed, upon transition, to be applications for a child protection order granting short term guardianship of the child to the chief executive. The existing clause provided for transition of the proceedings but omitted to stipulate the type of child protection order to which existing applications would translate under the principal Act.

Clause 54 amends section 203 (Applications to revoke or substitute certain orders under repealed Act) of the principal Act by replacing a reference to the 'repealed Act' with a reference to the 'replaced Act'. This amendment is consequential to the amendment made by Clause 56.

Clause 55 omits section 204 (Exemption from expiry of Children's Services Regulation 1966) of the principal Act. This provision is no longer necessary because the Regulation expired on 31 December 1999.

Clause 56 inserts a new section 204A (Amendment of Children's Services Act 1965) into the principal Act. This clause amends the *Children's Services Act 1965* by omitting all provisions other than section 1 (Short title), section 8 (Meaning of terms) and 69A (Tattooing of children prohibited). The clause also amends the long title of the *Children's Services Act 1965* and amends section 8 (Meaning of terms) by omitting all definitions other than the definition of 'child'. The purpose of this clause is to omit all provisions of the *Children's Services Act 1965* other than the offence provision in relation to the tattooing of children and the definition of 'child' which supports the interpretation of this offence provision.

The clause inserts a subsection (2) into section 69A to clarify that proceedings for an offence under section 69A are to be taken under the *Justices Act 1886.*

The intent of clause 56 is to maintain the status quo, making it an offence under the *Children's Services Act 1965* to tattoo a child, pending a policy review of this issue and the related issue of body piercing of children.

Clause 57 makes a consequential amendment to Schedule 2 (Appealable decisions and aggrieved persons) of the principal Act and clarifies that an aggrieved person for the purpose of appealing a decision to arrange for an interstate welfare authority to assume custody or guardianship of a child under section 191ZV is a person to whom notice of the decision must be given under section 191ZV(6).

The effect of this amendment is that a child's carer has administrative appeal rights against the decision to transfer the child's order if the carer is affected by the decision because they will continue to care for the child interstate. A carer who is not caring for the child when the child moves interstate is not afforded the right to appeal the transfer decision. They may however appeal any decision to remove the child from their care.

Clause 58 amends Schedule 4 (Dictionary) of the principal Act. The amendments include new definitions of terms used in this Bill and consequential changes to the definition of terms used in the principal Act.

Schedule—Amendments for omission of Chapter 7A, Part 7

The Schedule sets out further amendments to the Act which will occur upon proclamation of the Schedule. The Schedule will omit Chapter 7A, Part 7 (Interstate transfers for non-participating States) and make consequential omissions. It is intended that the Schedule will be proclaimed upon all States becoming participating States.