

# Commissioner for Children and Young People and Child Guardian and Another Act Amendment Bill 2008

## Explanatory Notes

### General Outline

### Policy Objectives

The main objective of the Bill is to effectively complement the *Child Protection (Offender Prohibition Order) Bill 2007* (CPOPO Bill) by strengthening and expanding the existing exclusionary framework within the blue card system. Under the provisions of the Bill, all ‘disqualified persons’ will be prohibited from making application for a blue card.

Disqualified persons are persons who:

- have a conviction for a child related sex offence; or
- are subject to a Child Protection Offender Prohibition Order or disqualification order made by a Court; or
- have reporting obligations under the *Child Protection (Offender Reporting) Act 2004*.

### Reasons for the Bill

The Bill is required to complement the CPOPO Bill and ensure its effective operation with Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000* (CCYPCG Act).

Part 6 of the CCYPCG Act outlines the risk management and criminal history screening requirements for organisations and persons involved in the provision of specified services to children – the blue card system.

## Achievement of the Objectives

The Bill expands the exclusionary framework of the blue card system by way of amendments to Part 6 of the CCYPCG Act which introduce the concept of a “disqualified person”.

It will now be an offence, punishable by five years imprisonment, for a “disqualified person” to sign an application for a blue card.

This means such persons will be prohibited upfront from applying to work or volunteer in or run an organisation that provides regulated services to children.

In very limited and defined circumstances a disqualified person will be able to seek an eligibility declaration from the Commissioner for Children and Young People and Child Guardian (Commissioner) which will enable them to make application for a blue card. This will only be permitted where they:

- have not been sentenced to imprisonment in relation to a disqualifying offence;
- do not have reporting obligations under the *Child Protection (Offender Reporting) Act 2004*;
- are not subject to a Child Protection Offender Prohibition Order or a disqualification order made by a Court.

This allows the Commissioner to exercise discretion in truly exceptional circumstances where it would not harm the best interests of children for a blue card to be issued. The only right of review in relation to a decision about an eligibility declaration will be judicial review.

The provisions of the Bill also provide powers for the Commissioner to take appropriate action to cancel or suspend a blue card where a holder becomes a disqualified person.

The Bill further strengthens the blue card system by:

- introducing additional powers for Courts to issue disqualification orders in circumstances where a person is convicted of a serious offence, other than a disqualifying offence, committed against or in relation to a child where the nature of the offending behaviour clearly indicates that it would not be in the best interests of children for a blue card to be issued;

- providing powers for the Commissioner and the Police Service to share information where necessary and appropriate to enable the effective administration of the blue card system as well as the *Child Protection (Offender Reporting) Act 2004* and the prohibition order system proposed by the CPOPO Bill;
- providing police officers with the power to seize a blue card where an individual is no longer entitled to hold it;
- providing for effective and efficient transitional arrangements.

### **Alternatives to the Bill**

There are no other ways by which the policy objectives of the Bill can be achieved.

### **Estimated Cost for Government Implementation**

It is estimated that the passage of the amendments to the CCYPCG Act, under the Bill, will result in implementation costs related to:

- modifications to existing information and data systems;
- communication of changes to stakeholders; and
- the revision of forms.

### **Consistency with Fundamental Legislative Principles**

There are a number of provisions in the Bill which may be regarded as infringing Fundamental Legislative Principles.

#### **Power sufficiently defined and subject to appropriate review, and consistency with the principles of natural justice**

Under the Bill, there is no provision for merits review of a decision by the Commissioner to refuse to issue an eligibility declaration or to refuse to cancel a negative notice in relation to a disqualified person. This gives rise to the question as to whether this amounts to a breach of the fundamental legislative principle that administrative power should be sufficiently defined and subject to appropriate review.

Under the proposed provisions, the exercise of the administrative power by the Commissioner to consider an application for an eligibility declaration or cancellation of a negative notice in relation to a disqualified person is

sufficiently defined and subject to appropriate review through the judicial review process. Additionally, the Commissioner will be obliged to provide the individual with an opportunity to provide submissions in relation to their application before making a decision.

Further, the legislative framework specifically outlines the obligation of the Commissioner to observe natural justice requirements as part of the application process, and includes provisions under which the Commissioner may revoke a decision to refuse to issue an eligibility declaration if the Commissioner is satisfied that the decision was based on wrong or incomplete information.

To the extent that there is a breach of fundamental legislative principles in this area, it is considered justified to achieve the overarching policy intent of the Bill, which is to protect children from harm.

### **Retrospectivity**

There is potentially an infringement of the fundamental legislative principle that rights and liberties should not be adversely affected or obligations imposed retrospectively, to the extent that the Bill seeks to withdraw current appeals in specified circumstances. Again, this infringement is considered necessary to achieve consistency with the overarching policy intent of the Bill, which is to protect children from harm.

### **Adverse affect on the rights and liberties of individuals**

Arguably, disqualifying individuals with past convictions from engaging in regulated child-related employment unless and until their blue card application has been approved is a breach of the fundamental legislative principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. This breach is considered justified for the protection of children from harm, as it prevents individuals with convictions for specified child-related sex offences from entering or continuing in regulated child-related service environments.

### **Consultation**

There has been no community consultation on the Bill. Consultation with relevant government stakeholders has occurred.

## Notes on Provisions

### Part 1 Preliminary

**Clause 1** states the short title as the *Commission for Children and Young People and Child Guardian and Another Act Amendment Act 2008*.

**Clause 2** provides that the Act commences on 2 June 2008 immediately after commencement of the *Child Protection (Offender Reporting) Act 2008*.

Part 2 Amendment of Commission for Children and Young People and Child Guardian Act 2000

**Clause 3** provides that the part amends the *Commission for Children and Young People and Child Guardian Act 2000*.

**Clause 4** amends section 99C(1) to provide an revised definition of the term “serious offence”.

**Clause 5** omits sections 99D (What is a serious child-related sexual offence) and 99E (What is an excluding offence). These terms have been replaced by the concept of a “disqualifying offence”.

**Clause 6** amends section 100 in several respects.

Clause 6(1) inserts new section 100(1C) to make it an offence for an employer, to ask an employee to sign an application under section 100(1) consenting to employment screening without warning the employee that it is an offence for a disqualified person to sign the application as a relevant person.

Clause 6(2) renumbers section 100(3)(d) as section 100(3)(f).

Clause 6(3) inserts new sections 100(3)(d) and 100(3)(e) which provide, respectively, that the approved form for section 100(1) must include provision for a declaration by the employer that the employer has given the employee a warning as required under section 100(1C), and a declaration by the relevant person that he or she is not a disqualified person.

Clause 6(4) inserts new section 100(3A) which provides that the approved form of an application under section 100(1) must include a warning that it

is an offence for a disqualified person to sign the application as a relevant person, and a statement about applying for an eligibility declaration.

Clause 6(5) omits the definition of “prescribed person” for section 100. This definition is now part of the dictionary in Schedule 4.

**Clause 7** amends section 101 in several respects.

Clause 7(1) inserts new section 101(3)(c) to provide that the approved form for an application by an individual for a prescribed notice to carry on a regulated business, must include provision for a declaration by the person that the person is not a disqualified person.

Clause 7(2) inserts new section 101(3A) to provide that the approved form for an application by an individual for a prescribed notice to carry on a regulated business must include a warning that it is an offence for a disqualified person to make the application, and a statement about applying for an eligibility declaration.

Clause 7(3) replaces section 101(6) to clarify when an application under section 101(1) is taken to have been withdrawn by the person who made it.

Clause 7(4) replaces section 101(7)(a) to provide that an application under section 101(1) is taken to have been withdrawn by the person who made the application if the person:

- is charged with a disqualifying offence;
- becomes the respondent in an application for an offender prohibition order;
- becomes subject to a temporary offender prohibition order.

Clause 7(5) omits the definition of “prescribed person” for section 101. This definition is now part of the dictionary in Schedule 4.

**Clause 8** amends section 102 in several respects.

Clause 8(1) amends section 102(3) to provide that section 102(3) is subject to sections 102(4), and 102(6A).

Clauses 8(2) and (3) amend section 102 to replace the terms “an excluding” and “excluding” with the terms “a disqualifying” and “disqualifying”, respectively, due to the introduction of the expanded exclusionary framework for the blue card system based on the concept of a “disqualified person”.

Clause 8(4) inserts new paragraphs 102(3)(d) and 102(3)(e) to provide that the Commissioner must issue a positive notice to a person about whom an application is made under sections 100 or 101 where a eligibility declaration has been issued or a decision to cancel a negative notice made. The insertion of new section (6A) by Clause 8(5) means these provisions will cease to have effect where an individual's eligibility declaration expires or the Commissioner receives further police or disciplinarily information about the person. The Commissioner will then be required to issue a negative notice unless satisfied that it is an exceptional case in which it would not harm the best interests of children.

Clause 8(5) replaces section 102(6) to provide that, subject to section 102(3) and (7), the Commissioner must issue a negative notice to a person about whom an application is made under sections 100 or 101 if the Commissioner is aware that the person is a relevant disqualified person, other than only because the person is subject to a temporary offender prohibition order. Additionally the provision will require the Commissioner to issue a negative notice to a person unless satisfied under subsection (7) that it is an exceptional case in which it would not harm the best interests of children for the Commissioner to issue a positive notice in relation to an application made by an individual who:

- is not currently a relevant disqualified person but who has been a relevant disqualified person;
- has been convicted of a serious offence.

Clause 8(6) inserts “subsection (6)(c) or (6A)” in place of “subsection 6(b)” in section 102(7).

**Clause 9** inserts “a disqualifying” in place of “an excluding” in section 102A(2)(a)(ii). This is necessary due to the introduction of the expanded exclusionary framework for the blue card system based on the concept of a “disqualified person”.

**Clause 10** inserts “102(6)(a) or (b)” in place of “102(6)(a)” in sections 102B(3A) and 102B(5).

**Clause 11** omits “under division 4” in section 104(2).

**Clause 12** amends section 107(2) in two respects.

Clause 12(1) inserts new section 107(2)(d) to provide that is an offence for an employer to continue to employ a person in regulated employment where they have been provided with a notice under section 119E(4) or

section 120E(3)(a), or under section 122B(3) because of a change in police information mentioned in section 122B(3)(f).

Clause 12(2) amends paragraph (b) of the penalty provision for section 107(2) to provide that the penalty of 200 penalty units or two years imprisonment applies with respect to the circumstances prescribed under section 107(2) other than those prescribed under section 107(2)(a).

**Clause 13** replaces section 108(2) to provide that it is an offence in specified circumstances for a person to start or continue in regulated employment unless a positive notice is issued to a person. The specified circumstances are if:

- an application about the person was made under section 100; and
- before a prescribed notice was issued, the application was withdrawn under section 123(2) or (3B) because the person's consent to employment screening under Part 6 of the *Commission for Children and Young People and Child Guardian Act 2000* was withdrawn.

The replacement provision also provides that the maximum penalty for the offence is 100 penalty units or one year imprisonment if an application is withdrawn under section 123(2), or 500 penalty units or five years imprisonment otherwise.

**Clauses 14** amends the heading of section for subdivision 3.

**Clause 15** replaces section 110 to state that a person is taken to have a change in police information if they acquire police information.

**Clause 16** amends section 111 to limit the application of the section to persons with a current positive notice immediately on the person's conviction for a serious offence.

**Clause 17** amends section 112 to require an employee to advise their employer where they are aware of a change in their police information and to require an employer on receiving that information to notify the Commissioner of the change in the approved form.

**Clause 18** amends section 113(3) to require an individual carrying on a regulated business to notify the Commissioner in the approved form where they are aware of a change in their police information.

**Clause 19** amends section 114 to require a person who is not in regulated employment and who becomes aware of a change in their police information to, before starting regulated employment, advise their employer of the change. Further, an employer, on receiving such a

notification from an employee must notify the Commissioner of the change in the approved form.

**Clause 20** inserts “the notice” in place of “the notice and issues a negative notice to the person” in section 117(1)(b).

**Clause 21** amends section 118 in several respects.

Clause 21(1) amends the heading of section 118. The amended heading is “Cancellation of negative notice”.

Clause 21(2) inserts new section 118(1A) to provide that section 118, which would otherwise apply where the Commissioner has issued a negative notice to a person and the notice is current, does not apply to the person if the person is a relevant disqualified person.

Clause 21(3) replaces section 118(3) to provide that a person cannot make application for cancellation of a negative notice less than two years after the issue of the negative notice, or any previous application by the person under section 118 unless:

- the decision to issue the negative notice was based on wrong or incomplete information; or
- the negative notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.

Clause 21(4) amends section 118(7) to remove the automatic requirement that the Commissioner must issue a positive notice to a person upon granting the person’s application to cancel a negative notice. Under s 102 (3)(d) the Commissioner is directed to issue a positive notice to a person on receiving an application for a prescribed notice, after making a decision to cancel a negative notice, unless section 102 (6A) applies.

**Clause 22** amends section 119 in several respects.

Clause 22(1) replaces section 119(1)(b) to the effect that the Commissioner may cancel a positive notice about a person and substitute a negative notice if the Commissioner is satisfied of the matters referred to in existing section 119(1)(a) or that, subject to section 119C, it is appropriate to cancel the positive notice having regard to:

- disciplinary information, or information received under section 122 or section 122A, about the person, other than information known to the Commissioner at the time the positive notice was issued; or

- a decision of a court made after the positive notice was issued, including the reasons for the decision, relating to an offence committed by the person.

Clause 22(2) replaces section 119(2) to the effect that the Commissioner may cancel a negative notice (the cancelled notice) about a person and substitute a positive notice if:

- the Commissioner is satisfied that the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the Commissioner should issue the positive notice; or
- the negative notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person; or
- the Commissioner is satisfied that it is appropriate to cancel the negative notice having regard to information not known to the Commissioner at the time the negative notice was issued.

Clause 22(3) inserts “section 126B” in place of “section 126B(2)”.

Clause 22(4) replaces section 119(6) to provide that the Commissioner may exercise a power under sections 119(1) or 119(2) on the Commissioner’s own initiative; or under sections 119(2)(a) or 119(2)(b) on application under section 118 by the person to whom the cancelled notice was issued.

**Clause 23** amends section 119A in several respects.

Clause 23(1) replaces the heading of section 119A. The amended heading is “Cancellation if relevant disqualified person”.

Clause 23(2) replaces section 119A(1) for consistency with the expanded exclusionary framework for the blue card system based on the concept of a “disqualified person”. The replacement provision provides that section 119A applies if a person who is the holder of a positive notice, including a positive notice that is suspended under section 119C, becomes a relevant disqualified person other than only because the person is subject to a temporary offender prohibition order.

Clause 23(3) replaces sections 119A(3)(b) and 119A(3)(c). The effect of the amendment is that, at the time the Commissioner gives a person a negative notice under section 119A(2), the Commissioner must give the person a further written notice stating the matters prescribed under section 119A(3) including that the person can not apply under section 118 for the

cancellation of the negative notice, even after two years, except as provided for in s 118(3).

Clause 23(4) inserts “section 126B” in place of “section 126B(2)”.

**Clause 24** omits section 119B (Cancellation if conviction for excluding offence but no imprisonment or disqualification order).

**Clause 25** amends section 119C in several respects.

Clause 25(1) replaces the heading of section 119C with the heading “Suspension of a positive notice”.

Clause 25(2) replaces section 119C(1) to provide that section 119C applies if a person who is the holder of a positive notice is charged with a disqualifying offence or becomes a relevant disqualified person because the person is subject to a temporary offender prohibition order.

Clause 25(2) also inserts new section 119C(1A) to provide that, in the circumstances prescribed in section 119C(1), the Commissioner must, by written notice given to a person, suspend the person’s positive notice.

Clause 25(3) inserts “notice about the suspension is” in place of “notice is” in section 119C(2)(e).

Clause 25(4) inserts “subsection (1A)” in place of “subsection (1)” in sections 119C(3) and 119C(4).

Clause 25(5) inserts a replacement penalty provision in section 119C(3) to increase the maximum penalty to 500 penalty units or five years imprisonment, for consistency with other similar provisions.

Clause 25(6) inserts “section 126B” in place of “section 126B(2)” to correct the reference.

**Clause 26** amends section 119D in several respects.

Clause 26(1) omits “or 119B(2)” in section 119D(2)(a).

Clause 26(2) replaces section 119D(2)(b). The replacement provision provides that a suspension of a positive notice under section 119C is cancelled if the Commissioner cancels the suspended notice and issues a further positive notice or a negative notice for the person on the Commissioner’s own initiative or on application by the person for cancellation of the suspension.

Clause 26(3) omits sections 119D(3) and 119D(3A).

Clause 26(4) inserts “to cancel the suspended notice and issue a further positive notice or a negative notice” in place of “under subsection (3)” in section 119D(4), as required due to the omission of section 119D(3).

Clause 26(5) inserts “section 126B” in place of “section 126B(2) in section 119D(5) to correct the reference.

Clause 26(6) inserts new section 119D(7) to prescribe the circumstances in which the Commissioner is not required to decide an application made under section 119D(2)(b)(ii).

**Clause 27** inserts new section 119E to make provision for a person who is given a notice under section 119C(1A) to ask the Commissioner, by written notice given to the Commissioner, to cancel the person’s positive notice. New section 119E also prescribes the actions that the Commissioner must take after receiving the written notice. New section 119E also provides that it is an offence for a person who is given a notice under section 119C(1A) to perform work that is regulated employment unless the Commissioner issues a further positive notice to the person.

**Clause 28** amends section 120A in two respects.

Clause 28(1) inserts “, or the holder of a negative notice who has applied for its cancellation” in place of “or negative notice” in section 120A(1).

Clause 28(2) inserts new section 120A(1A) to require individuals to provide written notice to the Commissioner if a person ends or changes the person’s regulated employment or stops carry on a regulated business or starts another regulated business.

**Clause 29** inserts new Division 4A (Disqualified persons) to introduce the expanded exclusionary framework for the blue card system based on the concept of a “disqualified person”.

New section 120B defines the term “disqualifying offence”.

New section 120C defines the term “disqualified person” and provides that a person is not a disqualified person once issued with a eligibility declaration unless the eligibility declaration expires.

New section 120D defines the term “relevant disqualified person”.

New section 120E provides that it is an offence, punishable by 5 years imprisonment or 500 penalty units for a “disqualified person” to:

- sign an application consenting to employment screening under s 100;
- or

- make an application under s 101; or
- apply for, or start or continue in, regulated employment.

Additionally section 120E provides for the actions of the Commissioner if a person breaches subsection (1).

New section 120F makes provision for “disqualified persons”, in prescribed circumstances, to apply to the Commissioner for an eligibility declaration that the person is not a disqualified person and is, therefore, eligible to sign an application as a relevant person under section 100 or make an application under section 101.

New section 120G creates an offence for a person who makes an eligibility application to fail to give notice to the Commissioner in the approved form of changes to the person’s name or contact details.

New section 120H prescribes that the Commissioner may only issue an eligibility declaration for a person who has been convicted of a disqualifying offence and outlines the matters that the Commissioner must consider, and the actions the Commissioner must take, in relation to an application by a person for an eligibility declaration.

New section 120I provides that the Commissioner is taken to have issued an eligibility declaration to a disqualified person if the Commissioner issues a positive notice to the person or cancels a negative notice issued to the person.

New section 120J makes provision for a person to withdraw an eligibility application in prescribed circumstances, and prescribes the circumstances in which a person is taken to have withdrawn an eligibility application.

New section 120K prescribes the circumstances in which an eligibility declaration expires.

New section 120L prescribes the circumstances in which the Commissioner may revoke a decision to refuse an eligibility application, and issue an eligibility declaration.

**Clause 30** amends section 121 in several respects.

Clauses 30(1), (2), (3), (4) and (5) amend references to various provisions and terms in section 121. Subsection (1) specifies that section 121, allowing a review of the Commissioner’s decision in specified circumstances, does not apply to a disqualified person.

Clause 30(6) replaces section 121(3) to clarify that there is no appeal, or review, under the *Commission for Children and Young People and Child Guardian Act 2000* against a decision of the Commissioner to issue, or refuse to cancel, a negative notice about a person other than a decision mentioned in section 121(1) or to refuse an application for an eligibility declaration.

**Clause 31** inserts new section 121AA (Effect of applicant under s 121 becoming a disqualified person). New section 121AA applies if a disqualified person made an application under section 121 before the person became a disqualified person. The application and any proceeding in relation to the application must be dismissed by:

- if a proceeding in relation to the application is before a court - by the court; or
- otherwise - by the Children Services Tribunal, even if the dismissal would be contrary to a direction of the District Court.

**Clause 32** inserts “an offence that is a disqualifying” in place of “serious child-related sexual” in section 121A(1)(a) as the term “serious child-related sexual offence” is no longer referred to within Part 6.

**Clause 33** amends section 121B to provide that the Police Commissioner may not delegate the Police Commissioner’s powers under section 121A other than to a police officer of at least the rank of superintendent.

**Clause 34** inserts new sections 122(1)(d), 122(1)(e) and 122(1)(f) to expand the circumstances in which the Commissioner may seek information from the Police Commissioner. Clause 34 also provides for an expansion of the range and nature of information that the Police Commissioner is obliged to provide to the Commissioner in prescribed circumstances. These amendments are necessary due to the introduction of the expanded exclusionary framework for the blue card system based on the concept of a “disqualified person”.

**Clause 35** amends section 122A to expand the provisions relating to notifications from the Police Commissioner to the Commissioner about changes in police information about certain persons. This is necessary due to the introduction of the expanded exclusionary framework for the blue card system based on the concept of a “disqualified person”.

**Clause 36** replaces section 122B to outline the requirement for the Commissioner, in prescribed circumstances, to notify a relevant entity that

the Commissioner is aware that police information about a person has changed.

**Clause 37** amends section 123 in two respects.

Clause 37(1) replaces section 123(3)(a)(i) to the effect that an employee will be taken to have withdrawn his or her consent to employment screening if, following a written request from the Commissioner, the employee fails within a reasonable stated time to provide,:

- stated information that the Commissioner reasonably needs to establish the employee's identity; or
- stated information, including by way of a submission, about a stated matter that the Commissioner reasonably believes is relevant to the application for a prescribed notice in respect of the employee.

In order for consent to be taken to have been withdrawn the Commissioner must:

- warn the person that that if the employee does not comply with the request the Commissioner may give the employee a notice of deemed withdrawal; and
- give the employer and the employee a notice of deemed withdrawal relating to the employee.

Clause 37(2) replaces section 123(3B)(a) to state that an employee is taken to have withdrawn his or her consent to employment screening if the Commissioner gives the employee written notice that the employee:

- is charged with a disqualifying offence;
- is named as a respondent for an offender prohibition order; or
- has become subject to a temporary offender prohibition order after the date of the application.

**Clause 38** inserts "(b)–the provision" in place of "119A–the section" in section 123A(3)(b).

**Clause 39** inserts "regulated employment" in place of "regulated employment until the charge for the excluding offence is dealt with and the commissioner cancels the suspension and issues a further prescribed notice" in section 124(4).

**Clause 40** replaces sections 126A(1)(b) and 126A(2) to expand the circumstances in which the Commissioner must, on written application of

the Police Commissioner, give the Police Commissioner information about an address for a person, and limits the purposes for which such information can be used, disclosed or accessed, to the purposes mentioned in section 126A(1)(b).

**Clause 41** inserts new section 126AA to prescribe the circumstances under which the Commissioner may give the Police Commissioner confidential information about a person and limits the access, disclosure and use of such information by the Police Commissioner as prescribed by section 122 (9) and (10).

**Clause 42** inserts new section 126B(2A) to expand the matters about which the Commissioner must notify the accreditation board to include a notification that a person is a disqualified person where an application is made in contravention of section 120E.

**Clause 43** omits sections 126C and 126D. The notifications required under s 126D are now dealt with by s 122B. Section 126C is replaced with a new section 126C to expand the circumstances in which a court may make a disqualification order.

**Clause 44** replaces section 146(1) to provide that an offence against section 108 or 109 or 111 or 119C(3) or 119E or 120E is an indictable offence.

**Clause 45** inserts new Part 9, Division 11 (Transitional provisions for Commission for Children and Young People and Child Guardian and Another Act Amendment Act 2008) to provide for transitional provisions in relation to amendments.

New section 217 provides a definition of “commencement” for the purposes of the Division.

New section 218 provides transitional arrangements in relation to a person who is a disqualified person but who is not a relevant disqualified person.

New section 219 provides transitional arrangements in relation to a person who is a relevant disqualified person.

New section 220 provides transitional arrangements in relation to a person who is not a disqualified person and for whom an application for a prescribed notice, for cancellation of a negative notice or for cancellation of a suspension of a positive notice was made before the commencement.

New section 221 provides transitional arrangements in relation to an application, made before commencement, for review under section 121 or

an appeal to a court, started before commencement, from a decision on an application for review under section 121. If the application or appeal has been made by a disqualified person it must be dismissed by the court or tribunal. Otherwise, the application or appeal is to be decided in accordance with the Act as amended.

New section 222 provides transitional arrangements in relation to a person who holds a positive notice and at commencement is a disqualified person but not:

- a relevant disqualified person; or
- a person in relation to whom the Commissioner started, before the commencement, to exercise a power under section 119; or
- a person who is taken to have been issued with an eligibility declaration under section 218(3).

New section 223 provides transitional arrangements for a person who holds a positive notice at commencement and who is a relevant disqualified person. The section provides that the positive notice is cancelled.

New section 224 provides that if, before the commencement, the Commissioner had started on the Commissioner's own initiative to exercise a power in relation to a person or a prescribed notice and the Commissioner may, on the commencement, exercise the power under the *Commission for Children and Young People and Child Guardian Act 2000*, the Commissioner may continue to exercise the power in relation to the person or prescribed notice.

New section 225 prescribes the notice requirements if an application for a prescribed notice about a person, for cancellation of a person's negative notice or for cancellation of a suspension of a person's positive notice is taken to have been withdrawn under sections 218 or 219.

New section 226 prescribes the notice requirements if a person's positive notice is taken to have been cancelled under sections 219 or 223.

New section 227 provides that, for specified sections, it is immaterial as to when the offence mentioned in the provision was committed or when the person to whom the provision applies was convicted.

New section 228 provides clarification in respect of the application of section 120E(1)(c) in relation to a person who is a disqualified person and, at the commencement, is employed in regulated employment. New section 228 declares that, on the commencement, section 120E(1)(c) applies to the

person even if it is not an offence for a person to employ the disqualified person in regulated employment.

New section 229 provides that nothing in the *Commission for Children and Young People and Child Guardian Act 2000* as amended by this amending Bill is effective to impose criminal liability on a person retrospectively.

New section 230 provides for a transitional regulation-making power. It provides that a regulation may make provision about a matter for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the *Commission for Children and Young People and Child Guardian Act 2000* as in force immediately before the commencement, to the operation of the Act after the commencement where the Act does not make provision or sufficient provision. New section 230 also provides that:

- a transitional regulation may have retrospective operation to a day not earlier than the day section 230 commences;
- a transitional regulation must declare it is a transitional regulation; and
- section 230 and any transitional regulation expires 12 months after the day section 230 commences.

**Clause 46** amends schedule 2 (Current serious offences) to insert “section 419(3)(b)(i) or (ii)” in place of “section 419(3)(b)(i) and (ii)” in Schedule 2, item 4, entry for Criminal Code, section 419, column 3.

**Clause 47** inserts replacement schedules 2B (Current disqualifying offences) and 2C (Repealed or expired disqualifying offences). This is necessary due to the introduction of the expanded exclusionary framework for the blue card system.

**Clause 48** amends schedule 4 (Dictionary). This is necessary due to the new terminology required under the expanded exclusionary framework for the blue card system. In particular, the definition of imprisonment order has been amended. As has been the case, detention of juveniles is not included. Hence, a juvenile sentenced to detention for a disqualifying offence is not barred for life from holding or applying for a positive notice, but must still satisfy the Commissioner that it is in the best interests of children that they be granted a positive notice before they can engage in regulated employment.

## **Part 3**                      **Amendment of Police Powers and Responsibilities Act 2000**

**Clause 49** provides that the part amends the *Police Powers and Responsibilities Act 2000*.

**Clause 50** inserts new Chapter 23, Part 1A.

New section 789A provides police officers with a power, in prescribed circumstances, to demand production of a person's positive notice and positive notice blue card, and makes it an offence for person not to comply with such a demand, unless the person has a reasonable excuse. The section also prescribes actions that must be taken by a police officer who is given a person's positive notice and positive notice blue card under this provision.

## **Part 4**                      **Consequential amendments of other Acts**

**Clause 51** provides that the part amends other Acts in accordance with the schedule. The amendments to the other Acts are consequential amendments necessitated by the amendments to the *Commission for Children and Young People and Child Guardian Act 2000*.