

# COMMISSION FOR CHILDREN AND YOUNG PEOPLE BILL 2000

## EXPLANATORY NOTES

### GENERAL OUTLINE

#### Objectives of Legislation

The object of the Bill is to repeal the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996* and provide for the re-establishment of the Children's Commission as the Commission for Children and Young People ("the commission") to promote and protect the rights, interests and well being of children in Queensland.

### REASONS FOR THE BILL

The Bill gives recognition to the entitlement of Queensland's children and young people to be heard and to have their rights and interests safeguarded by an independent and proactive body set up to advocate on their behalf. This entitlement was recognised by Parliament in passing the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996* (the "current Act").

A review of the current Act (the "Briton Review") made 66 recommendations relating to the broadening of the role of the Children's Commission to enhance its effectiveness in meeting the needs of children and young people in Queensland. In addition, the Commission of Inquiry into Abuse of Children in Queensland Institutions (the "Forde Inquiry") made several recommendations relating to the Children's Commission to help ensure the safety of children in out-of-home residential facilities and juvenile detention centres. The Bill implements those parts of the Government's response to the recommendations of the Forde Inquiry and Briton Review that are appropriate for inclusion in legislation.

The Bill extends the commission's mandate as an advocate for all children in Queensland who are under 18 years of age. The Bill recognises that some categories of children are particularly vulnerable and require additional services. For example, the Bill provides for a community visitor program to provide support to children with a mental illness receiving services at authorised mental health services, as well as those in out-of-home residential facilities and juvenile detention centres. In addition, the Bill provides the commission with significant powers to investigate complaints made by, or on behalf of and in the interests of, children who are subject to certain Orders or interventions.

The Bill also recognises the growing community concerns about the safety of children who are placed in the care of others and recognises the need to ensure that persons employed as paid employees or engaged as volunteers in child-related employment are persons suitable to work with children. The Bill seeks to "fill the gaps" in employment screening for child-related employment and follows from developments in this area in the United Kingdom and New South Wales. Employment screening for child-related employment is not a new legislative concept, but rather an expanding concept, which seeks to extend scrutiny beyond public sector employees working with children, to employees in equivalent non-government child-related fields. The Bill recognises the vulnerability of children and the obligations of employers, the government and the community as a whole, to protect them from harm or the likely risk of harm.

The Bill adopts nearly all the provisions in Part 4 of the *Family Services Act 1987* for the employment screening of persons who are, or are seeking to be, members of the commission's staff. The provision of criminal history information in relation to police investigations, charges or convictions is justified to ensure that the commissioner has access to all the relevant information required to assess a person's suitability to be, or continue to be, engaged by the commission. The Bill proposes that in carrying out their duties, commission staff must act in accordance with the principles underlying the Act. The Bill proposes that staff of the commission have a role in advocating for children, dealing with their complaints, seeking their advice, and providing services to vulnerable groups of children. It is therefore appropriate that these staff be subject to the same level of scrutiny required of staff of the Department of Families, Youth and Community Care.

The short title of the Act proposed is the “Commission for Children and Young People Bill 2000”. The title acknowledges that many older children prefer to be regarded as “young people” rather than “children”. For brevity and to avoid confusion, however, only the term “children” is used throughout the provisions of the Bill. This term covers all individuals under 18 years of age in accordance with the definition of the term “child” in the *Acts Interpretation Act 1954*.

## **ESTIMATED COST FOR GOVERNMENT IMPLEMENTATION**

The expanded functions and powers of the commission will require some additional funding. It is anticipated that the employment screening for child related employment will operate on a cost neutral basis by charging a \$40 fee for employment screening for paid employees in child-related employment and self employed persons carrying on child related businesses. Additional funding will be provided by government for the expanded community visitor function. All other costs will be met within existing resources.

## **CONSULTATION**

Extensive consultations with government and non-government stakeholders occurred during the Forde Inquiry and the Briton Review.

Since the completion of the Briton Review, consultation has occurred with all government departments and relevant statutory bodies as well as major advocacy, legal, sporting, recreational, educational and child welfare organisations.

An exposure draft of the Bill was released for public consultation during April and May 2000. The draft Bill was forwarded to over 200 persons and agencies. The Minister for Families, Youth and Community Care and Minister for Disability Services established a working party, chaired by the Children's Commissioner, to develop a framework for employment screening for child related employment. The working party comprised representation from key youth sporting and recreational organisations.

The Children's Commissioner held three stakeholder forums to provide information about the Bills and seek feedback from organisations affected by its provisions.

Broad community consultation has also occurred over the six week public consultation period following release of the exposure draft of the Bill. The Department of Families, Youth and Community Care and Children's Commission websites also contained copies of the Bill and information papers about the proposed employment screening, community visitor, complaints and advocacy functions.

## **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 21 (Appointment of commissioner)
- Clause 43 (Access to child)
- Clause 45 (Notice for information)
- Clause 46 (Identity of notifier under *Child Protection Act 1999*)
- Clause 59 (No liability for defamation if report made in good faith)
- Clause 75 (Powers in relation to staff of sites)
- Clause 76 (Power to require documents to be produced)
- Clause 98 (This part applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*)
- Schedule 4 (Dictionary) "criminal history"
- Clause 102 (Decision on application)
- Clause 107 (Prohibited employment)
- Clause 108 (Unsuitable person not to apply for, or start or continue in, child related employment)
- Clause 109 (Carrying on regulated business)
- Clause 111 (Effect of conviction for serious offence)
- Clause 112 (Change in criminal history of employee)
- Clause 113 (Change in criminal history of person carrying on regulated business)

- Clause 114 (Change in criminal history of other persons)
- Clause 128 (Application for suitability notice for current employee)
- Schedule 1 (7. Regulation about usual functions of employment)
- Clause 130 (This part applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*)
- Clause 132 (Person seeking to be a staff member must disclose criminal history)
- Clause 133 (Staff member must disclose changes in criminal history)
- Clause 136 (Commissioner may obtain report from police commissioner)
- Clause 143 (Written notice inappropriate in the circumstances)
- Clause 162 (Whistleblower's Protection)

In most cases where the Bill departs from the fundamental legislative principles, this occurs in the context of the tension between the rights of individuals as safeguarded by the *Legislative Standards Act 1992* and the competing rights of a child as set out in the principles under which the Act is to be administered. In particular, the following principles are of significance in provisions where there has been a departure from the fundamental legislative principles:

- in decisions involving a child, the best interests of a child are the paramount concern;
- every child is entitled to be cared for in a way that protects the child from harm and promotes the child's well being; and
- every child is entitled to be treated in a way that respects the child's dignity and privacy.

#### **Clause 21(4) (Appointment of commissioner)**

This clause provides that a person is ineligible for appointment as the commissioner if the person has a conviction for an indictable offence. Also the person must consent to a criminal history check. Sections 6, 8 and 9 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* do not apply in relation to the appointment of the commissioner.

The provision is justified to ensure that before appointing the commissioner, the Governor in Council has access to all relevant information to ensure that the nominated applicant has a demonstrated commitment to upholding the principles underlying the Act. The Bill provides the commissioner with considerable functions and powers in relation to vulnerable children. A criminal history which may cause doubt as to the ability of a nominated applicant to effectively advance the best interests of children, or which may query the integrity of the position of commissioner, is a relevant factor in deciding a person's appropriateness for that appointment.

### **Clause 43 (Access to child)**

This provision provides that the commissioner may, by written notice, require a person to provide access to a child who is, or whom the commissioner reasonably believes is, a complainant or child on whose behalf and in whose interests the complaint is made or a witness to a matter under investigation by the commissioner.

This provision does not require the person to provide the commissioner with an overarching power to enter premises but rather requires a person to allow the commissioner an opportunity to speak with a child to gain information which would allow the commissioner to progress an investigation.

Although the power has the potential to infringe the rights of persons charged with the care of a child, this power is justified given the particular vulnerability of the categories of children entitled to make a complaint to the commissioner. The privacy of children to whom the commissioner is seeking access is safeguarded by the inclusion of cls.43 (3) and (4) which provide that a person need not comply with the notice if the person has a reasonable excuse for not complying. It is a reasonable excuse for non-compliance with the notice, if the child to whom access is required has indicated to the commissioner that he or she does not wish to communicate with the commissioner.

**Clause 45 (Notice for information)**

This clause allows the commissioner to give a notice to a person, other than a child, for the purpose of carrying out an investigation. The notice may require the person to give information by statutory declaration or attend before the commissioner to give information, answer questions or produce documents or things.

This power potentially allows the privacy of individuals to be infringed, but is considered necessary to promote and protect the interests of the categories of vulnerable children who are entitled to make a complaint to the commissioner. These powers are balanced, however, by the inclusion of an offence and significant penalty provision for commissioner staff who breach confidentiality (cl. 153) and the following safeguards:

- the person is not required to give the information or produce the document or thing if the person objects on the ground of privilege the person would be entitled to claim were the person a witness in a prosecution for an offence in the Supreme Court—this includes privilege based on the rule against self incrimination (cl. 48);
- if giving the information or producing the document or other thing would compromise the security of an investigation by the police service, Criminal Justice Commission or Queensland Crime Commission, these entities need not comply with the notice (cl. 49);
- the person is not required to comply with the notice if a Supreme Court Judge decides that, on balance, the purpose for which the information or document was required, does not justify the adverse effect on a person's financial interests or intrusion on the privacy of an individual by disclosure of private or confidential information (cl. 50).

It should be noted that costs of applications to a Supreme Court judge, which are not frivolous, vexatious or lacking in substance, in relation to the matters outlined under cls. 48 and 50 are to be borne by the commissioner.

**Clause 46 (Identity of notifier under *Child Protection Act 1999*)**

This provision and the consequential amendment to s.186 (2)(c) of the *Child Protection Act 1999* allow the commissioner to gain access to the identity of notifiers under the *Child Protection Act 1999*. The protection of

notifiers of alleged harm to children under that Act is considered 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.

The Chief Executive (Families) is only required to reveal the identity of a notifier if the commissioner determines that it is necessary for the investigation of a complaint. In investigating a complaint by a child, or on behalf of and in the interests of a child, the commission needs to have access to all relevant information to effectively carry out that function. Where Families, Youth and Community Care Queensland has determined that a notification is unsubstantiated and malicious, it is appropriate that the commission have access to this information as it may be relevant, for example, in determining whether a complaint made by a complainant who is the notifier, is actually acting in the interests of the child the subject of the notification.

The identity of notifiers is protected from disclosure by the commissioner under the confidentiality provisions in cl. 153.

### **Clause 59 (No liability for defamation if report made in good faith) and Clause 162 (Whistleblower's Protection)**

Clause 59 provides that it is a lawful excuse for the publication of any defamatory statement made in a report that the publication is made in good faith and is, or purports to be, made for this Act. This is a standard provision in legislation of similar complaint handling bodies. The provision is considered reasonable given the overarching need to protect the interests of vulnerable children and the qualification that the publication be made in "good faith". At the least, the provision matches the protection already afforded under the provisions of the *Defamation Act 1899*.

Clause 162 provides complete immunity for whistleblower's who disclose information to the commissioner that would assist the commissioner in the assessment or investigation of a complaint.

The conferral of immunity from prosecution or proceedings is considered reasonable, given the nature of the commission's work and the overriding need to safeguard the interests of vulnerable children. Clause 162 is a standard provision which accords with the protection afforded to



whistleblowers under the *Whistleblowers Protection Act 1994*. The protection of whistleblowers serves the interests of children by providing a mechanism for people with relevant information which would assist the commissioner in the investigation of a complaint, to come forward with information knowing that they have some protection from further proceeding or prosecution. This protection is particularly relevant if the information of the whistleblower assists in protecting a child from abuse or other forms of harm.

**Clause 75 (Powers in relation to staff of sites) and Clause 76 (Power to require documents to be produced)**

Clause 75 requires a staff member at a visitable site to provide the community visitor with reasonable help to exercise the community visitor's powers, talk to a child at the site in private, access documents and obtain information about the site. It is an offence not to comply with the requirement unless the staff member has a reasonable excuse. The requirements on staff under this provision are not considered onerous, as the Bill specifically states that it is a reasonable excuse for the staff member not to comply with the requirement if complying with it might tend to incriminate the person (cl. 75(3)). Furthermore, the community visitor is required to provide the staff member with a warning that it is an offence not to comply with the requirement unless the staff member has a reasonable excuse (cl. 75(4)).

Clause 76 empowers community visitors to require staff to produce for inspection documents that relate to a child at the site or the operations of the site. The provision is qualified by requiring that the power be exercised at a reasonable time and the defence that a staff member need not comply with the requirement if the staff member has a reasonable excuse.

The power to require production of documents is considered necessary in circumstances where it is suspected that serious concern exists about a service being provided to a child while the child is residing at a visitable site. The proposed provisions are consistent with the intent of Forde Inquiry recommendations for independent monitoring of the care provided to children in residential facilities. The power outlined above is safeguarded by provisions, which recognise the entitlement to privacy of children and young people residing at the sites. For example, cl. 77 requires community visitors, to the greatest extent possible, to take into account the views and wishes of children at the site before inspecting, taking extracts from, or

making copies of, a document held by the site that relates to the child. Furthermore, the Bill provides that the child's wishes may be expressed orally, in writing or by conduct. Clause 78 safeguards the privacy of residents at the site by requiring community visitors to preserve, as far as practicable, the privacy of the children residing at the site and respect the wishes of any children who do not wish to communicate with the visitor.

### **Part 6 (Employment Screening for Child Related Employment)**

The Bill infringes some fundamental legislative principles in Part 6 which outlines provisions relating to employment screening for persons working in child related employment either as employees on a paid or voluntary basis, or as self employed persons. The infringements are considered necessary in order to uphold children's entitlement to be cared for in a way that protects them from harm and promotes their wellbeing.

Employment screening involves an assessment of a person's suitability to work with children based on whether the person has a criminal history and what that criminal history is. Employment screening is considered an essential component of any child protection strategy for child-related employment. Employment screening diminishes children's risk of harm and enhances their wellbeing by ensuring that only suitable persons are employed in child-related employment.

The Bill subjects persons working in child-related employment to a similar level of scrutiny to that which currently applies to teachers, staff of the Department of Families, Youth and Community Care, child care workers, foster carers, and persons wishing to adopt children. Persons working with children tend to be subjected to a greater degree of scrutiny than for other forms of employment. Many community organisations, which provide services to, and activities directed at, children have already embraced criminal history checks as a necessary probity check for ascertaining suitability to work with children. Media coverage in recent times has constantly highlighted the need for vigilance and greater regulation in relation to people working in this field.

**Clause 98 and Schedule 4 (Dictionary) “criminal history”**

Clause 98 provides that this part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*. “Criminal history” is defined as including a charge of an offence in any form and convictions whether or not a conviction is recorded.

These provisions are intended to provide the commissioner with access to all information considered necessary in assessing a person’s suitability for child related employment. There are a number of circumstances where the presence of certain charges in a person’s criminal history, even without the presence of convictions, would be relevant in making decisions about a person’s suitability to work with children. For example, in cases involving sexual offences against children, convictions may be difficult to obtain because of the need to rely on child witnesses. There are instances where the court may decide that a child witness is too young to give evidence or withstand the experience of an adversarial court proceeding.

A person to whom the application for a suitability notice for child related employment relates, however, is accorded natural justice by being given the opportunity to respond to the information and the commissioner must consider the person’s submission prior to determining the application.

Furthermore, the decision by the commissioner to issue a notice of unsuitability (a “negative notice”) may be reviewed by the Children Services Tribunal (cl. 121), and the Children Services Tribunal Bill 2000 provides that the decision of the Tribunal may be reviewed by the District Court on a question of law.

In addition to the review mechanism offered by the tribunal, clause 118 provides that a person who has been issued a current negative notice may apply to the commissioner to cancel the notice if two years has elapsed since the issuing of the notice. This provision effectively allows the commissioner to reconsider a person’s suitability for child related employment having regard to the time since the offence or alleged offence occurred and whether the person’s circumstances have changed in a way that the person would no longer be considered a risk to children.

**Clauses 102 (Decision on application), Clause 107 (Prohibited employment) and Clause 108 (Unsuitable person not to apply for, or start or continue in, child related employment)**

Clause 103 provides that the commissioner must decide the application by issuing a suitability notice declaring the person to be suitable for child related employment (a “positive notice”) or issuing a suitability notice declaring the person as not suitable for child related employment (“negative notice”). In the latter case, the notice is sent to the person with accompanying reasons for the decision and information about the person’s right of review to the Children Services Tribunal. If a person does not wish to continue with the screening process, the person may withdraw their consent to employment screening by providing written notice to the commissioner prior to the issuing of the suitability notice.

Clause 107 provides that it is an offence for an employer to employ a person in child related employment if the employer has applied for a suitability notice about the employee and has been notified by the commissioner that the person has withdrawn consent to the employer’s application for a suitability notice. The clause further provides that it is an offence for an employer to employ a person knowing that the person has a conviction for a serious offence and does not have a current positive notice, or the employer is aware that a negative notice has been issued to the employee and is current.

Clause 108 provides that it is an offence for a person, who has been issued with a negative notice which is current, to apply for, or start or continue in, regulated employment.

These provisions are considered reasonable having regard to the right of children to be protected from harm or the likely risk of harm.

The rights of adults working or seeking to work in child-related employment are not mutually exclusive of the rights of children who receive the services, or partake in the activities, being provided by these adults. The Bill strikes an effective balance between the employment rights of adults and the right of children to be protected from harm or the likely risk of harm. Significant safeguards accompany the significant powers of the commissioner. The Bill does not seek to impose an overall restraint of trade or employment for persons deemed not suitable for child-related employment. In all the categories of employment regulated by the Bill,

equivalent services may be provided to adult clients—for example, in the fields of counselling or other social support services, sport, religious instruction, recreation services, coaching or tutoring.

The employment screening provisions also include the following safeguards to protect the rights of individuals:

- ensuring written notice of a decision by the commissioner that a person is not suitable for child-related employment is accompanied by reasons for the decision and information about a person's right to have the decision reviewed by the tribunal;
- protecting the privacy of persons who have a criminal history by maintaining confidentiality as to an employee's criminal history and ensuring that employers do not receive details of the criminal history;
- imposing offences and significant penalties [up to 100 penalty units or 2 years imprisonment] for breaches by commission staff of the confidentiality provisions such as unauthorised disclosure of, or allowing unauthorised access to, criminal history information;
- requiring the commissioner to take into account the circumstances surrounding a person's criminal history in each case including when the offence occurred, the type of offence, and whether it was a charge or conviction;
- confining the categories of regulated employment and businesses to impose screening obligations only in relation to those persons whose functions of employment would provide an opportunity to expose children to harm; and
- requiring the commissioner to issue guidelines governing dealing with information obtained in relation to the employment screening function.

In addition, the Commission will develop and implement appropriate protocols about access to, storage and destruction of personal information.

Part 6 may have a significant impact on self-employed people carrying on regulated businesses. The Bill requires that these persons must have a current positive notice from the commissioner in order to commence or continue working in a child related business. A self employed person must also disclose changes in the person's criminal history to the commissioner

and if the change comprises a conviction for a serious offence, the person must not carry on a regulated business until the person obtains a further suitability notice declaring the person to be suitable for child related employment.

These provisions are considered justified as self-employed persons are subject to less supervision, if any at all, than employees working in child related employment. Accordingly, unsuitable self-employed persons may pose a significant risk to the safety and well being of children to whom they provide services.

**Clauses 112 (Change in criminal history of employee), Clause 113 (Change in criminal history of person carrying on regulated business) and Clause 114 (Change in criminal history of other persons)**

These provisions require certain disclosures about changes in criminal histories to be made by persons in regulated employment or carrying on regulated businesses and persons holding current positive notices, who are not employed in regulated employment or carrying on a regulated business, but are seeking to start regulated employment or a regulated business. The provisions also set out requirements for applications to be made where a person's criminal history has changed and who is required to make the application in each case. Significant monetary penalties apply for non-compliance with these provisions.

Clause 112 requires employees to make disclosures to their employers. The invasion of privacy of the employee in relation to their criminal history is balanced by the inclusion of a provision which specifically states that the employee is not required to disclose the nature of the change in the criminal history—only that a change has occurred.

These provisions are considered necessary to ensure the ongoing effectiveness of employment screening in regulated employment.

**Clause 128 (Application for suitability notice for current employee)**

The Bill allows an employer who knows or reasonably suspects that an employee has a criminal history which may make them unsuitable for child-related employment to apply to the commissioner for a suitability notice about the employee. The employer is not required to obtain the consent of the employee prior to making the application. The employer,

however, must make the application in the approved form, and provide sufficient identifying information about the employee in order for the commissioner to progress the application. If the commissioner determines that an employee is not suitable for child-related employment, the Bill makes it an offence for that person to continue in child-related employment.

This provision varies from many other legislative schemes allowing for criminal history checks for people working in child related employment, in that the employee's consent is not required prior to lodging the application. This provision potentially infringes a person's right to privacy and has the potential to infringe an individual's right to continue in employment in their chosen field.

The ability of the employer to lodge an application without the employee's consent is considered necessary in these circumstances. The employer has a duty of care towards children receiving services from, or participating in activities provided by, the employer. The provision provides employers with an opportunity to take action to ensure that an employee is indeed suitable to work with children and thus enhances their ability to fulfil their duty of care towards children.

The requirement for a prospective employee, who is required to provide consent, can be distinguished from the situation in relation to a person already employed in child related employment. If a prospective employee withdraws consent, then that person cannot be employed in child related employment. This is a "gate-keeping" provision that potentially deters people who pose a risk to the safety and well being of children, from entering child-related employment at the outset. However, some employees already working in child related employment may also pose a significant risk to the safety and well being of children. Without the opportunity to progress a check without the employee's consent, the ongoing safety of children receiving the service may be put at significant risk.

Other provisions that ensure natural justice is accorded to the employee who is the subject of the application, however, accompany this provision. Specifically, the Bill provides that:

- the employer's application must be accompanied by information supporting the employer's knowledge or suspicion:
- before proceeding to deal with the application, the commissioner must give a notice to the employee which outlines the information and invites the employee to respond to the initial allegations, be

satisfied that the employer has a reasonable basis for the suspicion and that if the employee actually has the criminal history the commissioner would be likely to decide the employee is unsuitable.

- if, after assessing the employee's criminal history, the commissioner proposes to decide the application by declaring the employee as not suitable for child-related employment, the commissioner must provide the employee with a further opportunity to respond to the information and the commissioner must consider the submission prior to determining the application;
- the decision by the commissioner to issue a notice of unsuitability may be reviewed by the Children Services Tribunal; and the Children Services Tribunal Bill 2000 provides that the decision of the tribunal may be reviewed by the District Court on a question of law; and
- a person who has been issued a current suitability notice declaring the person to be an unsuitable person for child related employment may apply to the commissioner to cancel the notice if two years has elapsed since the issuing of the notice.

An existing employee, therefore, has two opportunities to respond to the allegations or criminal history. In addition, the person may apply to the tribunal for a review of an adverse decision by the commissioner and in the longer term apply to the commissioner for cancellation of the notice two years after it has been issued.

The Bill also provides for significant monetary penalties for persons who provide documents to the commissioner, including applications in relation to current employees, containing information that the person knows is false or misleading in a material particular.

The nature of the assessment process in ascertaining a person's suitability to remain in child related employment also requires the commissioner to consider the circumstances relating to the commission or alleged commission of an offence, including when the offence was committed, the nature of the offence and anything else the commissioner reasonably considers to be relevant to the assessment of the employee. If an employee screened under this provision was found to have committed a serious



offence 20 years ago, yet has demonstrated a long standing commitment to advancing the well being of children since that time, this may be a relevant consideration in determining their suitability.

### **Schedule 1 (7. Regulation about usual functions of employment)**

This provision provides that for regulated employment in part 1 of Schedule 1, a regulation may make provision about whether a function of employment is a usual function. The regulation may state the employment or type of employment to which the regulation applies and declare that a stated function of the employment is, or is not, a usual function of the employment.

This provision potentially allows for a limited delegation of legislative power in relation to whether a person is required to undergo a criminal history check. The delegation of legislative power in this provision is considered appropriate given the possibility of uncertainty as to what are usual functions of employment. The regulation will ensure consistency in decision making by the commissioner as to the application of the provisions and may reassure the public about what types of cases are regulated. The provision is considered necessary to protect the rights of individuals who, in good faith, seek to comply with the requirements of employment screening.

In addition, this limited delegation of legislative power is considered appropriate, given that the failure to comply with the screening obligations in Part 6 of the Bill, attracts significant penalties and the delegation protects the rights of employers relying on the regulation to provide greater guidance about the application of the screening laws.

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

This Part replicates the provisions of Part 4, other than s.18 (2), of the *Family Services Act 1987* in relation to persons who are, or are seeking to be, members of the commission's staff. These provisions will enhance the ability of the commission to fulfil its duty of care to children to whom it will be providing services; in particular, children with disabilities, children under Care and Protection Orders, children in residential care and children with a mental illness. These are particularly vulnerable groups of children and commission staff will be, at times, in significant positions of trust and responsibility in relation to these children. The information held by the

Queensland Police Service which will be available to the commissioner or a selection panel will include charges, background of charges, convictions and current investigations relating to serious offences.

The imported provisions include safeguards to protect the rights of commission staff and other persons. These include where the release of information about an investigation would prejudice an ongoing investigation, or endanger a police officer, informant or other person. In addition, the commissioner of police must not provide information where a completed investigation has not led, and is unlikely to lead, to a charge. This safeguards against the provision of possibly erroneous information or allegations regarding a person's alleged criminal activities. Clause 159 (Confidentiality of information about criminal history) is another safeguard to ensure that information about the criminal history of an employee or prospective employee is not unlawfully disclosed.

#### **Clause 143 (Written notice inappropriate)**

This provision allows the commissioner to depart from the requirement that written notice be given in other provisions of the Bill. Departure is allowed where the commissioner considers that if the written notice were given:

- the rights, interests or well being of a child may be adversely affected;
- the health or safety of a person, or of someone else, may be put at risk; or
- an investigation by the commissioner will be prejudiced.

The commissioner may also depart from the written notice requirements if, for another reason, it would be inappropriate to give the written notice in the circumstances. A person also has the opportunity to request the commissioner to give the written notice to the person's lawyer or another nominated representative.

The Bill provides an accountability mechanism by requiring the commissioner to keep a written record of the reasons for not giving the notice, the way the commissioner told the person about the decision or action and the substance of the communication. The provision is considered justified to protect the overall rights of persons who will in some way be affected by the commission in the exercise of its functions and powers

under the Bill. Written notice to a complainant may inadvertently put them in danger if another person against whom the complaint is made reads the written correspondence. A child or adult who is illiterate may strongly oppose the need to communicate in writing or a person may wish to keep their identity anonymous and communicate, for example, by telephone.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

#### *Division 1—Introduction*

*Clause 1* sets out the short title of the Bill.

*Clause 2* provides for commencement of the Bill on proclamation.

*Clause 3* provides information as to the location of the “Dictionary” in the Bill.

*Clause 4* provides that the Act binds all persons.

*Clause 5* states the object of the Act.

*Clause 6* sets out the principles under which the Act is to be administered. In exercising a function or power under the Act, the commissioner and staff of the commission will be required to act in accordance with the entitlements of children and other principles set out in this clause.

*Clause 7* states that the scope of the Act is not limited to matters against persons who are children when the commissioner becomes involved, or to matters which occurred after the commencement of the Act. This clause allows the commissioner to deal with a complaint made on behalf of a person who was a child at the time the subject matter of the complaint occurred but who has since died or to deal with a matter that occurred when the person was a child although the person is now an adult. The clause allows the commissioner to deal with matters which may have systemic significance, for example, where a practice has been adversely affecting the well being of children over several years and the practice has not been remedied by the relevant service provider.

*Clause 8* defines the term “service provider” to mean a government service provider or a private service provider.

*Clause 9* defines “government service provider” to mean a government entity or a local government.

*Clause 10* defines private service provider as those entities, other than government service providers, that provide services for which some or all of the funding for the service is provided by the State or a local government, or administered by the State.

*Clause 11* defines services provided by a service provider as those services that are provided directly by the service provider or which are provided under an arrangement that involves a written agreement to which the service provider is a party. These arrangements would include services to children under foster care arrangements.

## **PART 2—COMMISSIONER AND COMMISSION FOR CHILDREN AND YOUNG PEOPLE**

### ***Division 1—Establishment***

*Clause 12* provides that there must be a Commissioner for Children and Young People and provides for the establishment of the Commission for Children and Young People which is to consist of the staff of the commission and the commissioner.

*Clause 13* provides that the commissioner is to control the commission.

*Clause 14* makes certain declarations about the application of other Acts in relation to the commission. These declarations include that the commission is a unit of public administration under the *Criminal Justice Act 1989* and it is therefore a duty of the commissioner to refer to the complaints section of the Criminal Justice Commission all matters that the commissioner suspects involve, or may involve, official misconduct. The commission is also a statutory body under certain Acts.

***Division 2—Functions and Powers***

*Clause 15* outlines the commissioner's functions.

*Clause 16* declares the commissioner to have all the necessary or convenient powers to perform the functions of the commissioner.

*Clause 17* provides that the commissioner must act independently and in a way that promotes and protects the rights, interests and well being of children. The clause also provides that the commissioner is not under the control or direction of the Minister.

*Clause 18* describes the way in which commissioner is to perform commissioner's functions including consulting with children, being sensitive to ethnic and cultural identity, and giving priority to the needs and interests of certain children.

*Clause 19* provides that the commissioner may obtain assistance from appropriately qualified persons (such as expert advisers) and cooperate with other entities that provide services to, or deal with issues affecting, children. The clause provides that the commissioner may enter into arrangements with a Minister responsible for administering an Act under which a government service provider is established to secure the cooperation of the service provider to provide information it has access to about matters affecting children.

*Clause 20* requires the commissioner to refer certain matters or potential offences to other persons including the chief executive (Families), the Queensland Police Service and the Queensland crime commissioner.

***Division 3—Appointment of commissioner and related provisions***

*Clause 21* provides for the appointment of the commissioner by the Governor in Council. It further provides that a person is eligible for appointment as commissioner only if the person has knowledge in a relevant subject area, experience working with children in a relevant subject area and a demonstrated commitment to upholding the principles underlying the Act. A person must also have no prior convictions for indictable offences and must consent to a criminal history check to be eligible for appointment.

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

*Clause 22* provides that the duration of appointment of the commissioner shall not exceed 5 years and that the person appointed is eligible for reappointment.

*Clause 23* provides that the commissioner is to be paid the remuneration and allowances decided by the Governor in Council and holds office on the terms and conditions, not provided for by this Act, decided by the Governor in Council.

*Clause 24* provides that if a public service officer is appointed as the commissioner, the person retains all accrued employment rights and entitlements including the entitlement to be appointed to a position at a level equivalent to the office the person held prior to being appointed commissioner at the end of the person's term of office or on resignation. The person's service as commissioner is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

*Clause 25* provides that the Minister may grant leave of absence to the commissioner under terms and conditions considered appropriate by the Minister.

*Clause 26* provides that the commissioner may resign by signed notice given to the Minister.

*Clause 27* sets out circumstances under which the Governor in Council may terminate the commissioner's appointment.

*Clause 28* provides that the Governor in Council may appoint an acting commissioner during a vacancy in the office or other period when the commissioner is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

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

*Clause 29* provides that staff of the commission, except for community visitors, are to be appointed under the *Public Service Act 1996* and that the commissioner may arrange for the services of staff of government departments or other units of public administration to be made available to the commission.

*Clause 30* provides that Part 7 sets out provisions relating to criminal history screening of the staff of the commission.

*Clause 31* provides that commission staff are not subject to direction by any person other than the commissioner about the way in which the commissioner's powers are to be exercised or the priority to be given to matters relating to the commissioner's functions.

## **PART 3—COMPLAINTS**

### ***Division 1—Making complaints***

*Clause 32* provides that the complaint provisions under this part apply only to complaints about services provided or those that are required to be provided to certain children. These children are those who are subject to an order made or action taken under the *Child Protection Act 1999*, or subject to certain orders made, or participating in certain programs established, under the *Juvenile Justice Act 1992*, or detained under the *Juvenile Justice Act 1992* or *Bail Act 1980*.

*Clause 33* outlines what is the basis for a complaint and who can make the complaint. Complaints may be made that a required service is not being provided or that the service is not being provided in accordance with the rights, interests or well being of a child or children. A complaint may be made by a child or a person acting on the child's behalf and in the child's interests.

*Clause 34* provides that a complaint must be made within a year after the person first becomes aware of the matter.

*Clause 35* requires that a person making a complaint must provide identifying information about themselves, unless the commissioner determines that it is in the public interest for them not to do so.

*Clause 36* provides that a complaint may be made in writing or orally. When a complaint is received orally from an adult complainant, the commissioner may assess the complaint but cannot deal with it further unless it is put in writing. If a child makes a complaint orally, the commissioner may provide assistance to the child to make the complaint in writing and may assess or otherwise deal with the complaint, whether or not the child makes the complaint in writing.

*Clause 37* outlines the circumstances where the commissioner can initiate a complaint in the commissioner's name. The complaint may be made by the commissioner where the commissioner becomes aware of a matter that the commissioner considers may be the subject of a complaint and a complaint has not been made under this division and the commissioner believes that the rights, interests or wellbeing of a child or children may be seriously affected if a complaint about the matter is not made and it is not reasonable to require the child or children affected by the matter to complain to a complaints agency or another government entity.

The commissioner may also make a complaint in the commissioner's own name if the commissioner believes that the matter raises issues of public interest or a significant issue about a law, policy or practice underlying the relevant service or the need for there to be a law, policy or practice. This provision would allow the commissioner, for example, to raise a complaint in the commissioner's own name where an adult has made a complaint orally and has not confirmed it in writing or to deal with a complaint made by a child where more than one year has elapsed since the child first became aware of the matter the subject of the complaint.

There is no limitation in this clause on the time between the occurrence of the matter and the time the commissioner may make a complaint about the matter.

### ***Division 2—Assessing complaints and deciding further action***

*Clause 38* provides that a complaint must generally be assessed within 28 days of receiving the complaint, or if the commissioner requires further information to assess the complaint, within 28 days after obtaining the further information required to assess the complaint. This time restriction does not apply to a complaint made in the commissioner's name.

*Clause 39* outlines the range of actions that can be taken once a complaint has been assessed, including referral to another agency. When deciding what action to take, the commissioner must consider whether the action should be taken urgently because the rights, interests or wellbeing of a child or children may be adversely affected if action is delayed. If the complaint is referred to another agency to be dealt with, this does not limit the commissioner's functions or powers in relation to the matter.



*Clause 40* outlines the range of circumstances where the commissioner must not, or may not, deal with or continue to deal with a complaint. These circumstances include where the commissioner is satisfied that there is not sufficient information to respond; the matter has already been or will be dealt with by somebody else; or the matter does not relate to the interests of a child. If a complaint is not dealt with, the complainant must be advised in writing of this decision and the reason for it as soon as practicable.

### ***Division 3—Investigating complaints***

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

*Clause 41* provides when the commissioner may investigate a complaint.

*Clause 42* requires that before investigating a complaint, the commissioner must give a written notice to the service provider to which the complaint relates. The clause sets out matters that are to be included in the notice including that the service provider may make a submission to the commissioner about the complaint within a reasonable time stated in the notice.

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

*Clause 43* provides that the commissioner may, by written notice, seek access to a child who the commissioner reasonably believes is a complainant, a child on whose behalf and in whose interests the complaint has been made or a witness to the matter being investigated by the commissioner. A person need not comply with this notice if the person has a reasonable excuse. The clause states that it is a reasonable excuse for non-compliance if the child to whom the notice relates has indicated to the commissioner that they do not want to communicate with the commissioner in relation to the complaint or the matter being investigated. The clause sets out a penalty of 50 penalty units for non-compliance with the notice without a reasonable excuse.

*Clause 44* outlines that if the commissioner seeks to access a child who is in a detention centre, watchhouse or lockup, directions may be given to the commissioner about how this can happen in a way that maintains the security of the facility.

*Clause 45* provides that the commissioner may require by written notice that an adult provide or produce information for the purpose of carrying out an investigation. A person must comply with the notice unless the person has a reasonable excuse. The clause also sets out how the commissioner is to deal with documents or other things required in the notice. The clause sets out a penalty of 50 penalty units for non-compliance with the notice without a reasonable excuse.

*Clause 46* requires that if the commissioner decides that it is relevant to know the identity of a notifier under the *Child Protection Act 1999*, written notice must be given to the chief executive (families) requiring the identification of the notifier within a reasonable time stated in the notice. The chief executive must comply with the notice.

### ***Subdivision 3—Defences for failing to comply with notice for information***

*Clause 47* clarifies that this clause applies to a person who has been given a notice for information under this part to provide information or produce a document or other thing.

*Clause 48* provides that a person does not have to comply with a written notice if the person objects on the ground of a privilege the person would be entitled to claim against giving the information, or producing the document or thing, were the person a witness in a prosecution for an offence in the Supreme Court. This privilege would include a privilege based on the rule against self-incrimination.

*Clause 49* provides that certain law enforcement agencies do not have to comply with a written notice if doing so would compromise the security of an investigation.

*Clause 50* provides that a person does not have to comply with a written notice if a Supreme Court judge determines that the requirement is not justified given the cost that would be involved in doing so or the loss of privacy that would result.

*Clause 51* provides for a person to make an application to a Supreme Court judge in relation to a written notice. The onus is on the applicant to establish why the applicant should not comply with the notice. The costs of taking this action are to be met by the commissioner unless the court forms the view that the application was frivolous, vexatious or lacking in substance.

#### ***Subdivision 4—Other offences***

*Clause 52* provides that a person who is required to provide information to the commissioner may be required to take an oath or make an affirmation. The person must comply with the requirement. The clause provides an offence of 10 penalty units for non-compliance.

*Clause 53* makes it an offence (maximum penalty—100 penalty units) for a person to make statements to the commissioner in response to a notice for information that the person knows is false or misleading in a material particular.

*Clause 54* makes it an offence (maximum penalty—100 penalty units) for a person to give the commissioner false or misleading documents in response to a notice for information. The clause also sets out circumstances where the provision does not apply.

*Clause 55* makes it an offence to obstruct or improperly influence the conduct of an investigation (maximum penalty—100 penalty units).

#### ***Subdivision 5—Matters at end of investigation***

*Clause 56* provides that the commissioner may end an investigation in a child's best interests, yet this does not limit the power of the commissioner to deal with a complaint in another way—for example, by advocacy, negotiation or mediation with the service provider.

*Clause 57* requires that the complainant be given written advice about the outcome of an investigation as soon as practicable after completing an investigation or ending it in the child's best interests under the preceding clause.

*Clause 58* requires that a report must be prepared in relation to all investigations and given to certain parties. The report may make recommendations about what action should be taken within a specified time frame. Actions that can be taken if the recommendations are not actioned are outlined.

*Clause 59* provides that if a report includes a defamatory statement, the commission is not liable if the statement was made in good faith and is or purports to be made for the purpose of this Act.

### ***Subdivision 6—Reports and tabling them***

*Clause 60* clarifies that this subdivision applies to any report prepared by the commissioner under this Act.

*Clause 61* provides that the commissioner may ask the Minister to table a report in the Legislative Assembly after following certain procedures. Such a report must not include information that might identify a complainant or a child who has been the subject of a complaint. The commissioner is required to provide the Minister with at least 28 days written notice of the commissioner's intention to ask the Minister to table the report and provide the Minister with a draft report.

*Clause 62* provides that where a report is to be tabled in the Legislative Assembly, the commissioner may also give the Minister a second report about the matter that includes sensitive and confidential information which the commissioner considers should not be publicly disclosed for various reasons set out in the clause.

*Clause 63* A report must not include adverse comments about an entity unless the entity has been provided with a copy of the comments and has had a reasonable opportunity to respond. If the entity provides the commissioner with a written statement in response to the comments about the entity in the report and requests that the statement be included in the report, the commissioner must include the entity's statement in the report insofar as it does not include information the commissioner considers should not be publicly disclosed for a reason mentioned in the preceding clause.

## **PART 4—COMMUNITY VISITORS**

### ***Division 1—Preliminary***

*Clause 64* sets out that the purpose of the part is to provide for community visitors to promote and protect the rights, interests and wellbeing of children residing at certain visitable sites.

### ***Division 2—Visits to visitable sites***

*Clause 65* provides that the commissioner must make arrangements for each visitable site to be visited by a community visitor regularly and frequently.

*Clause 66* provides that a child residing at a visitable site is entitled to ask the commissioner to arrange for a community visitor to visit the site, ask a staff member of the site to arrange for a community visitor to visit the site or tell a staff member that the child wishes to speak with a particular community visitor.

The clause sets out penalties if the staff member does not comply with the child's request and requires a community visitor to comply with a request to visit a site or talk with a child residing at a site, as soon as practicable after being informed of the request.

*Clause 67* provides that as soon as practicable after visiting a visitable site, a community visitor must prepare, and give to the commissioner, a report about the visit and that the commissioner may give a copy of the report, or information from the report, to certain persons, if the commissioner considers it appropriate to do so. The clause provides limitations on the release of confidential information which may be contained in a report.

### ***Division 3—Functions and powers***

#### ***Subdivision 1—Functions***

*Clause 68* sets out the functions of a community visitor.

***Subdivision 2—Power of entry to visitable sites***

*Clause 69* sets out the circumstances under which a community visitor may enter a visitable site. These circumstances are where a person in charge of the site consents to the entry, it is a public place and the entry is made when it is open to the public, or the entry is authorised by a warrant. The clause provides that for the purpose of asking a person in charge for consent to enter, a community visitor may, without the person's consent or a warrant, enter land around the site to an extent that is reasonable to contact the person or enter part of the site the community visitor reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the person.

*Clause 70* provides that before asking for the consent, the community visitor must tell the person the purpose of the entry and that the person is not required to consent. If the consent is given, the community visitor may ask the person to sign an acknowledgment of the consent which must state the person has been told the purpose of the entry and that the person is not required to consent, the purpose of the entry, that the person gives the community visitor consent to enter the place and exercise powers under this division and the time and date the consent was given.

The clause provides that if the person signs the acknowledgment, the community visitor must immediately give a copy to the person. A court must find that a person in charge of a visitable site did not consent to a community visitor entering the site under this division if an issue arises in a proceeding before the court whether a person in charge of the site consented to the entry, an acknowledgment is not produced in evidence for the entry and it is not proved by the person relying on the lawfulness of the entry that a person in charge of the site consented to the entry.

*Clause 71* provides that a community visitor may apply to a magistrate for a warrant for a visitable site and that the application must be sworn and state the grounds on which the warrant is sought. The magistrate may refuse to consider the application until the community visitor gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Clause 72* provides that the magistrate may issue a warrant only if the magistrate is satisfied the community visitor cannot properly carry out the visitor's functions without gaining entry to the site. The clause sets out matters which must be stated in the warrant.

*Clause 73* provides that if a community visitor named in a warrant issued under this subdivision for a visitable site is intending to enter the site under the warrant, before entering the site, the community visitor must do or make a reasonable attempt to do certain things. These include identifying himself or herself to a person in charge of the site by, for example, producing the community visitor's identity card, giving the person a copy of the warrant, telling the person the community visitor is permitted by the warrant to enter the place and giving the person an opportunity to allow the community visitor immediate entry to the place without using force.

### ***Subdivision 3—Other powers***

*Clause 74* provides that after entering a visitable site, a community visitor may inspect the site or inspect or copy a document held at the site that relates to a child residing at the site or the operations of the site.

*Clause 75* sets out the powers of a community visitor in relation to staff and management working at a visitable site and provides that a staff member must comply with requirements of the community visitor, unless the staff member has a reasonable excuse. The clause provides a maximum penalty of 40 penalty units for non-compliance with a request by the community visitor.

The clause provides that if the requirement is to give information or produce a document, it is a reasonable excuse not to comply if it might tend to incriminate the staff member.

A staff member also does not commit an offence unless, when making the requirement, the visitor warns the staff member it is an offence to fail to comply with the requirement unless the staff member has a reasonable excuse.

*Clause 76* provides a community visitor with various powers in relation to the production of documents held by the site that relates to a child residing at the site or the operations of the site. The clause provides penalties for non-compliance with requirements of the community visitor, unless the staff member has a reasonable excuse. The community visitor is required to warn the staff member it is an offence to fail to comply with the requirement unless the staff member has a reasonable excuse.

***Subdivision 4—Exercise of Powers***

*Clause 77* requires the community visitor as far as practicable, to seek, and take into account, the views and wishes of a child residing at a visitable site before asking a staff member of the site a question about the child or inspecting, taking extracts from, or making copies of, a document that relates to the child.

The clause provides that the child's views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct and the child's views and wishes should be taken into account in a way that has regard to the child's age and maturity.

*Clause 78* requires a community visitor, in exercising a power or performing a function, to act in a way that preserves, as far as practicable, the privacy of children residing at the site and respects the wishes of any of the children who do not wish to communicate with the visitor.

*Clause 79* provides that a community visitor is subject to the commissioner's directions in the exercise of a power.

*Clause 80* provides that the chief executive of the department in which the *Juvenile Justice Act 1992* is administered may give directions to a community visitor, about the conduct of visits to a detention centre, that the chief executive considers necessary for maintaining the security of the centre and the community visitor is required to comply with the directions when visiting the centre.

***Division 4—Appointment of community visitors***

*Clause 81* provides for the appointment of community visitor's by the commissioner and the terms and conditions of the community visitor's appointment. The clause provides that a person is eligible for appointment as a community visitor only if in the commissioner's opinion the person has the knowledge, experience and skills needed to perform a community visitor's functions and a demonstrated commitment to upholding the principles underlying the Act.

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



The clause also sets out certain employees who are not eligible to hold office as a community visitor while they remain employed with certain government bodies.

*Clause 82* provides for the duration of appointment of a community visitor and circumstances under which the commissioner may terminate the community visitor's appointment.

*Clause 83* provides for the terms of appointment of a community visitor.

### ***Division 5—Identity cards***

*Clause 84* provides that the commissioner must give each community visitor an identity card and that the identity card must comply with certain requirements.

*Clause 85* provides a penalty (maximum penalty—10 penalty units) for a person who ceases to be a community visitor and fails to return the person's identity card to the commissioner as soon as possible (but within 21 days) after the person ceases to be a visitor, unless the person has a reasonable excuse.

*Clause 86* provides that the community visitor must produce and display the community visitor's identity card if the community visitor decides to exercise a power in relation to another person.

### ***Division 6—Miscellaneous***

*Clause 87* provides that a staff member of a visitable site must not obstruct a community visitor in the exercise of a power, unless the staff member has a reasonable excuse (maximum penalty—50 penalty units).

*Clause 88* provides that a staff member of a visitable site must not open, read, copy or remove any correspondence sent, or being sent, between a community visitor and a child residing at the site, unless the child asks the staff member to do so (maximum penalty—20 penalty units).

*Clause 89* provides that the commissioner must include in the commission's annual report for a financial year a report on the operations of community visitors during the year.

## **PART 5—ADVISORY COMMITTEES**

*Clause 90* provides that the commissioner may establish expert, youth or other advisory committees.

*Clause 91* provides that the membership of advisory committees is to be decided by the commissioner, but that the commissioner may appoint a person to an expert advisory committee only if the commissioner is satisfied the person has expertise, relevant to children, in certain fields.

*Clause 92* provides for the functions of advisory committees.

*Clause 93* provides that the commissioner may dissolve an advisory committee at any time.

*Clause 94* provides that the commissioner may decide matters about an advisory committee that are not provided for under this Act, including, for example, the way a committee must conduct meetings or report to the commissioner.

## **PART 6—EMPLOYMENT SCREENING FOR CHILD RELATED EMPLOYMENT**

### *Division 1—Preliminary*

*Clause 95* states the purpose of this part.

*Clause 96* provides that a child's entitlement to be cared for in a way that protects the child from harm and promotes the child's wellbeing is to be the paramount consideration in making decisions under this part.

*Clause 97* provides that this part only applies to employment of persons who are employed in the categories set out in Schedule 1 (regulated employment) and the carrying on of a business of a type mentioned in Schedule 1 (regulated business).

The clause provides that this part does not apply to the employment of a child on a voluntary basis.

*Clause 98* provides that this part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

*Clause 99* provides that a person is employing another person if the first person has an agreement with the other person for the other person to carry out work. The clause provides that it is immaterial whether the agreement is in writing or oral, whether it is carried out voluntarily or for financial reward, what a person's motivation is for carrying out the work and the time for which the person is engaged to carry out the work. The clause sets out examples to assist in interpretation.

### ***Division 2—Issue of suitability notices***

*Clause 100* provides that an employer may apply to the commissioner for a suitability notice for a person whom they propose to start employing or continue to employ in employment regulated under part 1 of Schedule 1. The application is to be in the approved form and provide adequate and certified identifying information about the prospective employee.

Before making an application, an employer is required to sight the documents, relating to proof of the person's identity, which are prescribed under a regulation.

On receipt of the application, the commissioner may ask the employer or employee, orally or in writing, for further information that the commissioner reasonably needs to establish the identity of the person the employer proposes to employ or to continue to employ.

*Clause 101* provides that a person who proposes to carry on, or continue carrying on, a regulated business in Part 2, Schedule 1 may apply to the commissioner for a suitability notice stating whether the person is a suitable person for child related employment. The application is to be in the approved form and provide adequate and certified identifying information about the person. The clause provides that the person may withdraw the application at any time before it is decided and sets out circumstances where the person is taken to have withdrawn the application.

On receipt of the application, the commissioner may ask the person, orally or in writing, for further information that the commissioner reasonably needs to establish the identity of the person.

*Clause 102* provides how the commissioner must make a decision on the application for a person who proposes to carry on, or continue carrying on, a regulated business or a person who proposes to start employing or

continue to employ a person in regulated employment. The commissioner must decide the application by issuing a suitability notice stating whether the person is suitable (“positive notice”) or unsuitable (“negative notice”) for child related employment.

The clause states that if the commissioner is not aware of any convictions or charges of the person for any offence, the commissioner must issue a positive notice.

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

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

The clause provides that in all cases where the commissioner is aware of a conviction or charge of the person for an offence, the commissioner must decide the application having regard to certain matters relating to the commission, or alleged commission, of the offence.

On deciding the application, the commissioner is to issue a suitability notice to the person to whom it relates, unless the application is made by an employer, in which case a copy of the notice must also be given to the employer.

A negative notice must be accompanied by the reasons for the decision and information about the person's right to have the decision reviewed by the Children Services Tribunal.

*Clause 103* provides that if the commissioner proposes to issue a negative notice to a person, the commissioner is required to invite submissions from the person about the circumstances surrounding their criminal history. The commissioner is obliged to consider any submission made by the person within the stated time.

*Clause 104* sets out that a negative notice remains current until it is cancelled under division 4. A positive notice remains current for two years after it is issued unless it is cancelled earlier under division 4.

***Division 3—Obligations and offences relating to suitability notices******Subdivision 1—Regulated employment***

*Clause 105* sets out a formula for when an employer is required to apply for a suitability notice, or further suitability notice, about an employee who does not have a current positive notice. The clause applies where an employee is employed in regulated employment under an agreement with the employer and in the course of the employment, or in the course of regulated employment under any other previous agreements with the employer made within the previous year, the employee has carried out work at the frequency prescribed in the clause. The employer must not continue to employ the employee in regulated employment unless the employer has applied for a suitability notice. The clause prescribes a maximum penalty of 10 penalty units for an employer who is in breach of the provision.

*Clause 106* sets out a formula for when an employer is required to apply for a suitability notice for a person who is not employed in regulated employment but has previously been employed in regulated employment under 1 or more agreements with the employer. If in the course of the regulated employment under the previous agreement or agreements, the employee has carried out work at the frequency prescribed in the clause, the employer must not employ the employee in regulated employment unless the employer has applied for a suitability notice about the employee. The obligation to apply for a notice only applies where it is less than 1 year since the employee last carried out the regulated employment and the employee does not have a current positive notice. The clause prescribes a maximum penalty of 10 penalty units for an employer who is in breach of the provision.

*Clause 107* provides that it is an offence (maximum penalty—10 penalty units) for an employer to employ a person in regulated employment if the employer has applied for a suitability notice about the employee and has been notified by the commissioner that the person has withdrawn their consent to the employer's application for a suitability notice.

The clause further provides that it is an offence (maximum penalty—100 penalty units) for an employer to employ a person knowing that the person has a conviction for a serious offence and does not have a current positive notice; or the employer is aware that a negative notice has been issued to the employee and is current.

*Clause 108* provides that it is an offence for a person, who has been issued with a negative notice which is current, to apply for, or start or continue in, regulated employment. The maximum penalties prescribed increase if the person has a conviction for a serious offence and further still if the person has a conviction for a serious offence involving a child.

### ***Subdivision 2—Regulated business***

*Clause 109* provides that a person must not carry on a regulated business unless the person has a current suitability notice declaring the person to be a suitable person for child related employment and provides maximum penalties equivalent to those provided in the preceding clause.

### ***Subdivision 3—Changes in criminal history***

*Clause 110* provides that for a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

*Clause 111* sets out penalties for a person holding a positive notice where the person is subsequently convicted of a serious offence and continues or starts regulated employment or continues or starts a regulated business without that notice being cancelled and a further positive notice being issued.

*Clause 112* requires that an employee in child related employment must immediately disclose to the person's employer if there has been a change in the person's criminal history.

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

The clause clarifies what constitutes a change in a person's criminal history and sets out how an application for a further suitability notice is to be made.

The clause makes it clear that a person is not required to give the person's employer any information about the change other than that a change has occurred; and that the employer is not required to stop employing the person on receiving the disclosure.

*Clause 113* provides that a person carrying on a regulated business must immediately apply for a further suitability notice if there is a change in the person's criminal history.

*Clause 114* sets out obligations placed on persons holding current positive notices, who are not employed in regulated employment or carrying on a regulated business, where there is a change in the person's criminal history. The clause provides that before starting regulated employment, the person must notify the person's proposed employer that there has been a change in the person's criminal history since the person's current suitability notice was issued. On receiving the disclosure, the employer must not employ the person in regulated employment without applying for a further suitability notice about the person. The clause also provides that before starting to carry on a regulated business, the person must apply for a further suitability notice. The clause sets out maximum penalties of 100 penalty units for breach of the obligations in the clause.

#### ***Subdivision 4—General***

*Clause 115* makes it an offence to make a disclosure for the purposes of this part that is false or misleading in a material particular to another person who is proposing to employ the person in regulated employment. It is also an offence to state anything to the commissioner for this part that the person knows is false or misleading in a material particular. The clause provides a maximum penalty of 100 penalty units or 2 years imprisonment for breach of the clause.

*Clause 116* provides that a person must not give the commissioner a document for this part containing information the person knows is false or misleading in a material particular. The clause provides a maximum penalty of 100 penalty units or 2 years imprisonment for breach of this provision. The provision provides a defence if the person, when giving the document tells the commissioner, to the best of the person's ability, how it is false or misleading and if the person has, or can reasonably obtain, the correct information, gives it to the commissioner.

*Clause 117* provides that a person, who has a current positive notice and who has been convicted of a serious offence or has had that notice cancelled by the commissioner and has been issued with a negative notice, must immediately return the positive notice to the commissioner unless the person has a reasonable excuse. The clause provides a maximum penalty of 100 penalty units for breach of this provision.

#### ***Division 4—Cancellation and replacement of suitability notices***

*Clause 118* provides that a person who has been issued a negative notice which is current may apply to the commissioner to cancel the notice if two years has elapsed since the issuing of the notice or any previous application by the person under this section. The clause sets out how the application may be made and provides that a person may state in the application anything the person considers relevant to the commissioner's decision about whether the person is a suitable person for child related employment including, in particular, any change in the person's circumstances since the suitability notice was issued.

The clause also provides that clauses 102 and 103 apply to the application as if it were an application for a suitability notice. Clause 102 sets out how the commissioner is to deal with the application and matters that should be taken into account in the assessment process. Clause 103 provides that if the commissioner proposes to issue a notice declaring the person to be unsuitable, the commissioner is required to invite submissions from the person about the circumstances surrounding their criminal history.

The clause provides that if the commissioner grants the application, the commissioner must cancel the suitability notice to which the application relates and issue a positive notice to the person.

*Clause 119* provides that the commissioner may cancel a suitability notice and substitute another suitability notice if the commissioner is satisfied the decision on the application for the first notice was based on wrong or incomplete information, and based on the correct or complete information, the commissioner should issue the new notice. However, if the new notice is a negative notice, the commissioner must first invite the person to make a submission about the circumstances surrounding their criminal history.



An application for cancellation of the first notice may be made by the person about whom it relates or the person who applied for it. The clause requires the commissioner to issue the new notice to the person about whom it is issued and if the applicant is someone else, give a copy to the applicant.

*Clause 120* provides that if the commissioner receives an application for a further suitability notice about a person for whom there is a current notice, the commissioner must cancel the current suitability notice about the person when issuing the further suitability notice.

### ***Division 5—Miscellaneous***

*Clause 121* provides that a person may apply to the Children Services Tribunal to have a decision by the commissioner to issue a negative notice reviewed or a decision by the commissioner refusing an application by the person to cancel a negative notice. The clause provides that the tribunal may not stay the operation of either of these types of decisions by the commissioner.

*Clause 122* provides that the commissioner may obtain information from the police commissioner, or access to the police commissioner's records, about a person's criminal history and, if a criminal history exists, a brief description of the circumstances of a conviction or charge. The police commissioner must comply with the request insofar as the request applies to information in the police commissioner's possession or to which the police commissioner has access.

*Clause 123* provides that an employee may, by written notice, withdraw his or her consent to employment screening under this part in the period between the time the commissioner has received an application from an employer for a suitability notice relating to the person and the issuing of the suitability notice.

The clause sets out circumstances in which a person is considered to have withdrawn his or her consent to employment screening under this part.

If the employee withdraws his or her consent to employment screening under this part before the commissioner issues a suitability notice the commissioner must not issue the suitability notice and if the employee withdraws consent by giving a written notice to the commissioner, the commissioner must give written notice of the withdrawal to the employer.

*Clause 124* provides that an employer must comply with a provision of this part despite another Act or law or industrial agreement or award if it would be a contravention of a provision of this part for a person to employ another person in regulated employment. The clause provides protection for employees from any liability because the employer does not employ the employee in regulated employment in compliance under this part.

*Clause 125* provides that the commissioner must make guidelines, consistent with the Act, for dealing with information obtained by the commissioner under this part to ensure natural justice is afforded to the persons about whom the information is obtained, only relevant information is used in making employment screening decisions and that those decisions are made consistently. The commissioner is required to give a copy of the guidelines to a person on request.

*Clause 126* provides that the commissioner must not use information obtained under this part about a person's criminal history criminal history, other than for this part.

### ***Division 6—Transitional***

*Clause 127* provides that for 1 year after this part commences, it does not apply to the unpaid employment of an adult nor does this part apply to the employment of a person under an agreement entered into before the time this part would otherwise start to apply to the employment. This provision, however, is subject to clause 128.

*Clause 128* provides that an employer may apply for a suitability notice for a person who on the commencement of this part was already employed in regulated employment and the employer knows, or reasonably suspects, the employee has a criminal history that may make the employee unsuitable for child related employment.

The clause sets out how the employer is to make the application. The employer is not required to receive the consent of the employee prior to lodging the application but must include identifying information about the employee and information supporting the employer's knowledge or suspicion.

On receiving the application, the commissioner may give a notice to the employee stating the information supporting the employer's knowledge or suspicion and stating that the commissioner proposes to ask the police commissioner for access to the police commissioner's records to enable the commissioner to learn whether the employee has a criminal history and if so, what the criminal history is. The notice must also invite the employee to give the commissioner, within a reasonable time (and, in any case, at least 7 days after the commissioner gives the notice), a submission (oral or written) about the matters raised in the application.

The commissioner may proceed with the application as if it were an application made under clause 100 if, having regard to the information in the application and any submissions received from the employee in response to the notice given to the employee, the commissioner is satisfied that certain requirements are met. These are that the employer has a reasonable basis for the knowledge or suspicion, that, if the employee has the criminal history mentioned in the application, the commissioner would be likely to decide the employee is unsuitable for child related employment; and the employee is still employed by the employer in regulated employment.

## **PART 7—CRIMINAL HISTORY CHECKS OF COMMISSION'S STAFF**

### *Division 1—Preliminary*

*Clause 129* states that the purpose of this part is to enable the commissioner to obtain the criminal history of, and related information about, a person who is or who proposes to be a member of the commission's staff so that the commissioner can assess the person's suitability to be, or continue to be, a staff member.

*Clause 130* provides that this part applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

*Clause 131* requires that before a person is engaged as a staff member, the commissioner must tell the person of the person's duties of disclosure under this part; and that the commissioner may obtain the information about the person mentioned in clause 136 and that guidelines for dealing with information obtained by the commissioner under this part are available from the commissioner on request.

***Division 2—Disclosure of criminal history***

*Clause 132* provides that a person seeking to be a staff member must disclose to the commissioner, before being engaged whether or not the person has a criminal history; and if the person has a criminal history, what the complete criminal history is.

*Clause 133* provides that if there is a change in a staff member's criminal history, the staff member must immediately disclose to the commissioner the details of the change. The clause clarifies that if a staff member does not have a criminal history, there is taken to be a change in the staff member's criminal history if the staff member acquires a criminal history.

*Clause 134* requires a person to give the commissioner a disclosure in the approved form in order to comply with the obligations set out in clauses 132 and 133.

The clause sets out what matters must be included in the information disclosed by a person about a conviction or charge for an offence in the person's criminal history.

*Clause 135* provides that a person must not give the commissioner a disclosure for this division that is false or misleading in a material particular or fail to give the commissioner a disclosure as required under clause 133, unless the person has a reasonable excuse. The clause provides a maximum penalty of 100 penalty units or 2 years imprisonment for breach of this provision. It is a defence if when giving the document, the person tells the commissioner, to the best of the person's ability, how it is false or misleading and if the person has, or can reasonably obtain, the correct information, gives the correct information.

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

*Clause 136* provides that where a staff member or prospective staff member has given the commissioner a disclosure for the purposes of division 2, the commissioner may ask the police commissioner to give the commissioner certain information about the person, including a written report about the person's criminal history and the circumstances of a conviction or charge.

The police commissioner may also provide the commissioner with information about an investigation relating to the possible commission of a serious offence by the person.

The clause provides that the police commissioner must comply with the request except in certain circumstances.

*Clause 137* requires a prosecuting authority (the police commissioner or the director of public prosecutions) to notify the commissioner where the authority is aware that a staff member of the commission has been charged with, convicted of, or has appealed against a conviction for, an indictable offence. The clause sets out the particulars that must be provided if the person is committed for trial, if the person is convicted of the offence, or if there is an acquittal, mistrial, entry of nolle prosequi, or the prosecution process is terminated.

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

*Clause 138* provides that the information given to the commissioner under this part cannot be used for any purpose other than assessing the person's suitability to be, or continue to be, a staff member of the commission.

*Clause 139* provides that before information obtained under this part by the commissioner from the police commissioner is used to assess a person's suitability to be, or continue to be, a staff member, the commissioner must disclose the information to the person and allow the person a reasonable opportunity to make representations to the commissioner about the information.

*Clause 140* provides that the commissioner must make guidelines, consistent with this Act, for dealing with information obtained by the commissioner under this part to ensure natural justice is afforded to the persons about whom the information is obtained and only relevant information is used in assessing the persons' suitability to be, or continue to be, staff members, and decisions about the suitability of persons, based on the information, are made consistently. The commissioner must give a copy of the guidelines, on request, to a person seeking to be engaged, or engaged, as a staff member.

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

*Clause 141* provides circumstances in which this division applies.

*Clause 142* provides that if the person asks the commissioner not to notify the person by written notice but to use another way of communication, the commissioner must communicate with the person in the requested way, to the extent it is reasonable for the commissioner to do so, instead of giving the written notice.

*Clause 143* provides that the commissioner is not required to give written notice if the commissioner considers that if it were given, the rights, interests or wellbeing of a child may be adversely affected; or the health or safety of the person, or of someone else, may be put at risk; or an investigation by the commissioner will be prejudiced; or for another reason, it would not be appropriate to give the written notice in the circumstances. The commissioner may communicate with the person in a way the commissioner considers appropriate instead of giving the written notice. If the person asks the commissioner to give the written notice to the person's lawyer or other nominated representative, the commissioner must do so.

*Clause 144* requires the commissioner to keep a written record of the reasons for not giving the written notice, the way the commissioner told the person about the decision or action, and the substance of the communication.

***Division 2—Evidence and legal proceedings***

*Clause 145* provides for certain presumptions to be made under this Act in relation to community visitors, signatures, certificates and documents.

*Clause 146* provides which offences under the Act are indictable offences and which offences are summary offences.

*Clause 147* provides for the manner in which proceedings for indictable offences are to be progressed and the maximum penalty that may be summarily imposed for a indictable offence.

*Clause 148* sets out limitations on who may summarily hear indictable offence proceedings.

*Clause 149* provides that a proceeding for an offence under this Act which is not an indictable offence must be taken in a summary way under the *Justices Act 1886*.

*Clause 150* provides that a proceeding for an offence against this Act may be started within 1 year after the offence is committed or 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

*Clause 151* provides that in a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading statement, it is enough for a charge to state that the information or statement was, without specifying which, 'false or misleading'.

### ***Division 3—Confidentiality***

*Clause 152* provides that where a person who is, or has been, the commissioner or a staff member and in that capacity acquired information, or gained access to a document, under part 6 about someone else's criminal history, that person must not disclose the information, or give access to the document, to anyone else.

The clause also applies to a person who is, or has been, the commissioner, a staff member or a selection panel member and in that capacity acquired information, or gained access to a document, under part 7 about someone else's criminal history or about an investigation relating to the possible commission of a serious offence by someone else. The person must not disclose the information, or give access to the document, to anyone else.

The clause provides for a maximum penalty of 100 penalty units or 2 years imprisonment for breach of this provision.

The penalty does not apply to the disclosure of information, or giving of access to a document, about a person if subsection (1) applies—to the commissioner or a staff member for the purpose of an employment screening decision; or if subsection (2) applies—to a staff member or selection panel member for the purpose of assessing the person's suitability to be, or continue to be, a staff member; or with the person's consent; or if the disclosure or giving of access is otherwise required under an Act.

*Clause 153* provides that if a person gains confidential information (other than information of a kind set out in the preceding clause) through involvement in this Act's administration, the person must not make a record of the information or intentionally or recklessly disclose the information to anyone other than under subsection (4) and provides a maximum penalty of 100 penalty units for breach of this provision.

The clause states that a person is taken to gain information through involvement in this Act's administration if the person gains the information because of being, or an opportunity given by being the commissioner, a member of the commission's staff, a person consulted or employed by the commissioner for an investigation of a complaint or a member of an advisory committee.

The clause provides that a person may make a record of confidential information or disclose it to someone else for this Act, to discharge a function under another law, for a proceeding in a court or tribunal or if authorised under a regulation or another law. The clause also provides that a person may make a record of confidential information if the person is authorised in writing by the person to whom the information relates, the person to whom the information relates is an adult when the authorisation is given, and the information does not identify, and is unlikely to lead to the identification of, a person as a child who is, or has been, the subject of a complaint under this Act.

*Clause 154* provides that section 160 does not prevent the commissioner from disclosing information to a person or to members of the public about an issue the subject of an investigation by the commissioner if the commissioner is satisfied the disclosure is necessary and reasonable in the public interest and is unlikely to prejudice the investigation. In a disclosure under this provision, the commissioner may express an opinion expressly or impliedly critical of an entity only if the commissioner has given the entity an opportunity to answer the criticism.

#### ***Division 4—Reprisals***

*Clause 155* states the circumstances when a person takes a reprisal.

*Clause 156* provides that a person must not take a reprisal and sets out a maximum penalty of 150 penalty units or 2 years imprisonment.



*Clause 157* provides that a reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result and any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal. If the claim for the damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

### ***Division 5—Miscellaneous***

*Clause 158* provides a definition for “parent” of a child.

*Clause 159* provides that this Act does not prevent a complaints agency performing its principal function under the Act under which the complaints agency is established, however, the commissioner must liaise with each complaints agency about the exercise by the commissioner and the complaints agency of their respective functions relating to complaints about services provided to children.

*Clause 160* provides that if the commissioner refers a complaint to a complaints agency or other government service provider about services provided by a service provider to a child and the commissioner and by written notice to the agency or service provider, asks for information about the way in which the complaint has been dealt with, the agency or service provider must inform the commissioner about any action taken for dealing with the complaint. If the complaint is resolved, the agency or service provider must tell the commissioner about the resolution of the complaint.

This obligation applies despite any express provision in an Act establishing a complaints agency that makes it an offence for anyone involved with administration of the Act to disclose the information.

*Clause 161* provides that an official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act. If this prevents a civil liability attaching to an official, the liability attaches instead to the State.

*Clause 162* provides that a person is not liable, civilly, criminally or under an administrative process, for disclosing to the commissioner information that would help the commissioner in assessing or investigating a complaint.

*Clause 163* provides that the commissioner may provide the Minister with a report on any issue relating to the exercise of the commissioner's functions under this Act.

*Clause 164* provides that the Minister must ensure the operation of part 6 is reviewed within 2 years of the commencement of that part. Within 3 years of the commencement of that part, the Minister must prepare a report on the outcome of the review and table the report in the Legislative Assembly.

*Clause 165* provides that the commissioner may delegate the commissioner's powers under this Act to an appropriately qualified member of the commission's staff or another individual whom the commissioner considers is an appropriately qualified person to exercise the powers delegated to the person.

*Clause 166* provides that the commissioner may approve forms for use under this Act.

*Clause 167* provides that the Governor in Council may make regulations under this Act.

## **PART 9—REPEAL AND TRANSITIONAL PROVISIONS**

### ***Division 1—Repeal***

*Clause 168* provides for the repeal of the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*.

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

*Clause 169* provides that in this division "commencing day" means the day section 174 commences.

*Clause 170* provides that this section applies to the person who, immediately before the commencing day, was the Children's Commissioner under the repealed Act. Subject to clauses 26 and 27, the person continues in office as the commissioner under this Act until the end of the term stated in the person's appointment under the repealed Act. The remuneration, allowances and terms of appointment decided for the person under section 12 of the repealed Act are taken to have been decided under clause 23.

*Clause 171* provides that the Children's Commission established under the repealed Act is continued in existence as the commission under this Act and the staff of the Children's Commission established under the repealed Act continue as the staff of the commission under this Act.

*Clause 172* provides that this section applies to complaint made under part 3 of the repealed Act that immediately before the commencing day, had not been finally dealt with under the repealed Act and if this Act had commenced at the relevant time, could have been made under this Act. The commissioner must continue to deal with the complaint as if it had been made under this Act.

*Clause 173* provides that a person who, immediately before the commencing day, held office as an official visitor under the repealed Act continues to hold office as a community visitor, on the conditions applying to the person immediately before the commencing day, until the end of the term stated in the person's appointment. This provision applies subject to clause 82(2) and (3).

### ***Division 3—Transitional provisions for amendment of Juvenile Justice Act 1992***

*Clause 174* provides that a person who, immediately before the commencement, held office as an official visitor under the *Juvenile Justice Act 1992* continues to hold office as a community visitor until the end of the term stated in the person's appointment and while the person continues to hold office, the person continues to be entitled to the remuneration and allowances to which the person was entitled immediately before the commencement. This applies subject to clause 82(2) and (3).

**PART 10—CONSEQUENTIAL AMENDMENTS**

*Clause 175* provides that Schedule 3 amends the Acts mentioned in it.

**SCHEDULE 1****REGULATED EMPLOYMENT AND BUSINESSES  
FOR EMPLOYMENT SCREENING****PART 1—REGULATED EMPLOYMENT**

This part sets out the categories of employment regulated under Part 6 of the Act.

**PART 2—REGULATED BUSINESSES**

This part sets out the categories of businesses regulated under Part 6 of the Act.

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

Schedule 2 sets out other serious offence provisions of the Criminal Code.

## **SCHEDULE 3**

### **CONSEQUENTIAL AMENDMENTS**

Schedule 3 sets out consequential amendments to other Acts.

## **SCHEDULE 4**

### **DICTIONARY**

Schedule 4 sets out the dictionary for terms used in this Act.