

# **Criminal History Screening Legislation Amendment Bill 2010**

## **Explanatory Notes**

### **General Outline**

#### **Policy Objectives**

Reducing duplication and increasing consistency across criminal history screening systems

The main objectives of the Bill are to effectively reduce duplication of criminal history screening checks and increase the consistency of criminal history screening processes. The provisions of the Bill reduce duplicate screening by providing for the following exemptions:

- police officers and registered teachers will be able to apply for an exemption from holding a blue card when providing child-regulated services which are outside of their professional duties
- blue card holders will be able to apply for an exemption from holding a yellow card, and
- registered health practitioners (including nurses and midwives) will be automatically exempt from requiring a blue card or yellow card when they are providing services to children as well as adults with a disability as part of their professional duties.

The provisions of the Bill also increase consistency in criminal history screening by amalgamating in the blue card system screening of:

- all persons providing services to children with a disability
- all employees and volunteers of state government entities who are engaged in child-related roles
- health students undertaking placements that involve service delivery to children within private or public facilities, and

- all employees and volunteers of local governments undertaking child-related roles.

To achieve consistency in criminal history screening frameworks, the provisions of the Bill also align the exclusionary frameworks of the blue card, yellow card and teacher registration systems.

### **Short-term approvals of restrictive practices**

The Bill:

- amends the *Disability Services Act 2006* and *Guardianship and Administration Act 2000* to extend the maximum period for short-term approvals of restrictive practices, and to commence these provisions as soon as possible (on assent), and
- makes a technical amendment to the *Disability Services Act 2006* to clarify a further circumstance when the transitional period for the use of restrictive practices stops applying.

### **Reasons for the Bill**

#### **Reducing duplication and increasing consistency across criminal history screening systems**

Different criminal history screening systems have different focuses to maintain safeguards for

different groups of vulnerable people and target screening at individuals providing different types of services. These screening systems operate as follows:

- the teacher registration system targets screening at teachers to safeguard children and determine a person's suitability to teach
- the yellow card system targets screening at individuals providing services in funded organisations to safeguard adults and children with a disability, and
- the blue card system targets screening at individuals providing child regulated services to safeguard children. The *Commission for Children and Young People and Child Guardian Act 2000* (CCYPCG Act) outlines which services are regulated.

The duplicate screening which is currently occurring across these systems is as follows:

- persons who are registered teachers require a blue card if they are engaged in child-regulated employment or volunteering except for when they are engaged in health, counselling and support services, private teaching, coaching or tutoring, or education programs conducted outside of schools
- persons who hold yellow cards require a blue card if they are engaged in child-regulated employment or volunteering except when they are engaged in health, counselling or support services, and
- persons with blue cards are required to undergo a criminal history check when they apply for registration as a teacher.
- The inconsistencies which are created by the current systems include:
- individuals providing services to children with a disability in non-funded organisations are not screened under the yellow card system but are screened under the blue card system
- health students undertaking practicum placements in private health facilities are required to obtain a blue card whereas health students in public health facilities are not currently required to undergo this screening, and
- differences in screening requirements for individuals and volunteers of government entities (including local government entities) engaged in child-related roles.

In recognition of the similarities and differences across the systems which may result in duplicate screening and inconsistencies, the Bill is required to amend relevant legislation to reduce duplicate screening and achieve consistency across screening systems by:

- enabling police officers and registered teachers to apply an exemption from holding a blue card when providing child-regulated services which are outside of their professional duties
- enabling blue card holders to be able to apply for an exemption from holding a yellow card, and
- enabling the automatic exemption of registered health practitioners (including nurses and midwives) from requiring a blue card or yellow card when they are providing services to children as well as adults with a disability as part of their professional duties, and

- allowing for the recognition of blue cards for teacher registration applicants which may prevent a duplicate criminal history check being undertaken

Due to the distinct focuses, the different legislative systems of the blue card, yellow card and teacher registration will continue to be retained. However, to enable the exemption model to operate effectively, it is necessary that these systems are aligned to be able to consider the same types of police information for assessment purposes to determine whether or not an exemption should be issued. To achieve this, the Bill is required to amend relevant legislation to align the exclusionary frameworks of the blue card, yellow card and teacher registration systems.

The Bill also makes amendments to relevant legislation to amend errors, anomalies and drafting style.

### **Short-term approvals of restrictive practices**

In 2008, amendments were made to the *Disability Services Act 2006* and *Guardianship and Administration Act 2000* to create a legislative scheme to regulate the use of restrictive practices by disability service providers, and mandate positive behaviour support. This followed the report by the Honourable W.J. Carter QC – *Challenging Behaviour and Disability: A Targeted Response*. Restrictive practices are used at times to manage the adult's challenging behaviour to prevent risk of harm to a person. The scheme commenced on 1 July 2008.

As part of the legislative scheme, provision was made to allow for short-term approvals of restrictive practices, where it is necessary to use a restrictive practice to prevent an immediate and serious risk of harm to a person, and there is no time to obtain authorisation under the full scheme requirements. A short-term approval can be given by the Chief Executive, Department of Communities (or authorised delegate) or the Adult Guardian, depending on the type of restrictive practice proposed. Under the existing provisions, a short-term approval can be given up to 3 months, and can only be extended in exceptional circumstances.

The proposed amendment will extend the maximum period for short-term approvals.

The proposed amendments are required to provide the disability service provider with sufficient time to prepare an assessment for the adult, develop a positive behaviour support plan and obtain consent/approval from the relevant decision-maker under the full-scheme requirements.

Experience in implementing the scheme over the past 12 months has shown that a three month period is not enough time to do an assessment, develop a plan and obtain authorisation under the full scheme.

It is also proposed to make a technical amendment to the *Disability Services Act 2006* to clarify a further circumstance when the transitional period for restrictive practices no longer applies. At present the legislation is silent about this particular circumstance.

## **Achievement of the Objectives**

### **Reducing duplication and increasing consistency across criminal history screening systems**

To achieve the overall objectives, the Bill amends the CCYPCG Act, the *Disability Services Act 2006*, the *Education (Queensland College of Teachers) Act 2005* and the *Public Service Act 2000* to:

- incorporate an exemption notice regime for registered teachers and police officers in the blue card system
- remove the current exemption from requiring a blue card for government entities and amalgamate screening for public servants and employees of local government in child-related duties
- remove the current exemption for yellow card holders from the blue card systems to amalgamate screening of persons working with children with a disability
- incorporate an exemption notice regime in the yellow card system for blue card holders
- allow for the recognition of blue cards for teacher registration applicants
- incorporate relevant notification provisions to allow for information sharing between the blue card system, teacher registration system, yellow card system and government departments.
- align the exemption for registered health practitioners (including nurses and midwives) in both the blue card and yellow card systems
- align the exclusionary frameworks across the yellow card, blue card and teacher registration systems so the same ranges of offences are considered and to exclude persons who are subject to reporting obligations under *Child Protection (Offender Reporting) Act 2004* or

orders under the *Child Protection (Offender Prohibition Order) Act 2008* or the *Dangerous Prisoners (Sexual Offenders) Act 2003*

- align across the yellow card, blue card and teacher registration system similar information which may be disclosed relating to a person's criminal history including information from the Director of Public Prosecutions and information about persons who are subject to reporting obligations under *Child Protection (Offender Reporting) Act 2004* or orders under the *Child Protection (Offender Prohibition Order) Act 2008* or the *Dangerous Prisoners (Sexual Offenders) Act 2003*, and
- align across the yellow card and blue card systems the ability to obtain certain information from the Mental Health Court and Mental Health Review Tribunal in relation to a person's criminal history and allow the blue card system to obtain interview statements where this relates to assessment purposes.

To achieve the objectives, the Bill also amends the following other pieces of legislation: *Child Care Act 2002*; *Child Protection Act 1999*; *Child Protection (Offender Prohibition Order) Act 2008*; *Community Services Act 2007*; *Education (Accreditation of Non-State Schools) Act 2001*; *Evidence Act 1977*; *Family Service Act 1987*; *Health Practitioners (Professional Standards) Act 1999*; *Nursing Act 1992*; *Police Powers and Responsibilities Act 2000* and *Public Service Act 2000*.

The Bill also makes minor amendments to the following pieces of legislation: *Adoption Act 2009*; *Births Deaths and Marriages Registration Act 2003*; *Coroners Act 2003*; *Education (General Provisions) Act 2006*; *Grammar Schools Act 1975*; *Ombudsman Act 2001*; *Public Health Act 2005* and *Transport Operations (Passenger transport) Act 1994*.

### **Short-term approvals of restrictive practices**

The Bill amends the *Disability Services Act 2006* and *Guardianship and Administration Act 2000* to extend the maximum period for short-term approval of restrictive practices from 'up to 3 months' to 'up to 6 months'. The actual period for the short-term approval will be made by the relevant decision-maker on a case by case basis. All other conditions for a short-term approval, which are aimed at safeguarding the individual, will remain.

A technical amendment is also made to the *Disability Services Act 2006* to clarify that when the Queensland and Civil Administration Tribunal is

considering an approval for containment or seclusion for a relevant service provider in a matter under the full scheme, and the application also includes approval for other forms of restrictive practices, the transitional period also stops applying to these other restrictive practices when the Tribunal approves or refuses the application, or approves or refuses to approve one of these other restrictive practices.

### **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**

#### **Reducing duplication and increasing consistency across criminal history screening systems**

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

- establishment of and modifications to existing information and data systems
- communication of changes to stakeholders, and
- revision of forms.

#### **Short-term approvals of restrictive practices**

Any costs in respect of the amendments to the short-term approval provisions will be met from existing budget allocations.

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

#### **Reducing duplication and increasing consistency across criminal history screening systems**

There are a number of provisions in the Bill which may be regarded as infringing fundamental legislative principles.

*Whether legislation has sufficient regard to the rights and liberties of individuals—Legislative Standards Act, section 4(2)(a)*

### Information-sharing for decision-making

Various provisions of the Bill provide for the disclosure of information about a person to a particular entity if the information is relevant to a function or power of the other entity, including:

- information about a person's criminal history (including charges and convictions, expired convictions and information from interstate police commissioners)
- 'investigative information' about certain offences that did not result in a charge or a conviction
- information relating to a person's criminal history from the Director of Public Prosecutions, Mental Health Court and Mental Health Review Tribunal, and
- information relating to the outcome of a person's application for a prescribed notice or exemption notice (including that a person holds a negative notice or negative exemption notice) under the CCYPCG Act or *Disability Services Act 2006*.

The purpose of the information-sharing provisions is to monitor and determine the eligibility of persons proposing or continuing to be engaged in activities relating to children or persons with a disability, including persons applying to be or continuing to be registered as a teacher.

The disclosure of the information may potentially breach the right to privacy of the person concerned. However, this potential breach is considered justified for the safety of children as well as adults with a disability.

### Disclosure of personal information as part of disciplinary information-sharing provisions

The Bill amends the process for registration bodies to notify the Commissioner for Children and Young People and Child Guardian (CCYPCG Commissioner) of disciplinary information as follows:

- a disciplinary body will advise the CCYPCG Commissioner where there is disciplinary information relevant to an assessment under Chapter 8 of the CCYPCG Act (relating to the assessment of prescribed notices and exemption notices)
- if the person is an applicant for, or the holder of, a prescribed notice or exemption notice, the CCYPCG Commissioner will be able to request further information in relation to the disciplinary action, and

where the person is not an applicant for, or the holder of, a prescribed notice or exemption notice the CCYPCG Commissioner will retain the identifying details of the person on a disciplinary register and will request further information if the person becomes a prescribed notice or exemption notice holder or applicant.

The amended framework may require the CCYPCG Commissioner to hold data about a person even if they are not a blue card holder or applicant, or exemption notice holder or applicant in limited circumstances when the entity notifying the CCYPCG Commissioner about disciplinary information has not previously been notified by the CCYPCG Commissioner that the person is an applicant for an exemption notice or blue card or a blue card holder. While the initial notification will not include information about the nature of the disciplinary action taken, the fact that it is given is an indication that some form of disciplinary action has been taken. However, in order to safeguard the rights and liberties of individuals, registration bodies will provide the CCYPCG Commissioner with only the name and identifying details about the person. Details of the disciplinary information will not be provided unless the CCYPCG Commissioner requests them on the basis that the person is a blue card/exemption notice applicant or holder. Accordingly this potential infringement of personal information is considered justified in the circumstances given the requirement under the CCYPCG Act for the CCYPCG Commissioner to take into account decisions of such appellate bodies, and the revised process prevents the CCYPCG Commissioner from holding detailed disciplinary information about individuals who are not applicants or holders of prescribed notices or exemption notices.

#### Notifications of decisions and changes in criminal history and police information to employers and other entities

Various provisions of the Bill provide for the CCYPCG Commissioner to notify a person's employer or another entity responsible for monitoring the person's child-related activities about decisions made in relation to the person. This includes notifications about:

- changes to a person's criminal history or other police information, and
- a decision to issue a negative notice or negative exemption notice to the person.

The Bill also makes amendments to existing provisions in the CCYPCG Act which impose obligations on persons to disclose changes in the person's police information to employers. Amendments are also made to

the existing provisions in the *Disability Services Act 2006* that provide for similar disclosures to funded non-government service providers who engage the person. Such notifications may be considered to breach the right to privacy of the person concerned. However, notifications are considered for risk management purposes in these environments to safeguard risks to children as well as adults with a disability. The legislation also protects the rights of the person concerned by providing that the employer/funded non-government service provider must not terminate the person's employment/engagement solely on the basis of the disclosure.

In relation to notifications regarding to the issue of a negative notice or negative exemption notice, while these notifications do not contain the reasons for the outcome of the application (except in very limited circumstances), there is potential for negative inferences to be drawn from the fact the person has been issued a negative notice or negative exemption notice. However, the advice is given in consideration of risk management for the particular service environment, to ensure the employer or other entity does not allow the person to be employed in regulated employment or carry on a regulated business and, in some cases, to allow another entity to monitor the person's compliance with an Act administered by the entity. Accordingly, the potential breach in privacy rights is considered justified on the basis that it is necessary to effectively protect the best interests and safety of children as well as persons with a disability and to ensure adequate safeguards have been put in place where appropriate.

#### Disclosure of a person's address for the purpose of criminal history checks

The Bill amends the CCYPCG Act, the *Disability Services Act 2006* and the *Education (Queensland College of Teachers) Act 2005* to allow for routine disclosure of a person's residential address to the Queensland Police Service for the purpose of undertaking a criminal history check. While the disclosure of this information may potentially breach the right to privacy of the person concerned, it is a requirement for the purpose of processing criminal history checks. Accordingly, the amendments under the Bill are necessary to ensure screening agencies can continue to assess and monitor a person's criminal history information in order to protect children as well as persons with a disability from harm. In addition, the legislation provides limitations on the use of information provided by the screening agency to the Queensland Police Service.

### Exclusionary frameworks

The proposed amendments to the disqualifying offences lists (under the blue card and yellow card systems) and the linkage with the *Child Protection (Offender Reporting) Act 2004* and the *Child Protection (Offender Prohibition Order) Act 2008* (under the yellow card and teacher registration system) may potentially automatically exclude a broader range of individuals from holding a blue card or yellow card or being a registered teacher without review rights and result in the cancellation of some current authorities.

Under both the CCYPCG Act and the *Disability Services Act 2006* there is no right of review:

- for a ‘disqualified person’ who is issued a negative notice or negative exemption notice or whose application for cancellation of a negative notice or negative exemption notice is refused
- for a refusal to issue an eligibility declaration (which enables a person who would otherwise be a disqualified person to be excepted from limitations applying to disqualified persons), and
- for decisions to issue, or refuse to cancel, a negative notice or negative exemption notice are limited to decisions on the basis of whether there is an exceptional case or on the basis of a mistaken identity (i.e. the person was not the person the subject of the charge, conviction or order on which the decision was based).

This may be considered to be a breach of the fundamental legislative principle that administrative power should be sufficiently defined and subject to review. In the case of a ‘relevant disqualified person’ (under the blue card and yellow card systems) and a ‘relevant excluded person’ (under the teacher registration system) there is no discretionary decision-making as the person cannot be issued with a positive notice, positive exemption notice, eligibility declaration, (under the blue card or yellow card systems) or become a registered teacher. However, individuals will only be automatically excluded where:

- they have been convicted of a serious sexual offence against a child or a person with a disability in circumstances where they are sentenced to a period of imprisonment
- the person has been convicted of a serious child-related sex offence in circumstances where they become subject to reporting obligations under the *Child Protection (Offender Reporting) Act 2004*

- a court has imposed a final prohibition order against the person under the *Child Protection (Offender Prohibition Order) Act 2008* after being satisfied that the person poses a risk to the life or sexual safety of a child, and
- a court has imposed a sexual offender order under the *Dangerous Prisoners (Sexual Offenders) Act 2003* after being satisfied that the person presents a serious danger to the community in the absence of such an order being made.

Accordingly, this breach is considered justified in order to provide appropriate safeguards for children as well as adults with a disability, as the above listed circumstances are deemed to be so serious as to justify the automatic exclusion of a person. In addition, judicial review rights exist to allow a right of review against the decision of a screening agency on the basis that an error of law has occurred.

Similarly, the exercise of the administrative power by the relevant decision-maker (either the CCYPCG Commissioner or the Chief Executive, Department of Communities) to consider an application for an eligibility declaration or the cancellation of a negative notice in relation to a disqualified person is sufficiently defined and subject to appropriate review through the judicial review process.

Expansion of exclusionary frameworks to include persons on orders made under the *Dangerous Prisoners (Sexual Offenders) Act 2003*

The Bill has amended the exclusionary framework under the blue card, yellow card and teacher registration systems so that persons subject to orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003* are automatically excluded from these systems. These amendments may be considered to have insufficient regard to the right and liberties of individuals as these persons will be prohibited from applying for approval through the blue card, yellow card and teacher registration systems while they are subject to the order. However, given these orders are made where a person has been convicted of a serious sexual offence (defined as an offence of a sexual nature involving violence or against children) and where the court is satisfied to a high degree of probability that the person is a serious danger to the community in the absence of such an order being made, the breach is considered justified to protect children as well as persons with a disability from the risk of harm.

### Limited review rights for disqualified persons

The provisions under the Bill provide review and appeal rights in certain circumstances where a person is not a disqualified person. While the decision-maker retains a discretion so that a disqualified person can be issued with a positive notice or positive exemption notice where the decision-maker is satisfied that there is an exceptional case, there is no review or appeal rights under the Bill where the discretion is not exercised in that way. The decisions which may be reviewed are limited to those involving a decision about exceptional case or mistaken identity. 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 review. Under the proposed provision, this power is considered to be sufficiently defined and subject to appropriate review through the judicial review process.

Further, in making this decision, the legislation framework specifically outlines the obligation on the decision-maker to adhere to natural justice requirements including that the decision-maker is required to provide the individual with an opportunity to provide a submission in relation to their application before making a decision and includes provision to allow the decision-maker to revoke a decision to issue a negative notice or to refuse to issue an eligibility declaration if satisfied that the decision was based on wrong or incomplete information.

While persons who are disqualified persons are prohibited from commencing in child-regulated activities under the blue card system, the amendments under the Bill will allow for registered teachers and police officers to commence in child-regulated activities as long as they have made application for an exemption notice. This anomaly is considered justified given it is unlikely there will be registered teachers or police officers who would be disqualified persons.

To the extent that there is breach of fundamental legislative principle in relation to disqualified persons, it is considered justified to protect children as well as persons with a disability from the risk of harm.

### Immediate cancellation of teacher registration or permission to teach

The Bill amends the *Education (Queensland College of Teachers) Act 2005* to require the college to:

- suspend an approved teacher's registration or permission to teach if the teacher becomes subject to a temporary offender prohibition under

the *Child Protection (Offender Prohibition Order) Act 2008* or an interim order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*, and

- cancel an approved teacher's registration or permission to teach if the teacher becomes subject to reporting obligations under the *Child Protection (Offender Reporting) Act 2004*, a final offender prohibition order or a disqualification order under the *Child Protection (Offender Prohibition Order) Act 2008* or an order under division 3 of the *Dangerous Prisoners (Sexual Offenders) Act 2003*,

The Bill requires the college to take the above action immediately upon commencement of the relevant provisions. This potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals because it will immediately affect the person's capacity to earn income. The potential breach is justified on the grounds that these persons are considered to be inappropriate to work with children in a child-regulated service environment and therefore should be unable to work with children in their capacity as a teacher. The potential infringement is considered to be a necessary safeguard in light of the fact that the best interest of children must be paramount. It is also unlikely that a person who falls into this exclusionary category would have been considered suitable to teach.

#### Amendments to penalty provisions

The Bill makes amendments to certain penalty provisions in the CCYPCG Act and the *Disability Services Act 2006* for offences such as commencing and continuing employment/engagement of person without a prescribed notice or exemption notice. Where the amendment has resulted in an increased maximum penalty, this may be considered to adversely affect an individual's rights and liberties. However, the breach is considered necessary to achieve consistency between the CCYPCG Act and the Disability Services Act for like offences.

Certain penalties for offences which currently exist in the CCYPCG Act in relation to the requirement to notify the CCYPCG Commissioner of a change in address have been extended to exemption notice applicants or holders and to the *Disability Services Act 2006*. The maximum penalty for failing to notify of a change to contact or employment status details which currently exists in the CCYPCG Act has been retained. These penalties are considered justified given out of date contact details or employment details could increase the risk of fraudulent use of a blue card or exemption notice

if sent to the wrong address, or an inability to notify the current employer of a suspension of a blue card or exemption notice or the issue of a negative notice or exemption notice, which is contrary to the safety of children as well as adults with a disability.

#### Administrative directives

The Bill amends section 156 of the *Public Service Act 2008* in relation to the application of division 3 in relation to child-related duties which continues to allow the chief executive of a department to decide that a person should be subject to additional employment screening based on a directive made by the Public Service Commissioner. As directives are not subordinate legislation, they are not subject to the scrutiny of Parliament, and may be considered to have insufficient regard to the institution of Parliament. However, such directives are subject to sufficient transparency and accountability as they are required to be made by gazette notice and published on the relevant website. Rulings (including directives) are not made as subordinate legislation to allow for regular amendments to be made. In addition a person may appeal against a decision of the chief executive under a directive. Accordingly, this potential breach is considered justified.

#### Transitional arrangements

The Bill provides transitional arrangements in relation to amendments to the CCYPCG Act and the *Disability Services Act 2006* to allow the new decision-making framework to apply to existing applications, positive notices, reviews and appeals. These arrangements provide that:

- the CCYPCG Commissioner and the Chief Executive, Department of Communities will additionally be able to consider information about interstate offences, information from the Director of Public Prosecutions about discontinued matters, and information about a person's mental health as part of the blue card and yellow card decision making frameworks
- individuals who are, but were not previously a 'disqualified person', and who did not hold an unsuspended positive notice at commencement, will have their positive notice cancelled, prescribed notice or eligibility application withdrawn, or review or appeal dismissed, and

- individuals who are, but were not previously a ‘relevant disqualified person’, will have their positive notice cancelled, prescribed notice or eligibility application withdrawn, or review or appeal dismissed.

These arrangements may be considered to breach the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals. The decision making changes for persons who already have made an application. However, this potential breach is considered justified on the basis that it creates consistency in decision-making on commencement for existing and applicants and cardholders and new applicants. In relation to the transitional arrangements outlined above for disqualified persons and relevant disqualified persons, any breaches are considered justified on the basis that the purpose of the exclusionary frameworks is to exclude certain classes of persons from these systems on the basis that they are unsuitable to work with children as well as adults with a disability. Any breaches are also considered justified in relation to the changes listed above as the amendments should take effect immediately on commencement of the relevant provisions to minimise any risk of harm to these vulnerable groups.

There are no transitional arrangements for health students who were previously exempt under the blue card system if they were in child-regulated activities for a government entity but under the amendments will be required to obtain a blue card. This may be considered to have insufficient regard to the rights and liberties of individuals, particularly given that other categories of persons who previously did not require a blue card because of the government entity exemption will have transitional arrangements in place to allow for appropriate time to comply with new obligations. However, this potential breach is considered justified as it is likely most health students will already have a blue card as they currently transition between child-regulated activities where a blue card is required and activities where the government entity exemption may be used.

### **Short-term approvals of restrictive practices**

The proposal to extend the maximum period for the short-term approval of restrictive practices may be considered to have insufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(2)(a).

The proposed amendment is to extend the maximum period for a short-term approval from up to 3 months to up to 6 months – the actual

period for the short-term approval will be made by the relevant decision-maker (either the Adult Guardian or Chief Executive, Department of Communities, depending on the restrictive practice), on a case by case basis, and based on legislative criteria.

The proposed amendments to the *Disability Services Act 2006* and *Guardianship and Administration Act 2000* will extend the maximum period for the short-term approval of restrictive practices from 'up to 3 months' to 'up to 6 months'. At the same time, the proposal maintains existing safeguards to ensure appropriate protection for the individual subject to the restrictive practice.

Overall the aim of the restrictive practices scheme, together with the renewed focus on positive behaviour support, is intended to drive cultural change in the disability sector- through the provision of services that promote an improved quality of life and the reduction or elimination of the use of restrictive practices.

The short-term approval process is to allow an approval process where there is an immediate and serious risk of harm, and a need to use a restrictive practice to manage that risk. The extension of the maximum period for short-term approvals will allow disability service providers, in certain circumstances and as determined by the relevant decision-maker, enough time to conduct a comprehensive assessment of the adult and prepare a positive behaviour support plan that best meets the needs of the individual. This will lead to better informed decision making, which is ultimately in the individual's best interests. Experience in implementing the scheme over the past 12 months has shown that a three month period may not be enough time to do an assessment, develop a plan and obtain authorisation under the full scheme.

Also, the actual period for the short-term approval will be set by the relevant decision-maker on a case by case basis and based on legislative criteria.

For these reasons, it is considered the potential breach of the fundamental legislative principle is justified.

If a short-term approval is given, a disability service provider can continue to use a restrictive practice under the short-term approval provided they meet all the conditions of the short-term approval, and requirements in the legislation, which are aimed at safeguarding the individual.

These protections include:

- legislative criteria that the relevant decision-maker must be satisfied of before making a short-term approval – this includes being satisfied that there is an immediate and serious risk of harm, and the proposed restrictive practice is the least restrictive alternative
- within 14 days of any approval, the service provider must provide the decision-maker with a short-term plan for the individual
- if a short-approval is made, notice of the decision must go to certain interested parties;
- for decisions made by the Chief-Executive of the Department of Communities, there is a right of review to the Queensland and Civil Administration Tribunal, and
- if approved, the disability service provider may use the restrictive practice if:
  - there is an immediate and serious risk of harm to the adult or others
  - it is necessary to prevent the adult’s behaviour causing harm to the adult or others, and it is the least restrictive way of ensuring the person’s safety
  - the use complies with the short-term approval given, and the short-term plan for the adult, and
  - the disability service provider keeps and implements a policy and procedures on the use of the restrictive practice.

## **Consultation – community**

### Reducing duplication and increasing consistency across criminal history screening systems

A Consultation Paper containing the proposal under the Bill was distributed to stakeholders within the six operational sectors affected by the changes, namely the disability, education, health, state government and local government sectors and changes to the blue card system. The Consultation Paper was designed to obtain feedback about the operational implications of the proposals under the Bill. The Queensland Government also conducted targeted consultation with key non-government stakeholders on an exposure draft of the Bill.

## **Consultation – government**

The following agencies have been consulted about the amendments contained within the Bill:

- Commission for Children and Young People and Child Guardian
- Department of Communities
- Department of Education and Training
- Department of Premier and Cabinet
- Queensland Police Service
- Queensland Treasury
- Department of Justice and Attorney-General
- Public Service Commission
- Queensland Health, and
- Department of Community Safety

## **Notes on Provisions**

### **Part 1                      Preliminary**

**Clause 1** states the short title as the *Criminal History Screening Legislation Amendment Act 2010*.

**Clause 2** provides that the Act commences on a day to be fixed by proclamation (except for sections 82, 149, 152 to 155 and parts 12 and 17).

## **Part 2**                      **Amendment of Child Care Act 2002**

**Clause 3** provides that part 2 amends the *Child Care Act 2002*.

**Clause 4** amends section 26(2) to broaden the application of the provision to positive exemption notices and applications for exemption notices.

Clause 4 also amends the Note by inserting “Commissioner’s Act” in place of “*Commission for Children and Young People and Child Guardian Act 2000*” and by updating references to provisions in the Commissioner’s Act.

**Clause 5** amends section 27 in two respects.

Clause 5(1) amends the section 27 heading by inserting “or exemption notices” after “prescribed notices”.

Clause 5(2) amends section 27 by inserting “Commissioner’s Act” in place of “*Commission for Children and Young People and Child Guardian Act 2000*”.

**Clause 6** amends section 45(1)(e) by inserting “Commissioner’s Act” in place of “*Commission for Children and Young People and Child Guardian Act 2000*”.

**Clause 7** replaces section 50A to amend the existing process for the provision of information in relation to disciplinary action to the Commissioner.

New section 50A(1) and (2) provides that if the chief executive amends, suspends or revokes a person’s licence under section 43, 45, 46 (a disciplinary action) and reasonably believes the disciplinary action may be relevant to the functions or powers of the children’s commissioner under the Commissioner’s Act, the chief executive must notify the children’s commissioner in writing about the disciplinary action.

New section 50A(3) provides that the notice must state the person’s name and address, the person’s date and place of birth if known and that disciplinary action has been taken against the person without stating anything further about the disciplinary action.

New section 50A(4) and (5) provide that if the children’s commissioner requests further information about the disciplinary action and notifies the chief executive that the person is an applicant for, or holder of, a prescribed notice or exemption notice under the Commissioner’s Act then the chief

executive must notify the children's commissioner in writing of the form of the disciplinary action taken, when the conduct happened that constituted a ground for the disciplinary action, the nature of the conduct that constituted a ground for disciplinary action and any other information about the disciplinary action which the chief executive considers may be relevant to employment screening under chapter 8 of the Commissioner's Act, such as details about the nature of the disciplinary action.

New section 50A(6) provides that if the chief executive's initial notification to the children's commissioner did not include the person's place and date of birth, the chief executive can only provide further information about the disciplinary action if the children's commissioner includes the person's place and date of birth in their request and if the chief executive confirms the person's place and date of birth with the person.

New section 50A(7) provides that the notice under subsection (2) or (5) must not contain information that identifies, or is likely to identify, a particular child.

New section 50A(8) provides that if the chief executive gives the children's commissioner information about the disciplinary action and the disciplinary action is set aside on review or appeal, the chief executive must notify the children's commissioner that the disciplinary action has been set aside and of the reasons given by the entity that set the disciplinary action aside for setting it aside.

**Clause 8** amends section 54 in a number of respects.

Clause 8(1) amends section 54(7) to broaden the application of the subsection to include a positive exemption notice and an application for an exemption notice which has not been withdrawn.

Clause 8(2) amends section 54(8) by inserting "Commissioner's Act, section 197" in place of "*Commission for Children and Young People and Child Guardian Act 2000*".

Clause 8(3) inserts new subsection (8A) to provide that the personal representative does not commit an offence against section 259 of the Commissioner's Act by carrying on the child care service under the licence, without a current positive exemption notice during the first 30 days of the transitional licence period.

Clause 8(4) renumbers sections 54(8A) and (9) as section 54(9) and (10).

**Clause 9** amends the heading of part 3, division 5 by inserting "or exemption notices" after "prescribed notices".

**Clause 10** amends section 74 in a number of respects.

Clause 10(1) amends the heading section 74 by inserting “Commissioner’s Act” in place of “*Commission for Children and Young People and Child Guardian Act 2000*”.

Clause 10(2) amends section 74(1)(b) by broadening the application of the subsection to include positive exemption notices and applications for exemption notices.

Clause 10(3) amends section 74(2) by inserting “or current positive exemption notice” after “prescribed notice”.

Clause 10(4) amends section 74(2)(a) by inserting “children’s commissioner” in place of “Commissioner for Children and Young People and Child Guardian”.

Clause 10(5) amends section 74(3) by inserting “or exemption notice” after “prescribed notice”.

**Clause 11** amends section 80(1) by inserting “or current positive exemption notice” after “prescribed notice”.

**Clause 12** amends section 97 in a number of respects.

Clause 12(1) amends section 97(1) by inserting “or current positive exemption notice” after “prescribed notice”.

Clause 12(2) inserts a new section 97(3A) to provide that if a carer in a licensed home based service asks the licensee of the service to apply, under section 166(2), for a prescribed notice or exemption notice about an adult occupant who is required to have a prescribed notice or exemption notice under subsection (1), the licensee must comply with the request. The maximum penalty for offending against this section is 100 penalty units.

Clause 12(3) amends section 97(4) by inserting “or exemption notices” after “prescribed notices”.

Clause 12(4) amends the definition of “certified copy” in section 97(5) by inserting “or exemption notice” after “prescribed notice”.

**Clause 13** replaces section 107A to amend the requirements for when the chief executive is to give particular information to the children’s commissioner.

New sections 107A(1) and (2) provide that if the chief executive gives a person a prohibition notice under part 6 then the chief executive must

notify the children's commissioner in writing of the decision to give a person a prohibition notice.

New section 107A(3) provides that the notice must state the person's name and address, the person's date and place of birth if known and that the person has been given a prohibition notice without stating anything further about the giving of the prohibition notice.

New sections 107A(4) and (5) provide that if the children's commissioner requests further information about the prohibition notice and notifies the chief executive that the person is an applicant for, or holder of, a prescribed notice or exemption notice under the Commissioner's Act then the chief executive must notify the children's commissioner in writing about when the conduct that resulted in the prohibition notice happened, the nature of the conduct that resulted in the prohibition notice and any other information about the prohibition notice the chief executive considers may be relevant to employment screening under chapter 8 of the Commissioner's Act, such as details about the nature of the prohibition notice.

New section 107A(6) provides that if the chief executive's initial notification to the children's commissioner did not include the person's place and date of birth, the chief executive can only provide further information about the prohibition notice if the children's commissioner includes the person's place and date of birth in their request and if the chief executive confirms the person's place and date of birth with the person.

New section 107A(7) provides that if the prohibition notice relates to a child, a notice under subsection (2) or (5) must not contain information that identifies, or is likely to identify, the child.

New section 107A(8) provides that if the chief executive gives the children's commissioner information about a prohibition notice and the prohibition notice is set aside on review or appeal, the chief executive must notify the children's commissioner that the prohibition notice has been set aside and of the reasons given by the entity that set the prohibition aside for setting it aside.

**Clause 14** amends section 137(1)(d) by inserting "or current positive exemption notice" after "prescribed notice".

**Clause 15** amends section 139 in a number of respects.

Clause 15(1) replaces section 139(1) to provide that an authorised officer may ask a carer who provides stand alone care in a home may apply for a

prescribed notice or exemption notice about a person if the officer knows, or reasonably suspects, the person is an occupant of the home and has a criminal history that may make the person unsuitable to be present in the home while child care is provided in the home.

Clause 15(2) amends section 139(2) to provide that when the authorised officer asks the carer to apply for a prescribed notice or exemption notice, the officer must warn the carer that if the carer does not make the application within 14 days, the officer may give a direction that child care must not be provided in the home.

Clause 15(3) replaces section 139(3) and (4) to provide that if the carer does not make the application for a prescribed notice or exemption notice within 14 days or makes such an application but withdraws the application before it is decided, the authorised officer may give a notice to the carer directing the carer not to provide child care in the home.

Clause 15(4) amends section 139(5) to broaden its application to include an occupant who holds a current positive exemption notice.

Clause 15(5) amends section 139(7) to clarify that the section applies only in relation to an occupant of a home who is an adult.

**Clause 16** amends section 140 in a number of respects.

Clause 16(1) replaces section 140(1)(g) to broaden the application of the section to include an adult if a carer who provides stand alone care in a home has been asked under section 139 to apply for a prescribed notice or exemption notice about the adult.

Clause 16(2) amends sections 140(2) and (3) by inserting “children’s commissioner” in place of “Commissioner for Children and Young People and Child Guardian”.

Clause 16(3) amends sections 140(2)(a) and (c) by inserting “or exemption notice” after “prescribed notice”.

Clause 16(4) amends section 140(2)(b) to broaden the application of the provision to include an exemption notice.

**Clause 17** amends section 165(1) by inserting “Commissioner’s Act” in place of “*Commission for Children and Young People and Child Guardian Act 2000*”.

**Clause 18** amends section 165A in a number of respects.

Clause 18(1) amends the heading of section 165A by inserting “or exemption notice” after “prescribed notice”.

Clause 18(2) amends section 165A(1)(b) by inserting “or positive exemption notice” after “prescribed notice”.

Clause 18(3) amends section 165A(1)(c) by inserting “or exemption notice” after “prescribed notice”.

**Clause 19** replaces section 166 to provide the following:

- if a person is required under section 97(1) to have a current positive notice or current positive exemption notice because the person is an adult occupant of a home in which child care is provided in a licensed home based service, the licensee may apply for the prescribed notice or exemption notice and the application will be dealt with under the Commissioner’s Act as if the licensee were proposing to start employing or continue employing the person in regulated employment as a volunteer, and
- if a carer providing stand alone child care in the carer’s home has been asked under section 139 to apply for a prescribed notice or exemption notice about an adult occupant, or suspected adult occupant, of the carer’s home, the carer may apply for a prescribed notice or exemption notice and the application will be dealt with under the Commissioner’s Act as if the carer were proposing to start employing or continue employing the adult occupant in regulated employment as a volunteer. The adult occupant’s proof of identification documents as required by section 200(2)(b) or 261(2)(b) of the Commissioner’s Act must be sighted by a prescribed person as defined in schedule 7 of that Act.

**Clause 20** inserts a new part 10, division 5 to provide for transitional arrangements for the Criminal History Screening Legislation Amendment Act 2010.

New section 196 provides that if before commencement the chief executive has neither given nor decided not to give written notice to the commissioner about the disciplinary action, but at commencement had not notified the commissioner of the action, section 50A of the amended Act applies in relation to the action.

New section 197 provides that if before commencement the chief executive gave a person a prohibition notice, but at commencement had not notified

the commissioner of the notice, section 107A of the amended Act applies in relation to the action.

New section 198 provides that if an application was made before commencement, for a prescribed notice under section 166, and has not been withdrawn or decided at commencement, the application must be dealt with under the previous section 166 as if the amending Act had not been enacted.

**Clause 21** amends schedule 2 (Dictionary) in a number of respects as a result of the new exemption notice model.

Clause 21(1) omits the definitions for “negative prescribed notice” and “positive prescribed notice”.

Clause 21(2) inserts new definitions for “apply for an exemption notice”, “children’s commissioner”, “Commissioner’s Act”, “exemption notice”, “negative exemption notice”, “negative prescribed notice”, “positive exemption notice” and “positive prescribed notice”.

Clause 21(3) amends the definitions for “apply for a prescribed notice” and “prescribed notice” by inserting “Commissioner’s Act” in place of “*Commission for Children and Young People and Child Guardian Act 2000*”.

Clause 21(4) amends the definition of “disqualified person” by inserting “, a negative exemption notice’ after “prescribed notice”.

## **Part 3                      Amendment of Child Protection Act 1999**

**Clause 22** provides that part 3 amends the *Child Protection Act 1999*.

**Clause 23** amends section 99F in several respects.

Clause 23(1) amends the section 99F heading by inserting “children’s” after “by”.

Clause 23(2) amends section 99F(1) by inserting “children’s” after “is the”.

Clause 23(3) amends section 99F(2) by inserting “children’s commissioner gives notice under the Commissioner’s Act, section 370(4)” in place of

“commissioner gives notice under the *Commission for Children and Young People and Child Guardian Act 2000*, section 140B(4)”.

Clause 23(4) omits section 99F(3).

**Clause 24** amends section 125 in two respects.

Clause 24(1) amends section 125(1)(d)(ii) to broaden the application of the paragraph to include a current positive exemption notice and a current negative exemption notices.

Clause 24(2) replaces section 125(1)(d)(iv) to broaden the application of the paragraph to include reference to a current exemption notice and an application for an exemption notice.

**Clause 25** amends section 126 in two respects.

Clause 25(1) amends section 126(c) by inserting “or current positive exemption notice” after “notice”.

Clause 25(2) amends section 126(d) by inserting “chapter 8” in place of “part 6”.

**Clause 26** amends section 129(2)(c) by inserting “or current positive exemption notice” after “prescribed notice”.

**Clause 27** amends section 130 by inserting “chapter 8” in place of “part 6”.

**Clause 28** amends section 133(3)(d) to broaden the application of the paragraph to include a current positive exemption notice, a current negative exemption notice and a current application for an exemption notice.

**Clause 29** amends section 134(3)(d) to broaden the application of the paragraph to include a current positive exemption notice, a current negative exemption notice and a current application for an exemption notices.

**Clause 30** amends section 135(1)(a)(iii) and (b)(iv) by inserting “or current positive exemption notice” after “notice”.

**Clause 31** amends section 136(2)(c) by inserting “or current positive exemption notice” after “prescribed notice”.

**Clause 32** amends section 137(5) to broaden the application of the subsection to include a current positive exemption notice and a current application for an exemption notice.

**Clause 33** amends section 139(5) by inserting “or current positive exemption notice” after “notice”.

**Clause 34** amends section 140AB (Definitions for Subdivision 3) in a number of respects.

Clause 34(1) omits the definitions for “apply for a review”, “disqualifying event” and “prescribed provision”.

Clause 34(2) inserts new definitions for “apply for a review”, “disqualifying event” and “prescribed provision”. The amendments have been made to update cross-references and to broaden the definitions to also apply to exemption notices.

**Clause 35** amends section 140AC(3) to (5) by inserting “or negative exemption notice” after “prescribed notice”.

**Clause 36** amends section 140AF in two respects.

Clause 36(1) amends section 140AF(1) by inserting “or positive exemption notice” after “prescribed notice”.

Clause 36(2) amends section 140AF(2) by inserting “or negative exemption notice” after “prescribed notice”.

**Clause 37** amends section 140AG by inserting “or negative exemption notice” after “prescribed notice”.

**Clause 38** amends section 140AH(1) and (2) by inserting “or negative exemption notice” after “prescribed notice”.

**Clause 39** replaces section 140A to make amendments to the provision of disciplinary information to the commissioner.

New section 140A(1) and (2) provide that if the chief executive amends, suspends or cancels a person’s a certificate of approval under Division 4 (a disciplinary action) and reasonably believes the disciplinary action may be relevant to the functions or powers of the children’s commissioner under the Commissioner’s Act, the chief executive must give written notice of the disciplinary action to the children’s commissioner.

New section 140A(3) provides that the notice must state the person’s name and address, the person’s date and place of birth and that disciplinary action has been taken against the person without stating anything further about the disciplinary action.

New section 140A(4) and (5) provide that if the children’s commissioner requests further information about the disciplinary action and notifies the chief executive that the person is an applicant for, or holder of, a prescribed notice or exemption notice under the Commissioner’s Act then the chief

executive must notify the children's commissioner in writing of the form of the disciplinary information taken, when the conduct happened that constituted a ground for the disciplinary action, the nature of the conduct that constituted a ground for disciplinary action and any other information about the disciplinary information which the chief executive considers may be relevant to employment screening under chapter 8 of the Commissioner's Act, such as details about the nature of the disciplinary action.

New section 140A(6) provides that a notice under subsection (2) or (5) must not contain information that identifies, or is likely to identify, a particular child.

New section 140A(7) provides that if the chief executive gives the children's commissioner information about the disciplinary action and the disciplinary action is set aside on review or appeal, the chief executive must notify the children's commissioner that the disciplinary action has been set aside and of the reasons given by the entity that set the disciplinary action aside for setting it aside.

**Clause 40** amends section 141B(1)(b) and (c) by inserting "or current positive exemption notice" after "prescribed notice".

**Clause 41** amends section 141H in a number of respects.

Clause 41(1) amends section 141H(1)(a) and (d) by inserting "or exemption notice" after "notice".

Clause 41(2) amends section 141H(1)(c) by inserting "section 324 or 325" in place of "section 113 or 114".

Clause 41(3) amends section 141H(1)(e)(ii) by inserting "or negative exemption notice" after "notice".

Clause 41(4) amends section 141H(3)(b) by inserting "or current positive exemption notice" after "notice".

**Clause 42** amends section 141I in two respects.

Clause 42(1) amends section 141I(1)(a) by inserting "or exemption notice" after "notice".

Clause 42(2) amends section 141I(1)(c) by inserting "section 324 or 325" in place of "section 113 or 114".

**Clause 43** amends the definition for “police information”, in section 142 paragraphs (f) and (g) by inserting “or current positive exemption notice” after “prescribed notice”.

**Clause 44** amends section 148A in a number of respects.

Clause 44(1) amends section 148A(1)(a) by inserting “or exemption notice” after “notice”.

Clause 44(2) amends section 148A(1)(a)(i) by inserting “section 14(1) or (2)” in place of “section 6G(1) or (2)”.

Clause 44(3) amends section 148A(3)(b) by inserting “or current positive exemption notice” after “notice”.

**Clause 45** amends section 148(B) by replacing subsections (1)(a), (b) and (c) to broaden the application of the subsections to include a current positive exemption notice, a current negative exemption notice, a positive exemption notice that is suspended and a current application for an exemption notice.

**Clause 46** amends section 148D in a number of respects.

Clause 46(1) amends section 148D(2) by inserting “section 188” in place of “section 104B”.

Clause 46(2) amends section 148D(4) by inserting “197” in place of “section 109(1)”.

**Clause 47** amends section 246G in two respects.

Clause 47(1) amends section 246G(1) by inserting “section 134(3)” in place of “section 89T(3)”.

Clause 47(2) amends section 246G(2) by inserting “section 135(1)” in place of “section 89U(1)”.

**Clause 48** amends s 246H by inserting “section 135” in place of “section 89U”.

**Clause 49** inserts a new chapter 9, part 7 to provide for transitional provisions for the Criminal History Screening Legislation Amendment Act 2010.

New section 269 provides that if, before the commencement, the chief executive amended, suspended or cancelled a certificate of approval under chapter 4, part 2, division 4 (the disciplinary action) and at the commencement, the chief executive has not notified the children’s

commissioner of the disciplinary action, section 140A of the amended act applies in relation to the giving of the disciplinary action.

**Clause 50** amends schedule 2, left column, by inserting “or current positive exemption notice” after “prescribed notice”.

**Clause 51** amends schedule 3 (Dictionary) in a number of respects.

Clause 51(1) omits the definitions for “negative prescribed notice”, “positive prescribed notice”, “prescribed notice” and “traffic history”,

Clause 51(2) inserts new definitions for “apply for an exemption notice”, “exemption notice”, “negative exemption notice”, “negative prescribed notice”, “positive exemption notice”, “positive prescribed notice”, “prescribed notice” and “traffic history”.

Clause 51(3) amends the definition of “CDCRC” by inserting “chapter 6, part 1” in place of “part 4A, division 1” .

Clause 51(4) amends the definition of “current” in schedule 3 by inserting “or exemption notice” after “prescribed notice”.

## **Part 4                      Amendment of Child Protection (Offender Prohibition Order) Act 2008**

**Clause 52** provides that part 4 amends the *Child Protection (Offender Prohibition Order)*

*Act 2008*.

**Clause 53** amends section 25 in a number of respects.

Clause 53(1) amends section 25(2) to broaden the making of a disqualification order so a person may not hold a positive exemption notice or apply for an exemption notice.

Clause 53(2) amends section 25(3) by inserting “or positive exemption notice” after “positive notice”.

**Clause 54** amends section 28(4) by inserting “or positive exemption notice” after “positive notice”.

**Clause 55** amends the schedule (Dictionary) in a number of respects.

Clause 55(1) inserts new definitions for “exemption notice”, “positive exemption notice”, and “prescribed notice” as a result of the new exemption notice regime.

Clause 55(2) amends the definition of “appearance notice” at paragraph (e)(ii) by inserting “prescribed notice or exemption notice” in place of “positive notice”.

Clause 55(3) broadens the definition of “appearance notice” at paragraph (e)(iii) by inserting “positive notice blue card or positive exemption notice” in place of “or positive notice blue card”.

## **Part 5                      Amendment of Commission for Children and Young People and Child Guardian Act 2000**

**Clause 56** provides that part 5 and schedules 1 and 2 amend the *Commission for Children and Young People and Child Guardian Act 2000* (CCYPCG Act).

Clause 56(2) provides that schedule 1 makes minor amendments to particular provisions of the CCYPCG Act.

Clause 56(3) provides that schedule 2 amends parts 1 to 5, 6A, 6B and 7A to 9 of the CCYPCG Act to:

- convert parts into chapters, divisions into parts and subdivisions into divisions
- renumber provisions within parts 1 to 5, 6A, 6B and 7A to 9, and
- make consequential amendments to the conversions and renumbering as outlined above or out of the replacement of part 6 under clause 58 in relation to the provisions for the screening for regulated employment and business under the CCYPCG Act.

Clause 56(4) clarifies that if part 5 or schedule 1 amends a provision renumbered in schedule 2, the renumbering in schedule 2 takes effect immediately after the amendment of the provision in the part or schedule 1.

**Clause 57** replaces section 30 to prescribe for the employment screening of a person who is or proposes to be a member of staff of the Commission for

the Children and Young People and Child Guardian and in this capacity is to start or continue in regulated employment.

**Clause 58** replaces part 6 Screening for regulated employment and regulated business with chapter 8 Screening for regulated employment and regulated business in accordance with the amendments made under Clause 56 to convert parts into chapters, divisions into parts and subdivisions into divisions and the renumbering of provisions. A number of sections of the part 6 of the unamended Act have been reinserted without amendment other than renumbering, while other sections have been modified and entirely new sections inserted for clarity and to incorporate the objectives of this Bill.

New section 154 inserts a substantially similar provision to previous section 95 to explain that the main purpose of chapter 8 is to ensure that persons in employment or carrying on a business regulated by the CCYPCG Act undergo employment screening.

New section 155 inserts a substantially similar provision to previous section 96. The new section provides that without limiting section 6, the paramount consideration in making a decision under chapter 8 is a child's entitlement to be cared for in a way that protects them from harm and promotes their wellbeing.

New section 156 inserts a similar provision to previous section 97. The new section clarifies the types of employment and business regulated by chapter 8, namely regulated employment as contained in schedule 1, part 1 and regulated business contained in schedule, 1 part 2. Schedule 1, part 3 provides for employment to which chapter 8 does not relate.

New section 157 inserts a substantially similar provision to previous section 98 to clarify that chapter 8 is not limited by anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

New section 158 inserts a substantially similar provision to previous section 98B(1). The new section clarifies that the employment of a person is regulated employment if prescribed under a section of schedule 1, part 1, even if another section of schedule 1 deems the employment to not be regulated employment or that a business carried on by the person is not a regulated business (an exemption). An exemption is specific to the particular category of regulated employment or regulated business and is not transferable across the different categories of regulated employment or regulated business. An example is provided to demonstrate that while a

person does not require a blue card under one category, they may be required to hold a blue card under another category.

New section 159 inserts a substantially similar provision to previous 98B(2). The new section clarifies that the carrying on of a business by a person is regulated business if prescribed under a section of schedule 1, part 2, even if another section of schedule 1 deems that the business is not a regulated business or the employment is not regulated employment (an exemption). An exemption is specific to the particular section of regulated business or regulated employment and is not transferable across the different categories of regulated business or regulated employment. An example is provided to demonstrate that while person does not require a blue card under one category, they may be required to hold a blue card under another category.

New section 160 inserts a substantially similar provision to previous section 97(2). The new section clarifies to clarify that while the employment screening provisions in chapter 8 generally do not apply to the unpaid employment of a child, chapter 8 applies where the child is a trainee student of an education provider and is undertaking regulated employment as part of his or her course.

New section 161 inserts a substantially similar provision to previous section 99 in relation to prescribing what is employment, except to update the section for the purposes of renumbering and the new reference to chapter rather than part.

New section 162 inserts a similar provision to previous section 99A to clarify the employment relationship and whom may apply for a prescribed notice or exemption notice when an education provider arranges a trainee student to carry out work for someone else.

New section 163 inserts previous section 99B.

New section 164 inserts a substantially similar provision to previous section 99BA, updates cross-references and clarifies in the heading that the section relates to matters about particular regulated employment relating to the care of children.

New section 165 inserts previous section 99F.

New section 166 clarifies an executive officer or a person proposing to be a chief executive of the corporation is taken to be carrying on, or proposing to carry on, a regulated business for chapter 8 except for section 172.

New section 167 inserts a substantially similar provision to previous section 99C. The new section additionally clarifies that a serious offence includes an offence under a law of another jurisdiction that, had it been committed in Queensland, would constitute an offence mentioned in subsection (a) to (f).

New section 168 inserts a substantially similar provision to previous section 120B. The new section additionally clarifies that a disqualifying offence includes an offence under a law of another jurisdiction that, had it been committed in Queensland, would constitute an offence mentioned in subsection (a) to (e).

New section 169 inserts a substantially similar provision to previous section 120C. The new section additionally includes a person who is subject to a sexual offender order. Persons subject to orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003* are now included in the definition of disqualified person.

New section 170 inserts a substantially similar provision to previous section 120D. The new section additionally includes a person who is subject to a sexual offender order. Persons subject to orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003* are now included in the definition of relevant disqualified person.

New section 171 inserts a similar provision to previous section 99G. The new section clarifies the requirements in relation to risk management strategies about persons in regulated employment only.

New section 172 inserts a substantially similar provision to previous section 99G. The new section clarifies the requirements in relation to risk management strategies about regulated business only.

New section 173 clarifies that the part does not apply to police officers or registered teachers. This provision is necessary due to the introduction of the new exemption notice regime under Part 5. Police officers and registered teachers will be unable to apply for a prescribed notice under Part 4.

New section 174 inserts a substantially similar provision to previous section 120E(1) and (6) to prescribe offences for disqualified persons. The new provision updates cross-referencing and inserts a note.

New section 175 inserts a similar provision to previous section 120E(2)-(5) to clarify the notification requirements of the Commissioner where a disqualified person signs or makes a prescribed notice application.

New section 176 prescribes the notice requirement where an employer is required to notify the commissioner about the employment of someone else in regulated employment. The notification must be in the approved form, that is, must include provision for identifying information about the employee and certification by the employer of a prescribed person that they have sighted the employee's proof of identity documents. If this certification is not given by the employer, then the notice must include certification by the employer that they did not sight the documents due to the fact that the employee's usual place of residence was more than 50km from the employer's business address or that employee has a disability that affects his or her mobility. Generally the employer will be able to sight the documents relating to a person's identity (as prescribed by regulation). However, these amendments recognise that in some instances, distance or disability may hinder a person's capacity to provide an employer with the opportunity to sight their original proof of identification documents, and that this certification is not required to be part of the approved form.

New section 177 inserts a substantially similar provision to previous section 120F(1). The new section provides that the purpose of division 2 is to make 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 for a blue card.

New section 178 inserts a substantially similar provision to previous section 120F(2)-(5) to clarify when a person can make an application for an eligibility declaration and the requirements for such an application.

New section 179 inserts a substantially similar provision to previous section 120G. The new section clarifies that if an applicant for an eligibility declaration has a change in name or contact details subsequent to submitting the application but before the commissioner decides the application, the applicant must notify the commissioner of the change within 14 days of the change happening.

New section 180 inserts a similar provision to previous section 120H. The new provision clarifies how the Commissioner must decide the eligibility application, the notification requirements for when the Commissioner considers the person has not been convicted of a disqualifying offence and that there is no right of review of appeal under the CCYPCG Act in relation to the Commissioner's decision to refuse an eligibility declaration.

New section 181 inserts previous section 120I.

New section 182 inserts a substantially similar provision to previous section 120J(1) and updates cross-referencing.

New section 183 inserts a similar provision to section 120J(2). The new section specifically prescribes the circumstances in which a person is taken to have withdrawn an eligibility application where identity can not be established.

New section 184 inserts a substantially similar provision to section 120J(2). The new section specifically prescribes the circumstances in which a person is taken to have withdrawn an eligibility application where particular requests are not complied with.

New section 185 inserts a similar provision to previous section 120K. The new section 185 additionally provides that an eligibility declaration issued to a person also expires if after it is issued, the person is issued with a negative exemption notice, and where a positive exemption notice held by the person is cancelled.

New section 186 inserts a substantially similar provision to previous section 120L for the Commissioner to revoke a decision to refuse an eligibility and updates cross-referencing.

New section 187 inserts a substantially similar provision to previous section 104A to clarify that division 3 applies to the employment of a volunteers.

New section 188 inserts the requirement from previous section 104B that an employer must not employ a volunteer in regulated employment unless the volunteer has a positive notice. The new section also requires the employer to notify the commissioner that the employer is proposing to employ the employee in regulated employment. New section 188 further provides that an employer may employ a transitioning person if the employer has applied for a prescribed notice about the employee. Transitioning person is defined within section 188(2). The maximum penalty for offending against section 188 is 50 penalty units.

New section 189 inserts a similar provision to previous section 104BA to clarify the currency of a prescribed notice for a person continuing in regulated employment. A volunteer who holds a current positive notice can continue performing duties in regulated employment after the expiry of their blue card, provided the positive notice is not cancelled or suspended and a renewal application is lodged at least 30 days prior to the expiry. The

new provision also includes a note to refer to sections 240 or 242 in relation to the effect of a suspension of a positive notice.

New section 190 inserts a substantially similar provision to previous section 104C to clarify that division 4 does not apply to the employment of a volunteer.

New section 191 inserts a similar provision to previous section 105. The new section clarifies the requirements of an employer when continuing the employment of certain regular employees, in consideration of the minimum frequency for regulated employment as defined in clause 71. The new provision provides a maximum penalty of 50 penalty units for an employer who is in breach of this provision.

New section 192 inserts a similar provision to previous section 106. The new section clarifies the requirement of an employer when starting the employment of certain regular employees in consideration of the minimum frequency for regulated employment as defined in clause 71. The new provision provides a maximum penalty of 50 penalty units for an employer who is in breach of this provision.

New section 193 inserts a similar provision to previous section 106A to clarify the requirement of an employer when starting the employment of new employees in consideration of the minimum frequency for regulated employment as defined in clause 71. The new provision provides a maximum penalty of 50 penalty units for an employer who is in breach of this provision.

New section 194 inserts a similar provision to previous section 107. The new section provides that it is an offence for an employer to employ or continue to employ a person in regulated employment if the employer has applied for a prescribed notice about the employee and had received a notice of deemed withdrawal in relation to the application. The new provision further provides that it is an offence for an employer to employ a person if the employer has been notified that the person signing or making the application is a disqualified person, that the person's positive notice has been cancelled, or that the person has had a change in police information that is a conviction for a serious offence.

New section 195 inserts a similar provision to previous section 108(1) and (3) to outline the obligations if the holder of a negative notice or negative exemption notice, or prescribed notice application is withdrawn. The provision makes it an offence for a current negative notice or negative exemption notice holder to sign or make an application under division 7 or

8 respectively, or to apply for commence or continue in regulated employment. New subsections (2) and (3) provide exceptions for contravention of the provision in the case of substituted notices.

New section 196 inserts a similar provision to previous section 108(2) to clarify that a person who has withdrawn consent to employment screening is not to start or continue in regulated employment unless they are issued with a positive notice.

New section 197 inserts a similar provision to previous section 109(1). The new section 197 provides that a person must not carry of a regulated business unless they have a current positive notice or they are a transitioning person who has submitted an application for a prescribed notice. New subsection (2) provides a definition for transitioning person.

New section 198 inserts a similar provision to previous section 109A to clarify the currency of a prescribed notice for a person carrying on a regulated business. A person who carries on a regulated business who holds a current positive notice can continue to carry on the regulated business after the expiry of the positive notice provided the card was not cancelled or suspended and they lodge a renewal application at least 30 days prior to the expiry. The new provision also includes a note to refer to sections 240 or 242 in relation to the effect of a suspension of a positive notice.

New section 199 inserts a similar provision to previous section 100(1)-(1C) to prescribe who makes the application for a prescribed notice for regulated employment.

New section 200 inserts equivalent provision to previous section 100(2)-(3A). The new section outlines the form of the application, and additionally imposes an obligation on the person who makes an application to sign an accompanying certification (if necessary) in the approved form to certify that the reason they did not sight the documents relating to proof of the employee's identity, prescribed under a regulation was only because the employee's usual place of residence is more than 50km from the applicant's business address or the employee is a person with a disability that affects mobility. This certification is no longer part of the approved form.

New section 201 inserts a similar provision to previous section 100(4) to provide that the commissioner may request further information in relation to an application received under division 7. The new provision clarifies that requests for information or why the person did not sight the documents may be made in writing or orally.

New section 202 inserts a similar provision to previous section 100(6)-(7) to clarify that for an application made under division 7, the employee is liable to pay the prescribed fee and if the employer pays the prescribed fee, the fee is a debt payable by the employee to the employer.

New section 203 provides that a person who makes an application for a prescribed notice for regulated employment may withdraw the application at any time before it is decided. The new section further provides that a person who makes an application under part 4, division 7 is taken to have withdrawn the application if the person making the application does not comply with a written request from the commissioner asking the person to provide information about why the person did not sight the documents as mentioned in section 200(2)(b) and the commissioner gives the person a notice of deemed withdrawal.

New section 204 inserts a similar provision to previous section 123(2). The new section provides that the person about whom the application is made under part 4, division 7 may withdraw the person's consent to employment screening under chapter 8 either orally or by written notice to the commissioner. If the person withdraws their consent, to employment screening then the commissioner must give written notice of the withdrawal to the person who made the application.

New section 205 inserts a similar provision to previous section 123(3)(a)(i)(A),(ii) and (b)-(d) to provide for the deemed withdrawal of consent to employment screening where identity cannot be established.

New section 206 inserts a similar provision to previous section 123(3)(a)(i)(B),(ii), (b) and (d) to provide for the deemed withdrawal of consent to screening where particular requests are not complied with.

New section 207 inserts a similar provision to previous section 123(3A) and (4A) to provide for the withdrawal of consent to employment screening if the person ceases being employed with the employer. New subsection (3) also provides a definition for "relevant person".

New section 208 inserts a similar provision to previous section 123(3B). The new section additionally provides that a person is taken to have withdrawn their consent to employment screening where the commission gives the person notice that the person is subject to an interim sexual offender order. This is required as a result of the expansion to the exclusionary framework under the blue card system to include persons subject to orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

New section 209 inserts a similar provision to previous section 123(4)(a) to clarify the effect of a withdrawal of consent to employment screening.

New section 210 inserts a similar provision to previous section 123A to clarify the notification requirements where an application is withdrawn or the person already has a negative notice or negative exemption notice.

New section 211 inserts a substantially similar provision to previous section 101(1) to provide that a person who proposes to carry on, or continue to carry on a regulated business may apply for a prescribed notice.

New section 212 inserts a similar provision to previous section 101(2)-(3A) to outline the form of an application made under division 8 for a prescribed notice for regulated business.

New section 213 inserts a similar provision to previous section 101(5). The new section provides that the commissioner may request further information in relation to an application received under division 8. The new provision additionally provides that the commissioner may request a submission about a stated matter that the commissioner reasonably believes is relevant to the application.

New section 214 inserts a similar provision to previous section 101(4) to clarify that a person may withdraw an application under division 8 at any time prior to the application being decided.

New section 215 inserts a similar provision to previous section 101(6)(a)(i)(A),(ii), (b)-(d) to provide for the deemed withdrawal of consent to employment screening where identity cannot be established.

New section 216 inserts a similar provision to previous section 101(6)(a)(i)(B),(ii), (b) and (d) to provide for the deemed withdrawal of consent to screening where particular requests are not complied with.

New section 217 inserts a similar provision to previous section 123(3B). The new section additionally provides that a person is taken to have withdrawn their consent to employment screening where the commissioner gives the person notice that the person is subject to an interim sexual offender order. This amendment is required as a result of the expansion to the exclusionary framework under the blue card system to include persons subject to orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

New section 218 inserts a similar provision to previous section 123A to clarify the notification requirements where an application is withdrawn or the person already has a negative notice or negative exemption notice.

New section 219 inserts a similar provision to previous section 102(1) to clarify that part 4, division 9 applies if a prescribed notice application is made about a person and the application is not withdrawn.

New section 220 inserts a substantially similar provision to previous section 102(2) to provide that the commissioner must decide an application for a prescribed notice by issuing either a positive notice or a negative notice.

New section 221 inserts a similar provision to previous section 102(3)(a)-(c), (4)-(5) to outline the requirements for issuing a prescribed notice to a person and the commissioner is:

- not aware of police or disciplinary information
- is not aware of a conviction but is aware of investigative information, disciplinary information, a charge for an offence other than a disqualifying offence or a charge for a disqualifying offence that has been dealt with other than by a conviction and/or a conviction for an offence other than a serious offence.

New section 222 provides that the commissioner must issue a positive notice to the person, unless it is an exceptional case, if:

- the person was the holder of a positive exemption notice that was cancelled because the person resigned or retired from being a police officer and there has not been a change in police information about the person since the resignation or retirement, or
- the person was the holder a positive exemption notice that was cancelled because the person surrendered the person's registration under the *Education (Queensland College of Teachers) Education Act 2005* and there has not been a change in police information about the person since the surrender.

New section 223 inserts a similar provision to previous section 102(3)(d),(e), (6A). The new section clarifies that:

- the person must be issued with a positive notice if the commissioner is not aware of any police information or disciplinary information about the person other than information known to the commissioner at the time of cancelling the person's negative notice or negative exemption notice or the issuing of an eligibility declaration to a person that has now expired

- a negative notice must be issued to the person unless it is an exceptional case if the commissioner is aware of police information or disciplinary information not known at the time of cancelling the person's negative notice or negative exemption notice or the issuing of an eligibility declaration to a person that has now expired.

New section 224 inserts a similar provision to previous section 102(6)(a). The new section additionally provides that section 224(1) does not apply if the person is a relevant disqualified person only because the person is subject to an interim sexual offender order. This is required as a result of the expansion to the exclusionary framework under the blue card system to include persons subject to orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

New section 225 inserts a substantially similar provision to previous section 102(6)(b) and (c), (7) and (8). The new section additionally provides that the commissioner must issue a negative notice (unless there is an exceptional case) if aware that the person is a relevant disqualified person because the person is subject to an interim sexual offender order. New section 225 clarifies that a negative notice must be issued (unless there is an exceptional case) to a person who has been a relevant disqualified person at any time but is no longer a relevant disqualified person (other than a person who was a relevant disqualified person by reason of a conviction, sentence or order that was set aside on appeal).

New section 226 inserts a substantially similar provision to previous section 102A(1) and (2) to provide the matters upon which the commissioner must have regard to in deciding whether or not there is an exceptional case for the person and if the commissioner is aware the person has been convicted of, or charged with, an offence. The new section additionally prescribes that the commissioner must also have regard to:

- any information about the person given to the commissioner under from the director of public prosecutions or chief executive, corrective services
- any report about the person's mental health given to the commissioner from a registered health practitioner
- any information about the person given to the commissioner information from the Mental Health Court or Mental Health Review Tribunal.

New section 227 inserts a similar provision to previous section 102A(3) to prescribe the matters which the commissioner must have regard to when deciding whether or an exceptional case exists where the commissioner is aware of investigative information about a person.

New section 228 inserts a similar provision to previous section 102A(4) to prescribe the matters which the commissioner must have regard to when deciding whether or not an exceptional case exists where the commissioner is aware of disciplinary information about a person.

New section 229 inserts a similar provision to previous section 103 to provide that the commissioner must invite submissions from a person if the commissioner is deciding whether or not an exceptional case exists and is proposing to issue a negative notice.

New section 230 inserts a similar provision to previous section 101A

New section 231 inserts a similar section to previous section 104. The new section outlines the currency of a prescribed notice and positive notice blue card. A negative notice remains current until cancelled, a positive notice remains current for 3 years after it is issued, unless cancelled earlier and a positive notice blue card remains current for the same period as the positive notice.

New section 232 provides that division 10 applies if the commissioner decides a prescribed notice application.

New section 233 inserts a similar provision to previous section 102B(1)-(2). If a person is issued with a negative notice, the negative notice must be accompanied by a written notice containing the reasons for the decision, the relevant review and appeal information, and the offences which apply to a negative notice holder.

New section 234 inserts a similar requirement to previous section 102B(4)-(5) providing that the commissioner must notify each notifiable person of the issue of a prescribed notice. Notifiable person is defined in clause 71.

New section 235 applies if the chief executive of a department has made an application about a person under part 4, division 7 and the commissioner issues a positive notice to the person and the chief executive of the department asks the commissioner for advice. If the commissioner is aware that the person has a criminal history, the commissioner may advise the chief executive that the chief executive may need to undertake a further assessment of the person under the *Public Service Act 2008*, chapter 5, part

6, division 3A to decide whether or not the department should engage the person. The advice must be accompanied by a written statement that no adverse inference about the person's criminal history or suitability for engagement, or continued engagement, by the department may be drawn by the fact that advice was given.

New section 236 inserts a similar provision to previous section 118 to provide for the cancellation of a negative notice by request of a negative notice holder. The new section also clarifies the notification requirements where the commissioner refuses the application.

New section 237 inserts a similar provision to previous section 119(1), (3)-(5) to provide for the cancellation of a positive notice and the substitution of a negative notice where it is appropriate to issue a negative notice in certain circumstances.

New section 238 inserts a similar provision to previous section 119(2) and (3). The provision clarifies that the commissioner may substitute a positive notice only if satisfied the person is proposing to be employed in regulated employment or proposing to carry on a regulated business if the positive notice is issued. The commissioner may cancel the person's negative notice even if a positive notice is not issued to the person under subsection (3) until a later time or even if a positive notice is never issued to the person under subsection (3). New section 238 clarifies that the commissioner may act under subsection (1) on the commissioner's own initiative or, where the person has made an application under section 236 under subsection (1)(a) or (b) instead of cancelling the person's negative notice under sections 236.

New section 239 inserts a similar provision to previous section 119A to provide for the cancellation of a positive notice where a person becomes a relevant disqualified person in certain circumstances.

New section 240 inserts a similar provision to previous section 119C to provide for the suspension of a positive notice where a person is charged with a disqualifying offence or becomes subject to a temporary or interim order. New section 240 additionally provides for the suspension of a positive notice on the basis of an interim sexual offender order. This amendment is required as a result of the expansion to the exclusionary framework under the blue card system to include persons subject to orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*

New section 241 inserts a similar provision to previous section 119D to provide for the ending of a suspension under section 240 and the issue of a further prescribed notice. New section 241 clarifies the notification

requirements, and that the commissioner may cancel the suspended positive notice without issuing a further prescribed notice if the person notifies the commissioner that the person is no longer proposing to be employed in regulated employment or to carry out a regulated business even if a further positive notice is issued to the person.

New section 242 is provides for the suspension of a positive notice held by a registered teacher if teacher registration is suspended. If a registered teacher holds a positive notice and the teacher's registration is suspended under section 49 of the *Education (Queensland College of Teachers) Act 2005* the commissioner must suspend the teacher's positive notice and notify the person and each notifiable person of the suspension. Until the suspension ends, the teacher must not apply, start or continue in regulated employment or commence or continue to carry on a regulated business. While each person notified must not allow the teacher to perform regulated employment during the period of suspension.

New section 243 provides for the ending of a suspension under section 242. The suspension ends if the positive notice is cancelled on the basis that the person becomes a relevant disqualified person (other than only because the person is subject to a temporary offender prohibition order or a interim sexual offender order), the positive notice is cancelled on the basis that the person is no longer proposing to be in regulated employment or carrying on a regulated business, or a further prescribed notice is issued. Subsections (7), (8) and (9) outline the notification requirements if the commissioner cancels the suspended notice, and subsection (10) outlines when the commissioner is not required to decide an application in relation to the suspension.

New section 244 inserts a similar provision to previous section 119E to provide for the cancellation of a positive notice on the holder's request. New section 244 additionally clarifies that if the person's positive notice is cancelled, the person must not perform regulated employment or carry on a regulated business unless they are issued with a further positive notice, or in the case of a police officer of registered teacher, unless the commissioner issues a positive exemption notice or an exemption notice application is submitted about the person.

New section 245 inserts a similar provision to previous section 102B(6) to provide for the return of previously held prescribed notices or exemption notices. New section 245 additionally includes a reasonable excuse defence in subsection (2).

New section 246 inserts a similar provision to previous section 117(1)(b) and (2) to provide for the return of a cancelled positive notice. If the commissioner cancels a positive notice, the person must immediately return the positive notice and blue card, unless the person has a reasonable excuse.

New section 247 clarifies that if a registered teacher or police officer holds a current positive or negative notice, the person's positive notice or negative notice continues in effect subject to section 231. Section 247 applies despite section 173. Subsections (4) and (5) clarify when a positive or negative exemption notice must be issued if required to issue a positive or negative notice to a registered teacher or police officer.

Part 5 (sections 248 to 304) introduces the exemption notice regime for police officers and registered teachers. Part 5 inserts some similar provisions as contained in Part 4.

New section 248 provides that part 5 applies only in relation to the employment of a person, or the carrying on a business by a person who is a police officer or a registered teacher. Registered teacher is defined in clause 71. Police officer is defined in the *Acts Interpretation Act 1954*.

New section 249 prescribes the notice requirement where an employer is required to notify the commissioner about the employment of someone else in regulated employment. The notification must be in the approved form, that is, must include provision for identifying information about the employee and certification by the employer of a prescribed person that they have sighted the employee's proof of identity documents. If this certification is not given by the employer, then the notice must include certification by the employer that they did not sight the documents due to the fact that the employee's usual place of residence was more than 50km from the employer's business address to the that employee has a disability that affects his or her mobility. Generally the employer will be able to sight the documents relating to a person's identity (as prescribed by regulation). However, these amendments recognise that in some instances, distance of disability may hinder a person's capacity to provide an employer with the opportunity to sight their original proof of identification documents, and that this certification is not required to be part of the approved form.

New section 250 inserts a substantially similar provision to new section 187 to clarify that division 2 applies to the employment of a volunteer.

New section 251 inserts a similar provision to new section 188. New section 251 provides that an employer must not employ an employee in

regulated employment unless the employee has a current positive exemption notice or the employee is a transitioning person (and the employer notified the commissioner of the proposed employment in both of these circumstances) or the employer has submitted an exemption notice application. The maximum penalty for offending against section 251 is 50 penalty units.

New section 252 inserts a substantially similar provision to new section 190 to clarify that division 3 does not apply to the employment of a volunteer.

New section 253 inserts a similar provision to new section 191. New section 253 clarifies the requirements of an employer when continuing the employment of certain regular employees, where the employee does not hold a current positive exemption notice and is not a transitioning person and in consideration of the minimum frequency for regulated employment as defined in clause 71. The new provision provides a maximum penalty of 50 penalty units for an employer who is in breach of this provision.

New section 254 a similar provision to new section 192, New section 254 clarifies the requirement of an employer when starting the employment of certain regular employees in consideration of the minimum frequency for regulated employment as defined in clause 71. An employer must not employ an employee in regulated employment unless the employee has a current positive exemption notice or the employee is a transitioning person (and the employer notified the commissioner of the proposed employment in both of these circumstances) or the employer has submitted an exemption notice application. The maximum penalty for offending against this section is 50 penalty units.

New section 255 inserts a similar provision to new section 193. New section 255 clarifies the requirement of an employer when starting the employment of new employees in consideration of the minimum frequency for regulated employment as defined in clause 71. An employer must not employ an employee in regulated employment unless the employee has a current positive exemption notice or the employee is a transitioning person (and the employer notified the commissioner of the proposed employment in both of these circumstances) or the employer has submitted an exemption notice application about the employee. The maximum penalty for offending against this section is 50 penalty units.

New section 256 inserts a similar provision to new section 194. New section 256 provides that it is an offence for an employer to employ or

continue to employ a person is regulated employment if the employer has applied for an exemption notice about the employee and had received a notice of deemed withdrawal in relation to the application. The new provision further provides that it is an offence for an employer to employ a person if the employer has been notified that the person's positive exemption notice has been cancelled under section 302 or that the person has had a change in police information that is a conviction for a serious offence.

New section 257 inserts a substantially similar provision to new section 195. The provision makes it an offence for a current negative notice or negative exemption notice holder to sign or make an application under division 6 or 7 respectively, or to apply for, start or continue in regulated employment. New subsections (2) and (3) provide exceptions for contravention of the provision in the case of substituted notices.

New section 258 inserts a similar provision to new section 196. New section 258 to clarify that a person who has withdrawn consent to employment screening is not to apply for, or start or continue in, regulated employment unless they are issued with a positive exemption notice.

New section 259 inserts a similar provision to new section 197. New section 259 provides that a person must not carry on a regulated business unless the person has a current positive exemption notice, the person is a transitioning person (as defined in clause 71) or the person has applied for an exemption notice and does not hold a negative notice or a negative exemption notice.

New section 260 inserts a similar provision to new section 199 to outline who makes the application for an exemption notice for regulated employment.

New section 261 inserts a similar provision to new section 200 to outline the form of an application under division 6. The application must be in the approved form, signed by the applicant and employee, and if the applicant did not sign the proof of identification documents, certification that the reason they did not sight the documents relating to proof of the employee's identity, prescribed under a regulation was only because the employee's usual place of residence is more than 50km from the applicant's business address or the employee is a person with a disability that affects mobility. The approved form must include provision for identifying information about the employee, certification by the applicant or prescribed person that the employee's proof of identification documents have been sighted, a

declaration by the employee that that he or she is a police officer of registered teacher and the employee's consent to employment screening.

New section 262 inserts a substantially similar provision to new section 201 to provide that the commissioner may request further information in relation to an application received under division 6. The commissioner may request, orally or in writing, stated information necessary to establish the employee's identity, stated information by way of a submission, or information as to why the person making the application did not sight the proof of identification documents

New section 263 inserts a substantially similar provision to new section 203. New section 263 provides that a person who makes an application under part 5, division 6 may withdraw the application at any time before it is decided. New section 263 further provides that a person who makes an application under part 5, division 6 is taken to have withdrawn the application if the person making the application does not comply with a written request from the commissioner asking the person to provide information about why the person did not sight the documents as mentioned in section 261(2)(b) and the commissioner gives the person a notice of deemed withdrawal.

New section 264 inserts a substantially similar provision to new section 204. The new section provides that a person whom an application is made under part 5, division 6 may withdraw the person's consent to employment screening by written notice to the commissioner. Subsection (2) provides that if a person withdraws his or her consent to employment screening by written notice under (1), the Commissioner must give written notice of the withdrawal to the person who made the application.

New section 265 provides that a person about whom an application is made under part 5, division 6 is taken to have withdrawn his or her consent to employment screening under chapter 8 if the person notifies the commissioner in writing that the person is no longer a police officer or registered teacher and the commissioner gives the person a notice of deemed withdrawal.

New section 266 inserts a substantially similar provision to new section 205 to provide for the deemed withdrawal of consent where identity cannot be established.

New section 267 inserts a substantially similar provision to new section 206 to provide for the deemed withdrawal of consent where particular requests are not complied with.

New section 268 inserts a substantially similar provision to new section 207 to provide for the deemed withdrawal of consent to employment screening if employment changes.

New section 269 inserts a substantially similar provision to new section 208. New section 269 provides that an a person about whom an exemption notice application is made is deemed to have withdrawn their consent to employment if charged with disqualifying offence, named as the respondent in an application for an offender prohibition order, or subject to a temporary offender prohibition order or interim sexual offender order, and the commissioner gives the person a notice of deemed withdrawal.

New section 270 inserts an equivalent provision to new section 209 to clarify the effect of a withdrawal of consent to employment screening.

New section 271 inserts a substantially similar provision to new section 210 to provide the notification requirements where an exemption notice application is withdrawn or the person already has a negative exemption notice or negative notice.

New section 272 inserts a substantially similar provision to new section 211 to provide that a person who proposes to carry on, or continue to carry on a regulated business may apply for an exemption notice.

New section 273 inserts a similar provision to new section 212 to outline the form of an application made under division 7 for an exemption notice for regulated business. The application must be in the approved form and signed by the applicant. The approved form must include provision for identifying information about the applicant, certification relating to the sighting of the applicant's proof of identification documents and a declaration that the applicant is a police officer or registered teacher.

New section 274 inserts an equivalent provision to new section 213 .to provide that the commissioner may request further information in relation to an application received under division 7. This includes stated information that the commissioner reasonably needs to establish the applicant's identity, or stated information by way of a submission.

New section 275 inserts an equivalent provision to new section 214 to clarify that a person may withdraw an application under division 7 at any time prior to the application being decided.

New section 276 provides that a person about whom an application is made under part 5, division 7 is taken to have withdrawn his or her consent to employment screening under chapter 8 if the person notifies the

commissioner or the commissioner notifies the person that the person is no longer a police officer or registered teacher and the commissioner gives the person a notice of deemed withdrawal.

New section 277 inserts an equivalent provision to new section 215 to provide for the deemed withdrawal of consent to employment screening where the person's identity cannot be established.

New section 278 inserts an equivalent provision to new section 216 to provide for the deemed withdrawal of consent to screening where particular requests are not complied with.

New section 279 inserts an equivalent provision to new section 217. New section 279 provides that an a person about whom an exemption notice application is made is deemed to have withdrawn their application if charged with disqualifying offence, named as the respondent in an application for an offender prohibition order, or subject to a temporary offender prohibition order or interim sexual offender order, and the commissioner gives the person a notice of deemed withdrawal.

New section 280 inserts a substantially similar provision to new section 218 to clarify the notification requirements where an application is withdrawn or the person already has a negative notice or negative exemption notice.

New section 281 inserts a substantially similar provision to new section 219 to provide that application 8 applies if an exemption notice is made about a person and the application is not withdrawn.

New section 282 inserts a substantially similar provision to new section 220 to provide that the commissioner must decide an exemption notice application by issuing either a positive exemption notice or a negative exemption notice.

New section 283 applies in relation to an application made by a police officer for an exemption notice. The commissioner must issue a positive exemption notice to the person if the commissioner is not aware of any police information about the person and the commissioner has been advised, under section 286, that the person is a police officer and has not been advised, under section 286, to undertake further employment screening of the person under chapter 8.

New section 284 applies in relation to an application made by a registered teacher for an exemption notice. The commissioner must issue a positive exemption notice to the person if the commissioner is not aware of any

police information or disciplinary information about the person and the commissioner has been advised, under section 287, that the person is a registered teacher and has not been advised, under section 287, to undertake further employment screening of the person under chapter 8.

New section 285 applies if neither section 283 or 284 applies to the person. The commissioner must decide the exemption notice application in the way the commissioner would be required to decide the application if it were a prescribed notice application. Sections 221 to 229 apply in relation to making the decision.

New section 286 applies if the exemption notice application is about a person purporting to be a police officer. The commissioner may ask the police commissioner to confirm that the person is a police officer. If the person is a police officer the commissioner may ask the police commissioner for advice whether the commissioner should undertake further employment screening of the person under chapter 8. The police commissioner must comply with the commissioner's request. If asked for advice, the police commissioner must advise the commissioner that the commissioner may need to undertake further employment screening of the person under chapter 8 if the police commissioner is aware the person has been charged with an offence and the charge has not been finally dealt with.

New section 287 applies if the exemption notice application is about a person purporting to be a registered teacher. The commissioner may ask the college of teachers to confirm that the person is a registered teacher. If the person is a registered teacher the commissioner may ask whether the commissioner should undertake further employment screening of the person under chapter 8. The college of teachers must comply with the commissioner's request. If asked for advice, the college of teachers must advise the commissioner to undertake further screening of the person under chapter 8 if the college is aware of any police information about the person.

New section 288 inserts a substantially similar provision to new section 230 to outline the notification requirements to the commissioner in relation to change in particular information.

New section 289 provides for the currency of an exemption notice. A negative exemption notice remains current until it is cancelled under part 5, division 10, and a positive exemption notice remains current while the holder is a police officer or registered teacher, unless cancelled earlier under part 5, division 10.

New section 290 inserts a substantially similar provision to new section 232. New section 290 provides that division 9 applies if the commissioner decides an exemption notice application.

New section 291 inserts a substantially similar provision to new section 233 to outline the additional information that the commission must give a person is issued with a negative exemption notice.

New section 292 inserts a substantially similar provision to new section 234 to require that each notifiable person must be notified of the commissioner's decision to issue a positive or negative exemption notice.

New section 293 is similar to new section 293 if the chief executive of a department has made an application about a person under part 5, division 6 and the commissioner issues a positive exemption notice to the person and the chief executive of the department asks the commissioner for advice. If the commissioner is aware that the person has a criminal history, the commissioner may advise the chief executive that the chief executive may need to undertake a further assessment of the person under the *Public Service Act 2008*, chapter 5, part 6, division 3A to decide whether or not the department should engage the person. The advice must be accompanied by a written statement that no adverse inference about the person's criminal history or suitability for engagement, or continued engagement, by the department may be drawn by the fact that advice was given.

New section 294 inserts a substantially similar provision to new section 236 to prescribe for the cancellation of a negative exemption notice on the holder's application. A person who has been issued with a negative exemption notice and who is not a relevant disqualified person, may apply to the Commissioner to cancel the notice if two years has passed since the issuing of the notice.

New section 295 inserts a substantially similar provision to new section 237 to allow the Commissioner to cancel a positive exemption notice and substitute a negative exemption notice where:

- the decision to issue the positive exemption notice was based on wrong or incomplete information and based on the correct or complete information the Commissioner should issue a negative exemption notice
- it is appropriate to cancel the positive exemption notice on the basis of:

- disciplinary information or information received from the police commissioner, the director of public prosecutions or an interstate police commissioner
- a court decision is made subsequent to the positive exemption notice being issued.

New section 296 inserts a substantially similar provision to new section 238 to allow the Commissioner to cancel a negative exemption notice and substitute a positive exemption notice where:

- the decision to issue the negative exemption notice was based on wrong or incomplete information and based on the correct or complete information the commissioner should issue a positive exemption notice
- the decision to issue the negative exemption notice was based on the person being a relevant disqualified person and the person is no longer a relevant disqualified person
- it is appropriate to cancel the negative exemption notice on the basis of information not known to the Commissioner at the time the negative exemption notice was issued.

New section 296 clarifies that the commissioner may act under subsection (1) on the commissioner's own initiative or, where the person has made an application under section 294 under subsection (1)(a) or (b) instead of cancelling the person's negative notice under sections 294.

New section 297 inserts a substantially similar provision to new section 239 to provide that the Commissioner must cancel a positive exemption notice (including one that is suspended) and substitute a negative exemption where the person:

- has been or is convicted of a disqualifying offence, or
- is subject to offender reporting obligations, an offender prohibition order, a disqualification order or a sexual offender order (other than a temporary offender prohibition order and/or interim sexual offender order).

New section 298 inserts a similar provision to new section 240. New section 298 applies to the suspension of exemption notice where a positive exemption notice holder is charged with a disqualifying offence, or becomes a relevant disqualified person on the basis of a temporary offender prohibition order or interim sexual offender order. Additionally, new

section 298(9) clarifies that a notifiable person must not end the person's employment on the basis that the person's positive exemption notice has been suspended.

New section 299 inserts a similar provision to new section 241 to relate to the exemption notice regime. Subsection (2) includes that a suspension ends if the commissioner cancels the suspended notice under subsection (5) if the commissioner is satisfied that the person is no longer proposing to be in regulated employment or carrying on a regulated business and where a positive exemption notice ceases to have effect as a result of the suspension of a teacher's registration under section 48 or 49 of the *Education (Queensland College of Teachers) Act 2005*.

New section 300 applies if a person was issued with a positive exemption notice on the basis that the person was a police officer or a registered teacher and the person is no longer a police officer or registered teacher (including because the person's teacher registration was suspended under section 48 or 49 of the *Education (Queensland College of Teachers) Act 2005*). The commissioner must notify the person in writing that their positive exemption notice has ceased to have effect, that the person must immediately return the exemption notice and that the person may apply for a prescribed notice if they are no longer a police officer or registered teacher. The Commissioner must also give written notice to each notifiable person about the expiry of the exemption notice and also consider whether notice should be given under section 342(2)(e) which provides for the notification to the Non-State Schools Accreditation Board about the expiry of a positive exemption notice with respect to a director of the governing body of a non-state school.

New section 301 applies if a person was issued with a negative exemption notice on the basis the person was a police officer or a registered teacher and the person is no longer a police officer or registered teacher. The negative exemption notice continues in effect despite section 248. However, if the negative exemption notice is cancelled under section 294 or 295, the commissioner is required or permitted to issue a positive exemption notice to the person, the commissioner must instead issue the person with a prescribed notice if the commissioner is aware that the person is no longer a police officer or registered teacher, the commissioner must instead issue the person with a prescribed notice.

New section 302 inserts a substantially similar provision to new section 244 to provide for the cancellation of a positive exemption notice on the holder's request.

New section 303 provides for the return of a previously held exemption notice or prescribed notice (old notice) where the person is issued with a new (exemption) notice. Unless the person has a reasonable excuse, the person must return the old notice and any blue card to the Commissioner within 14 days.

New section 304 inserts a similar provision to new section 246 to provide for the return of a previously held exemption notice or prescribed notice.

New section 305 inserts a similar provision to previous section 121A. New section 305 provides that the police commissioner may decide that information about a person is investigative information in relation to prescribed notices and exemption notices. Schedule 6 prescribes the offences to which the acts or omissions of the investigated person must constitute.

New section 306 inserts previous section 121B.

New section 307 inserts a similar provision to previous section 121C. New section 307 provides for appeal rights against the police commissioner's decision that information is investigative information. New section 307 additionally applies where a negative exemption notice is issued, where a positive notice is cancelled and substituted with a negative exemption notice and where a positive exemption notice is cancelled and substituted with a negative exemption notice.

New section 308 inserts a substantially similar provision to previous section 121D.

New section 309 inserts a similar provision to previous section 121E to clarify the consequences of a decision on appeal. New section 309 applies to the issue of a negative exemption notice and the refusal of on an eligibility notice on the basis of investigative information. In relation to a negative exemption notice, if the court sets aside the decision that information was investigative information, the person can apply for the cancellation of the negative exemption notice and for the substitution of a positive exemption notice. In relation to a refused eligibility declaration, if the court sets aside the decision that information was investigative information, the person can apply for the commissioner to revoke the refusal on the grounds that the refusal was based on wrong information.

New section 310 inserts a similar provision to previous section 122(1) to clarify the persons to whom division 2 applies in relation to the commissioner obtaining information from the police commissioner.

New section 311 inserts a similar provision to previous sections 122(2), 122(2A), 122(3) and 122(8). New section 311 also allows for certain information regarding an exemption notice to be shared to the police commissioner, commissioner's request may include the person's address, and that if there is police information about the person and the commissioner may ask the police commissioner for a section 93A transcript about an offence mentioned in the police information.

New section 312 inserts a similar provision to previous sections 122(4)-(6). New section 312 additionally clarifies that the police commissioner may disclose information under section 311 (1) or (3), despite Part 9 of the *Youth Justice Act 1992*.

New section 313 is substantially similar to previous section 122(2B).

New section 314 is substantially similar to previous section 122(2C).

New section 315 inserts previous section 122(7).

New section 316 is similar to previous section 122(9)-(11). Subsection (4) additionally clarifies the meaning of withdrawal for the purpose of the provision.

New section 317 is similar to previous section 122A(1), (1B)-(4) to clarify when the police commissioner may notify the commissioner about a change in police information. clarifies that the police commissioner may disclose information despite Part 9 of the *Youth Justice Act 1992*.

New section 317(2) provides that in relation to an even mentioned in subsection (1)(a) or (b), the police commissioner may notify the commissioner that the relevant even has happened. If subsection (1)(a) applies because the person has been charged with or convicted of an offence, the police commissioner may notify the commissioner of the offence that the person has been charged with or convicted of, the particulars of the offence and the date of the charge or conviction.

New section 317(3) provides that in relation to an event mentioned in subsection (1)(c) or (d), the police commissioner must notify the commissioner that the relevant event has happened. if subsection (1)(c) applies because the person has become a relevant disqualified person, the police commissioner must provide the commissioner with information in accordance with section 313. If section (1)(d) applies then the police commissioner must notify the commissioner of the information mentioned in section 314 in relation to the offender prohibition order.

New section 317(8) clarifies that a change in criminal history includes acquiring a criminal history.

New section 317(9) clarifies that the police commissioner may disclose information under the part despite part 9 of the *Youth Justice Act 1992*.

New section 318 inserts a new provision to clarify what information may be requested from and provided by the director of public prosecutions in relation to a person mentioned in section 310. Where the commissioner is aware that the person has been charged with or convicted of an offence, the commissioner may request from the director a written summary of the offence or alleged offence, a copy or written summary of evidentiary material about the offence, and if a charge was not proceeded with, a written summary of the reasons for the discontinuance. The director may comply with the request if the director reasonably believes the material may assist the commissioner in making an employment screening decision about the person. The director must not provide the commissioner with a copy or written summary of evidentiary material that relates to another person (other than the person about whom the request is made).

Further, the Director must not comply with the commissioner's request where reasonably satisfied that the giving of information may:

- prejudice the investigation of a contravention or possible contravention of the law
- enable to existence or identity of a confidential source of information regarding the enforcement or administration of the law, to be ascertained
- prejudice the effectiveness of a lawful method of procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law
- prejudice a prosecution or another matter before a court
- endanger a person's life or physical safety.

New section 318 clarifies that the giving of information under this section under this provision is authorised despite any other Act or law, including confidentiality requirements. The provision applies despite section 24A of the *Director of Public Prosecutions Act 1984*.

New section 319 provides what information may be requested from and provided by the chief executive (corrective services). The provision is required due to the expansion of the exclusionary framework to include

persons who are subject to reporting obligations under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. The chief executive must notify the commissioner in writing of each person who is or becomes subject to a sexual offender order including the person's name, that the person is subject to a sexual offender order and any other information that the chief executive considers is necessary for the commissioner to perform a function or exercise a power under chapter 8.

The chief executive and commissioner may enter into a written arrangement relating to the process for providing notifications under subsection (1), including electronic notification. If notification is given electronically, there is a limitation of who may access the information contained in the notification and any arrangement between the chief executive and the commissioner must provide for this limitation. The giving of information under this section under this provision is authorised despite any other Act or law, including confidentiality requirements.

New section 320 provides what information may be requested by the commissioner from an interstate police commissioner.

New section 320(1) provides that the provision applies if police information about a person is obtained under division 2 includes a conviction of the person for an offence in another state (including an interstate spent conviction) or an interstate charge against the person.

New sections 320(2) and 320(3) provides that the commissioner may ask an interstate police commissioner for a brief description of the circumstances of the charge or conviction, and that this request may include the person's name (and any other name the person may have used), gender and date and place of birth.

New section 320(4) clarifies that the provision applies in relation to a conviction or a charge of a person, regardless of whether the offence or alleged offence happened before or after the commencement of the provision.

New section 320(5) provides definitions of interstate charge, interstate police commissioner, interstate rehabilitation law and interstate spent conviction for the purpose of the provision.

New section 321 inserts previous section 110.

New section 322 inserts a substantially similar provision to previous provision 111. New section 332 additionally require the person to immediately return their positive notice or positive exemption notice to the

Commissioner and clarifies that the person must not start or continue in regulated employment or carry on a regulated business until a prescribed event happens. Subsection (4) provides a definition for prescribed event.

New section 323 inserts a substantially similar provision to previous 112. The new section changes the heading by inserting “Effect of change in police information about employee” instead of “Change in police information of employee”.

New section 324 inserts a substantially similar previous section 113. The new section changes the heading by inserting “Person carrying on a regulated business to notify commissioner of change in police information” in place of “Change in police information of person carrying on a regulated business”.

New section 325 is similar to previous section 114 however the heading is changed by inserting “Effect of change in police information about other persons” in place of “Change in police information of other persons” and to also apply to exemption notices. Additionally, subsection (1) clarifies that the provision applies where the commissioner has not been notified about the change under section 323 or 324.

New section 326 provides that if the police commissioner is aware that a person is applicant for, or holder of an exemption notice on the basis that the person is a police officer, and the person ceases to be a police officer, the police commissioner must notify the commissioner.

New section 327 provides that a person must notify their employer if they cease to be a police officer. Subsection (3) clarifies that this notification does not need to contain any further information other than that the person has ceased to be a police officer and that it is not a requirement for the employer to stop employing the person as a result of the notification.

New section 328 provides that a person must notify their employer if the person surrenders their teacher registration under section 59 of the *Education (Queensland College of Teachers) Act 2005*. Subsection (3) clarifies that this notification does not need to contain any further information other than that the surrender has occurred and that it is not a requirement for the employer to stop employing the person as a result of the notification.

New section 329 prescribes the application of division 6 in relation to obtaining a report about a person’s mental health. If the commissioner is deciding whether an exceptional case exists for a person who has been

charged with or convicted of a serious offence or charged with or convicted of an offence other than a serious offence which relates to or involves a person with a child. The commissioner may obtain a report about the person's mental health if the commissioner reasonably believes that the report is a necessary consideration in deciding whether an exceptional case exists. A reasonable belief can be established where the relevant conviction or charge was referred to the Mental Health Court (or similar entity), where the court has ordered the person to undertake treatment of a psychiatric nature or where the commissioner or court has been given a report about a person's mental health prepared by a registered health practitioner.

New section 330 provides the circumstances in which the commissioner may request a person to undergo a mental health examination by a registered health practitioner nominated by the commissioner, so that a mental health report can be provided to the commission, and to give the commissioner consent to obtain such a report.

New section 330(2) provides that a notice under subsection (1) must contain:

- the reasons for the commissioner's request
- the name and qualifications of the relevant registered health practitioner
- the details for the examination is to be conducted
- that the person may be required to undergo further examinations necessary for the preparation of a report about the person's mental health
- that the commission must consider the report in deciding whether an exceptional case exists as required under section 226
- that the person may withdraw their application or consent to employment screening under chapter 8
- that if the person fails to undergo the examination or to give consent that the person's consent to employment screening may be withdrawn, or the commissioner may decide whether or not there is an exceptional case in the absence of a report about the person's mental health.

New section 331 provides that the commissioner may nominate a registered health practitioner to conduct a mental health examination only if the commission is reasonably satisfied the health practitioner has the

necessary qualifications, expertise or experience to conduct the examination.

New section 332 provides that the commissioner, in certain circumstances, may ask the person to give the Mental Health Court consent to provide the registered health practitioner the following information:

- the court's decision in relation to the reference
- the court's reasons for its decision
- a copy or written summary of any expert's report about the person received in evidence by the court, including, for example, a medical report, psychiatrist's report or expert report that accompanied the reference, and
- transcripts of any hearing conducted for the reference that the court has directed may be given to a party to the hearing or another person.

If the person gives the consent, the Mental Health Court may give the information mentioned in subsection (2) to the commissioner to give to the registered health practitioner. However, subsections (5) and (6) provide certain limitation on the types of information which may be provided, such as material given to the court under section 284 of the *Mental health Act 2000*. The giving of information under this section by the Mental Health Court is authorised despite any other Act or law including a law imposing an obligation to maintain confidentiality about the information. Without limiting this, information may be given under this section even if the information can not be disclosed to the charged person under a confidentiality order under section 426 of the *Mental Health Act 2000* and this section applies in relation to an expert's report despite section 318 of the *Mental Health Act 2000*. However, a decision of the Mental Health Court not to give an expert report about the person under this section does not prevent the commissioner applying under section 318(2) the *Mental Health Act 2000*, for leave of the court to give the report to the registered health practitioner.

New section 333 provides for a registered health practitioner to obtain information from the Mental Health Review Tribunal for the purpose of conducting an examination under this subdivision where the person has been charged but not convicted of a serious offence or an offence, other than a serious offence, relating to or involving a child. The commissioner may ask the person to give the Mental Health Review Tribunal consent to give the registered health practitioner:

- the tribunal's decision on the review;
- the tribunal's reasons for the decision;
- a copy or written summary of any expert's report about the person received by the tribunal in the proceeding for the review, including, for example, a report about an examination of the person by a psychiatrist under section 203A of the *Mental Health Act 2000*;
- transcripts of any hearing conducted for the review that the tribunal has directed may be given to a party to the hearing or another person.

If the person gives the consent, the Mental Health Review Tribunal may give the information mentioned in subsection (2) to the commissioner to give to the registered health practitioner. However, subsections (5) and (6) provide certain limitation on the types of information which may be provided. The giving of information under this section by the Mental Health Review Tribunal is authorised despite any other Act or law including a law imposing an obligation to maintain confidentiality about the information. Without limiting this information may be given under this section even if the information can not be disclosed to the charged person under a confidentiality order under section 458 of the *Mental Health Act 2000*.

New section 334 applies if the commissioner gives a registered health practitioner information or a document about a person from the Mental Health Court of the Mental Health Tribunal. New section 333(2) places restrictions on the registered health practitioner's use of the information. The maximum penalty for offending against this section is 100 penalty units.

New section 335 provides that there where a person consents under section 330(1)(b) the commissioner may request ask the registered health practitioner to provide a report about the examination.

New section 336 clarifies that the commissioner will bear the costs of obtaining the medical report under the division.

New section 337 and 338 provide the circumstances in which the commissioner may request information from the Mental Health Court and Mental Health Review Tribunal for deciding whether or not there is an exceptional case for the person who has been charged with, but not convicted of a serious offence or an offence (other than a serious offence) relating to or involving a person with a disability. There are restrictions on the information and documents which may be released.

New section 339 inserts a substantially similar provision to previous section 122B to provide that the commissioner is to give notice to particular entities about a change in police information. New section 339 also updates cross references.

New section 340 inserts a substantially similar provision to previous section 126A.

New section 341 inserts a substantially similar provision to previous section 126AA.

New section 342 inserts a similar provision to previous section 126B. New section 342 also applies to the exemption notice regime and to expand the matters about which the commissioner must notify the accreditation board. The new matters to be notified are:

- the cancellation of the positive notice of a director of a school's governing body under section 244
- the positive exemption notice of a director of a school's governing body ceasing to have effect under section 289
- the suspension of a positive exemption notice of a director of a school's governing body under section 298
- the cancellation of a suspended positive exemption notice of a director of a school's governing body under section 299, and
- the cancellation of the positive exemption notice of a director of a school's governing body under section 302.

New section 343 applies if the college of teachers requested information about a person under the *Education (Queensland College of Teachers) Act 2005*, section 15D and the person is an approved teacher. The commissioner must give the college written notice of the person's cancellation of their positive notice under part 4, division 11 or its expiry under section 231. If on the cancellation of the person's positive notice under part 4, division 11, the person is issued a further positive notice or a positive exemption notice, the commissioner must give the college written notice of the issue of a further positive notice or positive exemption notice. If the commissioner becomes aware that police information about the person has changed, other than in a way mentioned in section 339(2), the commissioner must give the college a written notice complying with section 339(3) about the change.

New section 344 applies if the chief executive (disability services) requests information about a person under the *Disability Services Act 2006*, section 89D and the person is the holder of, or applicant for, an exemption notice under the *Disability Services Act 2006*. The commissioner must give the chief executive (disability services) written notice of the person's cancellation of their positive notice under part 4, division 11 or its expiry under section 231. If on the cancellation of the person's positive notice under part 4, division 11, the person is issued a further positive notice or a positive exemption notice, the commissioner must give the chief executive (disability services) written notice of the issue of a further positive notice or positive exemption notice. If the commissioner becomes aware that police information about the person has changed, other than in a way mentioned in section 339(2), the commissioner must give the chief executive (disability service) a written notice complying with section 339(3) about the change.

New section 345 inserts a substantially similar provision to previous section 126 but changes cross references.

New section 346 inserts a substantially similar provision to previous section 125 to provide that the commission must make guidelines for dealing with information under chapter 8.

New section 347 inserts a similar provision to previous section 120. New section 347 also relates to a positive exemption notice and to provide the relevant person with the option of either requesting a replacement notice or requesting to have the notice cancelled.

New section 348 inserts a substantially similar provision to previous section 120A(1),(2)-(5). New section 348 also relates to a positive exemption notices.

New section 349 inserts a substantially similar provision to previous section 120A(1A), (2)-(5). The provision clarifies requirements, also refers to positive exemption notice and requires notification when a volunteer changes to employment as other than a volunteer.

New section 350 provides that if a holder of a positive notice (that is not suspended) is or was during the term of the positive notice employed in regulated employment as a volunteer and becomes employed in paid regulated employment or starts carrying on a regulated business, the holder must notify the commissioner of the relevant change within 14 days. If the commissioner issues a new positive notice, they commissioner may also issue a new positive notice blue card and must cancel the previously held

positive notice . If the commissioner issues a new positive notice or blue card to the person, the holder must return the previously held notice or card within 14 days of receiving the new notice or card. If the prescribed application fee has not paid the prescribed application fee, the notice under subsection (2) must be accompanied by the prescribed application fee.

New section 351 inserts previous section 115.

New section 352 inserts previous section 116.

New section 353 provides the definitions for division 3.

New section 353 defines “chapter 8 reviewable decision” to mean:

- a decision of the commissioner as to whether or not there is an exceptional case for the person if, because of the decision, the commissioner issued a negative notice or negative exemption notice to or refused to cancel a negative notice or negative exemption notice issued to the person, or
- a decision of the commissioner that the person had been charged with a disqualifying offence if, because of the decision, the positive notice held by the person was suspended under section 240, the positive exemption notice held by the person was suspended under section 298 and the person claims he or she has not been charged with the disqualifying offence and the person has applied for a cancellation of the suspension under section 241 or 299 and that application has been refused, or
- a decision of the commissioner that the person’s teacher registration has been suspended under section 49 of the *Education (Queensland College of Teachers) Act 2005* if, because of the decision, the positive notice held by the person was suspended under section 242, the person claims she is not the person whose registration was suspended under section 49 of the *Education (Queensland College of Teachers) Act 2005* and the person has applied for the cancellation of the suspension under section 243 and that application has been refused.
- a relevant disqualified person decision if because of the decision, the commissioner issued a negative notice or negative exemption notice to the person, the person claims he or she is not the person to whom the conviction, reporting obligations or order relates and the person has applied for a cancellation of the negative notice under section 236 or a cancellation of the negative exemption notice under section 294, and that application has been refused

New section 353 defines issue to include:

- substitute a negative notice after cancelling a positive notice (in relation to a negative notice), and
- substitute a negative exemption notice after cancelling a positive exemption notice (in relation to a negative exemption notice).

New section 353 defines “prescribed period” for a review of a chapter 8 reviewable decision to mean 28 days after the person is given the relevant notice as provided for in paragraphs (a) to (f).

New section 353 defines “relevant disqualified person decision” to mean:

- a decision of the commissioner that a person has been or is convicted of a disqualifying offence for which an imprisonment order was or is imposed, or
- a decision of the commissioner that a person is subject to offender reporting obligations, a final offender prohibition order, a disqualification order or a final sexual offender order.

New section 354 provides that a person that is not a disqualified person may apply (within the prescribed period and as otherwise provided for under the QCAT Act) to the tribunal for a review of a chapter 8 reviewable decision. If a person applies for the review of a chapter 8 reviewable decision, the tribunal may not stay the operation of the decision or grant an injunction in the proceeding of the review. New section 354(3) clarifies that that there is no review or appeal under the *Commission for Children and Young People and Child Guardian Act 2000* in relation to a decision of the commissioner to issue, or refuse to cancel, a negative notice or negative exemption notice about a person other than because of a chapter 8 reviewable decision. New section 354 does not limit section 307.

New section 355 inserts a substantially similar provision to section 121AA to provide for the effect of an applicant for a review becoming a disqualified person.

New section 356 inserts a substantially similar provision to section 124. New section 354 additionally also make reference to exemption notices.

New section 357 inserts a substantially similar provision to section 126C. New section 355 additionally also make reference to exemption notices.

**Clause 59** omits part 7 of the *Commission for Children and Child Guardian Act 2000*. This is necessary as the screening of commission staff will be administered under chapter 5 of the *Public Service Act 2000*.

**Clause 60** amends section 146 in two respects.

Clause 160(1) replaces section 146(1) to provide that an indictable offence is an offence against:

- section 174
- section 195, 196, 197, 240(5), 242(4) or 244(3)
- section 257, 258, 259, 298(4) or 302(3)
- section 322(3).

Clause 160(2) amends section 146(2) by inserting “section 388” in place of “section 156”.

**Clause 61** amends section 152 by broadening the application of section 152 to include persons who have acquired or gained access to information about a person’s mental health under chapter 8.

**Clause 62** amends section 167 by inserting a new subsection (3) to provide that a regulation may prescribe a fee for the commissioner giving information under section 15D of the *Education (Queensland College of Teachers) Act 2005*.

**Clause 63** amends part 9 (Transitional and other provisions) by inserting a note after the heading to clarify that the cross-references to provisions in the Act appearing in chapter 8 have not been updated except to change references to “division”, or “div” in a part of this chapter to “part” or “pt”. The remaining cross-references remain as they appeared before the renumbering as a result of the *Criminal History Screening Legislation Amendment Act 2010*.

**Clause 64** inserts a new Part 13 to provide for transitional provisions in relation to the Criminal History Screening Legislation Amendment Act 2010.

New section 465 provides definitions for part 13.

New section 466 provides transitional arrangements in relation to existing applications for prescribed notices about former regulated employment. Former regulated employment is defined to mean employment that is not regulated employment under section 156 but was regulated employment under section 97 of the unamended Act. An application for former regulated employment that had not been decided or withdrawn at commencement will be taken to have been withdrawn. The commissioner

must notify the person and each notifiable person for the person about the withdrawal.

New section 467 provides transitional arrangements in relation to existing applications for prescribed notices for former regulated business. Former regulated business is defined to mean a business that is not a regulated business under section 156 but was a regulated business under section 97 of the unamended Act. An existing application for former regulated business that had not been decided nor withdrawn at commencement will be taken to have been withdrawn. The commissioner must notify the person and each notifiable person for the person about the withdrawal and refund any fee paid for the application.

New section 468 provides transitional arrangements in relation to existing applications made under section 100 or 101 of the unamended Act about a person who has been or is convicted of a new disqualifying offence but who is not a relevant disqualified person. If at the time of the application the person did not hold a positive notice or held a positive notice that was suspended under section 119C of the unamended Act, the application is taken to have been withdrawn and the commissioner must give written notice of the withdrawal to the person and to each notifiable person for the person. If at the time of the application the person held a positive notice that was not suspended under section 119C of the unamended Act, the person is taken to have been issued with eligibility declaration other than under section 223(1)(b) and the commissioner must decide the application under this Act.

New section 469 provides transitional arrangements in relation to existing applications made under section 100 or 101 of the unamended Act about a new relevant disqualified person. A new relevant disqualified person is defined in section 465 to mean a person who is a relevant disqualified person because the person has been or is convicted of a new disqualifying offence for which imprisonment was or is imposed or is subject to a sexual offender order. If the application has not been decided or withdrawn at the commencement, the application is taken to have been withdrawn. The commissioner must notify the person and each notifiable person in writing about the withdrawal.

New section 470 provides transitional arrangements in relation to other existing applications for a prescribed notice. If the application was made under section 100 or 101 of the unamended Act and has not been decided or withdrawn at the commencement and is not an application to which sections 466, 467, 468 or 469 applies, then the application is taken to be a

prescribed notice application under the relevant provision and chapter 8, part 4 applies to the application. Subsection (5) clarifies that despite section 231(2), a prescribed notice issued under this section remains current for 2 years after it is issued (unless cancelled earlier under chapter 8, part 4, division 11).

New section 471 provides transitional arrangements for positive notices issued under section 102(a) before commencement to a person who is a relevant disqualified person only because the person is subject to a temporary offender prohibition order and/or an interim sexual offender order. If immediately before commencement the positive notice is not suspended under section 119C the commissioner must by written notice suspend the person's positive notice. New section 471(4) provides that if immediately before the commencement the suspension had not ended, the suspension continues subject to subsection (5). New section 471(5) provides that sections 204 and 241 apply to the suspended notice as if the notice were suspended under section 240(2) as in force at commencement.

New section 472 provides transitional arrangements in relation to existing positive notices held by other relevant disqualified persons. New section 472(2) provides that the positive notice is cancelled. New section 472(3) provides that if the positive notice is suspended under section 119C at the commencement and the person has applied for the cancellation of the suspension under section 119D, and the application has not been decided or withdrawn at the commencement, then the application is taken to have been withdrawn. New section 472(4) and (5) provide to whom and about what the commissioner must provide notifications.

New section 473 provides transitional arrangements in relation to other existing positive notices and positive notice blue cards. The positive notice is taken to be a positive notice issued under section 220(a) and remains current for 2 years after it was issued under section 102(a) of the unamended Act (unless cancelled earlier). Any positive notice blue card issued under the unamended Act continues to be a positive notice blue card relating to a positive notice and remains current for the same period as the positive notice. If the holder of the positive notice is a new disqualified person (but not a new relevant disqualified person), the person is taken to have been issued with an eligibility application subject to subsection (5). Section 473(5) provides that section 223(1)(b) does not apply in relation to the commissioner making a decision about the person for the first time after commencement under chapter 8, part 4, division 9.

New section 474 provides that an existing negative notice at commencement will be taken to be a negative notice issued under section 220(b). The 2 year period mentioned in section 236(3) runs from the date the negative notice was issued under section 102(2)(b) of the unamended Act.

New section 475 makes transitional arrangements in relation to the application of chapter 8 to police officers and registered teachers. Section 173 and chapter 8, part 5 do not take effect until 3 months after the commencement (the exemption notice regime commencement date). Chapter 8, part 4 applies in relation to a police officer or registered teacher until the exemption notice regime commencement date. A prescribed notice application about a police officer or registered teacher that has not been decided or withdrawn at the exemption notice regime commencement date must be decided under chapter 8, part 4 despite section 173. An eligibility application made by a police officer or registered teacher that has not been decided or withdrawn at the exemption notice regime commencement date is taken to have been withdrawn and the commissioner must give written notice of the withdrawal to the police officer or registered teacher. A current positive notice or current negative notice held by a police officer or registered teacher at the exemption notice regime commencement date, or issued under subsection (3) continues in effect despite section 173, and section 247 applies to the notice. New section 475(6) provides that without limiting subsection (2)(a), until the exemption notice regime commencement date, sections 36 and 243 apply as if they provided for the issue of a prescribed notice instead of an exemption notice to a person who is a police officer or registered teacher.

New section 476 provides that chapter 8 does not apply to the employment of a person in disability services regulated employment until 3 months after the commencement (disability services commencement date). Section 476 makes transitional arrangements in relation to persons who 3 months after commencement are employed in disability services regulated employment and who do not have a current positive notice and has either a current positive notice under the *Disability Services Act 2006* or an application for a prescribed notice under the *Disability Services Act 2006*.

New section 477 provides that chapter 8 does not apply to the carrying on of a disability services business until 3 months after the commencement (disability services commencement date). Section 477 makes transitional arrangements in relation to persons who 3 months after commencement are carrying on a disability services regulated business and do not have a

current positive notice and either has either a current positive notice under the *Disability Services Act 2006* or an application for a prescribed notice under the *Disability Services Act 2006*.

New section 478 provides that chapter 8 does not apply to the employment of a person in new local government regulated employment until 3 months after the commencement (local government commencement date). Section 478 makes transitional arrangements in relation to persons who 3 months after commencement are in new government regulated employment and who do not have a current positive notice.

New section 479 provides that chapter 8 does not apply to the carrying on of a new local government regulated business until 3 months after the commencement (local government commencement date). Section 479 makes transitional arrangements in relation to persons who 3 months after commencement are carrying on a new government regulated business and who do not have a current positive notice or negative notice.

New section 480 makes transitional arrangements in relation to persons who immediately prior to commencement were employed or were continuing to be employed by another person in other new regulated employment as a volunteer and at the commencement do not hold a current positive notice.

New section 481 makes transitional arrangements in relation to persons who immediately prior to commencement were carrying on an other new regulated business and at commencement do not have a current positive notice or negative notice.

New section 482 makes transitional arrangements in relation to a person with a positive notice who is convicted of a serious offence before the commencement and who at commencement has not been issued a further prescribed notice as mentioned in section 111 of the unamended Act.

New section 483 makes transitional arrangements in relation to existing applications to cancel a negative notice. If the application was made by a new relevant disqualified person, the application is taken to be withdrawn. If the application was made by a person other than a new relevant disqualified person, the application is taken to have been made under section 236.

New section 484 makes transitional arrangements in relation to existing suspensions of positive notices. If a person suspension of a positive notice had not ended at commencement, the person's positive notice is taken to

have been suspended under section 240(2) and section 240 and 241 apply to the suspended notice.

New section 485 makes transitional arrangements for the continuation of the commissioner acting on own initiative. 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, immediately after the commencement, exercise the power under chapter 8, the commissioner may continue to exercise the power in relation to the person or prescribed notice.

New section 486 makes transitional arrangements for the effect of a conviction or charge for a new disqualifying offence. In applying section 169(1)(a) or 170(a) in relation to a person convicted of a new disqualifying offence, it is immaterial as to when the offence was committed or when the person was convicted of the offence. Section 240 applies in relation to a person who holds a current positive notice who is charged with a new disqualifying offence even if the charge, or the acts or omissions constituting the alleged offence, happened before the commencement.

New section 487 provides transitional arrangements in relation to the replacement of positive notice or positive notice blue cards. If a person's current positive notice or positive notice blue card is lost or stolen 14 days or less before the commencement and at commencement the person has not applied for a replacement notice or card as required under section 120 of the unamended Act, section 120 of the unamended Act does not apply. Section 347 as in force after the commencement applies to the person as if the reference to 14 days after the loss or theft were a reference to the later of either 14 days after the loss or theft or 7 days after the commencement.

New section 488 provides that existing eligibility applications by new relevant disqualified persons that are not decided or withdrawn at the commencement, will be taken to have been withdrawn. The commissioner must notify the person of the withdrawal.

New section 489 provides that other existing eligibility applications will be taken to be eligibility applications under section 178 and chapter 8, part 4, division 2 applies to the applications.

New section 490 provides that eligibility declarations that have been issued under section 120H of the unamended Act to new relevant disqualified persons will be cancelled. All other eligibility declarations that have been issued under section 120H of the unamended Act will be taken to be eligibility declarations issued under section 180.

New section 491 provides that existing review and appeal applications in relation to new disqualified persons that are not decided at commencement must be dismissed by the entity hearing the review or appeal.

New section 492 provides transitional arrangements in relation to other existing appeal and review applications. The entity hearing the review or appeal must apply this Act in relation to the matter. The entity may exercise a power of the commissioner under chapter 8, part 6, division 6 and 7 for deciding a review of a decision of the chief executive as to whether or not there is an exceptional case. If a disqualified person applied for the review or the review to which the appeal relates before the person became a disqualified person, the entity hearing the review or appeal must dismiss the review or appeal on its own initiative or on application by the commissioner.

New section 493 applies to a decision of the commissioner that was made before the commencement, if immediately before commencement a person could have but has not applied for a review of the decision under section 121 of the unamended Act and the period within which the person could have applied for the review has not passed. If the person is not a disqualified person, the person may apply for a review of the decision under section 354 and section 354 applies in relation to the application for the review.

New section 494 provides transitional arrangements in relation to an offence that is a schedule 6 offence but was not an offence mentioned in section 121A(a) of the unamended Act. Section 305 applies in relation to a positive notice holder's acts or omissions constituting a new investigative information offence even if the acts or omissions were made before the commencement.

New section 495 provides that sections 121C and 121E of the unamended Act continue to apply in relation to a decision of the police commissioner that information about a person is investigative information made before the commencement as if the amending Act had not been enacted. An appeal against this decision must be decided under the unamended Act.

New section 496 provides that the commissioner must give the notice under section 123A of the unamended Act if under that section the commissioner was required to give someone written notice about the withdrawal of an application or that a particular person has a current negative notice and at the commencement the notice had not been given.

New section 497 provides that information obtained by the commissioner under part 6 of the unamended Act will be taken to have been obtained under chapter 8.

New section 498 provides that a court may make a disqualification order under section 357 in relation to a person convicted of an offence after the commencement arising out of act done or omission made before the commencement.

New section 499 provides transitional arrangements about notice of change in criminal history not given at commencement under section 133 of the unamended Act. If before commencement there was a change in the criminal history of a staff member's criminal history and at commencement that person had not disclosed the change in criminal history to the commissioner, the person is no longer required to give the details to the commissioner.

New section 500 provides transitional arrangements in relation to requests for police information not complied with at commencement. If the chief executive asked the police commissioner for prescribed police information about a person under section 136 of the unamended Act and at commencement the police commissioner had not given the police information to the commissioner, the police commissioner is no longer required to comply with the commissioner's request.

New section 501 provides transitional arrangements in relation to particular prescribed police information obtained but not used before commencement. If before commencement the police commissioner gave the commissioner a person's prescribed police information under section 136 of the unamended Act and at commencement the commissioner had not made an assessment about the person's suitability to be, or continue to be, a staff member under section 138 of the unamended Act, the commissioner must immediately destroy the prescribed police information and stop making the assessment.

New section 502 provides transitional arrangements in relation to notices not given by the prosecuting authority at commencement. If before commencement a staff member was charged with an indictable offence and at commencement the police commissioner or director of public prosecutions has not given information about the charge to the commissioner as required under section 137 of the unamended Act, the prosecuting authority is no longer required to give the information to the commissioner.

New section 503 provides that section 138(2) of the unamended Act continues to apply in relation to information about a person received by the commissioner under part 7 of the unamended Act as if the amending Act had not been enacted.

New section 504 provides that until the JJA short title amendment commences, a reference to the *Youth Justice Act 1992* is taken to be a reference to the *Juvenile Justice Act 1992*, if the provision commences before the JJA short title amendment commences. “JJA short title amendment” is defined in new section 290(3) to mean section 9 of the *Juvenile Justice and Other Acts Amendment Act 2009*.

**Clause 65** amends schedule 1 in a number of respects.

Clause 65(1) replaces section 97 as the authorising provision with section 156.

Clause 65(2) omits the government service provider exemption from the residential facilities category of regulated employment.

Clause 65(3) replaces the term registered teacher with the term approved teacher. An approved teacher is defined in schedule 4.

Clause 65(4) omits the government entity exemption from the churches, clubs and associations involving children category of regulated employment.

Clause 65(5)-(14) amends the health, counselling and support services category of regulated employment.

Clause 65(15) omits the exemption for registered teachers from the private teaching, coaching or tutoring category of regulated employment.

Clause 65(16) omits the exemption for registered teachers from the education programs conducted outside of school category of regulated employment.

Clause 65(17) omits the exemption for government service providers that carry on a business which includes arranging a child accommodation service.

Clause 65(18)-(20) omits the government entity exemption from the sport and active recreation category of regulated employment and makes other technical amendments to section 6D due to renumbering.

Clause 65(21)-(25) amends the health counselling and support services category of regulated businesses (section 8).

Clause 65(26) amends the sport and active regulation category of regulated business to update cross-referencing.

Clause 65(27) omits the government service provider exemption from the hostel for children other than residential facility category of regulated businesses.

Clause 65(28) renumbers sections 3A to 16 in schedule 1 as sections 4 to 24.

Clause 65(29) inserts new sections 25-29.

New section 25 provides that section 15 and 140 of the *Education (Accreditation of Non-State Schools) Act 2001* provide for particular persons who are taken to be carrying a regulated business.

New section 26 is a substantially similar provision to previous section 98A. New section 26 provides that chapter 8 does not apply to the employment of a person who, within the meaning of the *Police Service Administration Act 1990*, section 5AA.3 is a person engaged by the service, to the extent the person is performing a function mentioned in the *Police Service Administration Act 1990*, section 2.3.

New section 27 provides that chapter 8 does not apply to the employment of a person who is a person mentioned in the *Corrective Services Act 2006*, section 327, definition *relevant person*, to the extent the employment relates to the person's functions under that Act.

New section 28 provides that chapter 8 does not apply to the employment of a person who is a registered health practitioner to the extent the person relates to the person's functions as a registered health practitioner.

New section 29 is a substantially similar provision to previous section 97(3). New section 29 provides that chapter 8 does not apply to the employment of a person only because the person helps or guides a child as part of the child's employment. However, chapter 8 does apply to the employment of the person if the employment is otherwise regulated employment under part 1 of schedule 1.

**Clause 66** amends schedule 2.

Clause 66(1) inserts "section 167" in place of "section 99C" in the authorising provision of schedule 2.

Clause 66(2) inserts "Qualification" in place of "Limitation" in the third column of all entries in schedule 2.

Clause 66(3) makes amendment to Schedule 2, entry for *Classification of Publications Act 1991*, entry for section 17 of that Act.

Clause 66(4) corrects the grammatical error in the third column of the entries for section 229G, 229H and 229I by inserting “section” after “mentioned in”.

Clause 66(5) inserts “233BAB Special offence relating to tier 2 goods – if the offence involved child pornography or child abuse material” into schedule 2.

**Clause 67** amends schedule 2A.

Clause 67(1) inserts “section 167” in place of “section 99C” in the authorising provision of schedule 2.

Clause 67(2) renumbers schedule 2A as schedule 3.

**Clause 68** amends schedule 2B.

Clause 68(1) inserts “section 168” in place of “section 120B(1)” in the authorising provision of schedule 2B.

Clause 68(2) amends the entry relating to the offence of ‘exhibition or display of prohibited publication or child abuse photograph’, section 15 of the *Classification of Publications Act 1991*, by inserting the limitation that it is only a disqualifying offence if an offender was or could have been liable as mentioned in section 15, penalty, paragraph (c).

Clause 68(3) omits the entry relating to the offence of ‘producing prohibited publication’, section 17 of the *Classification of Publications Act 1991*, and in its place inserts:

- an entry relating to section 17(1) of the *Classification of Publications Act 1991* with the limitation that it is only a disqualifying offence if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c)
- an entry relation to section 17(2) of the *Classification of Publications Act 1991* with the limitation that it is only a disqualifying offence if an offender was or could have been liable as mentioned in section 17(2), penalty, paragraph (c)
- an entry relating to section 17(3) and (4) of the *Classification of Publications Act 1991* without inserting a limitation.

Clause 68(4) amends the entry relating to the offence of ‘unlawful sodomy’, section 208 of the *Criminal Code 1899*.

Clause 68(5) amends the entries in relation to the offences of ‘abuse of persons with an impairment of the mind’ and ‘procuring young person etc for carnal knowledge’, sections 216 and 217 of the *Criminal Code 1899*.

Clause 68(6) amends schedule 2B, entry for *Customs Act 1901* (Cwlth), second column, by inserting “offence” in place of “offences”.

**Clause 69** amends schedule 2C.

Clause 69(1) inserts “section 168” in place of “section 120B(1)” in the authorising provision of schedule 2C.

Clause 69(2) renumbers schedule 2C as schedule 5.

**Clause 70** inserts a new schedule 6. This schedule lists the offences that may form the basis of investigative information.

**Clause 71** amends schedule 4 (Dictionary).

## **Part 6                      Amendment of Community Services Act 2007**

**Clause 72** provides that part 6 amends the *Community Services Act 2007*.

**Clause 73** omits part 10 (Screening of persons engaged by the department).

**Clause 74** amends section 127 in a number of respects.

Clause 74(1) amends section 127(1)(b) by inserting “previous” after “under”.

Clause 74(2) amends subsection 127(4) by inserting definitions for “engaged by the department”, “previous Part 10” and “serious offence”.

**Clause 75** amends the heading of section 136 by inserting “Definition” in place of “Definitions”.

**Clause 76** amends the heading of section 137 by inserting “pt” in place of “part”.

**Clause 77** inserts a new part 13, division 3 to provide for transitional provisions in relation to the Criminal History Screening Legislation Amendment Act 2010.

New section 141 provides the definitions for Division 3.

New section 142 provides transitional arrangements in relation to self-disclosing criminal history under section 105 of the unamended Act. If before commencement there is a change in the criminal history of a person engaged by the department and at commencement that person had not disclosed the change in criminal history to the chief executive (as required by section 105 of the unamended Act), the person is no longer required to give the details to the chief executive.

New section 143 provides transitional arrangements in relation to requests for police information not complied with at commencement. If the chief executive asked the police commissioner for police information about a person under section 108 of the unamended Act and at commencement the police commissioner had not given the police information to the chief executive, the police commissioner is no longer required to comply with the chief executive's request.

New section 144 provides transitional arrangements in relation to particular police information obtained but not used before commencement. If before commencement the police commissioner gave the chief executive a person's police information under section 108 of the unamended Act and at commencement the chief executive had not made an assessment of the person under section 110 of the unamended Act, the chief executive must immediately destroy the information and stop making the assessment.

New section 145 provides transitional arrangements in relation to notices not given by the prosecuting authority at commencement. If before commencement a person engaged by the department was charged with an indictable offence and at commencement the police commissioner or director of public prosecutions (prosecuting authority) has not given information about the charge to the chief executive as required under section 109 of the unamended Act, the prosecuting authority is no longer required to give the information.

New section 146 provides transitional arrangements in relation to the use of particular information obtained before commencement. Section 110(2) of the unamended Act continues to apply in relation to information about a person received by the chief executive under part 10 as if the amending Act had not been enacted.

**Clause 78** omits schedule 2 (Current serious offences) due to the repeal of part 10 (Screening of persons engaged by the department).

**Clause 79** omits schedule 3 (Repealed or expired offences) due to the repeal of part 10 (Screening of persons engaged by the department).

**Clause 80** amends schedule 4 (Dictionary) in a number of respects.

Clause 80(1) removes definitions for “commencement”, “commissioner of the police service”, “engaged by the department”, “indictable offence” and “serious offence” due to the repeal of Part 10.

Clause 80(2) inserts definitions for “commencement”, “engaged by the department”, “police commissioner”, “police information” and “unamended act”.

Clause 80(3) relocates the definition of ‘criminal history’ to section 127(4).

## **Part 7                      Amendment of Disability Services Act 2007**

**Clause 81** provides that the part amends the *Disability Services Act 2006*.

**Clause 82** amends section 59(2)(a)(iv) by inserting “system; and” in place of system.”.

**Clause 83** omits part 9 (Screening of persons engaged by the department).

**Clause 84** amends the heading of part 10 by inserting “particular persons engaged by department or” in place of “persons engaged by”.

**Clause 85** amends section 75 by inserting “at a service outlet by the department or a funded non-government service provider” from “by”.

**Clause 86** inserts sections 76A and 76B after section 76.

New section 76A provides that this part does not apply in relation to persons engaged or to be engaged by the department or a funded non-government service provider to provide disability services only to children.

New section 76B provides that this part does not apply to the engagement of a registered health practitioner to the extent the engagement relates to the practitioner’s functions as a registered health practitioner.

**Clause 87** inserts section 77A after section 77 to list the types of persons that are engaged by the department at a service outlet as follows:

- a public service employee in the department

- a person contracted by the chief executive to provide disability services for the department
- members of committees established under section 216, and
- a person working the department as a volunteer or as a student on work experience.

**Clause 88** replaces the heading of section 78 with ‘Persons engaged by a funded non-government service provider at a service outlet’.

**Clause 89** amends section 79 (What is a serious offence) for consistency with the equivalent provision in the CCYPCG Act. New section 79(g) additionally clarifies that a serious offence includes an offence under a law of another jurisdiction that, had it been committed in Queensland, would constitute an offence mentioned in subsection (a) to (f).

**Clause 90** omits section 80 (What is a serious sexual or violent offence).

**Clause 91** amends section 81 by omitting ‘What is an excluding offence’ with ‘What is a disqualifying offence’. The section has been amended for consistency with the equivalent provision in the CCYPCG Act and additionally clarifies that a disqualifying offence includes an offence under a law of another jurisdiction that, had it been committed in Queensland, would constitute an offence mentioned in subsection (a) to (e).

**Clause 92** inserts part 10, division 3A to provide for the screening of persons engaged by the department at a service outlet.

New section 82A(1) and (2) provide that the chief executive may ask a person engaged or to be engaged by the department at a service outlet of the department for the person’s written consent for the chief executive to undertake screening of the person under part 10.

New section 82A(3) provides that subsection (2) applies even if the person is a public service employee at the time the person is engaged or to be engaged by the department at a service outlet of the department.

New section 82A(4) provides that if the person does not give the consent, or withdraws his or her consent, the chief executive must ensure the person is not engaged by the department at a service outlet of the department.

New section 82A(5) provides that if the person gives the consent, the chief executive may:

- if the person does not hold a CCYPCG positive notice – undertake screening of the person under part 10 and issue a prescribed notice to

the person as if the chief executive were deciding a prescribed notice application about the person

- if the person holds a CCYPCG positive notice – undertake screening of the person under part 10 and issue an exemption notice to the person as if the chief executive were deciding an exemption notice application about the person.

New section 82A(6) provides that the person may withdraw his or her consent to screening under section 117(2), (3), (3A) or (5).

New section 82A(7), (8) and (9) provides for arrangements until the exemption notice regime commencement date.

**Clause 93** inserts section 82B into part 10, division 4 to provide that division 4 does apply in relation to the engagement of a person who holds a CCYPCG positive notice.

**Clause 94** amends section 83 in a number of respects.

Clause 94(1) amends the heading of section 83 by inserting “prescribed” after “for”.

Clause 94(2) amends section 83(2) by inserting a new paragraph (d) to provide the application must be accompanied by the prescribed fee.

Clause 94(3) amends section 83(3) by inserting a new paragraph (d) to provide that the approved form must include provision for a declaration by the engaged person that he or she is not a disqualified person.

Clause (94)(4) omits section 83(5) and inserts new subsections (5),(6) and (7):

- new section 83(5) provides that if a funded non-government service provider asks a person to sign an application under subsection (1) about the person, the service provider must warn the person that it is an offence for a disqualified person to sign the application as an engaged person
- new section 83(6) provides that the engaged person is liable to pay the funded non-government service provider the fee mentioned in subsection (2)(d). If the funded non-government service provider pays the fee, the amount of the fee is a debt payable by the engaged person to the service provider
- new section 83(7) provides that subsection (6) applies subject to:

- a written agreement entered into between the funded non-government service provider and the engaged person,
- an industrial instrument under the *Industrial Relations Act 1999*, or
- another document that regulates wages and conditions of employment and is enforceable under the *Fair Work Act* (Cwlth), the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth) and the repealed *Workplace Relations Act 1996* (Cth).

**Clause 95** amends section 84 in two respects.

Clause 95(1) amends the heading of section 84 by inserting “prescribed notice application” after “application under s 83”.

Clause 95(2) amends section 84(1) by inserting “if a prescribed notice application is made about” in place of “to a person if an application under section 83 is made for a prescribed notice about”.

**Clause 96** amends section 85 in a number of respects.

Clause 96(1) amends section 85(1) by providing that section 85 applies if a prescribed notice application is made about an engaged person.

Clause 96(2) amends section 85(3)(b)(ii) and (iii) by inserting “a disqualifying” in place of “an excluding”.

Clause 96(3) amends section 85(3)(b)(iii), note, by inserting “a disqualifying” in place of “excluding”.

Clause 96(4) amends section 85(7) by inserting “subsection (8), (9) or (10)” in place of “subsection (6)(b)”.

Clause 96(5) amends section 85(8) by replacing ‘subsection (7)’ with ‘subsection (11)’.

Clause 96(6) renumbers section 85(7) and (8) as section 85(11) and (12).

Clause 96(7) omits section 85(6) and inserts

- new section 85(6) provides that the chief executive must issue a positive notice to the engaged person if the chief executive has, under section 100, cancelled the negative notice issued to the person or has issued an eligibility declaration and the eligibility declaration has not expired

- new section 85(7) provides that the chief executive must issue a negative notice to the engaged person if the chief executive is aware the person is a relevant disqualified person, other than only because the person is subject to a temporary offender prohibition order and/or an interim sexual offender order
- new section 85(8) provides that subject to subsection (11), the chief executive must issue a negative notice to an engaged person to whom subsection (6)(a) or (b) applies if the chief executive is aware of any police information or disciplinary information about the person, other than information known to the chief executive at the time of taking the action mentioned in the subsection
- new section 85(9) provides that subject to subsection (11) the chief executive must issue a negative notice to the engaged person if the chief executive is aware the person is a relevant disqualified person because the person is subject to a temporary offender prohibition order or interim sexual offender order; or has been a relevant disqualified person at any time but is no longer a relevant disqualified person (other than a person who was a relevant disqualified person by reason of a conviction, sentence or order that was set aside on appeal; or (c) has been convicted of a serious offence
- new section 85(10) provides that subject to subsection (11), the chief executive must issue a negative notice to the engaged person if the chief executive is aware the person has been convicted of a serious offence.

**Clause 97** amends section 86 in a number of respects.

Clause 97(1) amends section 86(1) by omitting “as mentioned in” and inserting “for a person”.

Clause 97(2) amends section 86(2), by omitting “an engaged person” and inserting “a person”.

Clause 97(3) amends section 86(2)(a)(ii) by inserting “a disqualifying” in place of “an excluding”.

Clause 97(4) renumbers section 86(2)(b) as section 86(2)(e).

Clause 97(5) inserts new paragraphs (b), (c) and (d) into section 86(2) to expand the information the chief executive must have regard to in deciding whether or not there is an exceptional case as mentioned in section 85(4) or (7).

Clause 97(6) amends section 86(2)(b) by inserting “or 114B” in place of “section 114A”.

**Clause 98** amends section 87 in a number of respects.

Clause 97(1) amends section 87(1) by inserting “a prescribed notice application” in place of “an application under section 83”.

Clause 97(2) omits section 87(2)(b) to (e) and inserts a new section 87(2)(b) which provides the relevant review and appeal information must accompany the negative notice when it is issued to the engaged person.

Clause 97(3) amends section 87(3) by inserting :part 10, division 7, subdivision 1” in place of “section 108”.

Clause 97(4) amends section 87(5) by inserting “, or an exemption notice” after “another prescribed notice”.

Clause 97(5) amends section 87(5)(a) by inserting “or exemption notice” after “notice”.

Clause 97(6) amends section 87(5)(b) by inserting “engaged person previously held a prescribed notice that” in place of “previously held a prescribed notice that”.

**Clause 99** omits section 88(1) and inserts a new section 88(1) which provides that the section applies if, for a prescribed notice application, the chief executive must decide whether or not there is an exceptional case for a person.

**Clause 100** amends section 89 by inserting “3 years” in place of “2 years” to extend the currency of a prescribed notice and positive notice card from 2 years to 3 years.

**Clause 101** inserts a new part 10, division 4A (Issue of exemption notices for funded non-government service providers).

New section 89A prescribes the requirements for an application for an exemption notice.

New section 89A(1) provides that a funded non-government service provider who proposes to start engaging, or continue engaging, a person who holds a CCYPCG positive notice at a service outlet of the service provider, may apply to the chief executive for an exemption notice about the engaged person.

New section 89A(2) provides that the application must be in the approved for, signed by, or on behalf of, the service provider and signed by the engaged person.

New section 89A(3) provides what the approved form must make provision for.

New section 89A(4) provides that the chief executive, on receiving the application, may

ask the service provider for further information that the chief executive reasonably considers necessary to establish the engaged person's identity.

New section 89B prescribes the requirements for notifying of change of engagement, or name and contact details in an exemption notice application.

New section 89B(1) provides that section 89B applies if an exemption notice application is made about an engaged person and any of the following happen (relevant change) before the chief executive has issued an exemption notice to the engaged person in relation to the application:

- the engaged person's name or contact details, as stated in the application, change
- the engaged person's engagement, as stated in the application, ends.

New section 89B(2) is a penalty provision that provides that the engaged person must give notice, in the approved for, to the chief executive of the relevant change within 14 days after the relevant change occurs. The maximum penalty is 10 penalty units.

New section 89B(3) provides that the approved form mentioned in subsection (2) must provide for an engaged person to give notice withdrawing the person's consent to screening under this part.

New section 89C prescribes the requirements for making a decision of an application for an exemption notice.

New section 89C(1) provides that section 89C applies if an exemption notice application is made about an engaged person.

New section 89C(2) provides that the chief executive must decide the application by either issuing a positive exemption notice or a negative exemption notice.

New section 89C(3) provides that the chief executive must issue a positive exemption notice to the engaged person if the chief executive is not aware

of any police information about the engaged person and if the chief executive:

- has, under section 89D, been advised that the engaged person holds a CCYPCG positive notice which is not suspended, and
- has not been advised under section 89D to undertake further screening of the engaged person under this part.

New section 89C(4) provides that if subsection (3) does not apply, the chief executive must decide the application in the way the chief executive would be required to decide the application if it were a prescribed notice application.

New section 89C(5) provides that for subsection (4), sections 85(3) to (12), 86 and 88 apply to the decision.

New section 89D provides for the obtaining of information from the Children's commissioner where an exemption notice application is made about a person purporting to be the holder of a CCYPCG positive notice. Where this is the case, the chief executive may ask the children's commissioner for the following:

- confirmation of whether or not the applicant is the holder of a CCYPCG positive notice, and if so, the expiry date of the notice
- confirmation of whether or not the person's CCYPCG positive notice has been suspended under the Commissioner's Act, and
- if the person is the holder of a CCYPCG positive notice – the commissioner's advice about whether the chief executive may need to undertake further screening of the person under this part.

The chief executive's request may include the person's name (and any other name that the chief executive believes the person may use or may have used), gender and date and place of birth, address, and any number or date given by the person about the CCYPCG positive notice the person claims to hold. The children's commissioner must comply with a request made under this provision, and further, if the children's commissioner is asked for advice under subsection (2)(c), the children's commissioner must advise the chief executive that the chief executive needs to undertake further screening of the person under part 7 if the commissioner is aware of police information about the person. If the children's commissioner advises the chief executive of the need to undertake further screening, the advice must be accompanied by a written notice stating that no adverse inference

about the person's criminal history or suitability for engagement may be drawn by the fact the advice was given.

New section 89E prescribes the actions of the chief executive after making a decision on an application for an exemption notice.

New section 89E(1) provides that the chief executive must issue an exemption notice to the engaged person after making a decision about an exemption notice application.

New section 89E(2) provides that if the chief executive issues a negative exemption notice, the notice must be accompanied by a notice stating the reasons for the chief executive's decision on the application and the relevant review and appeal information.

New section 89E(3) provides that the notice under subsection (2) must include a copy of part 10 division 7, subdivision 1.

New section 89E(4) provides that after the chief executive issues the exemption notice to the engaged person under his section, the chief executive must give notice to the funded non-government service provider stating whether the engaged person was given a positive exemption notice or negative exemption notice.

New section 89E(5) is a penalty provision that provides that within 14 days after an exemption notice is issued under this section to an engaged person who previously held another exemption notice or a prescribed notice, the engaged person must give the chief executive the previously held exemption notice or prescribed notice. If the engaged person previously held a prescribed notice that was a positive notice, he or she must give the chief executive the positive notice card. The maximum penalty for subsection (5) is 10 penalty units.

New section 89F provides that a negative exemption notice remains current until it is cancelled under division 6. A positive exemption notice remain current while its holder holds a CCYPCG positive notice, unless it is earlier cancelled under division 6.

**Clause 102** amends the heading of part 10, division 5 by inserting "and exemption notices" after "notices".

**Clause 103** omits section 90 and inserts new sections 90, 90A and 90B.

New section 90 prescribes the requirements for starting engagement of certain regular engaged persons. Subsection (1) provides for how the section applies. Under subsection (2) a funded non-government service

provider must not engage the person at a service outlet of the service provider unless:

- the person has a current positive notice and the service provider has notified, in the approved form, the chief executive that the service provider is proposing to engage the person at a service outlet of the service provider, or
- the service provider has applied for a prescribed notice, or further prescribed notice, about the person.

New section 90A provides for starting engagement of new engaged persons. Subsection (1) provides for how the section applies. Under subsection (2) a service provider must not engage the person at a service outlet of the service provider unless:

- the person has a current positive notice and the service provider has notified, in the approved form, the chief executive that the service provider is proposing to engage the person at a service outlet of the service provider, or
- the service provider has applied for a prescribed notice, or further prescribed notice, about the person.

New section 90B provides for the continuing engagement of persons. New section 90B(1) provides for how the section applies. Under subsection (2) the funded non-government service provider must not continue to engage the person at a service outlet of the service provider unless the service provider has applied for a prescribed notice, or a further prescribed notice, about the person.

**Clause 104** makes amendments to section 90 to apply the section to persons other than volunteers, current exemption notices and exemption notices.

**Clause 105** makes amendments to section 90A to apply the section to persons other than volunteers, current exemption notices and exemption notices.

**Clause 106** makes amendments to section 90B to apply the section to persons other than volunteers, current exemption notices and exemption notices.

**Clause 107** inserts new section 90C and 90D to provide for starting engagement of volunteers and the continuing engagement of volunteers.

New section 90C provides that a funded non-government service provider must not engage a volunteer at a service outlet of the service provider unless:

- the volunteer has a current positive notice or current positive exemption notice and the service provider has notified, in the approved form, the chief executive that the service provider is proposing to engage the volunteer at a service outlet of the service provider; or
- the volunteer holds a CCYPCG positive notice that is not suspended under the CCYPCG Act and the service provider has applied for an exemption notice about the volunteer.

New section 90C(2) provides that the approved form mentioned advice (in section 90C(1)(a) must include provision for identifying information about the volunteer, and certification by the funded non-government service provider that the service provider has sighted the volunteer's proof of identification documents prescribed under a regulation.

New section 90D provides that a funded non-government service provider must not continue to engage a volunteer at a service outlet of the service provider unless:

- the volunteer has a current positive notice or current positive exemption notice; or
- the volunteer holds a CCYPCG positive notice that is not suspended under the CCYPCG Act and the service provider has applied for an exemption notice about the volunteer.

**Clause 108** amends section 91 in a number of respects.

Clause 108(1) amends section 91(1) by inserting “or current positive exemption notice” after “notice”.

Clause 108(2) amends section 91(2)(a) by inserting “or exemption notice” after “notice”.

Clause 108(3) amends section 91(2)(a) by omitting “paragraph (b)” and inserting “paragraph (b)(i)”.

Clause 108(4) omits section 91(2)(b) and inserts new section 91(2)(b) to provide that a funded non-government service provider must not engage, or continue to engage, an engaged person at a service outlet of the service provider if the service provider has been given a notice of deemed withdrawal relating to the engaged person under section 117(4); or a notice

under section 116(3) because of a change in police information mentioned in section 116(3)(g).

Clause 108(5) amends section 91(2)(c) by inserting “or negative exemption notice” after “notice”.

Clause 108(6) amends section 91(2), penalty, paragraph (b)(i) by inserting “200 penalty units or 2 years imprisonment” in place of 100 penalty units.

Clause 108(7) amends section 91(2), penalty, paragraph (b)(ii) by inserting “1000 penalty units” in place of “500 penalty units”.

**Clause 109** replaces part 10, division 5, subdivision 2 by inserting new sections 92 and 92A.

New section 92 provides for a person holding negative notice or negative exemption notice not to apply for, or start or continue in, regulated engagement. New section 92(1) provides that a person must not sign an application for apply for, or start or continue in, regulated engagement if a negative notice or negative exemption notice has been issued to the person and the notice is current. A penalty is imposed of 500 penalty units or 5 years imprisonment.

New section 92(2) provides that if a person held a positive notice but a negative notice or negative exemption notice was substituted for the positive notice under section 101(1), 102 or 105, court may not find the person contravened subsection (1) unless the court is satisfied that notice of the substitution was given to the person.

New section 92(3) provides that if a person held a positive exemption notice but a negative exemption notice was substituted for the positive exemption notice under section 101A(1) or 105B, a court may not find the person contravened subsection (1) unless the court is satisfied that notice of the substitution was given to the person.

New section 92A provides a person must not start or continue in regulated engagement if a prescribed notice application or exemption notice application was made about a person but the person withdrew the person’s consent to screening under this part before a prescribed notice or exemption notice was issued to the person. Section 92A imposes a maximum penalty of 100 penalties or 1 year imprisonment if the person’s consent to screening is withdrawn under section 117(2) . If the person’s consent to screening is otherwise withdrawn, paragraph (b) imposes a penalty of 500 penalty units or 5 years imprisonment.

**Clause 110** amends part 10, division 5, subdivision 3, heading by omitting “criminal history” and inserting “police information”.

**Clause 111** replaces section 93 (Acquiring a criminal history) to refer to police information so that for a person who does not have police information, there is taken to be a change in the person’s police information if the person acquires police information.

**Clause 112** replaces section 94 (Effect of conviction for serious offence or charge for excluding offence) with Effect of conviction for serious offence.

New section 94(1) provides that section 94 applies to a person with a positive notice or positive exemption notice if the person is convicted of a serious offence.

New section 94(2) provides that the person must immediately return the positive notice or positive exemption notice to the chief executive, unless the person has a reasonable excuse. Maximum penalty for offending against this subsection is 100 penalty units.

New section 94(3) provides that until and unless a prescribed event happens for the person, the person must not start, or continue in regulated engagement. Maximum penalty for offending against this subsection is 500 penalty units or 5 years imprisonment.

New section 94(4) provides that for subsection (3), a prescribed event happens for a person if the person’s positive notice or positive exemption notice is cancelled and the person is issued a new positive notice or positive exemption notice.

New section 94(5) provides that a reference to a person’s positive notice in section 94 is taken to include a reference to any positive notice card relating to the notice.

**Clause 113** amends section 95 in a number of respects.

Clause 113(1) amends the heading of section 95 by inserting “Change in police information of person engaged by funded non-government service provider” in place of “Change in criminal history of engaged person”.

Clause 113(2) amends section 95(1) and (2) by omitting “criminal history” and inserting “police information”.

Clause 113(3) amends section 95(3) by inserting “or exemption notice” after “prescribed notice”.

**Clause 114** inserts a new section 95A after section 95 to provide for a change in change in criminal history of a person engaged by the department.

New section 95A(1) provides that section 95A applies to a person engaged by the department at a service outlet of the department if there is a change in the person's criminal history.

New section 95A(2) provides that the person must immediately disclose to the chief executive that there has been a change in the person's criminal history. Maximum penalty for offending against this section is 100 penalty units.

New section 95A(3) provides that if the chief executive receives information about a change in the person's criminal history under subsection (2), the chief executive may, under section 82A, ask the person for written consent for the chief executive to undertake screening of the person under this part.

New section 95A(4) clarifies that it is not a requirement of subsection (2) that the person give the chief executive any information about the change other than that a change has happened.

**Clause 115** amends section 95A by replacing references to 'criminal history' with 'police information'.

**Clause 116** amends section 96 in a number of respects.

Clause 116(1) amends the heading of section 96 to replace "criminal history" with "police information".

Clause 116(2) amends section 96(1)(a) by inserting "or current positive exemption notice" after "notice".

Clause 116(3) amends 96(1) to replace "criminal history" with "police information".

Clause 116(4) amends section 96(1)(c) by omitting from "by" and inserting "at a service outlet by the department or a funded non-government service provider".

Clause 116(5) amends section 96(2) by inserting "police information since the person's current positive notice or current exemption notice" from "criminal history" to "notice".

Clause 116(6) amends section 96(3) by inserting "or exemption notice" after "notice".

**Clause 117** replaces section 99 and inserts a new section 99 (Return of cancelled positive notice to chief executive) and inserts a new section 99A in relation to the return of a cancelled positive exemption notice to the chief executive.

New section 99 provides that where the chief executive cancels a person's current positive notice and issues the person with a negative notice or negative exemption notice, the person must immediately return the old notice and any positive notice card issued to the person to the chief executive, unless the person has a reasonable excuse.

New section 99A provides that where the chief executive cancels a person's current positive exemption notice and issues the person with a negative exemption notice, the person must immediately return the old notice to the chief executive, unless the person has a reasonable excuse.

**Clause 118** amends the heading of part 10, division 6 by inserting the heading "Cancellation of prescribed notices and exemption notices etc." in place of "Cancellation and replacement prescribed notices".

**Clause 119** amends section 100 in a number of respects.

Clause 119(1) replaces the heading of section 100 with "Cancellation of negative notice or negative exemption notice and issuing of positive notice or positive exemption notice".

Clause 119(2) amends section 100(1) and (5) by inserting "or negative exemption notice" after "negative notice".

Clause 119(3) inserts section 100(1A) to provide that section 100 does not apply to the person if the person is a relevant disqualified person.

Clause 119(4) inserts two new subsections (a) and (b) into section 100(3) to provide that the person may apply under section 100 less than 2 years after the issue of the negative notice or negative exemption notice if the decision to issue the negative notice or negative exemption notice was based on wrong or incomplete information, or if the negative notice or negative exemption notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.

Clause 119(5) inserts two new subsections (a) and (b) into section 100(7) to provide that if the chief executive grants the application, the chief executive must:

- for an application relating to a negative notice – cancel the negative notice and issue a positive notice to the person, or

- for an application relating to a negative exemption notice – cancel the negative exemption notice and issue a positive exemption notice to the person.

Clause 119(6) inserts a new subsection (8) into section 100 to provide that the chief executive may only issue a positive notice or positive exemption notice under (7) if satisfied that the person is proposing to be in regulated engagement.

**Clause 120** amends section 101 in a number of respects.

Clause 120(1) amends section 101(1)(b) to provide that the chief executive may cancel a prescribed notice and substitute another prescribed notice having regard to:

- information received under section 114, 114A or 115 about the person, other than information known to the chief executive at the time the cancelled notice was issued; or
- a decision of a court made after the cancelled notice was issued, including the reasons for the decision, relating to an offence committed by the person.’

Clause 120(2) amends section 101(1)(b)(i) to include reference to section 114B after the reference to section 114A.

Clause 120(3) replaces section 101(3) to provide that the chief executive may cancel a negative notice and substitute a positive notice if :

- the chief executive is satisfied that the decision to issue the negative notice was based on wrong or incomplete information and, based on the correct or complete information, the chief executive should issue the positive notice
- a penalty or order of a court of the type mentioned in section 102(1), that required the chief executive to cancel the positive notice and issue a negative notice, is not upheld on appeal; or
- the chief executive is satisfied that it is appropriate to cancel the negative notice having regard to information not known to the chief executive at the time the negative notice was issued.

Clause 120(4) replaces section 101(3)(b) to provide for the cancellation of a negative notice and substitution of a positive notice if the negative notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.

Clause 120(5) insert new sections 101(6), 101(7) and 101(8) To provide that:

- if, for subsection (3), the chief executive's decision under subsection (4) is that the person should be issued a positive notice, the chief executive may issue a positive notice only if satisfied the person is proposing, if the positive notice is issued, to be engaged in regulated engagement.
- the chief executive may cancel a person's negative notice under subsection (3) even if a positive notice is not issued to the person under subsection (6) until a later time; or a positive notice is never issued to the person under subsection (6).
- The chief executive may act under subsection (3) only on the chief executive's own initiative.

**Clause 121** inserts a new section 101A after section 100 to provide for the chief executive to cancel an exemption notice and substitute another exemption notice.

New section 101A(1) provides that the chief executive may cancel a positive exemption notice and substitute a negative exemption notice if 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 chief executive should issue a negative exemption notice; or
- it is appropriate to cancel the cancelled notice having regard to information received under section 114, 114A, 114B or 115 about the person, other than information known to the chief executive at the time the cancelled notice was issued; or a decision of a court made after the cancelled notice was issued, including the reasons for the decision, relating to an offence committed by the person

New section 101A(2) provides that if the person is engaged by a funded non-government service provider at the time the negative exemption notice is substituted, the chief executive must give notice of the substitution to the service provider.

New section 101A(3) provides that the chief executive may cancel a negative exemption notice about a person and, if subsection (6) applies, substitute a positive exemption notice if:

- the chief executive 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 chief executive should issue a positive exemption notice; or
- the negative exemption notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person; or
- the chief executive is satisfied that it is appropriate to cancel the negative exemption notice having regard to information not known to the chief executive at the time the negative exemption notice was issued.

New section 101A(4) provides for how a decision must be made under subsection (1) or (3).

New section 101A(5) prescribes that the chief executive must comply with section 88 if proposing to substitute a negative exemption notice in subsection (1).

New section 101A(6) provides that if, for subsection (3), the chief executive's decision under subsection (4) is that the person should be issued a positive exemption notice, the chief executive may issue a positive exemption notice only if the chief executive is satisfied the person is proposing, if the positive exemption notice is issued, to be engaged in regulated engagement.

New section 101A(7) provides that the chief executive may cancel a person's negative notice under subsection (3) even if a positive exemption notice is not issued to the person under subsection (6) until a later time; or (b) a positive exemption notice is never issued to the person under subsection (6).

New section 101A (8) provides that the chief executive may act under subsection (3) only on the chief executive's own initiative.

**Clause 122** amends section 102 in a number of respects.

Clause 122(1) replaces the heading of section 102 with "Cancellation of positive notice if relevant disqualified person".

Clause 122(2) replaces section 102(1) to provide that section 102 applies if a positive notice holder becomes a relevant disqualified person other only because the person is subject to a temporary offender prohibition order and/or interim sexual offender order.

Clause 122(3) removes paragraphs (a) to (c) in section 102(3) and replaces them with new paragraphs (a) and (b) to provide that at the time the chief executive gives the person the negative notice, the chief executive must also notify the person that the person can not apply under section 100 for the cancellation of the negative notice even after 2 years and must also notify the person of the relevant review and appeal information.

Clause 122(4) omits section 102(5).

**Clause 123** omits section 103.

**Clause 124** amends section 104 in a number of respects.

Clause 124(1) inserts amends the heading of section 104 to insert “Suspension of positive notice if charged with disqualifying offence or subject to temporary or interim order”.

Clause 124(2) inserts a new section 104(1) to provide that the chief executive must suspend a positive notice held by a person if the person is charged with a disqualifying offence or becomes a relevant disqualified person because the person is subject to a temporary offender order or interim sexual offender order.

Clause 124(3) amends section 104(2) by requiring the chief executive to notify the person of the relevant review and appeal information, in addition to the matters currently listed in subsection 2.

Clause 124(4) replaces subsection (3) by inserting the maximum penalty of 500 penalty units or 5 years imprisonment.

**Clause 125** amends section 105 in a number of respects.

Clause 125(1) amends the heading of section 105 by inserting “Ending” in place of “Cancellation”.

Clause 125(2) omits sections 105(2) to (4) and inserts a new section 105(2) to provide that a suspension ends if the suspended notice is cancelled under another provision; or on the chief executive’s own initiative or on application by the person, the chief executive cancels the suspended notice and issuing a further positive notice or a negative notice to the person or cancels the suspended notice as mentioned in (5).

Clause 125(3) amends section 105(5) by inserting “to cancel the suspended notice and, subject to subsection (5), issue a further positive notice or a negative notice to the person” in place of “under subsection (3)”.

Clause 125(4) rennumbers section 105(5) and (6) as section 105(3) and (4).

Clause 125(5) inserts a new subsection (5) to provide that the chief executive may cancel the suspended positive notice without issuing a further prescribed notice to the person if the person notifies the chief executive that the person is no longer proposing to be engaged in regulated engagement, even if a further positive notice is issued to the person.

Clause 125(6) inserts a new subsection (6) into section 105 to provide that the chief executive is not required to decide an application by a person as mentioned in subsection:

- while a charge against the person for a disqualifying offence is pending
- while the person is a relevant disqualified person because the person is subject to a temporary offender prohibition order or interim sexual offender order
- if the person has been convicted of a disqualifying offence and –
  - the period allowed for an appeal relating to the conviction or sentence of the person has not ended, or
  - an appeal relating to the conviction or sentence has started but has not been decided
- if the person is subject to a final offender prohibition order, disqualification order or final sexual offender order and –
  - the period allowed for an appeal relating to the order has not ended, or
  - an appeal relating to the order has started but has not been decided.

**Clause 126** inserts new sections 105A, 105B, 105C and 105D after section 105.

New section 105A(1) provides that section 105A applies if a person holds the positive exemption notice on the basis the person holds a CCYPCG positive notice and the CCYPCG is suspended under the CCYPCG Act.

New section 105A(2) provides that the chief executive must suspend the positive exemption notice and must notify the person of the suspension.

New section 105A (3) lists the matters the notice about the suspension must contain.

New section 105A(4) is a penalty provision that prohibits a person whose positive exemption notice is suspended and who is given a notice under subsection (2) must not apply for, or start or continue in regulated engagement. The maximum penalty is 500 penalty units or 5 years imprisonment.

New section 105A(5) is a penalty provision that provides that a person who is given notice under subsection (2) must return the person's positive exemption notice to the chief executive within 7 days of the notice being given to the person. The maximum penalty is 100 penalty units.

New section 105A(6) provides additional notification requirements if the person is engaged by a funded non-government service provider.

New section 105A(7) is a penalty provision that prohibits a funded non-government service provider to whom notice is given under subsection (6) from allowing a person to work at a service outlet of the service provider while the person's positive exemption notice is suspended.

New section 105A(8) provides that a funded non-government service provider to whom notice is given under subsection (6) must not terminate the person's engagement or continued engagement solely or mainly because the service provider is given the notice.

New section 105B provides the decision making process in relation to the ending of a section 105A suspension.

New section 105C provides the notification requirements in the event of a person who was issued a positive exemption notice and who no longer holds a current CCYPCG positive notice. The chief executive must notify the person that the positive exemption notice ceases to have effect under section 89F. If the person is engaged by a funded non-government service provider at a service outlet of the service provider, the chief executive must also notify the chief executive that the positive exemption notice has ceased to have effect and that a prescribed notice application may be made about the person if the person does not hold a CCYPCG positive notice and is not a disqualified person.

New section 105C(5) is a penalty provision that requires a person who has been notified under subsection (2) to immediately return the positive exemption notice which has ceased to have effect unless the person has a reasonable excuse. The maximum penalty is 100 penalty units.

New section 105D provides that a person may, by notice, ask the chief executive to cancel the person's positive notice or positive exemption

notice. After receiving the notice, the chief executive must cancel the positive notice or positive exemption notice and give the person a notice stating that the notice has been cancelled and that the person must not apply for, or start or continue in, regulated engagement.

New section 105D(3) is a penalty provision that prohibits the person from apply for, or starting or continuing in, regulated engagement unless the chief executive issues a further positive notice or positive exemption notice to the person. The maximum penalty is 500 penalty units or 5 years imprisonment.

New section 105D(4) provide additional notification requirements if the person is engaged by a funded non-government service provider.

**Clause 127** amends section 106 in a number of respects. The purpose of is to allow for a person whose positive notice, positive notice or positive exemption notice is lost or stolen to have the option of either requesting a replacement notice or card or requesting to have the notice cancelled.

Clause 127(1) amends the heading of section 106 by inserting “,positive notice card or positive exemption notice” in place of “or positive notice card”.

Clause 127(2) replaces section 106(1) to provide the option of either requesting to have a lost or stolen positive notice, card or positive exemption notice replaced or requesting to have the notice cancelled.

Clause 127(3) amends section 106(2) by inserting “An application under subsection (1)(c)(i)” in place of “The application”.

Clause 127(4) amends section 106(3) to clarify what the chief executive must cancel and what the chief executive must replace if a person requests a replacement notice under subsection (1)(c)(i).

Clause 127(5) amends section 106(4) by inserting “must” in place of “may”.

Clause 127(6) amends section 106(6) by inserting “current positive notice card, or current positive exemption notice” from “or current” to “card”.

**Clause 128** amends section 107 in a number of respects.

Clause 128(1) replaces the heading of section 107 with “Change of details for positive notice, positive notice card or positive exemption notice”.

Clause 128(2) amends section 107(1) by inserting “or positive exemption notice” after “positive notice”.

Clause 128(3) amends section 107(3) to (5) to include references to positive exemption notices.

**Clause 129** inserts a new section 107A after section 107. The purpose is to introduce new requirements in relation to a volunteer moving into an engagement as other than a volunteer.

New section 107A(1) provides that section 107 applies if the holder of a positive notice that is not suspended changes the person's engagement by a funded non-government service provider from engagement as a volunteer to engagement as other than a volunteer (relevant change).

New section 107A(2) provides that the holder must, within 14 days, notify the chief executive in the approved form of the relevant change. The maximum penalty for offending at this subsection is 10 penalty units.

New section 107A(3) provides that the chief executive, after receiving a notice under subsection (2), must issue a new positive notice, and if the holder also has a positive notice card, a new positive notice card.

New section 107A(4) provides that if the chief executive issues to the holder a new positive notice or positive notice card under subsection (3), the holder must return the person's previously held notice or card to the chief executive within 14 days after receiving the new notice or card. The maximum penalty for offending against this subsection is 10 penalty units.

New section 107A(5) provides that the chief executive must cancel the previously held positive notice or positive notice card if the chief executive has issued a new notice or card.

New section 107A(6) provides that if the holder has not paid the prescribed fee for the positive notice, the notice under subsection (2) must be accompanied by the prescribed fee.

New section 107A(7) defines "prescribed notice fee".

**Clause 130** inserts a new part 10, divisions 6A and 6B. Division 6A (section 107B, 107C) relates to persons who start to hold, or stop holding a CCYPCG positive notice. Division 6B (sections 107D -107N) relates to disqualified persons.

New section 107B applies if a person holds a current positive notice or current negative notice and also holds a CCYPCG positive notice. The person's positive notice or negative notice continues in effect subject to section 89 and Division 6 continues to apply in relation to the person's positive notice or negative notice while it remains current. However, if

under division 6 the chief executive is required or permitted to issue a positive notice or negative notice and the chief executive is aware the person holds a CCYPCG positive notice, the chief executive must instead issue a positive exemption notice or negative exemption notice respectively.

New section 107C applies if a person was issued with a negative exemption notice and the person no longer holds a CCYPCG positive notice. The negative exemption notice continues in effect despite section 89A(1). However, if under division 6, the chief executive is required or permitted to issue a positive exemption notice or negative exemption notice and the chief executive is aware the person no longer holds a CCYPCG positive notice, the chief executive must instead issue a positive notice or negative notice respectively.

New section 107D provides that a person is a disqualified person if the person:

- has been or is convicted of a disqualifying offence; or
- is subject to:
  - reporting obligations under the *Child Protection (Offender Reporting) Act 2004*
  - an order under the *Child Protection (Offender Prohibition) Order Act 2008*
  - a disqualification order; or
  - an order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

However a person is not a disqualified person if the chief executive issued an eligibility declaration to the person and the eligibility declaration has not expired.

New section 107E prescribe the offences for a disqualified person. A disqualified person must not sign an application as an engaged person under section 83 or apply for, or start or continue in, regulated engagement. The maximum penalty is 500 penalty units or 5 years imprisonment. If the chief executive is satisfied a person who has signed an application is a disqualified person, the chief executive must provide notice to the person and the funded non-government service provider who made the application that the person must not apply for, or start or continue in regulated engagement and the service provider must not allow the person to start or

continue in engagement by the service provider at a service outlet of the service provider.

New section 107F allows for a person who may be a disqualified person to apply to the chief executive for a declaration (eligibility declaration) that the person is not a disqualified person and is eligible to sign an application as an engaged person under section 83. The person can not make an application for an eligibility declaration less than 2 years after making a previous eligibility application that has been refused, unless:

- the decision to refuse the previous eligibility application was based on wrong or incomplete information; or
- the previous eligibility declaration was refused because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.

New section 107G requires a person who makes an eligibility application to notify of a change of name and contact details within 14 days after the change happens. The maximum penalty is 10 penalty units.

New section 107H prescribes the decision making for the chief executive to issue an eligibility declaration. The chief executive may only issue an eligibility declaration to a person only if the person who has been convicted of a disqualifying offence and is not a relevant disqualified person. The chief executive may grant or refuse the application.

If the eligibility application is refused, the chief executive must notify the person of the reasons for the refusal and, if the reasons, include investigative information, that the person may appeal to a Magistrates Court about the police commissioner's decision that the information is investigative information. There is no review or appeal in relation to a decision of the chief executive under this section to refuse an eligibility application.

The chief executive must also notify the person if the chief executive considers the person has not been convicted of a disqualifying offence.

New section 107I provides that the chief executive is taken to have issued an eligibility declaration to a disqualified person if the chief executive issues a positive notice to the person or cancels a negative notice or negative exemption notice issued to the person.

New sections 107J-107L provide for the withdrawal of eligibility applications. An eligibility application may be withdrawn in the following circumstances:

- a person may withdraw their eligibility application at anytime before an eligibility declaration or a notice is issued
- if the chief executive can not establish with certainty the person's identity
- if the person does not comply with the following requests for information by the chief executive:
  - gives the person a notice asking the person to provide stated information, including by way of a submission, about a stated matter that the chief executive reasonably believes is relevant to the application
  - a notice under section 114D; or
  - a notice asking the person to give the necessary consent for section 114F or 114G; or
  - a notice asking the person to give the necessary consent for section 114K or 114L.

New section 107M prescribes the circumstances when an eligibility declaration issued to a person expires.

New section 107N prescribes the circumstances when the chief may revoke a decision to refuse an eligibility application and issue an eligibility declaration.

**Clause 131** inserts a new part 10, division 7, subdivision 1 heading.

**Clause 132** amends section 108(1)(a) by omitting reference to section 105(3).

**Clause 133** omits section 108 and inserts new sections 108, 108A and 108B in relation to reviews and appeals against particular decisions.

New section 108 provides the definitions for subdivision 1. New section 108 defines “issue” to include the following for the purposes of subdivision 1:

- substitute a negative notice after cancelling a positive notice (in relation to a negative notice), and
- substitute a negative exemption notice after cancelling a positive exemption notice (in relation to a negative exemption notice).
- New section 108 defines “part 10 reviewable decision” to mean:

- a decision of the chief executive as to whether or not there is an exceptional case for the person if, because of the decision, the chief executive issued a negative notice or negative exemption notice to or refused to cancel a negative notice or negative exemption notice issued to the person, or
- a decision that the person had been charged with a disqualifying offence if, because of the decision, the positive notice held by the person was suspended under section 104, the person claims he or she has not been charged with the disqualifying offence and the person has applied for a cancellation of the suspension under section 105 and that application has been refused, or
- a decision that the person's CCYPCG positive notice has been suspended under the CCYPCG Act if, because of the decision, the positive exemption notice held by the person was suspended under section 105A, the person claims his or her CCYPCG positive notice has not been suspended under the CCYPCG Act and the person has applied for a cancellation of the suspension under section 105B and that application has been refused
- a relevant disqualified person decision if because of the decision, the chief executive issued a negative notice or negative exemption notice to the person, the person claims he or she is not the person to whom the conviction, reporting obligations or order relates and the person has applied for a cancellation of the negative notice under section 100 or a cancellation of the negative exemption notice under section 100, and that application has been refused.

New section 108 defines “prescribed period” for a review of a part 10 reviewable decision to mean 28 days after the person is given the relevant notice as provided for in paragraphs (a) to (e).

New section 108 defines “relevant disqualified person decision” to mean:

- a decision of the chief executive that a person has been or is convicted of a disqualifying offence for which an imprisonment order was or is imposed
- a decision of the chief executive that a person is subject to offender reporting obligations, a final offender prohibition order, a disqualification order of a final sexual offender order.

New section 108A provides that a person that is not a disqualified person may apply (within the prescribed period and as otherwise provided for

under the QCAT Act) to the tribunal for a review of a part 10 reviewable decision. If a person applies for the review of a part 10 reviewable decision, the tribunal may not stay the operation of the decision or grant an injunction in the proceeding of the review. New section 108A(3) clarifies that there is no review of appeal under the *Disability Services Act 2006* in relation to a decision of the chief executive to issue, or refuse to cancel, a negative notice or negative exemption notice about a person other than because of a part 10 reviewable decision. New section 108A does not limit section 111.

New section 108B provides that if a disqualified person made an application under section 108A prior to the person becoming a disqualified person, the application and any proceeding in relation to the application must be dismissed:

- by a court if a proceeding in relation to the application is before a court
- otherwise – by QCAT, even if the dismissal would be contrary to a direction of the District Court.

New section 108B clarifies that any appeal by the person from a decision of QCAT on the application must be dismissed.

Clause 134 inserts a new part 10, division 7, subdivision 2 heading ‘Subdivision 2 Provisions about investigative information’.

**Clause 135** amends section 109 (Police commissioner may decide that information about a person is investigative information) due to the insertion of Schedule 6A which lists offences that may form the basis of investigative information.

**Clause 136** amends section 111 to broaden the circumstances when a person may apply for review of the decision that information is investigative information to allow for applications by persons who make an eligibility application and negative exemption notice holders. An application for review will be able to be made in the following circumstances:

- a negative notice or exemption notice is issued to the person
- the person’s positive notice is cancelled and a negative notice or negative exemption notice is substituted for it
- the person’s positive exemption notice is cancelled and a negative exemption notice is substituted for it

- the person's eligibility application is refused.

**Clause 137** amends section 113(2)(a) by inserting “or 103(2)” after “section 85(4) or (7)”.

**Clause 138** replaces section 113. New section 113 applies if a Magistrate Court hears and decides an appeal against the police commissioner's decision under section 109 that information given to the chief executive about a person is investigative information. The new section 113 provides that the person issued with a negative notice, negative exemption notice or persons whose eligibility applications were refused may apply for cancellation of the notice or to revoke the refusal on the grounds that the refusal or decision to issue the notice was based on wrong information.

**Clause 139** inserts new pt 10, div 7, subdivision 3 heading ‘Subdivision 2 Obtaining police information or information related to police information about a person’ and section 113A. New section 113A lists the categories of persons to which sections 114 and 114A apply, that is, the categories of persons about whom the chief executive may obtain information from the police commissioner or the director of public prosecutions.

**Clause 140** amends section 114 (Chief executive may obtain information from police commissioner) in a number of respects, mainly to broaden the information which may be obtained from the police commissioner.

Clause 140(1) amends section 114(1) by inserting “mentioned in section 113A.” from “if”.

Clause 140(2) amends section 114(3)(c) and (d) to expand the information that may be provided by the chief executive to the police commissioner when requesting information about a person.

The additional information that may be included in a request under subsection (2) is:

- the person's address
- if the person is currently the holder of an exemption notice – any number or date relevant to the exemption notice
- whether or not the person is engaged, or to be engaged, as a volunteer
- the basis on which the chief executive may request information about the person.

Clause 140(3) inserts new subsections (6A) and (6B) into section 114 to provide what the police commissioner must provide in relation to a person:

- who is or has been a relevant disqualified person (subsection 6A)
- who is or has been the subject of an application for a disqualification order or named as the respondent for an application for an offender prohibition order, and the order was not made (subsection 6B).

Clause 140(4) inserts new subsection to (13) to clarify that the police commissioner may disclose information under the part despite part 9 of the *Youth Justice Act 1992*.

**Clause 141** inserts new sections 114A to 114G after section 114 which broaden information which may be provided to the chief executive relating to a person's criminal history and align with similar amendments under the CCYPCG Act.

New section 114A inserts a new provision to clarify what information may be requested from and provided by the director of public prosecutions in relation to a person mentioned in section 113A. Where the chief executive is aware that the person has been charged with or convicted of an offence, the chief executive may request from the director a written summary of the offence or alleged offence, a copy or written summary of evidentiary material about the offence, and if a charge was not proceeded with, a written summary of the reasons for the discontinuance. The director may comply with the request if the director reasonably believes the material may assist the chief executive in making a screening decision about the person. The director must not provide the chief executive with a copy or written summary of evidentiary material that relates to another person (other than the person about whom the request is made).

Further, the director must not comply with the chief executive's request where reasonably satisfied that the giving of information may:

- prejudice the investigation of a contravention or possible contravention of the law
- enable to existence or identity of a confidential source of information regarding the enforcement or administration of the law, to be ascertained
- prejudice the effectiveness of a lawful method of procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law
- prejudice another prosecution or another matter before a court
- endanger a person's life or physical safety.

New section 114A clarifies that the giving of information under this section under this provision is authorised despite any other Act or law, including confidentiality requirements. The provision applies despite section 24A of the *Director of Public Prosecutions Act 1984*.

New section 114B provides what information may be requested from and provided by the chief executive (corrective services). The provision is required due to the expansion of the exclusionary framework to include persons who are subject to reporting obligations under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. The chief executive (corrective services) must notify the chief executive in writing of each person who is or becomes subject to a sexual offender order by written notice including the person's name, that the person is subject to a sexual offender order and any other information that the chief executive (corrective services) considers is necessary for the chief executive to perform a function or exercise a power under part 7.

The chief executive (corrective services) and chief executive may enter into a written arrangement relating to the process for providing notifications under subsection (1), including electronic notification. If notification is given electronically, there is a limitation of who may access the information contained in the notification and any arrangement between the chief executive (corrective services) and the chief executive must provide for this limitation. The giving of information under this section under this provision is authorised despite any other Act or law, including confidentiality requirements.

New section 114C prescribes the application of subdivision 3 in relation to obtaining a report about a person's mental health. If the chief executive is deciding whether an exceptional case exists for a person who has been charged with or convicted of a serious offence or charged with or convicted of an offence other than a serious offence which relates to or involves a person with a disability, the chief executive may obtain a report about the person's mental health if the chief executive reasonably believes that the report is a necessary consideration in deciding whether an exceptional case exists. A reasonably belief can be established where the relevant conviction or charge was referred to the Mental Health Court (or similar entity), where the court has ordered the person to undertake treatment of a psychiatric nature or the court or where the chief executive has been given a report about a person's mental health prepared by a registered health practitioner.

New section 114D provides the circumstances in which the chief executive may request a person to undergo a mental health examination by a

registered health practitioner nominated by the chief executive, so that a mental health report can be provided to the chief executive, and to give the chief executive consent to obtain such a report.

New section 114D(2) provides that a notice under subsection (1) must contain:

- the reasons for the chief executive's request
- the name and qualifications of the relevant registered health practitioner
- the details for when the examination is to be conducted
- that the person may be required to undergo further examinations necessary for the preparation of a report about the person's mental health
- that the commission must consider the report in deciding whether or not an exceptional case exists as required under section 86(2)(c)
- that the person may withdraw their consent to or application for employment screening or the person's eligibility application
- that if the person fails to undergo the examination or to give consent that the person's consent to employment screening or eligibility application may be withdrawn, or the chief executive may decide whether or not there is an exceptional case in the absence of a report about the person's mental health.

New section 114E provides that the chief executive may nominate a registered health practitioner to conduct a mental health examination only if the chief executive is reasonably satisfied the health practitioner has the necessary qualifications, expertise or experience to conduct the examination.

New section 114F provides that the chief executive, in certain circumstances, may ask the person to give the Mental Health Court consent to provide the registered health practitioner the following information:

- the court's decision in relation to the reference
- the court's reasons for its decision
- a copy or written summary of any expert's report about the person received in evidence by the court, including, for example, a medical report, psychiatrist's report or expert report that accompanied the reference, and

- transcripts of any hearing conducted for the reference.

If the person gives the consent, the Mental Health Court may give the information mentioned in subsection (2) to the chief executive to give to the registered health practitioner. However, subsections (5) and (6) provide certain limitation on the types of information which may be provided, such as material given to the court under section 284 of the *Mental health Act 2000*. Further, if the chief executive is given information under section 114F to give to the registered health practitioner, the chief executive must provide the information to the registered health practitioner as soon as possible and must not use the information for any other purpose other than giving it to the registered health practitioner. The giving of information under this section by the Mental Health Court is authorised despite any other Act or law including a law imposing an obligation to maintain confidentiality about the information. Without limiting this, information may be given under this section even if the information can not be disclosed to the charged person under a confidentiality order under section 426 of the *Mental Health Act 2000* and this section applies in relation to an expert's report despite section 318 of the *Mental Health Act 2000*. However, a decision of the Mental Health Court not to give an expert report about the person under this section does not prevent the chief executive applying under section 318 the *Mental Health Act 2000*, for leave of the court to give the report to the registered health practitioner.

New section 114G provides for a registered health practitioner to obtain information from the Mental Health Review Tribunal for the purpose of conducting an examination under this subdivision. The chief executive may ask the person to give the Mental Health Review Tribunal consent to give the registered health practitioner:

- the tribunal's decision on the review;
- the tribunal's reasons for the decision;
- a copy or written summary of any expert's report about the person received by the tribunal in the proceeding for the review, including, for example, a report about an examination of the person by a psychiatrist under section 203A of the *Mental Health Act 2000*;
- transcripts of any hearing conducted for the review that the tribunal has directed may be given to a party to the hearing or another person.

If the person gives the consent, the Mental Health Review Tribunal may give the information mentioned in subsection (2) to the chief executive for

giving it to the registered health practitioner. However, subsections (5) and (6) provide certain limitation on the types of information which may be provided. Further, if the chief executive is given information under section 114G to give to the registered health practitioner, the chief executive must provide the information to the registered health practitioner as soon as possible and must not use the information for any other purpose other than giving it to the registered health practitioner. The giving of information under this section by the Mental Health Court is authorised despite any other Act or law including a law imposing an obligation to maintain confidentiality about the information. Without limiting this, information may be given under this section even if the information can not be disclosed to the charged person under a confidentiality order under section 458 of the *Mental Health Act 2000*.

New section 114H applies if the chief executive gives a registered health practitioner information or a document about a person given by the Mental Health Court or the Mental Review Tribunal. New section 114H(2) places restrictions on the registered health practitioner's use of the information. The maximum penalty for offending against section 114H is 100 penalty units.

New section 114I provides that the where a person consents under section 114D(1)(b) the chief executive may request the registered health practitioner to provide a report about the examination.

New section 114J clarifies that the chief executive will bear the costs of obtaining the medical report under this subdivision.

New sections 114K and 114L prescribe the circumstances for the chief executive obtaining particular information from the Mental Health Court and Mental Health Review Tribunal for deciding whether or not there is an exceptional case for the person who has been charged with, but not convicted of a serious offence or an offence (other than a serious offence) relating to or involving a person with a disability. There are restrictions on the information and documents which may be released.

**Clause 142** amends section 115 to expand upon the matters on which the police commissioner may notify the chief executive of in relation to a change in the person's police information. These matters have been expanded to include the circumstances when the person becomes, or is no longer, a relevant disqualified person and the person is named as the respondent for an application for an offender prohibition order. Section 115 has also been amended to clarify that despite part 9 of the *Youth Justice Act*

1992, part 9, the police commissioner may disclose information to the chief executive.

**Clause 143** inserts a new heading for part 10, division 7, subdivision 7.

**Clause 144** amends section 116 (Chief executive to give notice to funded non-government service provider about making screening decision about engaged person) in a number of respects. The amendments clarify that the section does not apply to the change if the person has been charged with or convicted of a disqualifying offence or has become a relevant disqualified person. The section also does not apply if the change is that the engaged person has been named as the respondent in an application for an offender prohibition order and the proceeding for the offender prohibition order has not ended and an application for a prescribed notice or exemption notice about the engaged person has been made under this part and has not been decided. Amendments have also been made to expand on the matters the chief executive must notify the service provider and provide a definition of engaged person.

**Clause 145** amends section 117 to expand upon the basis on which a person is taken to have withdrawn their consent to screening under Part 10 to allow for withdrawal of consent when:

- notices provided under section 114D, 114F, 114K or 114L are not complied with
- applications for exemption notices are made
- an applicant is charged with a disqualifying offence but a notice has not yet been issued.

**Clause 146** amends section 118(4) to provide that a person whose positive notice is suspended under section 104, or whose positive exemption notice is suspended under section 105A, may be engaged by the service provider other than at a service outlet of the service provider until the suspension ends.

**Clause 147** amends section 122 by expanding the category of persons about which the chief executive may apply for a disqualification order to include persons convicted of a serious offence committed in relation to, or otherwise involving, a person with a disability.

Clause 147(3) clarifies that a court may make the disqualification order only if the court considers it would not be in the interests of people with a disability for the chief executive to issue a positive notice or positive exemption notice to the person.

Clause 147(4) provides that a person about whom the disqualification order is made may appeal against the court's decision under subsection (2) in the same way the person may appeal against the conviction.

**Clause 148** amends section 123 to clarify that the chief executive must keep a register with up-to-date information for each person engaged by the department at a service outlet of the department and for each person for whom a prescribed notice application or exemption notice application is made.

**Clause 149** amends section 123ZL to insert "6 months" in place of "3 months". This amendment extends the maximum period for short-term approvals from up to 3 months to up to 6 months. The actual period for a short-term approval will be set by the relevant decision-maker.

**Clause 150** amends the definition of "health professional" provided in section 123ZZG to mean a registered health practitioner and any other person, including for example, an audiologist, dietician or social worker.

**Clause 151** amends section 221 by broadening the application of section 221 to include persons who have acquired or gained access to information about a person's mental health under part 10.

**Clause 152** makes a technical amendment to section 248 to clarify a further circumstance when the transitional period for restrictive practices ends. In particular, when the Queensland and Civil Administration Tribunal is considering an approval for containment or seclusion for a relevant service provider in a matter under the full scheme; and the application also includes approval for other forms of restrictive practices - the transitional period also stops applying to these other restrictive practices when the Queensland and Civil Administration Tribunal approves or refuses the application in relation to that matter.

**Clause 153** amends the definition of "transitional period" for the purposes of the short-term approval provisions only. The effect is that the short-term approval provisions will commence upon assent.

**Clause 154** renumbers part 16, division 3 as part 16, division 4.

**Clause 155** renumbers section 241 as section 251.

**Clause 156** inserts a new part 16, division 5 to provide for transitional provisions in relation to the Criminal History Screening Legislation Amendment Act 2010.

New section 252 provides a definition for division 5.

New section 253 provides the definitions for subdivision 2.

New section 254 provides transitional arrangements in relation to self-disclosing criminal history under section 67 of the unamended Act. If before commencement there was a change in the criminal history of a person engaged by the department and at commencement that person had not disclosed the change in criminal history to the chief executive as required by section 67 of the unamended Act and the person is engaged by the department at a service outlet of the department, section 95A applies in relation to the change in the person's criminal history.

New section 255 provides transitional arrangements in relation to requests for police information not complied with at commencement. If before commencement the chief executive asked the police commissioner for police information about a person under section 70 of the unamended Act and at commencement the police commissioner had not given the police information to the chief executive, the police commissioner is no longer required to comply with the chief executive's request.

New section 256 provides transitional arrangements in relation to particular police information obtained but not used before commencement. If before commencement the police commissioner gave the chief executive a person's police information under section 70 of the unamended Act and at commencement the chief executive had not made an assessment about the person's suitability for engagement, or continued engagement, by the department under section 72 of the unamended Act, the chief executive must immediately destroy the police information and stop making the assessment.

New section 257 provides transitional arrangements in relation to notices not given by the prosecuting authority at commencement. If before commencement a person engaged by the department was charged with an indictable offence and at commencement the police commissioner or director of public prosecutions (prosecuting authority) has not given information about the charge to the chief executive as required under section 71 of the unamended Act, the prosecuting authority is no longer required to give the information to the chief executive.

New section 258 provides transitional arrangements in relation to the use of particular information obtained before commencement. Section 72(2) of the unamended Act continues to apply in relation to information about a person received by the chief executive under Part 9 as if the amending Act had not been enacted.

New section 259 stipulates that amendments of provisions of part 10 of this Act by the amending Act are to commence in 2 stages and this subdivision provides for particular transitional arrangements for amendments of provisions of part 10 that are to commence in the first of the 2 stages. This is to enable staged commencement of the amendments to occur.

New section 260 inserts definitions for subdivision 3.

New section 261 clarifies that the chief executive may not cancel a person's positive notice on the basis the person would not have been issued a positive notice under this Act because the person was charged with or convicted of a new serious offence before the commencement. However, this does not prevent the chief executive from having regard to the charge or conviction of a new serious offence which happened before commencement and making a decision because there has been a change in the person's criminal history or the chief executive becomes aware of the charge or conviction.

New section 262 provides that an application for a prescribed notice made prior to commencement but not decided or withdrawn at commencement is not invalid only because it does not comply with this Act as in force immediately after the commencement. In addition, despite 89(2), a prescribed notice issued under this section remains current for 2 years unless cancelled earlier under part 10, division 6.

New section 263 provides that a positive notice in force at the commencement remains current for 2 years after it was issued under the unamended Act, unless it is earlier cancelled under part 10, division 6 despite section 89(2).

New section 264 provides that if, before the commencement, the chief executive had started on the chief executive's own initiative to exercise a power in relation to a person or a prescribed notice and the chief executive may, immediately after commencement, exercise the power under this Act, the chief executive may continue to exercise the power in relation to the person or prescribed notice.

New section 265 provides that if a person's current positive notice or positive notice card is lost or stolen 14 days or less before the commencement and at commencement the person has not applied for a replacement notice or card as required under section 106 of the unamended Act, section 106 of the unamended Act does not apply to the person. Section 106 as in force after the commencement applies to the person as if

the reference to 14 days after the loss or theft were a reference to the later of the following:

- 14 days after the loss or theft
- 7 days after the commencement.

New section 266 provides that in relation to existing reviews and appeals the entity hearing the review or appeal must apply this Act in relation to the matter. The entity may exercise a power of the chief executive under part 10 for deciding a review of a decision of the chief executive, or an appeal against a decision of the tribunal, as to whether or not there is an exceptional case for a person.

New section 267 provides that in relation to an offence that is a schedule 6A offence but was not a serious sexual or violent offence within the meaning of that term under the unamended Act, section 109 applies in relation to a positive notice holder's acts or omissions constituting a new investigative information offence even if the acts or omissions were committed before commencement.

New section 268 explains the references to an exemption notice application, an exemption notice, a positive exemption notice or negative exemption notice and a provision of proposed part 10, division 4A.

New section 269 explains the references to an eligibility application, an eligibility declaration and a provision of proposed part 10, division 6B.

New section 270 stipulates that amendments of provisions of part 10 of this Act by the amending Act are to commence in 2 stages and subdivision 4 provides for particular transitional arrangements for amendments of provisions of part 10 that are to commence in the second of the 2 stages. This is to enable staged commencement of the amendments to occur.

New section 271 provides definitions for subdivision 4.

New section 272 provides transitional arrangements in relation to a request made by the chief executive, before commencement, for information from the police commissioner under section 114.

New section 272(2) provides that if, at commencement, the police commissioner has complied the request, the chief executive may ask the police commissioner for information to learn whether there is any new police information about the person.

New section 272(4) provides that if, at commencement, the police commissioner has not complied with the request, section 114 as in force from commencement applies in relation to the request.

New section 273 provides transitional arrangements in relation to existing applications for a prescribed notice about a disqualified person who is not a relevant disqualified person.

New section 273(2) provides that if at the time of the application the person did not hold a positive notice or held a positive notice that was suspended under section 104, the application is taken to have been withdrawn and the chief executive must give notice of the withdrawal to the person and the funded non-government service provider who made the application.

New section 273(3) provides that if at the time of the application the person held a positive notice that was not suspended under section 104, the person is taken to have been issued with eligibility declaration other than under section 85(6)(b) and the chief executive must decide the application under this Act.

New section 273(5) provides that despite section 89(2), a prescribed notice issued under (3)(b) in relation to a prescribed notice application made before subdivision 3 commenced remains current for 2 years after it is issued, unless cancelled earlier under part 10, division 6.

New section 274 provides transitional arrangements in relation to existing applications for a prescribed notice about a relevant disqualified person. If the application has not been decided or withdrawn at the commencement, the application is taken to have been withdrawn. The chief executive must notify the person and the funded non-government service provider who made the application of the withdrawal.

New section 275 provides transitional arrangements in relation to other existing applications for a prescribed notice. If the application has not been decided or withdrawn at commencement and if sections 273 nor section 274 apply to the application, this Act applies to the application. If the application complies with the requirements of the unamended Act, the application is not invalid only because it does not comply with this Act at commencement. Despite section 89(2), a prescribed notice issued under (2) in relation to a prescribed notice application made before subdivision 3 commenced remains current for 2 years after it is issued, unless cancelled earlier under part 10, division 6.

New section 276 provides transitional arrangements in relation to existing positive notices held by disqualified persons who are not relevant disqualified persons nor are persons in relation to whom the chief executive has started, before the commencement, to exercise a power under section 101. If the positive notice is not suspended under section 104, the person is taken to have been issued with an eligibility declaration. If the positive notice is suspended under section 104, this Act continues to apply in relation to the positive notice. Subsection (4) provides that, if after commencement, the chief executive is to make a decision about the person under section 85, and it is the first time the chief executive is to make a decision under that section about the person after commencement, then section 85(6)(b) does not apply to the chief executive making the decision. For the purposes of this provision, a new disqualifying offence means an offence that is a disqualifying offence under this Act but was not an excluding offence under section 81 as in force immediately before the commencement.

New section 277 provides transitional arrangements for positive notices issued under section 85(2) before commencement to a person who is a relevant disqualified person only because the person is subject to a temporary offender prohibition order and/or an interim sexual offender order. If at commencement the positive notice is not suspended under section 104 the chief executive must by written notice suspend the person's positive notice. New section 277(4) provides that if at commencement the positive notice is suspended, the suspension continues subject to subsection (5). New section 277(5) provides that sections 104 and 105 apply to the suspended notice as if the notice were suspended under section 104(1) as in force at commencement.

New section 278 provides transitional arrangements in relation to existing positive notices held by other relevant disqualified persons. New section 279(2) provides that the positive notice is cancelled. New section 278(3) provides that if the positive notice is suspended under section 104 at the commencement and the person has applied for the cancellation of the suspension under section 105, and the application has not been decided or withdrawn at the commencement, then the application is taken to have been withdrawn. New section 263(4) and (5) provide to whom and about what the chief executive must provide notifications.

New section 279 provides transitional arrangements in relation to existing applications to cancel a negative notice by a relevant disqualified person. If

the application has not been decided or withdrawn at commencement, the application is taken to have been withdrawn.

New section 280 provides transitional arrangements in relation to other existing applications to cancel a negative notice by a relevant disqualified person. If the application has not been decided or withdrawn at commencement, the chief executive must decide the application under this Act.

New section 281 provides that if, before the commencement, the chief executive had started on the chief executive's own initiative to exercise a power in relation to a person or a prescribed notice and the chief executive may, at immediately after commencement, exercise the power under this Act, the chief executive may continue to exercise the power in relation to the person or prescribed notice. New section 281(3) clarifies that for subsection (1)(b) the chief executive's power under section 103 of the unamended Act is taken to be exercisable, immediately after the commencement, under section 101(1)(b)(ii).

New section 282 provides that for section 107D(1)(a) and for paragraph (a) in the definition of "disqualified person" in Schedule 7, 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 283 applies in relation to the following persons:

- a person who is a disqualified person
- at the commencement, is engaged by a funded non-government service provider at a service outlet of the service provider, and
- is not a person in relation to whom sections 273(3) or 276(2) applies.

New section 283(2) clarifies that section 107E(1)(b) applies to the person even if it is not an offence for a funded non-government service provider to engage the person at a service outlet of the service provider.

New section 284 applies if, before commencement, a disqualified person applied for a review of a decision of the chief executive under section 108 or 113(2)(a) of the unamended Act or appealed under the QCAT Act against a decision of the tribunal in relation to a review under section 108 or 113(2)(a) of the unamended Act and the review or appeal has not been decided at commencement. New section 285(2) provides that the entity hearing the review or appeal must dismiss the review or appeal.

New section 285 applies to other existing reviews and appeals that were started before commencement and not decided before commencement. The entity hearing the review or appeal must apply this Act. A review under section 108 of the unamended Act is taken to be a review under section 108A.

New section 286 provides that a court may make a disqualification order under section 122 in relation to a person convicted of an offence after the commencement arising out of act done or omission made before the commencement.

New section 287 applies if immediately before commencement a person was engaged by a funded non-government service provider at a service outlet of the service provider as a volunteer and the person does not have a current positive notice. During the transitional period the funded non government service provider does not commit an offence against section 90D if a prescribed notice application about the person is made. The transitional period is the 12 month period after the commencement of the section 90D.

New section 288 applies despite section 76A and explains how sections 273 to 275 and sections 89 and 276 to 278 operate in relation to prescribed notice applications and in relation to positive and negative notices held by persons engaged by funded non-government service providers to provide disability services only to children.

New section 289 explains how sections 273 to 275, sections 82B, 89 and 276 to 278 and section 107B operate in relation to prescribed notice applications and in relation to positive and negative notices held by persons who hold a CCYPCG positive notice at commencement.

New section 290 provides that until the JJA short title amendment commences, a reference to the *Youth Justice Act 1992* is taken to be a reference to the *Juvenile Justice Act 1992*, if the provision commences before the JJA short title amendment commences. JJA short title amendment” is defined in new section 290(3) to mean section 9 of the *Juvenile Justice and Other Acts Amendment Act 2009*.

**Clause 157** amends schedule 3 (Current serious offences). This is necessary to ensure consistency with the CCYPCG Act schedule of serious offences.

**Clause 158** omits schedules 5 and 6 and inserts new schedules 5 and 6. This is necessary due to the changes in the exclusionary framework and

ensures consistency with the equivalent schedules in the CCYPCG Act. New schedule 5 lists the current disqualifying offences. New schedule 6 lists the repealed or expired disqualifying offences.

**Clause 159** inserts a new schedule 6A to list offences that may form the basis of investigative information.

**Clause 160** amends schedule 7 (Dictionary).

## **Part 8                      Amendment of Education (Accreditation of Non-State Schools) Act 2001**

**Clause 161** provides that part 8 amends the *Education (Accreditation of Non-State Schools) Act 2001*.

**Clause 162** amends section 15 in a number of respects.

Clause 162(1) amends the heading of section 15 by inserting “ch 8” in place of “pt 6”.

Clause 162(2) amends section 15 by inserting “chapter 8” in place of “part 6”.

**Clause 163** amends section 16(1)(c)(ii) by inserting “or current positive exemption notices” after “positive notices”.

**Clause 164** amends section 39(3) by inserting “or current positive exemption notice” after

“positive notice”.

**Clause 165** amends section 49(3) by inserting “or current positive exemption notices” after “positive notices”.

**Clause 166** amends section 140 in a number of respects.

Clause 166(1) amends the heading of section 140 by inserting “ch 8” in place of “pt 6”.

Clause 166(2) amends section 140 by inserting “chapter 8” on place of “part 6”.

**Clause 167** amends section 145(2) by inserting “or current positive exemption notice” after “positive notice”.

**Clause 168** replaces section 146(2) by expanding the types of applications about which the authorised person must notify the board to include applications for an exemption notice under

the Commission for Children and Young people and Child Guardian Act 2000.

**Clause 169** amends section 168 in several respects.

Clause 169(1) amends the heading of section 168 by inserting “or exemption notice” after “notice”.

Clause 169(2) replaces section 168(1)(b) to update references to the Commission for Children and Young people and Child Guardian Act 2000 and to include exemption notices.

Clause 169(3) replaces 168(2)(b) to update references to the Commission for Children and Young people and Child Guardian Act 2000 and to include exemption notices.

**Clause 170** amends section 178 by inserting “this chapter” in place of “this part”.

**Clause 171** amends schedule 3 (Dictionary) in a number of respects. This is necessary due to the introduction of the exemption notice model under the Commission for Children and Young people and Child Guardian Act 2000.

Clause 171(1) omits definitions for “commissioner” and “positive notice”.

Clause 171(2) inserts definitions for “positive exemption notice” and “positive notice”.

## **Part 9                      Amendment of Education (Queensland College of Teachers) Act 2005**

**Clause 172** provides that part 9 amends the *Education (Queensland College of Teachers) Act 2005*.

**Clause 173** amends section 11 in a number of respects.

Clause 173(1) amends the heading of section 11 by inserting “police” in place of “criminal history”.

Clause 173(2) amends section 11(1)(a) by inserting “police information about the person” in place of “the person’s criminal history”.

Clause 173(3) amends section 11(1) by expanding the matters the college of teachers must have regard to in considering whether a person is suitable to teach, to include information about the person obtained under the new sections 15B (information from the Director of Public Prosecutions), 15C (information from the Department of Corrective Services or 15D (information from the children’s commissioner).

**Clause 174** amends section 14 in a number of respects.

Clause 174(1) amends section 14(2)(b)(iv) by inserting “;and” in place of “;”.

Clause 174(2) omits section 14(2)(b)(v) and inserts a new paragraph (2)(c) because of the change in the fee structure for applications for registration or permission to teach.

Clause 174(3) amends section 14(4) and (5) by inserting “police information about the person” in place of “the person’s criminal history”.

Clause 174(4) amends section 14 by inserting new subsections (7), (8), (9) and (10) because of the change in the fee structure applications for registration or permission to teach.

**Clause 175** amends section 15 in a number of respects.

Clause 175(1) amends the heading of section 15 by inserting “Obtaining police information about applicant” in place of “Criminal history check etc.”.

Clause 175(2) amends section 15(1) by inserting “containing details of the police information, if any, existing in relation to” in place of “about the criminal history of”.

Clause 175(3) inserts “(c) the applicant’s address” into section 15(3).

Clause 175(4) inserts new subsections (6A) and (6B) into section 15.

New section 15(6A) provides what a written report given under subsection (1) must contain about a person who is or has been a relevant excluded person.

New section 15(6B) provides what a written report given under subsection (1) must contain about a person who is or has been named as the respondent for an application for an offender prohibition order, or the subject of an application for a disqualification order or CPOPOA disqualification and the order was not made.

Clause 175(5) amends section 15(7) by inserting “, (2),(6A) or (6B)” in place of “or (2)”.

Clause 175(6) inserts new subsections (8) and (9) into section 15.

New section 15(8) clarifies that the commissioner of police may disclose information to which that part applies to the college for complying with a request under subsection (1) or (2), despite part 9 of the Youth Justice Act 1992.

New section 15(9) provides that section 15 does not apply if:

- the college has, under section 15D, been advised that the applicant is the holder of a positive notice under the Commissioner’s Act and that the positive notice has not been suspended under that Act
- the college has not, under section 15D, been advised that the college may need to have regard to the police information about the applicant for deciding whether the applicant is suitable to teach, and
- the college is reasonably satisfied that there is no police information in relation to the applicant (having regard to advice under section 15D and any other information about the applicant that the college is aware of).

**Clause 176** inserts three new sections, section 15B-15D.

New section 15B provides that where the college is aware that the person has been charged with or convicted of an offence, the college may request from the director of public prosecutions a written summary of the offence or alleged offence, a copy or written summary of evidentiary material about the offence, and if a charge was not proceeded with, a written summary of the reasons for the discontinuance. The director may comply with the request if the director reasonably believes the material may assist the college in making a decision about whether the person is suitable to teach. The director must not provide the college with a copy or written summary of evidentiary material that relates to another person (other than the person about whom the request is made).

Further, the director must not comply with the college's request where reasonably satisfied that the giving of information may:

- prejudice the investigation of a contravention or possible contravention of the law
- enable to existence or identity of a confidential source of information regarding the enforcement or administration of the law, to be ascertained
- prejudice the effectiveness of a lawful method of procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law
- prejudice another prosecution or another matter before a court
- endanger a person's life or physical safety.

New section 15B clarifies that the giving of information under this section under this provision is authorised despite any other Act or law, including confidentiality requirements. The provision applies despite section 24A of the *Director of Public Prosecutions Act 1984*.

New section 15C provides what information may be requested from and provided by the chief executive (corrective services). The provision is required due to the expansion of the exclusionary framework to include persons who are subject to reporting obligations under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. The chief executive must notify the college in writing of each person who is or becomes subject to a sexual offender order by written notice including the person's name, that the person is subject to a sexual offender order and any other information that the chief executive considers is necessary for the college to perform a function or exercise a power under chapter 2.

The chief executive and the college may enter into a written arrangement relating to the process for providing notifications under subsection (1), including electronic notification. If notification is given electronically, there is a limitation of who may access the information contained in the notification and any arrangement between the chief executive and the college must provide for this limitation. The giving of information under this section under this provision is authorised despite any other Act or law, including confidentiality requirements.

New section 15D provides for the obtaining of information from the children's commissioner where an applicant for registration or permission to teach is purporting to be the holder of a positive notice under the

Commissioner's Act. Where this is the case, the college may ask the children's commissioner for the following:

- confirmation of whether or not the applicant is the holder of a positive notice under the Commissioner's Act
- confirmation of whether or not the applicant's positive notice is suspended under the Commissioner's Act, and
- if the applicant is the holder of a positive notice under that Act, that is not suspended – the children's commissioner's advice about whether the college may need to have regard to the matters in section 11(1) about the applicant for deciding whether the applicant is suitable to teach.

The college's request may include the person's name (and any other name that the college believes the person may use or may have used), gender and date and place of birth, address, and any number or date given by the person about the positive notice the person claims to hold. The children's commissioner must comply with a request made under this provision, and further, if the children's commissioner is asked for advice under subsection (2)(c), the children's commissioner must advise the college that the college may need to have regard to police information about the applicant for deciding whether the applicant is suitable to teach if the commissioner is aware of police information about the applicant. If the children's commissioner advises the college of the need to have regard to the matters mentioned in section 11(1) about the applicant for deciding whether the applicant is suitable to teach, the advice must be accompanied by a notice stating that no adverse inference about the person's criminal history or suitability to teach may be drawn by the fact the advice was given.

**Clause 177** amends section 16 in a number of respects.

Clause 177(1) amends the heading of section 16 by inserting "police" in place of "criminal history".

Clause 177(2) amends section 16(1) by inserting "section 15" in place of "section 15(4)".

**Clause 178** amends section 28 in number of respects.

Clause 178(1) amends section 28(2)(c)(iii) by inserting "the fee mentioned in section 14(2)(c)" from "the criminal".

Clause 178(2) amends section 28(4) and (5) by inserting "police information" in place of "criminal history".

Clause 178(3) amends section 28 but inserting a new subsection (7) to provide that section 14(7) to (9) applies in relation to the application to the application were a reference to an application under this section.’

**Clause 179** amends section 37(2) and (3) by inserting “police information “ in place of “police information”.

**Clause 180** amends section 48 in a number of respects.

Clause 180(1) amends the heading of section 48 by inserting “, temporary offender prohibition order or interim sexual offender order” from “pending”.

Clause 180(2) inserts a new subsection (1A) to expand the application of section 48 to include an approved teacher becoming a relevant excluded person because the person is or becomes subject to a temporary offender prohibition order or interim sexual offender order.

Clause 180(3) amends section 48(2) by inserting “or order” after “charge”.

Clause 180(4) renumbers section 48(1A) and (2) as section 48(2) and (3).

**Clause 181** amends section 56 in a number of respects.

Clause 181(1) replaces the heading of section 56 by inserting the heading “56 Cancellation in particular circumstances”.

Clause 181(2) inserts a new subsection (1A) to expand the application of section 56 to include an approved teacher being or becoming a relevant excluded person because the teacher is or becomes subject to any of the following:

- offender reporting obligations
- an final offender prohibition order
- a CPOPOA disqualification order, or
- a final sexual offender order.

Clause 181(3) amends section 56(2) by inserting “, or that the teacher is or has become a relevant excluded person as mentioned in subsection (2).” after “conviction”.

Clause 181(4) amends section 56(4)(c)(ii) to expand its application by providing that a teacher can apply for registration or permission to teach if the order in relation to which the person’s registration or permission to teach was cancelled is not upheld on appeal.

Clause 181(5) renumbers section 56(1A) to (7) as section 56(2) to (8).

**Clause 182** amends section 57 in a number of respects.

Clause 182(1) expands the application of section 57 by adding two items, (iv) and (v), into

section 57(1)(b) to include a decision of a court resulting in the teacher being subject to offender reporting obligations, and the making of an offender prohibition order, CPOPOA disqualification order or sexual offender order.

Clause 182(2) amends section 57(3) by inserting “, order or decision” from “an order” to “(iii)”.

**Clause 183** amends section 58 in a number of respects.

Clause 183(1) amends section 58(1) to expand the application of section 58 to approved teachers who are convicted of a serious offence committed in relation to, or otherwise involving, a child.

Clause 183(2) clarifies section 58(2) by providing that the disqualification court order may state either that the:

- teacher may not be granted, or apply for the grant of, registration or permission to teach for a stated period, or
- person may never be granted, or apply for the grant of, registration or permission to teach.

Clause 183(3) inserts two subsections (2A) and (2B) into section 58.

New section 58(2A) clarifies that the court may make the disqualification order only if the court considers it would not be in the interests of children for the college to register the teacher or grant the teacher permission to teach.

New section 58(2B) provides that a person against whom the disqualification order is made may appeal against the court’s decision under subsection (2) in the same way the person may appeal against the conviction.

Clause 183 (4) renumbers section 58(2A) to (3) as section 58(3) to (5).

**Clause 184** amends section 65 in a number of respects.

Clause 184(1) amends the heading of section 65 by inserting “police information” in place of “criminal history”.

Clause 184(2) amends section 65(1)(a)(i) by inserting “containing details of the police information, if any, existing in relation to the teacher” in place of “about the teacher’s criminal history”.

**Clause 185** inserts a new section 68 relating to changes in police information. The amendments are made to relate to “police information” as opposed to “criminal history”.

**Clause 186** amends section 69 in a number of respects.

Clause 186(1) amends the heading of section 69 by inserting “police information” in place of “criminal history”.

Clause 186(2) inserts new subsection (3) and (4) into section 69 to expand the information an approved teacher must disclose under section 68(1).

New section 69(3) provides that the information disclosed by an approved teacher about the teacher being or becoming a relevant excluded person must include each of the following:

- that the teacher is or has been a relevant excluded person
- if the teacher is or has been subject to an offender prohibition order –
  - a brief description of the conduct that gave rise to the order, and
  - the duration and details of the order, including whether it is or was a temporary offender prohibition order or final offender prohibition order, and
- if the teacher is or has been subject to a disqualification order or CPOPOA disqualification order – the duration and details of the disqualification order.

New section 69(4) provides that the information disclosed by the approved teacher about the teacher being named as the respondent for an application for an offender prohibition order that was not made, or becoming the subject of an application for a disqualification order or CPOPOA disqualification order that was not made, must include each of the following:

- that the teacher is or has been named as the respondent for an application for an offender prohibition order, or the subject of an application for a disqualification order or CPOPOA disqualification order, and the order was not made
- the reasons why the application was made or not made

- if the application was for an offender prohibition order and the magistrate or court hearing the application decided not to make a CPOPOA disqualification order for the teacher – the reasons why the CPOPOA disqualification order was not made.

**Clause 187** amends the heading of section 70 by inserting “police information” in place of “criminal history”.

**Clause 188** amends section 71(2) by inserting “police information” in place of “criminal history”.

**Clause 189** amends section 75 in a number of ways due to the changes in the exclusionary framework.

Clause 189(1) amends the heading of section 75 by inserting “police information” in place of “criminal history”.

Clause 189(2) replaces section 75(1) to (3) to expand the matters on which the police commissioner must notify the college. New section 75(1) provides that in addition to a change in the person’s criminal history, the police commissioner must also notify the college if police information about a person changes because of any of the following events:

- the person becomes, or is no longer, a relevant excluded person
- the person is named as the respondent for an application for an offender prohibition order
- the person becomes subject to an application for a disqualification order or CPOPOA disqualification order
- the police commissioner reasonably suspects the person is an approved teacher or was an approved teacher when the act or omission leading to the event.

New section 75(2) provides that the police commissioner must notify the college of the relevant event and new section 75(3) provides the requirements of the notice.

Clause 190(3) inserts a new section 75(4A) to clarify that the police commissioner’s obligation to comply with section 75 applies only to information in the possession of the commissioner or to which the commissioner has access.

Clause 190(4) inserts new section 75(7) and (8). Subsection (7) clarifies that the commissioner of police may disclose the information to which that part applies to the college under subsection (2), despite part 9 of the Youth

Justice Act 1991 and subsection (8) provides a definition for “personal information”.

Clause 187(5) renumbers section 75(4A) to (8) as section 75(5) to (9).

**Clause 190** replaces the heading of section 83 with “Requirement to hold registration or permission to teach in schools”.

**Clause 191** amends section 92 in a number of respects.

Clause 191(1) replaces section 92(1)(a) and (b) to expand the grounds for disciplinary action against a relevant teacher as a result of the expansion of the exclusionary framework.

Clause 191(2) replaces section 92(2)(a) to (c) to clarify that the ground for disciplinary action mentioned in subsection (1)(h) is taken to apply to a relevant teacher whose registration or permission to teach is:

- suspended under section 48 if the teacher has been charged with a disqualifying offence and the charge has been dealt with; the teacher has been charged with a disqualifying offence and the teacher is convicted of an offence other than an indictable offence; the teacher is or becomes subject to a temporary offender prohibition order or interim sexual offender order
- suspended under section 49.

**Clause 192** amends section 97(3) by inserting “teacher’s registration or permission to teach” in place of “teacher”.

**Clause 193** amends section 102(5)(b) by inserting “teacher’s registration or permission to teach” in place of “teacher”.

**Clause 194** amends section 159(1)(b) inserting “teacher’s registration or permission to teach” in place of “teacher”.

**Clause 195** amends section 160(2)(b) by inserting “teacher’s registration or permission to teach” in place of “teacher”.

**Clause 196** amends section 230 by inserting “police information” in place of “criminal history”.

**Clause 197** amends section 282 in a number of respects.

Clause 197(1) renumbers paragraphs (a)(iv) to (vi) as (a)(vii) to (ix).

Clause 197(2) amends the definition of “relevant personal information” in section 282(a)(iii) by inserting “(iii) section 15B; (vi) section 15(4) or 15B as applied by section 29(5), 31(3) or 38(1).

Clause 197(3) amends the definition of “relevant personal information” in section 282(a) by inserting “(iv) section 15C; (v) section 15D;”.

Clause 197(4) amends the definition of “relevant personal information” in section 282(a)(vi) by inserting “15B, 15C or 15D” in place of “or 15B”.

**Clause 198** replaces section 285 and inserts new sections 285, 285A and 285B. This is necessary due to the introduction of the exemption notice model under the Commissioner’s Act .

New section 285(1) expands the application of section 285 to include the college’s decision to suspend an approved teacher’s registration or permission to teach under section 48.

New section 285(2) removes the requirement for the college to form the reasonable belief that the decision to notify the children’s commissioner is relevant to the functions or powers of the commissioner under the Commissioner’s Act.

New section 285(3) removes the requirement for the college to initially notify the children’s commissioner of when the conduct giving rise to the suspension happened, when the grounds for disciplinary action arose or the nature of the conduct or grounds for disciplinary. Instead, in relation to the actual disciplinary information, the college will only be required to initially notify the children’s commissioner that disciplinary action has been taken against the person.

New section 285(4) provides that the new subsection (5) applies if the children’s commissioner requests further information about disciplinary action mentioned in a notice under subsection (3) about an approved teacher and notifies the college that the approved teacher is an applicant for, or holder of, a prescribed notice or exemption notice under the Commissioner’s Act.

New section 285(5) provides what the college must give to the children’s commissioner in response to the commissioner’s request for further information.

New section 285(6) provides that a notice given under subsection (2) or (5) that relates to a particular child, must not contain information that identifies, or is likely, to identify the child.

New section 285(7) provides that if the college gives the children’s commissioner information under subsection (5) about a suspension mentioned in subsection (1)(a)(i) or a decision mentioned in subsection (1)(a)(ii), and the suspension or decision is set aside on review or appeal,

the college must notify the children's commissioner that the suspension or decision has been set aside and of the reasons given by the entity that set the suspension or decision aside for setting it aside.

New section 285A provides that the college must give information about the status of a teacher's registration to the children's commissioner in particular circumstances.

New section 285A(1) lists the relevant matters about which the college must notify the children's commissioner if the children's commissioner had notified the college that the registered teacher is an applicant for, or holder of, an exemption notice under the Commissioner's Act.

New section 285A(2) provides the college must give notice of the relevant matters to the children's commissioner and new section 285A(3) provides what a subsection (2) notice must state.

New section 285A(4) provides that if a notice mentioned in subsection (1)(a)(ii) to (v) relates to a particular child, the notice must not contain information that identifies, or is likely to identify the child.

New section 285A(5) provides that if the college gives the children's commissioner information about a cancellation mentioned in subsection (1)(a)(ii), (ii) or (iv), or a suspension mentioned in subsection (1)(a)(iv), and the suspension or decision is set aside on review or appeal, the college must notify the children's commissioner that the suspension or cancellation has been set aside and of the reasons given by the entity that set the suspension or cancellation aside for setting it aside.

New section 285B provides that the college may enter into a information sharing agreement with the children's commissioner. Subsection (4) clarifies that if written notice is given electronically and under an Act, there is a limitation of who may access the information contained in the notifications, then the arrangement between the college and the commission must provide for the limitation.

**Clause 199** amends the heading of chapter 12, part 9 by inserting "provision" in place of "provisions".

**Clause 200** inserts a new Chapter 12, Part 11 to provide for transitional provisions in relation to the Criminal History Screening Legislation Act 2010.

New section 332 provides transitional arrangements for the giving of particular information to the children's commissioner. If, prior to commencement, the college decided to suspend an approved teacher's

registration or permission to teach under section 49, or the disciplinary committee made a decision about disciplinary proceedings against a relevant teacher, and at commencement, the college has not given or decided not to give the children's commission notice of the decision under section 285 of the unamended Act, the section 285 of the unamended act applies.

New section 333 defines "commencement" for the purposes of division 2 to mean the commencement of division 2.

New section 334 provides transitional arrangements in relation to new excluded persons. If a person has applied for full or provisional registration/permission to teach or the renewal of full or provisional registration/permission to teach or the restoration of the person's full registration that has ended and the person is a new excluded person, the application is taken to be withdrawn if at commencement the application has not been decided or withdrawn. "New excluded persons" is defined to mean a person who is an excluded person at the commencement but was not an excluded person under the unamended Act.

New section 335 provides transitional arrangements in relation to other existing applications at commencement. These applications must be dealt with under the amended Act.

New section 336 provides transitional arrangements for obtaining particular information from commissioner of police about persons who have applied for full or provisional registration/permission to teach or the renewal of full or provisional registration/permission to teach or the restoration of the person's full registration that has ended and the application has not been decided or withdrawn at commencement. If at commencement the police commissioner has complied with the request, the college may ask the police commissioner for a written report about non-criminal history police information about the person. However if the police commissioner has not complied with the request, section 15(3) to (7) as in force from commencement apply as if the it were made under section 15 in relation to only non-criminal history police information.

New section 337 provides that a court may make a disqualification order under section 58 in relation to a person convicted of an offence after the commencement arising out of an act done or omission made before the commencement.

New section 338 provides transitional arrangements in relation to the disclosure of changes in police information. To remove any doubt, section

68 only requires a person to disclose to the college a change in the person's non-criminal history police information if the change happened after the commencement. To remove any doubt, section 75 only requires the commissioner of police to disclose to the college a change in the person's non-criminal history police information if the change happened after the commencement. "Non-criminal history police information" is defined to mean police information other than the person's criminal history.

New section 339 provides that until the JJA short title amendment commences, a reference to the *Youth Justice Act 1992* is taken to be a reference to the *Juvenile Justice Act 1992*, if the provision commences before the JJA short title amendment commences. JJA short title amendment" is defined in new section 339(3) to mean section 9 of the *Juvenile Justice and Other Acts Amendment Act 2009*.

**Clause 201** amend schedule 3 (Dictionary). This is necessary due to the change to the exclusionary framework.

Clause 201(1) removes the definitions of "commencement" and "imprisonment".

Clause 201(2) inserts definitions for "children's commissioner", "commencement", "Commissioner's Act", "CPOPOA disqualification order", "final offender prohibition order", "final sexual offender order", "imprisonment order", "interim sexual offender order", "offender prohibition order", "offender reporting obligations", "police information", "relevant excluded person", "sexual offender order" and "temporary offender prohibition order".

Clause 201(3) amends the definitions of "commencement", "existing register", "former board", "former by-law", "former office", "new board" and "repealed Act" by inserting "parts 1 to 7" after "chapter 12".

Clause 201(4) replaces the definition of "disqualifying offence".

Clause 201(5) replaces the definition of "disqualifying offence".

Clause 201(6) replaces paragraph (a) of the definition of "excluded person".

Clause 201(7) amends the definition of "serious offence" by inserting "section 167" in place of "section 99C".

## **Part 10**                      **Amendment of Evidence Act 1977**

**Clause 202** provides that part 10 amends the *Evidence Act 1977*.

**Clause 203** amends section 93AA in several respects.

Clause 203(1) omits “only” in section 93AA(2).

Clause 203(2) inserts new sections 93AA(2A), 93AA(2B), 93AA(2C) and 93AA(2D) to

expand the circumstances in which a person has authority for subsection (1) to authorise:

- the police commissioner and the Director of Public Prosecutions to prepare, give and summarise a transcript of a section 93A statement for the CCYPCG commissioner
- a person to possess a section 93A transcript if given to the person under the CCYPCG Act by the CCYPCG commissioner from the police commissioner, or the Director Public Prosecutions and is in the person’s possession for the purpose of a CCYPCG employment-screening decision
- a person to supply, offer to supply a written summary of a section 93A statement to a relevant CCYPCG applicant that is in the person’s possession under subsection 2B
- a person to copy, or permit a person to copy a section 93A statement of a summary of a section 93A statement that is in the person’s possession under subsection 2B and the copying is done for the purpose of making a CCYPCG employment-screening decision.

Clause 203(3) inserts definitions for “CCYPCG Act”, “CCYPCG commissioner”, “CCYPCG employment-screening decision”, “relevant CCYPCG applicant” and “section 93A transcript” for the purposes of the provision.

## **Part 11**                      **Amendment of Family Services Act 1987**

**Clause 204** provides that part 11 amends the *Family Services Act 1987*.

**Clause 205** amends section 2 (Definitions) in a number of respects.

Clause 205(1) omits definitions for “conviction”, “criminal history”, “engaged by the department”, “sentence” and “serious offence” due to the repeal of Part 4.

Clause 205(2) inserts definitions for “commencement”, “engaged by the department”, “police commissioner”, “police information” and “unamended act”.

**Clause 206** amends section 10 by inserting “provision” in place of “provisions”.

**Clause 207** omits Part 4 (Criminal histories of persons engaged by the department).

**Clause 208** inserts a section 28A to provide a new confidentiality provision due to the repeal of the previous confidentiality provision, section 26. New section 28A provides for the confidentiality of information obtained under the previous Part 4.

**Clause 209** inserts a new heading “Division 1 Transitional provision for repeal of Family and Youth Services Act 1987” in Part 6 before section 33.

**Clause 210** inserts a new heading “Division 2 Transitional provision for Criminal Code and Other Acts Amendment Act 2008” in Part 6 after section 33.

**Clause 211** inserts a new Part 6, Division 3 to provide for transitional provisions in relation to the Criminal History Screening Legislation Amendment Act 2010.

New section 35 provides the definitions for Division 3.

New section 36 provides transitional arrangements in relation to self-disclosing criminal history under section 19 of the unamended Act. If before commencement there was a change in the criminal history of a person engaged by the department and at commencement that person had not disclosed the change in criminal history to the chief executive, despite

section 19 of the unamended Act, the person is no longer required to give the details to the chief executive.

New section 37 provides transitional arrangements in relation to requests for police information not complied with at commencement. If the chief executive has asked the police commissioner for police information about a person under section 22 of the unamended Act and at commencement the police commissioner had not given the police information to the chief executive, the police commissioner is no longer required to comply with the chief executive's request.

New section 38 provides transitional arrangements in relation to particular police information obtained but not used before commencement. If before commencement the police commissioner gave the chief executive a person's police information under section 22 of the unamended Act and at commencement the chief executive had not made an assessment of the person under section 24 of the unamended Act, the chief executive must immediately destroy the information and stop making the assessment.

New section 39 provides transitional arrangements in relation to notices not given by the prosecuting authority at commencement. If before commencement a person engaged by the department was charged with an indictable offence and at commencement the police commissioner or director of public prosecutions has not given information about the charge to the chief executive as required under section 23 of the unamended Act, the police commissioner or director of public prosecutions is no longer required to give the information.

New section 40 provides transitional arrangements in relation to the use of particular information obtained before commencement. Section 24(2) of the unamended Act continues to apply in relation to information about a person received by the chief executive under Part 4 as if the amending Act had not been enacted.

**Clause 212** omits the schedule (Other serious offence provisions of the criminal code) due to the repeal of Part 4.

## **Part 12**                      **Amendment of Guardianship and Administration Act 2000**

**Clause 213** provides that part 12 amends the *Guardianship and Administration Act 2000*.

**Clause 214** amends section 80ZH to insert “6 months” in place of “3 months. This amendment extends the maximum period for short-term approvals from up to 3 months to up to 6 months. The actual period for a short-term approval will be set by the relevant decision-maker.

**Clause 215** amends section 266 in a number of respects.

Clause 215(1) omits “within the meaning of section 265” from section 266.

Clause 215(2) inserts a definition for “transitional period” for the purposes of the provision. This is defined as the period commencing on 1 July 2008 and ending on the date of assent of the Criminal History Screening Legislation Amendment Act 2010.

## **Part 13**                      **Amendment of Health Practitioners (Professional Standards) Act 1999**

**Clause 216** provides that part 13 amends the *Health Practitioners (Professional Standards) Act 1999*.

**Clause 217** amends section 384A in a number of respects to amend the process for the Board to provide disciplinary information to the children’s commissioner in particular circumstances.

Clause 217(1) amends the heading of section 384A by inserting “must” in place of “may”.

Clause 217(2) amends section 384A(3) by inserting “chapter 8 of the commissioner’s Act, the board must give” in place of “part 6 of the commissioner’s act, the board may give”.

Clause 217(3) renumbers section 384A(7) as section 384A(9).

Clause 217(4) inserts new sections 384A(4)–(8) to amend the process for the Board to provide disciplinary information to the children’s commissioner in particular circumstances.

New section 384A(4) provides that the notice under subsection (3) must contain the person’s name and address, the person’s date and place of birth and that the disciplinary action, immediate suspension or section 311 action has been taken, without stating anything further about the action or suspension.

New section 384A(5) and (6) provide that where the children’s commissioner requested further information about the disciplinary action, immediate suspension of section 311 action and notifies the board that the person is an applicant or holder of a prescribed notice or exemption notice, the board must give written notification to the children’s commissioner about the form of the action taken, when the conduct happened that constituted the action or suspension, the nature of the conduct that constituted the action or suspension and any other information about the action or suspension that the board considered may be relevant to an employment screening decision under Part 8 of the commissioner’s act, such as details about the nature of the action or suspension.

New section 384A(7) provides that if a notice under (3) or (6) relates to a particular child, the notice must not contain information that identifies, or is likely to identify the child.

New section 384A(8) provides that where the action or suspension is set aside on review or appeal, the board must notify the children’s commissioner that the action has been set aside and the reasons for setting aside the action.

**Clause 218** inserts new Part 13, Division 5 (Transitional Provisions for Criminal History Screening Legislation Amendment Act 2010) to provide a transitional arrangement for the giving of particular information by the board to the children’s commissioner.

## **Part 14                      Amendment of Nursing Act 1992**

**Clause 219** provides that part 14 amends the *Nursing Act 1992*.

**Clause 220** amends section 139A in several respects to amend the process for the executive officer or council to provide disciplinary information to the children's commissioner in particular circumstances.

Clause 220(1) amends the heading of section 139A by inserting "must" in place of "may".

Clause 220(2) omits "(immediate suspension)" from section 319A(1)(b).

Clause 220(3) omits "(also immediate suspension)" from section 139A(1)(c).

Clause 220(4) renumbers section 139A(6) as section 139A(8).

Clause 220(5) omits sections 139A(2) to (5) and inserts new provisions 139A(2)-(7) to amend the process for the executive officer or council to provide disciplinary information to the children's commissioner in particular circumstances

New section 139A(3) provides that the notice under subsection (2) must contain the person's name and address, the person's date and place of birth and that the action has been taken, without stating anything further about the action.

New section 139A(4) and (5) provides that where the children's commissioner requested further information about the action and notifies the executive officer or council that the person is an applicant or holder of a prescribed notice or exemption notice, the executive officer or council must provide the children's commissioner with written notice containing details relating to the form of the action taken, when the matter that was the reason for the action happened, the nature of this matter, and any other information that the executive officer or council consider may be relevant to an employment screening decision under Chapter 8 of the Commissioner's Act.

New section 139A(6) provides that if the notice under (2) or (5) relates to a particular child, the notice must not contain information that identifies, or is likely to identify the child.

New section 139A(7) provides that where an action is set aside on review or appeal, the executive officer or council must notify the children's commissioner that the action has been set aside and the reasons for setting aside the action.

**Clause 221** inserts new Part 9, Division 7 (Transitional Provisions for Criminal History Screening Legislation Amendment Act 2010) to provide

a transitional arrangement for the giving of particular information by the council or executive officer board to the children's commissioner .

## **Part 15                      Amendment of Police Powers and Responsibilities Act 2000-**

**Clause 222** provides that part 15 amends the *Police Powers and Responsibilities Act 2000*.

**Clause 223** amends section 789A in two respects.

Clause 223(1) extends the definition of a "CCYPCG document" in section 789A(8) to also include a positive exemption notice within the meaning of the CCYPCG Act.

Clause 223(2) amends section 789A(8) by inserting a new definition for "disqualifying offence".

## **Part 16                      Amendment of Public Service Act 2000**

**Clause 224** provides that part 16 amends the *Public Service Act 2000*.

**Clause 225** amends section 150 (Definitions for Part 6) in a number of respects.

Clause 225(1) removes definitions for "CCYPCG disqualification order", "CPOPOA disqualification order", "disqualification order", "investigative information", "offender prohibition order", "police information", "police information report", "relevant disqualified person", "serious offence" and "temporary offender prohibition order".

Clause 225(2) inserts definitions for "CCYPCG Act", "CCYPCG commissioner", "positive exemption notice", "positive prescribed notice" and "regulated employment".

**Clause 226** inserts a new chapter 5, part 6, division 2, subdivision 1 heading 'Subdivision 1 General' before section 151.

**Clause 227** replaces section 151(1)(b) to further restrict the application of division 2 to particular duties that are not likely to involve regulated employment or child-related duties.

**Clause 228** inserts a new chapter 5, part 6, division 2, subdivision 2 “Subdivision 2 Changes in criminal history of persons engaged by the department of communities”, sections 155A-155G.

New section 155A provides definitions for subdivision 2.

New section 155B imposes an obligation on a person who is engaged by the Department of Communities to perform relevant duties to immediately disclose the details of a change in their criminal history to the chief executive (communities).

New section 155C makes it an offence for a person to fail to disclose to the chief executive (communities) under section 155B a change in his or her criminal history and makes it an offence to make a false, misleading or incomplete disclosure under section 155B.

New section 155D provides that the chief executive (communities) may obtain a criminal history report from the police commissioner in relation to a person who is engaged by the Department of Communities.

New section 155E outlines the use of information by the chief executive (communities) when considering information about a person received under subdivision 2.

New section 155F provides that the chief executive (communities) must disclose information obtained under section 115D to the person to allow the person to respond, before using the information to assess the person’s suitability to continue to be engaged by the department.

New section 155G provides that the chief executive (communities) must make guidelines for dealing with information obtained by the chief executive under subdivision 2.

**Clause 229** amends section 156 in a number of respects.

Clause 229(1) replaces section 156(1) to clarify what constitutes child-related duties under a Part 6 directive.

Clause 229(2) omits section 156(3).

**Clause 230** replaces sections 157-165 with new sections 157-165D.

New section 157 provides definitions for Division 3.

New section 158(1) provides that a chief executive of a department other than the CCYPCG commissioner must ensure a person does not perform child-related duties in the department unless:

- if the person is engaged as a volunteer and is not a police officer or registered teacher - the person has a current positive prescribed notice
- otherwise - the person has either a current positive prescribed notice or current positive exemption notice, or the chief executive has applied for a prescribed notice or exemption notice about the person as provided under section 159.

New section 158(2) provides that the CCYPCG commissioner must ensure a person does not perform child-related duties in the CCYPCG unless:

- if the person is engaged as a volunteer and is not a police officer or registered teacher - the person has a current positive prescribed notice or exemption notice
- otherwise - the person has either a current positive prescribed notice or current positive exemption notice, or the CCYPCG commissioner has applied for a prescribed notice or exemption notice about the person under section 160.

New section 158(3) provides that subsections (1) and (2) apply even if the person is a public service employee at the time the chief executive proposes to engage the person to perform the child-related duties.

New section 158(4) provides definitions for registered teacher and volunteer for the purpose of the provision.

New section 159 provides that the chief executive of a department other than the CCYPCG commissioner must apply to the CCYPCG for a prescribed notice or exemption notice if the chief executive proposes to engage a person in the department to perform child-related duties and the person does not have a prescribed notice or exemption notice.

New section 160 provides that the CCYPCG commissioner must undertake child-related employment screening if the CCYPCG commissioner proposes to engage a person in the CCYPCG to perform child-related duties and the person does not have a prescribed notice or exemption notice.

New section 161 provides that a chief executive must ensure a person does not continue to perform child-related duties where:

- the chief executive of a department engages a person to perform child-related duties and has either applied for a prescribed notice or exemption notice about the person as mentioned in section 158(1)(b)(ii) (for a chief executive of a department other than the CCYPCG commissioner) or has started to undertake child-related employment screening of the person as mentioned in section 158(2)(b)(ii) (for the CCYPCG commissioner),
- the person is a public service employee at the time of engagement by the chief executive, and
- the person's consent to employment screening is withdrawn or taken to be withdrawn, or the person is issued with a negative notice.

New section 162 provides that if a chief executive of a department engages a person to perform child-related duties in the basis the chief executive has applied for a prescribed notice or exemption notice as mentioned in 158(1)(b)(ii)(for a chief executive of a department other than the CCYPCG commissioner) or started to undertake child-related employment screening of the person as mentioned in (2)(b)(ii)and the person is not a public service employee at the time the chief executive engages the person, the chief executive may only appoint the person on probation under section 126 for a period not ending before the prescribed notice or exemption notice is issued. The chief executive may confirm the person's appointment under section 126 only if the person is issued a positive prescribed notice or positive exemption notice. The chief executive must not confirm the person's appointment under section 126 if either the person's consent to child-related employment screening is withdrawn or taken to be withdrawn under the CCYPCG Act or if the person is issued a negative prescribed notice or negative exemption notice.

New section 163(1) provides that if the chief executive of a department engages a person to perform child-related duties in the department and the person's positive prescribed notice is suspended under the CCYPCG Act, the chief executive must ensure the person does not perform child-related duties while the notice is suspended. New section 163(2) provides that if the chief executive of a department engages a person to perform child-related duties in the department and the person's positive prescribed notice or positive exemption notice is cancelled, the chief executive must ensure the person does not perform child-related duties.

New section 164 clarifies that division 3A does not apply to the engagement of a person under a contract for services, a person on a

voluntary basis and a student under an arrangement to provide the student with practical experience in the student's field of study.

New section 165 clarifies that while division 3A is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986* it does not limit any other law, or other provision of this Act, under which a person's criminal history may be obtained.

New section 165A(1) and (2) apply if the CCYPCG Commissioner issues a positive prescribed notice or positive exemption notice to a person to be engaged by a department to perform either child-related duties and or regulated employment and advises the chief executive of the department that the chief executive may need to undertake a further assessment of the person under division 3A to decide whether or not to engage the person. If the chief executive proposes to engage the person to perform the prescribed duties, the chief executive may, under a part 6 directive, ask the person for written consent for the chief executive to obtain the person's criminal history under division 2. New section 165A(3) clarifies that section 165A(2) applies even if the person is an employee of the department at the time the chief executive proposes to engage the person to perform the prescribed duties.

New section 165B(1) and (2) provide that if an employee of the department engaged to perform prescribed duties does not consent, or withdraws consent for the chief executive to obtain their criminal history, then the chief executive must ensure the person does not perform the prescribed duties. New section 165B(3) clarifies that if the person is not an employee of the department who is engaged in performing prescribed duties, the chief executive is not required to consider the person for engagement to perform the prescribed duties.

New section 165C provides that if a person consents in writing to the chief executive obtaining the person's criminal history, the chief executive may request the police commissioner to provide a written report about the person's criminal history, and the police commissioner must comply with this request. The request may include the person's name (and any other name the chief executive believes the person may use or have used) the person's date and place of birth, gender and address.

New section 165D provides that the chief executive must, under a part 6 directive, consider the person's criminal history report in making an assessment about the person's suitability to be engaged in prescribed duties.

**Clause 231** amends heading of chapter 5, part 6, division 4 by inserting “and 3A and other information etc.” in place of “and 3”.

**Clause 232** amends section 166 by omitting “or police information” from the heading and provision.

**Clause 233** amends section 167 in a number of respects.

Clause 233(1) amends the heading of section 167 by omitting “or police information”.

Clause 233(2) amends section 167(1)(a) and (b) to update the cross-references to other sections and to omit the reference to police information.

**Clause 234** amends section 168(1) by inserting “165C(2)” in place of “or 159(2)”.

**Clause 235** amends section 169(1)(a) by omitting “or police information report” and by inserting “or 3A” in place of “or 3”.

**Clause 236** amends section 170 in a number of respects.

Clause 236(1) amends section 170(1) by inserting “the person is charged with a relevant offence” from “any of the following”.

Clause 236(2) omits section 170(4).

Clause 236(3) amends section 170(5) by inserting “and the person has appealed against the conviction” in place of “or an order is made as mentioned in subsection (4), and the person has appealed against the conviction or making of the order”.

Clause 236(4) omits “or order” from section 170(5)(b).

Clause 236(5) amends section 170(6) by inserting “department’s” after “notice to the”.

Clause 236(6) omits amends section 170(7) by inserting “subsection (4)” in place of “subsection 5”..

Clause 236(7) omits section 170(8)

Clause 236(8) amends section 170(9) by inserting “disqualifying offence see the CCYPCG Act, schedule 7”.

Clause 236(9) rennumbers section 170(5) to (9) as section 170(4) to (7).

**Clause 237** amends section 171(1) by inserting “or 165A” in place of “or 157”.

**Clause 238** amends section 172(4) by inserting definitions for “child-related duties”, “police information”, “police information report” and “previous section 160”.

**Clause 239** amends section 173 in a number of respects.

Clause 239(1) amends section 173(2)(b) and (c) to extend the matters which a directive must make provision for.

Clause 239(2) amends section 173(3) by broadening the definition of “adverse decision” to include duties that are regulated employment, other than a decision that the person is suitable to perform the duties.

**Clause 240** inserts a new chapter 9, part 4 to provide for transitional provisions in relation to the Criminal History Screening Legislation Amendment Act 2010.

New section 256 provides definitions for part 4.

New section 257 provides transitional arrangements for the requirement for persons engaged by the Department of Communities to disclose changes in criminal history. If before commencement the person was required to disclose a change in their criminal history to the chief executive but at commencement had not yet done so, section 155B applies to the change as if it happened immediately after commencement. Subsection (3) provides definitions for “department of communities” and “relevant provision”.

New section 258 provides transitional arrangements for persons being considered for engagement, or engaged in child-related duties or regulated employment at commencement. Chapter 5, part 6, divisions 3 and 3A apply in relation to a person who, at the commencement, is being considered for, or is engaged by a department in child-related duties.

New section 258(2) provides that chapter 5, part 6, division 3A applies in relation to a person who, at commencement is being considered for or is engaged by a department in regulated employment. New section 258(3) clarifies the meaning of “being considered for engagement” and new section 258(4) provides a definition for “child-related duties”.

New section 259 provides transitional arrangements in relation to requests for police information not complied with at commencement. If before commencement the chief executive of a department asked the police commissioner for a written report about a person’s police information under section 159 of the unamended Act and at commencement the police commissioner had not provided the report, the police commissioner is no longer required to comply with the chief executive’s request.

New section 260 provides transitional arrangements in relation to particular police information obtained before commencement. If before commencement the police commissioner gave the chief executive of a department a written report about a person's police information under section 160 of the unamended Act and at commencement the chief executive had not made an assessment of the person under section 162 of the unamended Act, the chief executive must immediately destroy the information and stop making the assessment.

New section 261 provides transitional arrangements in relation to particular appeals and appeal rights at commencement. If at commencement, a person has applied to the magistrates Court under section 161 of the unamended Act however the application has not yet been decided, the magistrates Court must hear or continue to hear and decide the application under the unamended Act. If at commencement a person could have, but has not yet appealed to the Magistrates Court under section 161 of the unamended Act, the person may appeal within the period stated in section 161(3) of the unamended Act and the court must also hear and decide the application under section 161 of the unamended act.. Section 161 of the unamended act applies to the above despite section 262(6) New section 61(6) provides for the actions of the chief executive if on appeal, a magistrates Court sets aside the police commissioner's decision that information given to the chief executive is investigative information and new section 261(7) provides definitions for "CCYPCG Act", "child-related duties and "relevant duties" for the purposes of the provision.

New section 262 provides transitional arrangement for particular information etc. obtained before commencement. Section 168 of the unamended Act continues to apply in relation to information given to the police commissioner under section 159(2) of the unamended Act before the commencement as if the amending Act had not been enacted. If under a part 6 directive it is no longer required to keep a report and other information about a person given under section 160 of the unamended Act or a notice given to a chief executive under section 170 of the unamended Act, then the chief executive must destroy the report, the information, the notice and any other document required by the directive to be destroyed.

New section 263 provides transitional arrangements in relation to notices not given by the prosecuting authority at commencement. If before commencement something (the relevant event) mentioned in section 170(1)(b) to (e) of the unamended Act happened in relation to a person who is a public service employee in a department and at commencement

the police commissioner or director of public prosecutions has not given information about the relevant information to the chief executive as required under section 170 of the unamended Act, the police commissioner or director of public prosecutions is no longer required to give notice of the relevant event to the chief executive.

**Clause 241** amends schedule 4 (Dictionary) in a number of respects. This is necessary due to the new terminology required for the exemption notice model under the CCYPCG Act and due to the changes in child-related employment screening.

Clause 241(1) removes definitions for “CCYPCG disqualification order”, “CPOPOA disqualification order”, “disqualification order”, “disqualifying offence”, “engage”, “investigative information”, “offender prohibition order”, “police information”, “police information report”, “relevant disqualified person”, “serious offence” and “temporary offender prohibition order”.

Clause 241(2) inserts definitions for “amending Act”, “approved form”, “CCYPCG Act”, “CCYPCG commission”, “CCYPCG commissioner”, “child-related employment screening”, “chief executive (communities)”, “commencement”, “current”, “department of communities”, “engage”, “exemption notice”, “negative exemption notice”, “negative prescribed notice”, “positive exemption notice”, “positive prescribed notice” “regulated employment”, and “unamended Act”.

## **Part 17                      Amendment of Youth Justice Act 1992**

**Clause 242** provides that the 17 amends the *Youth Justice Act 1992*.

**Clause 243** corrects a minor drafting error in section 252I of the Act to specify that that the period spent by a child out of custody after the issue of a warrant by a justice under section 252I(1), or a Childrens Court magistrate under section 252I(2), is not to be counted as part of the time spent by the child in detention for the purpose of calculating the end of the period of detention from which the child was released.

**Clause 244** inserts a transitional provision into the Act to preserve the effect of the repealed section 231(12).

**Clause 245** provides for circumstances where a warrant is issued under section 252I of the Act before the commencement of this part.

## **Part 18**                      **Amendment of Juvenile Justice and Other Acts Amendment Act 2009**

**Clause 246** provides that part 18 amends the *Juvenile Justice and Other Acts Amendment Act 2009*.

Clause 246(2) provides that part 18 applies only if schedule 2 of the Act commences before the JJA short title amendment commences.

Clause 246(3) defines “JJA short title amendment” to mean section 9 of the *Juvenile Justice and Other Acts Amendment Act 2009*.

## **Part 19**                      **Amendment of other Acts**

**Clause 248** provides that part 19 amends other Acts in accordance with schedule 3. The minor 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*.