

Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- give effect to the Government's election commitment to amend the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) and introduce automated blue card application processes to prevent people commencing paid work while a blue card application is pending (the 'No Card, No Start' election commitment); and
- implement recommendations from the Queensland Family and Child Commission (QFCC) reports *Keeping Queensland's children more than safe: Review of the blue card system* (Blue Card Review Report) and *Recommendation 28 Supplementary Review: A report on information sharing to enhance the safety of children in regulated home-based services* (Supplementary Review).

Overview of Queensland's blue card system

The purpose of the blue card system is to contribute to the creation of safe and supportive environments for children and young people when receiving services and participating in activities which are essential to their development and wellbeing, such as child care, education, sport, and cultural activities. The WWC Act refers to these core activities as 'regulated employment' and 'regulated business'.

Queensland's blue card system mitigates past, present and future risks to children through:

- screening people working with children and deeming people ineligible to work with children based on their known police or disciplinary information;
- monitoring all blue card holders and applicants on a daily basis through an electronic interface with the Queensland Police Service (QPS) for changes in their Queensland police information; and
- legislatively requiring child-related organisations to implement policies and procedures to manage risks to children.

People with no known police or disciplinary information are automatically issued with a blue card. Where a person has known police or disciplinary information, the chief executive (employment screening) undertakes a thorough assessment which is underpinned by a robust decision-making framework. When making a decision about an application, the welfare and best interests of a child are the paramount consideration. The working with children check is one tool in the broader system for keeping children safe.

‘No Card, No Start’ election commitment

The Bill will deliver on the Government’s ‘No Card, No Start’ election commitment. On 14 November 2017, it was announced a re-elected Labor Government would introduce a ‘No Card, No Start’ policy, which would require all applicants to hold a blue card before commencing work in regulated services.

The implementation of ‘No Card, No Start’ is a core safeguard which strengthens the system by ensuring that all persons working in child-related environments have been issued with a working with children clearance prior to commencing work.

This election commitment is consistent with recommendation 20 of the Blue Card Review Report where the QFCC recognised, if processing timeframes can be reduced for applicants with no or simple criminal history, a ‘No Card, No Start’ approach will provide a stronger safeguard and build on the blue card system’s long history of mitigating risks to children.

To minimise adverse impacts to jobseekers and employers, the ‘No Card, No Start’ requirement will be accompanied by a suite of initiatives to streamline the blue card application process, reduce processing timeframes and assist people seeking paid employment to be job-ready by allowing them to apply for blue cards without an up-front link to an employer. In addition, the development of an online organisational portal will enable organisations to more efficiently and effectively manage their blue card obligations including linking and de-linking to applicants and cardholders.

Implementation of QFCC reports

During 2017, the QFCC completed two key reviews which impact the blue card system: (1) the Blue Card Review Report; and (2) the Supplementary Review.

Blue Card Review Report

In September 2016, the Government announced that an Expert Panel would work with the QFCC to undertake a whole of system review of the WWC Act and its operation.

On 7 September 2017, the Government released the Blue Card Review Report and indicated its broad support for the intent of all 81 recommendations made by the QFCC.

One of the key findings of the QFCC was the need for an overarching review of the WWC Act to implement the recommendations from the Blue Card Review Report and simplify the laws to make it easier for stakeholders to understand their obligations. This Bill is the first stage of a series of legislative reforms. It lays the foundations for other recommendations to be progressively implemented.

In relation to the Blue Card Review Report, the Bill implements a range of recommendations from the Report which can be categorised into four groups:

- amendments which simplify terms and the language used throughout the WWC Act;
- complementary changes to support the ‘No Card, No Start’ requirement which are aimed at strengthening the blue card system and modernising the application process;
- other key safeguards and changes; and
- amendments to reduce duplication and unnecessary regulatory burden.

These amendments are outlined in more detail below.

Supplementary Review

On 11 July 2016, the Government publicly released the *When a child is missing: Remembering Tiahleigh – A report into Queensland’s children missing from out-of-home-care* (When a child is missing report) and supported the implementation of all 29 recommendations.

Recommendation 28 of the When a child is missing report required the QFCC to undertake a supplementary review of legislation, policies and practices relating to information sharing between all parties, as responsible agencies for undertaking internal risk assessments and decision-making about the safety of all children in home-based care services.

Home-based care services include foster and kinship care, family day care and stand-alone care services. Under the WWC Act, foster and kinship carers, family day educators and carers providing stand-alone care are all required to hold a blue card. Stand-alone care services are mostly small-scale care services provided regularly by someone other than a relative or guardian of the child, for reward, and some of these services operate in regional and remote areas.

On 20 February 2017, the Government released the Supplementary Review, indicating its support for all 17 recommendations.

The Supplementary Review identified a need for greater visibility of households providing home-based services to children by regulatory bodies such as the QPS; Department of Education (DoE); the Office of the Public Guardian (OPG); and the Department of Child Safety, Youth and Women (DCSYW). This is particularly relevant where households are providing more than one home-based care service to children.

The key recommendation called for the creation of a centralised register of home-based care services. The register will be a multi-agency exchange of information regarding individuals who provide home-based care services as well as other adults who may reside in the residence.

The Bill will establish the centralised register and implement some of the other legislative amendments recommended in the Supplementary Review. These amendments are outlined in more detail below.

Achievement of policy objectives

‘No Card, No Start’ election commitment

The Bill implements the ‘No Card, No Start’ election commitment by prohibiting an employer from employing a person in regulated employment unless:

- the person holds a working with children clearance; and
- the employer has notified the chief executive that the employer is proposing to employ the person.

To satisfy the notification requirement, an employer will be required to: (a) take reasonable steps to verify the employee’s identity (for example by viewing the employee’s working with children card or another form of identification which includes their photograph); and (b) notify the chief executive either via the online organisational portal or through a paper-based form of this employment arrangement.

The penalty for this offence will be elevated to 100 penalty units. The increase signifies the importance of this employer obligation.

Existing offences will be retained which prohibit an employer from employing a person if they:

- know or ought reasonably to know the person holds a negative notice; or
- have received a notice that:
 - the person’s working with children authority has been cancelled; or
 - the person’s working with children check application has been withdrawn (where, although the employment has not commenced, the employer has notified the chief executive of the proposed employment arrangement) because the person has been charged with a disqualifying offence.

Offences will also apply to employees who start or continue in regulated employment without a working with children clearance. Circumstances of aggravation will apply so that more severe penalties can be imposed if the person: (i) is a disqualified person; (ii) is a negative notice holder; (iii) has cancelled their previous working with children authority on their own initiative; or (iv) received a notice of withdrawal because the person has been charged with a disqualifying offence.

In addition, existing offences will continue to apply which: (i) prohibit a person who has had their working with children authority suspended because they have been charged with a disqualifying offence from undertaking regulated employment; and (ii) require an employer not to allow a suspended person to perform regulated employment.

The Bill also retains the offence which prohibits disqualified persons and negative notice holders from making a working with children application.

The Bill provides that an existing cardholder must seek the renewal of their clearance before it expires to continue in regulated employment. This is because the chief

executive will maintain the ongoing daily monitoring of the person's Queensland criminal history. If a person fails to make an application prior to the expiry of their clearance, they will be subject to the 'No Card, No Start' requirement and will not be able to continue in regulated employment until a new clearance has been issued.

The Bill also amends the *Public Service Act 2008* to ensure that public service employees cannot commence child-related duties unless they hold a working with children clearance. Child-related duties do not fall within one of the categories of regulated employment under the WWC Act, but are performed at a place at which services are provided only or mainly to children, or involve contact with children and which pose an unacceptable level of risk to children.

QFCC reports

Blue Card Review Report

1. Simplification of language – changes to terminology

The Bill takes the opportunity to modernise and simplify some of the key terms used in the WWC Act. Currently, the WWC Act refers to:

- an application for a blue card as a 'prescribed notice';
- a person receiving a 'positive notice' when their application is approved and a 'negative notice' when the application is refused; and
- a person being issued with a 'positive notice blue card'.

These are legislative constructs that do not carry much of an everyday meaning. As a result, the Bill overhauls the language in the WWC Act to be more reflective of the type of application a person is making, the outcomes which are possible from such an application and the resulting product which is issued to the person. The Bill will make the following changes:

For anyone, except registered teachers and police officers, seeking to undertake regulated employment or carry on a regulated business:

- the person will apply for a working with children check;
- a positive outcome will be a working with children clearance;
- a negative outcome will be a negative notice; and
- the person will be issued with a working with children card.

For police officers and registered teachers seeking to undertake regulated employment or carry on a regulated business:

- the person will apply for a working with children check for an exemption;
- a positive outcome will be a working with children exemption;
- a negative outcome will be a negative notice; and
- the person will be issued with a working with children card.

To reduce duplication in the WWC Act (as well as other Acts), the Bill provides the following collective terms:

- an application for a working with children check or a working with children check for an exemption will be badged a ‘working with children check application’; and
- a working with children clearance or working with children exemption will be badged a ‘working with children authority’.

These terminology changes are consistent with how other jurisdictions refer to their checks and outcomes.

2. Complementary changes to support ‘No Card, No Start’ requirement

The Bill delivers a range of complementary changes to support the ‘No Card, No Start’ requirement including:

- streamlining the application process to provide sufficient flexibility so that applications can be made manually or through an online process;
- removing the requirement that a person must have an agreement to work with an organisation before applying for a working with children check as this is an unnecessary barrier to employment;
- enabling organisations to manage their obligations as well as communications with the chief executive, including relevant notifications, through an online organisational portal; and
- introducing a photograph on the working with children card.

Changes to application process and removing agreement to work requirement (recommendations 19 and 63)

Under the current WWC Act, a person must have an agreement to work or volunteer with a regulated organisation prior to applying for a working with children check. The application must be in the approved form and be completed by both the employee and the employer. The application process requires the employer to check the employee’s identification documents before lodging the application with the chief executive.

Applications made by paid employees and persons seeking to carry on a regulated business for financial reward must be accompanied by a prescribed fee. Volunteer and student applications are processed free of charge. Once approved, a blue card is valid for three years from the date of issue unless it is cancelled or suspended.

Currently, exemption notices are issued to registered teachers and police officers. The exemption notice has no expiry and remains in force for as long as the holder is a police officer or a teacher remains registered with the Queensland College of Teachers or until the exemption notice is cancelled. There is no fee associated with an application for an exemption notice.

In the Blue Card Review Report, the QFCC identified that the current application form is hard to follow and complete correctly; the manual and paper-based nature of the process results in delays in processing times; and current identity check processes create an administrative burden for organisations.

The QFCC recommended the introduction of an efficient online application process supported by a strengthened identity check. This will result in:

- faster processing times and a better client experience for applicants;
- national consistency with the *Royal Commission into Institutional Responses to Child Sexual Abuse's* (Royal Commission) recommendation for faster processing times;
- stronger safeguards for children through better quality identity checks of blue card applicants, and
- improved public confidence in the efficiency of the system.

In addition, the QFCC identified the need to maintain a more user-friendly manual application form for people with limited access to technology or who cannot or do not wish to lodge their application online.

The Blue Card Review Report also recommended removing the requirement for a person to have an agreement to work before applying for a blue card, considering it to be an unnecessary barrier to employment (recommendation 19).

In response to these findings, the Bill includes a streamlined and simplified process for a person to make a working with children check application. There will be no need for a person to have an agreement to work with an organisation prior to making the application.

The Bill provides that an application will need to be in the approved form and made in an 'approved way' (which means in a way approved by the chief executive and notified on a Queensland Government website). This allows flexibility for online applications as well as applications to continue to be made manually.

All working with children check applications must be: (i) signed by the applicant; (ii) include proof of the applicant's identity; (iii) provide for the applicant's consent to employment screening; and (iv) be accompanied by the prescribed fee, if required.

While the Bill uncouples the application process for paid employees, persons who seek a working with children check to undertake volunteer work are required to demonstrate that they have an agreement with a regulated organisation to provide volunteer services in order to have their application fee waived. This approach balances the need to continue to encourage volunteering in the community while also keeping the blue card system sustainable.

The Bill also simplifies the provisions in relation to the withdrawal of applications while still retaining the ability for the chief executive to withdraw applications in the following situations:

- when the identity of the applicant cannot be established within a stated time; or
- when the applicant fails to comply with particular requests (including for additional information or submissions); or
- when the applicant is charged with a disqualifying offence.

The Bill brings working with children exemptions into line with working with children clearances and imposes a term of three years. This requirement means that police officers and registered teachers will be required to renew their exemption every three years. Compelling exemption notice holders to renew their working with children exemption will allow the chief executive to:

- monitor and maintain quality assurance;
- modernise and strengthen the identity check process for this cohort through the inclusion of a photograph which will also reduce the chance of a person fraudulently using another person's card; and
- obtain up to date information about the person and whether they are still engaged in regulated employment.

A working with children (exemption) application will continue to have no prescribed fee. All existing positive exemption notice holders will be afforded a three year grace period from commencement to make a working with children (exemption) application. A person that holds a positive exemption notice who does not apply within the grace period will have their notice automatically cancelled.

Development of organisational portal (recommendation 73)

The Bill will enable communications between the chief executive and organisations to be made through an online organisational portal. All of the current interactions between organisations and the chief executive are authorised under the WWC Act. For example, organisations are responsible for notifying the chief executive of each new person's employment with them. In addition, organisations must notify the chief executive about a range of other issues, including when an employee or volunteer leaves the organisation.

The Bill will provide sufficient flexibility so that notifications can continue to be made manually in the approved form or through the online organisational portal. New section 398A recognises that the chief executive may approve an information system for generating, sending, receiving and otherwise processing electronic communications between the chief executive and organisations.

New section 344A formalises that the chief executive may give a range of authorised entities information electronically through the portal (this includes information about a working with children check application, a working with children authority or negative notice held by a person as well as other notifications given to the entity under the WWC Act). Authorised entity is defined broadly to include:

- a person's employer or an authorised representative of the employer; or
- another notifiable person under the WWC Act (for example, a recognised religious group that has responsibility for supervising or disciplining a person who is carrying on a regulated business as a religious representative); or
- an entity to whom the chief executive provides notices under the WWC Act (for example, the non-state school accreditation board under section 342).

New section 344B provides that persons may use, give access or disclose information obtained under section 344A to identify, access or monitor a risk, or potential risk, to the safety or welfare of a child, to establish whether or not a person has made a working with children check application or holds a working with children authority and to comply with an obligation under the WWC Act.

To assist the DoE in managing its obligations, the Bill makes amendments to put beyond doubt that both the relevant school and DoE centrally, as the employing authority, are the 'notifiable person' for changes in the blue card status of all persons associated with Queensland State Schools. This will enhance the ability of DoE to monitor and respond to high risk situations in school environments.

Photograph on working with children card (recommendation 69)

In the Blue Card Review Report, the QFCC noted stakeholder advice that a physical blue card is important to the wider community and is a part of Queensland's child safe culture. Inclusion of a photograph on the card will reduce the chance of a person fraudulently using another person's card.

The Bill provides that the definition of 'working with children card' will include a photograph of the person.

3. Safeguards and other changes

The Bill prioritises some key safeguards from the Blue Card Review Report which will strengthen the system by:

- expanding the range of disqualifying offences under the WWC Act to include bestiality and abduction/kidnapping of a child, in line with the findings of the QFCC and the Royal Commission; and
- removing the ability for a person performing child-related work to rely on an exemption under the WWC Act if they are considered ineligible to work with children.

Beyond the Blue Card Review Report, the Bill includes a further safeguard which provides for a stay of 'blue card' review decisions so that if the Queensland Civil and Administrative Tribunal (QCAT) overturns a decision made by the chief executive to issue a person with a negative notice, QCAT's orders are stayed automatically until the appeal period has expired or an appeal is finalised.

Changes to disqualifying offences (recommendation 29)

Under the WWC Act, disqualifying offences can generally be categorised into three groups: (i) serious child-related sex offences; (ii) offences related to child exploitation material, and (iii) murder of a child.

If a person is convicted of a disqualifying offence and sentenced to a term of imprisonment, the chief executive must issue the person with a negative notice. If a person is charged with a disqualifying offence either while holding or applying for a blue card, the card is either suspended or the application is withdrawn.

In 2015, the Royal Commission released its recommendations on working with children checks. The Royal Commission recommended that the range of offences that will result in the issue of an automatic negative notice be expanded to include abduction or kidnapping of a child and animal-related sexual offences.

The QFCC agreed with the Royal Commission's findings and incorporated them into recommendation 29 of the Blue Card Review Report. The Blue Card Review Report also highlighted the need to consider any unintended consequences from the system automatically disqualifying people with convictions for kidnapping offences that arise in a family law context.

The Bill expands the range of disqualifying offences listed in Schedule 4 of the WWC Act to include:

- Bestiality – section 211 Criminal Code
- Kidnapping of a child – section 354 Criminal Code
- Kidnapping for ransom of a child – section 354A Criminal Code
- Child stealing – section 363 Criminal Code
- Abduction of a child under 16 – section 363A Criminal Code

The Bill has regard to avoiding the unintended consequences foreshadowed by the QFCC in the Blue Card Review Report by making clear that the abduction, child stealing and kidnapping offences will only be treated as disqualifying if the context in which the offence was committed was not familial.

In addition, the Bill further expands the disqualifying offences to include the murder (section 300 Criminal Code) and rape of an adult (section 349 Criminal Code). These offences are currently treated as serious under the WWC Act. This means the chief executive must issue a negative notice to the person unless it is an exceptional case in which it would not harm the best interests of children.

However, in responding to community expectations and to provide stronger protections for children, these offences will now be treated as disqualifying.

Removing the ability for 'high risk' person to rely on an exemption (recommendation 28)

Currently, a person can undertake certain child-related work without a working with children authority if they meet one of the exemptions provided for under the WWC Act. These include if the person:

- is a volunteer parent, in certain circumstances; or
- is a volunteer under the age of 18; or
- does not meet the minimum frequency for regulated employment.

This means that persons with negative notices and other ‘high risk’ persons can rely on these exemptions to carry out child-related work.

In the Blue Card Review Report, the QFCC noted that stakeholders expressed strong views that allowing a person with a negative notice to rely on an exemption is unacceptable. To address this, the QFCC recommended changes to the WWC Act which remove the ability for negative notice holders and other ‘high risk’ people to rely on these exemptions. The QFCC noted the strength of the process of issuing a negative notice is in excluding that person from all child-related activities.

The Bill proposes the introduction of two new terms – ‘restricted employment’ and ‘restricted person’. ‘Restricted employment’ is defined to include:

- infrequent employment which does not meet the minimum frequency under new section 156 (the frequency test has been simplified to be seven days in a calendar year in line with the recommendations of both the Royal Commission and the QFCC);
- the unpaid employment of a person under the age of 18; and
- volunteer parents who undertake regulated employment in the following settings: schools; education and care services; child care; churches; clubs and associations; and sport and active recreation.

The definition of ‘restricted person’ captures the following ‘high risk’ people: (i) negative notice holders; (ii) persons with a suspended working with children authority; (iii) a disqualified person; and (iv) a person charged with a disqualifying offence.

The Bill creates an offence on the restricted person to not start or continue in restricted employment. An offence is also placed on the employer not to employ or continue to employ the person in restricted employment if they know or ought reasonably to know the person is a restricted person.

Stay of ‘negative notice’ decisions pending an appeal

Currently, a person who has been issued with a negative notice who is not a disqualified person, may apply to QCAT for a review of the decision within 28 days of the notice being given.

The chief executive may appeal QCAT’s decision if it decides to revoke a person’s negative notice and issue the person with a blue card. At this time, the chief executive may seek a ‘stay’ of QCAT’s decision which would stop the applicant from starting regulated employment until the appeal is finalised. QCAT may also order a ‘stay’ on

its own initiative. However, if the request for a ‘stay’ is unsuccessful, the person may begin performing regulated employment, despite an appeal having commenced.

The Bill provides that where QCAT overturns a decision by the chief executive to issue a negative notice, the order of QCAT is automatically ‘stayed’ until one of the following happens: the period in which the chief executive had to appeal QCAT’s decision expires; or, if an appeal is lodged, the appeal is finally decided. This is a further safeguard to complement the ‘No Card, No Start’ requirement and is consistent with the principles of the WWC Act that the welfare and best interests of a child are paramount.

4. Amendments to reduce duplication and unnecessary regulatory burden

The Bill reduces regulatory burden by removing a range of unnecessary provisions and consolidating and simplifying the WWC Act, where possible.

In particular, recommendation 69 of the Blue Card Review Report recommended the removal of the positive notice letter as an outcome of a working with children check application. This is on the basis many individuals do not retain the letter, as the physical card itself is seen as the key outcome of the application.

While a letter will still be issued as an outcome of a working with children check application, the Bill removes the requirement to retain the letter and makes clear that a working with children card is evidence that a person holds a working with children clearance or working with children exemption. Offence provisions will remain for failure to return a physical card when a person’s authority is suspended or cancelled or a person seeks a replacement card.

The Bill also reduces duplication by consolidating and simplifying the provisions in the WWC Act which deal with the suspension and cancellation of a person’s working with children authority. New Chapter 8, Part 5A does not reduce safeguards or alter the ability for the chief executive to suspend or cancel a person’s authority.

Supplementary Review

In relation to the Supplementary Review, the Bill will achieve its policy objectives by:

- establishing a register for recording and reporting on all child-related employment or business conducted from the home;
- requiring all adult household members of stand-alone care services to hold a blue card; and
- amending the WWC Act to include DoE within the definition of ‘notifiable person’ so that it receives notifications about changes to the blue card status of individual family day care educators and adult household members.

Creation of register of home-based care services (recommendation 28.1)

The Bill establishes the register to improve the visibility of home-based care services (including co-located services), inform decision-making and risk assessments, and

facilitate information sharing between relevant government agencies to promote the safety of all children accessing these home-based care services.

The register is not designed to replace existing information exchanges between agencies. It is an additional tool to provide more comprehensive information regarding certain types of home-based care services to inform other forms of compliance and monitoring activities being undertaken by other regulatory agencies.

Access to the register will be limited to authorised users from the QPS, DoE, DCSYW and OPG.

The Bill provides for the type of information the register must contain about each regulated person and adult household member. The register will not include the specifics of a person's criminal history nor provide any information as to the reason why the person does not hold a valid clearance or exemption. Rather, the searching of the register is intended to be a prompt or trigger for regulatory bodies to make further enquiries with Blue Card Services (BCS) or other relevant entities in relation to a particular person or residence.

The Bill provides when an authorised user of the register can use, give access to or disclose confidential information obtained from the register. In particular, an authorised user will be able to use, give access or disclose information to identify, access or monitor a risk, or potential risk, to the safety or welfare of a child being provided care through a home-based care service, as well as check the currency and status of a regulated person's or adult household member's card or application.

Improve consistency for assessing individuals in home-based care services (recommendation 28.5)

The Supplementary Review identified that stand-alone care is not regulated under the Education and Care Services National Law. It is subject to very limited regulation under the *Education and Care Services Act 2013* (Qld) as the only home-based care service that does not require all adult household members to hold a blue card.

The Bill provides that all adult household members of stand-alone care services are required to hold and maintain a blue card to promote safety of children. This amendment will bring stand-alone care into alignment with requirements for foster and kinship care and family day care services.

Monitoring and responding to risks in home-based care services (recommendation 28.11)

Under the WWC Act, the chief executive assesses all information it receives to identify whether a person's blue card should be issued, suspended or cancelled. Changes to the status of a person's blue card must be reported to relevant notifiable persons.

The Bill amends the definition of notifiable person to include the chief executive (education and care) within the definition of 'notifiable person' so that it receives notifications about changes to the blue card status of individual family day care educators and adult household members. This allows greater visibility of the family

day care residence to enable DoE to take appropriate action where an individual residing in a household where family day care is provided may pose a risk to children.

The Bill makes further amendments, beyond the Supplementary Review recommendation, which makes the chief executive (education and care) the notifiable person for all staff members, nominated supervisors and volunteers under either the Education and Care Services National Law or *Education and Care Services Act 2013*. This will provide DoE, as the regulatory authority for education and care services, the ability to monitor all relevant services.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

As part of the 2018-19 Budget, the Government allocated \$17 million over the next three years to implement the ‘No Card, No Start’ laws and an online blue card application system.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs). Potential breaches of the FLPs are addressed below.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – right to employment and conduct business – clause 17

The ‘No Card, No Start’ requirement will: (i) prevent a person from starting or continuing in regulated employment without first obtaining a working with children clearance; and (ii) require an employer to ensure an employee does not start or continue in regulated employment without a clearance.

This is a potential departure from the principle that sufficient regard be given to the rights and liberties of individuals and, in particular, the right to obtain and keep employment and the right to conduct business without interference.

The ‘No Card, No Start’ approach reduces risks to the safety and wellbeing of children by preventing persons with concerning histories from being able to work with children for periods of time while their application is being assessed.

The ‘No Card, No Start’ policy is also consistent with the principles for administering the WWC Act, that the welfare and best interests of the child are paramount and that every child is entitled to be cared for in a way that protects the child from harm and promotes the child’s wellbeing (section 6).

Legislation has sufficient regard to the institution of Parliament (section 4(2)(b) Legislative Standards Act 1992) – making of applications and giving of notices – clauses 17, 21, 28, 34, 44, 48, 50 and 55

The Bill includes a number of amendments which will require applications to be made or notices to be given to the chief executive in the ‘approved way’ - this is defined in the Bill to mean a way approved by the chief executive and notified on a Queensland Government website. This delegation of legislative power is a potential departure from the principle that sufficient regard be given to the institution of Parliament.

Currently, all applications and notices under the WWC Act must be in the approved form. Section 400 provides that the chief executive may approve forms for use under the WWC Act. From a practical perspective, given most of the current processes in the blue card system are supported by little to no automation, this requires applicants, cardholders and organisations to complete manual paper-based forms and submit them to the chief executive. In 2017-18 alone, BCS received 362,766 applications and employer link forms.

In order to maintain consistency around the information that is collected, the Bill will still require all applications and notices to be in the approved form. However, more importantly, the amendments will enable applications or notices to be made or given in an ‘approved way’. This will ensure that legislation is not a barrier to new technologies, including online portals, being adopted. This increased flexibility will facilitate the transition to an online application process and online organisational portal. In addition, information published on the Queensland Government website will be more practically accessible for organisations and individuals engaging with the blue card system.

For example, in relation to an application by a person for a working with children check or working with children check for an exemption, it is appropriate that practical details, including the way in which the applicant’s identity is verified and the specifics of the application lodgement process, are deferred to the notice which will be published on the Queensland Government website.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – confidentiality of information in register of home-based care services – clause 60

The amendments will expand the current information sharing arrangements between relevant government agencies including the QPS, DCSYW, DoE and OPG by enabling personal information about individuals engaged in home-based care services, as well as other adults who may reside in the residence to be accessed by a range of government agencies. These provisions are a potential departure from the principle that sufficient regard be given to an individual’s rights and liberties, including privacy and confidentiality.

The creation of the register is necessary as it will improve the ability of regulatory agencies to quickly identify co-located home-based care services, inform decision making and subsequently share information about any risks in these environments.

The Royal Commission has identified a range of factors that need to be considered when assessing the risk of harm to children across service environments. In home-based care services, there are a range of additional characteristics (including the private nature of these environments and reduced levels of external observation) that may increase the opportunities for harm to children to occur. Other factors that may increase the vulnerability of children accessing these services include, being very young in age, having a disability or having previously suffered harm.

As a result, it is important responsible regulatory agencies are able to monitor individuals working and residing in home-based care services on an ongoing basis. The information that will be stored in the register will not include the specific criminal history of individuals but rather their blue card status. The confidentiality of the information on the register will be further protected by the inclusion of a specific penalty of 100 penalty units for the inappropriate use or disclosure of information. New section 357I provides that an authorised user of the register of home-based care services will be able to use, give access or disclose information to identify, access or monitor a risk, or potential risk, to the safety or welfare of a child being provided care through a home-based care service as well as check the currency of a regulated person's card or application. Audits will also be able to be undertaken, as required.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – retrospectivity of information in register of home-based care services – clause 66

The register of home-based care services will include the identifying information of persons obtained from working with children check applications that were processed by the chief executive prior to the commencement of the amendments, which will establish the register.

This retrospective application is considered necessary to enable the register to be an effective and useful safeguard for children in home-based care services from the commencement of the amendments. It would not be feasible to rely upon the consent of applicants for their identifying information to be included in the register as they apply for a working with children check or working with children check for an exemption or seek renewal of their working with children authority.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – confidentiality of information shared with authorised entities – clause 53

New section 344A formalises that the chief executive may give a range of authorised entities information electronically through the online organisational portal – all of these interactions are currently authorised by the WWC Act and occur through paper-based notifications. These provisions are a potential departure from the principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality.

This includes the chief executive sharing information about a working with children check application, a working with children authority or negative notice held by a person

associated with the entity as well as other notices given to the entity under the WWC Act. Authorised entity is defined to include:

- a person's employer or an authorised representative of the employer (for example, where an individual site location may nominate a central oversight body to also received relevant information); or
- other notifiable persons under the WWC Act (for example, a recognised religious group that has responsibility for supervising or disciplining a person who is carrying on a regulated business as a religious representative); or
- an entity to whom BCS provides notices under the WWC Act (for example, the non-state school accreditation board under section 342).

The sharing of this information is critical to the effective operation of the blue card system as it enable employers and other entities to risk manage their service environments and take corrective action, where appropriate. As a further safeguard, new section 344B provides a penalty of 100 penalty units for the inappropriate use or disclosure of information obtained under section 344A. Section 344B appropriately balances privacy considerations with the protection of children by recognising that persons may use, give access or disclose information to identify, access or monitor a risk, or potential risk, to the safety or welfare of a child, to establish whether or not a person has made a working with children check application or holds a working with children authority and to comply with an obligation under the WWC Act.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – changes to disqualifying offences – clause 70

The Bill expands the range of disqualifying offences under the WWC Act to include the rape and murder of an adult, bestiality and kidnapping or abduction of a child and child stealing, if the offence was not committed in a familial context. These changes may be considered to have insufficient regard to the rights and liberties of individuals as the amendments will automatically exclude a broader range of individuals from holding a working with children authority.

In addition, under section 354 of the WWC Act, a person who is convicted of a disqualifying offence is afforded no review rights. This may be considered to be a breach of the fundamental legislative principle that administrative power should be sufficiently defined and subject to review.

The inclusion of bestiality, kidnapping or abduction of a child and child stealing as disqualifying offences is specifically supported by both the Royal Commission and the QFCC. All of the amendments with respect to disqualifying offences are considered justified for the protection of children from harm, as it prevents individuals with convictions for specified offences from making a working with children check application or entering or continuing in regulated child-related service environments.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – creation of new offences – clauses 17 and 50

The Bill creates new offences as well as reframes and consolidates a number of existing offences across the WWC Act. The creation of new offences potentially breaches the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals in so far as they impose a penalty upon the person for a breach of the provision. However, all of these penalties are considered to be reasonable as they provide stronger safeguards for children and represent a strong deterrent for persons who breach key requirements under the WWC Act.

The amendments operate prospectively and will only capture offenders who commit offences after commencement.

Offences relating to 'No Card, No Start' requirement

The Bill creates a new offence under section 175 which provides that an employer must not employ another person (who is not a registered teacher or police officer) in regulated employment unless the person holds a working with children clearance and the employer has notified the chief executive that they propose to employ the person. The maximum penalty for the offence is set at 100 penalty units. The 'No Card, No Start' requirement places an important obligation on employers as the gatekeepers of regulated employment.

New section 176A provides that a person, who is not a registered teacher or police officer, is prohibited from engaging in regulated employment without a working with children clearance. The maximum penalty for this offence include a baseline penalty of 100 penalty units as well as relevant circumstances of aggravation which enable a more significant penalty to be imposed on the person (500 penalty units or five years imprisonment).

The circumstances of aggravation are predominantly based on existing offences under the WWC Act, which include if the person is: (i) a disqualified person (in line with existing section 174(1)(c)); or (ii) a negative notice holder (in line with existing section 195(1)(c)); or (iii) held a working with children authority that was cancelled on the person's request (in line with existing section 244(4)). A further circumstance of aggravation is included which covers a person who has made a working with children check application and the application was withdrawn because the person was charged with a disqualifying offence.

The circumstances of aggravation cover situations where the person represents a much greater risk to children because of their past concerning behaviour. The baseline penalty provided is a new offence under the WWC Act and is also considered justified. It is reflective of the increased personal responsibility and the strict requirement which will be placed on individuals not to commence in regulated employment until they have been assessed by BCS and have been issued with a clearance.

New section 176B provides that a person must not carry on a regulated business without holding a working with children clearance. This offence is a re-stating of an existing offence under section 197 of the WWC Act. The penalty of 500 penalty units or five years imprisonment recognises that a person carrying on a regulated business operates independently without the oversight which arises from an employment relationship.

Ability to start work – police officers and registered teachers

The ‘No Card, No Start’ requirement does not apply to registered teachers and police officers who undertake regulated employment outside their professional duties. This is on the basis that they have already been subject to criminal history screening and ongoing monitoring by either the Queensland Police Service or the Queensland College of Teachers. New sections 176C, 176E, 176F and 176G are essentially a re-stating and re-framing of existing offences under the WWC Act.

In particular, new section 176E provides that a registered teacher or police officer is prohibited from engaging in regulated employment unless the person holds a working with children authority or the person has made a working with children (exemption) application. The maximum penalty for this offence includes a baseline penalty of 100 penalty units as well as relevant circumstances of aggravation which enable a more significant penalty to be imposed on the person (500 penalty units or five years imprisonment). The circumstances of aggravation are the equivalent of those included in new section 176A.

Further offences against employer – regulated employment

The Bill reframes and consolidates a number of existing offences on employers of persons in regulated employment. The circumstances of aggravation included in new section 175 and 176C provide that an employer must not employ, or continue to employ an employee in regulated employment if the employer knows or ought reasonably to know the employee holds a negative notice; or the employer has been given a notice that the employee’s working with children authority has been cancelled; or the chief executive has given the employer a withdrawal notice for a working with children check application made by the person because section 199 applies. These offences provide for stronger penalties on employers for situations that are more ‘high risk’.

Beyond this, sections 176 and 176D provide for a new offence which states that an employer must not start a person in regulated employment if that person holds a working with children authority that is suspended; and the employer knows, or ought reasonably to know, the employee’s authority is suspended. This offence recognises that suspended cardholders are a high risk category of persons and employers should be vigilant in ensuring they do not start the employment of a person with a suspended authority.

Offences related to restricted persons starting or continuing in restricted employment

New sections 176I and 176J provide for two new offences which deal with ‘restricted employment’ and ‘restricted persons’. This amendment has the effect of essentially excluding a limited range of individuals from being able to carry out child-related work in particular circumstances. This impacts on the rights and liberties of individuals. However, this must be weighed against the need to protect children and provide safe environments.

Restricted employment includes: (i) employment which does not meet the minimum frequency under new section 156(4); (ii) the unpaid employment of a person under the age of 18; and (iii) volunteer parents in certain categories of regulated employment

(including schools; education and care services; child care; churches; clubs and associations; and sport and active recreation). A 'restricted person' includes: (i) a negative notice holder; (ii) a person with a suspended working with children authority; (iii) a disqualified person; and (iv) a person charged with a disqualifying offence.

New section 176I provides an employer must not employ or continue to employ the person if they know or reasonably ought to know that the person is a restricted person and new section 176J provides a restricted person must not start or continue in restricted employment. The maximum penalty on the employer is 200 penalty units or two years imprisonment, which is consistent with new section 176; and on the 'restricted person' is 500 penalty units or five years imprisonment, which is consistent with new section 176A.

In the Blue Card Review Report, the QFCC noted that stakeholders expressed strong views that allowing a person with a negative notice to rely on an exemption is unacceptable. The strength of the process of issuing a negative notice is in excluding that person from all child-related activities. In addition, all of the other types of persons who are included in the 'restricted person' definition are people who have concerning histories. The penalties are considered justified as they relate to ensuring persons who pose a high risk to children are not able to access child-related environments and places an onus on employers to provide a 'child-safe' environment.

Consolidation of offences related to notification that must be given if there is a change in police information about a person

The Bill consolidates existing sections 323, 324 and 325 that deal with a notification that must be given if there is a change in police information about a person.

This consolidated offence provision simplifies current processes regarding notice that must be given to the chief executive following a change in police information. This provision places responsibility solely on persons who hold a working with children authority or have made a working with children application to give notice to the chief executive once they become aware of a change in their police information.

The penalty is consistent with current penalties under sections 323-325 for failure to notify an employer or the chief executive of a change in police information (100 penalty units).

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – notifications to potential employers – clauses 37 and 48

The Bill authorises the chief executive to notify potential employers of persons in regulated employment if the person has been issued with a negative notice or had their working with children authority suspended or cancelled. These changes may be considered to have insufficient regard to the rights and liberties of individuals as the amendment will enable the chief executive to share confidential information with other parties.

The definition of ‘potential employer’ is limited to a person who is not a notifiable person but the chief executive reasonably believes employs, or proposes to employ, the employee.

The threshold of ‘reasonably believes’ provide an appropriate safeguard to ensure the chief executive will only disclose information about a person to a potential employer if there is enough information to suggest the person is being employed by the potential employer but the employer has not notified the chief executive. For example, information might be brought to light through a compliance activity undertaken by BCS or the QPS.

It is important that information about the suspension or cancellation of a person’s authority is provided to a potential employer so that the employer can appropriately risk manage the situation.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – clause 49

The changes to section 310 of the WWC Act recognise that the chief executive may monitor the police information of persons who have purported to make a working with children check application but the application may not have been properly made. This change may be considered to have insufficient regard to the rights and liberties of individuals.

However, the changes to section 310 mitigates any risks in relation to when the chief executive may start or continue monitoring a person’s criminal history. It is noted the Bill retains the ability for police officers and registered teachers to start in regulated employment upon making an application. In addition, the Bill provides that persons who hold a current working with children clearance are able to continue in regulated employment on the condition that they make an application to renew their clearance prior to the current authority expiring.

While the majority of persons will be applying online, for those individuals who will continue to make their applications via a paper form, there is the possibility that these applicants may leave out some mandatory information in the form inadvertently but have a belief that they have validly lodged their application after posting it to BCS. As a result, it is important the legislation is put beyond doubt to ensure that the chief executive is able to monitor these persons as early as possible to mitigate any risk.

Legislation has sufficient regard to the institution of Parliament (section 4(2)(b) Legislative Standards Act 1992) and not impose obligations retrospectively (section 4(3)(g) Legislative Standards Act 1992) – clause 66

The Bill provides for a regulation-making power for the purposes of transitional arrangements (new section 589). The inclusion of this power is a potential departure from the principle that sufficient regard be given to the institution of Parliament. A number of transitional arrangements are already provided for under the Bill in new Chapter 11, Part 19 – they have been drafted to attempt to address all situations that may arise. However, the inclusion of the regulation-making power is considered

justified to resolve any complex transitional issues that are unforeseeable at the time of introduction.

The regulation-making power will ensure the effective implementation of the changes to the disqualifying offences as well as the 'No Card, No Start' requirement and new working with children check application process. The inclusion of this power will mean that the safety and protection of Queensland's children is not compromised as these important changes commence. To ensure parliamentary oversight, the regulation making power, along with any regulation made under it, will expire 18 months after commencement of the Bill.

Consultation

A range of stakeholders were consulted in relation to the amendments across two separate sessions in October 2018.

In line with Recommendation 78 of the Blue Card Review Report, the Department of Justice and Attorney-General has established a Blue Card System Review Implementation Reference Group (IRG) to monitor the blue card reforms. The IRG consists of government and non-government stakeholders.

The non-government attendees at the IRG consultation session included: Queensland Catholic Education Commission; Surf Life Saving Queensland; Aboriginal and Torres Strait Islander Legal Service; and Junkuri Laka

An additional consultation session was held with key non-government stakeholders. At this session, 31 organisations were represented, including: Anglican Church SQ; Anglican Schools Commission; Australian Childcare Alliance Queensland; Australian Homestay Network; Bravehearts; Brisbane Catholic Education; Crèche & Kindergarten Association Limited; Catholic Archdiocese of Brisbane; Churches of Christ; Cerebral Palsy League; Early Childhood Teachers Association; Family Day Care Association Queensland; Foster Care Queensland; Girl Guides Queensland; Griffith University; Independent Schools Queensland; Life Without Barriers; Mercy Community Services; Micah Projects; Protect All Children Today; Police-Citizens Youth Clubs; Queensland Aboriginal and Torres Strait Islander Child Protection Peak; Queensland Council of Social Services; Queensland University of Technology; Scouts Queensland; Sporting Wheelies and Disabled Association; Toowoomba Catholic Schools; Uniting Care; Uniting Church Synod; World Education Program; Youth Advocacy Centre and Youth with a Mission.

At the sessions, organisations were provided with an overview of the current position under the WWC Act, the rationale for change and the proposed amendments. Attendees were also provided accompanying guides which included a summary of the proposed amendments and invited to provide any feedback on the amendments.

Stakeholders reported general support for the Bill and its objectives.

Consistency with legislation of other jurisdictions

The ‘No Card, No Start’ approach is contrary to the findings of the Royal Commission in its 2015 *Working with Children Check Report*. The Royal Commission recommended allowing applicants (both paid and volunteer) to start regulated employment while their application is processed, provided appropriate safeguards are put in place to protect children.

All State and Territory working with children check schemes, except South Australia, currently permit applicants, in some way, to begin regulated employment before the outcome of their application is determined.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2018*.

Clause 2 states the Bill is to commence on a day to be fixed by proclamation.

Part 2 Amendment of Working with Children (Risk Management and Screening) Act 2000

Clause 3 states that this part amends the *Working with Children (Risk Management and Screening) Act 2000*.

Clause 4 inserts new Chapter 1, Part 1, heading 'Introduction'.

Clause 5 relocates existing section 157 and inserts new section 7 'Act applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986'.

Clause 6 amends section 8 'Chief executive's main functions' to provide a new function for the chief executive to establish a register of regulated persons who provide home-based care services to children.

Clause 7 inserts a new Chapter 1, Part 2, heading 'Interpretation'.

Clause 8 relocates and renumbers section 3 (Dictionary) to Chapter 1, Part 2, section 9.

Clause 9 changes the Chapter 8 heading to 'Regulated employment and regulated businesses'. The provision also renumbers Chapter 8 as Chapter 7.

Clause 10 omits and replaces sections 156 and 157.

New section 156 'Regulated employment' provides that employment is regulated employment if it is regulated employment of a type as set out in Schedule 1, Part 1. The provision also clarifies the types of employment that are not considered to be regulated employment. Employment is not regulated employment if Schedule 1, Part 1 states that it is not regulated employment, or Schedule 1, Part 3 states that Chapter 7 does not apply to the employment.

New section 156 also provides that the unpaid employment of a child is only regulated employment if the child is a trainee student of an education provider and the employment is part of a course undertaken by the trainee student with the education provider.

Additionally the provision clarifies that employment is not regulated employment if a person is employed to work, and works, in the employment for not more than seven days in a calendar year. This simplified frequency test aligns with the recommendations of the Royal Commission and QFCC.

New section 157 ‘Regulated business’ provides that a business is a regulated business if it is a type of business that is stated to be a regulated business in Schedule 1, Part 2. However, a business is not considered to be a regulated business if Schedule 1, Part 3 states that Chapter 7 does not apply to the carrying on of the business.

Clause 11 omits section 160 (Application of chapter to children) as this is no longer necessary.

Clause 12 amends section 162 (What is employment when education provider arranges trainee student to carry out for someone else) to clarify that for the purposes of trainee students, despite the absence of an express agreement between the person and the trainee student to carry out the work, the person for whom the trainee student is carrying out the work is deemed to be employing the trainee student.

Clause 13 amends section 169 (Who is a *disqualified person*) to expand the definition of ‘disqualified person’ to include the respondent to an application for an offender prohibition order under the Offender Reporting Act. The provision clarifies that a person to whom subsection (1)(a) applies and subsection (1)(b) and (c) do not apply, is not a disqualified person if an eligibility declaration is in force for the person.

Clause 14 amends section 170 (Who is a *relevant disqualified person*) to provide that a person who is named as the respondent to an application for an offender prohibition order under the Offender Reporting Act, is a relevant disqualified person.

Clause 15 relocates sections 161 to 170, as amended by this Act, to the new Chapter 1, Part 2 ‘Interpretation’ and renumbers as sections 10 to 18.

Clause 16 omits the heading in Chapter 7, Part 2 (Interpretation) as this is no longer necessary.

Clause 17 replaces Chapter 7, Part 4, Division 1, sections 173 – 176.

New Part 4 ‘Screening requirements’ consolidates the previous requirements in Chapter 8, Part 4, Divisions 3-5 and Chapter 8, Part 5, Divisions 2-5 and provides for the criminal history screening requirements of persons seeking to engage in regulated employment or carry on a regulated business.

Division 1 deals with preliminary matters.

New section 173 ‘Requirements for employer giving notice about employing person’ provides that an employer must take reasonable steps to verify a person’s identify before notifying the chief executive about the employment or proposed employment of a person. The notification must be given in the approved form and in an approved way.

Division 2 deals with the working with children clearance requirements for all persons who are not a police officer or registered teacher.

New section 174 ‘Application of division’ clarifies that division 2 does not apply in relation to the employment of a person, or the carrying on of a business by a person, who is a police officer or registered teacher.

New section 175 ‘Clearance required to employ a person in regulated employment’ provides that it is an offence for an employer to employ or continue to employ another person (the employee) in regulated employment unless the employee holds a working with children clearance and the employer has notified the chief executive under section 173 about employing the employee in regulated employment.

The maximum penalty for an employer that breaches this provision is 200 penalty units or 2 years imprisonment, if an aggravating circumstance applies to the offence, otherwise 100 penalty units.

An aggravating circumstance for the offence is if the employee holds a negative notice and the employer knows or ought reasonably to know, the employee holds the negative notice; or if the employer has been issued a notice under chapter 8, part 5A that states the employee’s working with children authority has been cancelled; or the chief executive has given the employer a withdrawal notice for a working with children check application made by the employee because section 199 applies (that is, because the employee has been charged with a disqualifying offence).

New section 176 ‘Employing person with suspended clearance prohibited’ provides that it is an offence for an employer to start an employee in regulated employment if the employee holds a working with children clearance that is suspended and the employer knows, or ought reasonably to know, the employee’s clearance is suspended. This offence comes with a maximum penalty of 200 penalty units or 2 years imprisonment.

New section 176A ‘Person prohibited from regulated employment without clearance’ provides that it is an offence for a person to start or continue in regulated employment unless the person holds a working with children clearance. The maximum penalty for an employee that breaches this provision is 500 penalty units or 5 years imprisonment, if an aggravating circumstance applies to the offence, otherwise 100 penalty units.

An aggravating circumstance is if the person: holds a negative notice; is a disqualified person; held a working with children authority that was cancelled on the person’s request under chapter 8, part 5A, division 4; or made a working with children application that was withdrawn because section 199 applies.

New section 176B ‘Clearance required to carry on regulated business’ inserts a similar offence to previous section 197 to state that a person must not carry on a regulated business unless the person holds a working with children clearance. The maximum penalty for a person that breaches this provision is 500 penalty units or five years imprisonment.

Division 3 deals with the working with children exemption requirements for police officers and registered teachers.

New section 176C ‘Exemption required to employ police officer or registered teacher in regulated employment’ provides that it is an offence for an employer to employ, or continue to employ a police officer or registered teacher (the employee) in regulated employment unless the employee holds a working with children authority or has made a working with children check (exemption) application that has not been decided or

withdrawn; and the employer has notified the chief executive under section 173 about employing the employee in regulated employment.

The maximum penalty for an employer that breaches this provision is 200 penalty units or 2 years imprisonment, if an aggravating circumstance applies to the offence, otherwise 100 penalty units.

An aggravating circumstance is if: the employee holds a negative notice and the employer knows or ought reasonably to know, the employee holds the negative notice; the employer has been issued a notice under chapter 8, part 5A that states the employee's working with children authority has been cancelled; or the chief executive has given the employer a withdrawal notice for a working with children check application made by the employee because section 199 applies (that is, the employee has been charged with a disqualifying offence).

New section 176D 'Employing police officer or registered teacher with suspended authority prohibited' provides that it is an offence for an employer to employ a police officer or registered teacher (the employee) in regulated employment if the employee's working with children authority is suspended and the employer knows, or ought reasonably to know, the employee's authority is suspended. The maximum penalty for this offence is 200 penalty units or 2 years imprisonment.

New section 176E 'Police officer or registered teacher prohibited from regulated employment without exemption' provides that it is an offence for a police officer or a registered teacher to start or continue in regulated employment unless the person holds a working with children authority or has made a working with children check (exemption) application that has not been decided or withdrawn.

The maximum penalty for a person that breaches this provision is 500 penalty units or 5 years imprisonment, if an aggravating circumstance applies to the offence, otherwise 100 penalty units.

An aggravating circumstance is if: the person holds a negative notice; the person is a disqualified person, the person held a working with children authority that was cancelled on the person's request under chapter 8, part 5A, division 4; or the person's working with children application was withdrawn because section 199 applies.

New section 176F 'Exemption required for regulated employment if previous application is withdrawn' applies to a person who is a police officer or a registered teacher who makes a working with children check (exemption) application that is withdrawn because section 193 or 196 applies.

It is an offence for the person to start or continue in regulated employment unless the person holds a working with children authority. The provision states that the maximum penalty is 500 penalty units or five years imprisonment if the withdrawal notice is given because section 199 applies, otherwise, 100 penalty units or 1 year imprisonment.

New section 176G 'Exemption required for police officer or registered teacher to carry on regulated business' inserts a similar provision to previous section 259 to provide that a police officer or registered teacher must not carry on a regulated business unless the

person holds a working with children authority or has made a working with children check (exemption) application that has not been decided or withdrawn. The maximum penalty for a person that breaches this provision is 500 penalty units or 5 years imprisonment.

Division 4 prohibits restricted persons from engaging in restricted employment.

New section 176H 'Definitions for division' inserts definitions for 'restricted employment' and 'restricted person'. Restricted employment means employment that is not regulated employment under: section 156(3) or (4); or schedule 1, part 1, section 3(2)(b), 4(4), 4A(2), 5(2), 6(3)(c)(i) or 11(2)(b).

Restricted person means a person who: (a) holds a negative notice; or (b) holds a working with children authority that is suspended; or (c) is a disqualified person and does not hold a working with children authority; or (d) has been charged with a disqualifying offence the proceeding for which has not ended.

Section 176I 'Employing restricted person in restricted employment prohibited' provides that it is an offence for an employer to employ or continue to employ another person (the employee) in restricted employment if the employee is a restricted person and the employer knows, or ought reasonably to know, the employee is a restricted person. The maximum penalty for an employer that breaches this provision is 200 penalty units or 2 years imprisonment.

New section 176J 'Restricted person prohibited from starting or continuing in restricted employment' provides that it is an offence for a restricted person to start or continue in restricted employment. The maximum penalty for a person that breaches this provision is 500 penalty units or 5 years imprisonment.

Clause 18 inserts, after new section 176J, a new Chapter 8 heading 'Working with children checks and authorities' and a new Chapter 8, Part 1 heading 'Restrictions on making working with children check applications'.

Clause 19 inserts new Chapter 8, Part 1, Division 1 'Prohibited applications'.

Division 1 prohibits working with children check applications from being made by particular persons.

New section 176K 'Application by disqualified person prohibited' provides that it is an offence for a disqualified person to make a working with children check application. This maximum penalty is 500 penalty units or 5 years imprisonment.

New section 176L 'Application by negative notice holder prohibited' provides that it is an offence for a negative notice holder to make a working with children check application. The maximum penalty is 500 penalty units or 5 years imprisonment.

Clause 20 amends section 177 (Purpose of div 2) to clarify that the purpose of the division is to allow a person who may be a disqualified person to apply to the chief executive for a declaration that the person is eligible to make a working with children check application.

Clause 21 amends section 178 (Application for an eligibility declaration) to stipulate that an application for an eligibility declaration must be made in the approved form and in an approved way and that the approved form must provide for the application to provide proof of the applicant's identity.

Clause 22 amends section 180 (Chief executive's decision on eligibility application) to provide that an eligibility application must be decided by the chief executive as if it were a decision about a working with children check application. This means if the person applying for an eligibility declaration is a police officer or a registered teacher, part 5, division 8 applies; and for all other persons, part 4, division 9 applies. New section 180(6)(c) provides that if the person is not a disqualified person for another reason, the person may make a working with children check application.

Clause 23 amends section 181 (Eligibility declaration taken to have been issued) to provide the chief executive is taken to have issued an eligibility declaration to a disqualified person if the chief executive issues a working with children clearance to the person or cancels a negative notice issued to the person or decides not to cancel the person's working with children authority.

Clause 24 omits existing section 182 (Withdrawing eligibility application generally) and replaces it with new section 182 'Chief executive may request further information'. New section 182 provides that, on receiving an application for an eligibility declaration, the chief executive may issue a notice to the person requesting information that reasonably establishes the applicant's identity or about a stated matter that the chief executive reasonably believes is relevant to the application. The notice issued by the chief executive must state that the application will be withdrawn if the applicant does not comply with the request within the stated time.

Clause 25 omits section 183 (Deemed withdrawal of eligibility application if identity can not be established) and section 184 (Deemed withdrawal of eligibility application if particular requests not complied with) as these provisions are no longer necessary.

Clause 26 omits section 185 (Expiration of eligibility declaration) and replaces it with new section 185 (When eligibility declaration ends). New section 185 retains the existing grounds on which an eligibility declaration ends. These are: if the person is charged with a disqualifying offence, convicted of a serious offence or becomes a relevant disqualified person; if the person is issued with a negative notice; or a working with children authority held by the person is cancelled.

Clause 27 omits Chapter 8, Part 4, Divisions 3 to 8.

Clause 28 inserts new Chapter 8, Part 2 'Working with children check applications' and Part 3 'Withdrawal of application'.

Part 2 deals with working with children check applications.

New section 187 'Who may apply' consolidates previous sections 199, 211 and 260 and provides that a person may apply to the chief executive for a working with children

check or, if the person is a police officer or registered teacher, a working with children check for an exemption.

New section 188 'Form of application' provides that an application must be in the approved form, made in an approved way and signed by the applicant. A working with children check (general) application must be accompanied by the prescribed fee, unless section 189 applies. All working with children check (exemption) applications are processed free of charge.

The approved form must provide for the applicant to provide proof of the applicant's identity and the applicant's consent to employment screening and, if the application is a working with children check (exemption) application, a declaration by the applicant that he or she is a police officer or a registered teacher.

Additionally, the approved form must state that it is an offence for a disqualified person to make a working with children check application and that a disqualified person may apply for an eligibility declaration which, if issued, will allow the person to make a working with children check application.

New section 189 'No application fee for volunteers' provides the basis on which the prescribed fee for working with children check (general) applications may be waived. The chief executive is to waive the fee if satisfied the applicant: (a) has an agreement with another person (the employer) to be employed in regulated employment as a volunteer by the employer; or (b) proposes to carry on, or to continue carrying on, a regulated business other than for financial reward.

New section 190 'Chief executive may request further information' consolidates previous sections 201, 213 and 262. New section 190 provides that on receiving an application, the chief executive may give the applicant a notice requesting stated information to establish the applicant's identity or about a stated matter the chief executive believes to be relevant to the application. The notice by the chief executive must state that if the applicant does not comply with the request within the stated time, the application will be withdrawn.

New section 191 'Working with children authority continues in force pending decision' provides that a working with children authority remains in force for a person despite sections 231(1) and 289(1) until the earliest of the following occurs: (a) the person's application is decided or withdrawn; or (b) the current authority is cancelled; or (c) if the application is a working with children check (exemption) application, the applicant stops being a police officer or registered teacher.

New section 192 'Effect of application by disqualified person' applies if a disqualified person makes a working with children check application. The application has no effect. The chief executive is required to give notice to the applicant and each notifiable person for the person, that states the chief executive is satisfied the applicant is a disqualified person, the application has no effect, and that it is an offence for: (i) the applicant to, or to allow the applicant to, start or continue in regulated employment or restricted employment; or (ii) for the applicant to carry on a regulated business.

New section 193 ‘Effect of application by negative notice holder’ applies if a negative notice holder makes a working with children check application. The application has no effect. The chief executive is required to give notice to the applicant and each notifiable person for the person that states: the application has no effect because the person holds a negative notice; and the date the negative notice was issued. If a negative notice is issued to an applicant because they are a relevant disqualified person, a notice is to be given to the chief executive (child safety) and must state the provision of the Act under which the negative notice was issued.

New Part 3 deals with the withdrawal of applications.

New section 194 ‘Application of part’ clarifies that this part applies to a working with children check application and an eligibility application.

New section 195 ‘Notice of withdrawal’ provides that an application is withdrawn when the chief executive gives the applicant a notice (a withdrawal notice) that states the application is withdrawn. The chief executive is required to give a withdrawal notice to the applicant if, before the application is decided, the applicant withdraws the application under section 196 or because the chief executive is permitted or required under the part to withdraw the application.

For a working with children check application, the chief executive is required to give a withdrawal notice to each notifiable person for the applicant. A withdrawal notice must state the reason for the withdrawal.

New section 196 ‘Withdrawal by applicant’ provides that a person who makes an application may withdraw an application at any time before it is decided. This notice may be given to the chief executive either orally or in writing.

New section 197 ‘Deemed withdrawal – identity cannot be established’ provides that the chief executive must withdraw an application when the applicant’s identity cannot be established.

New section 198 ‘Deemed withdrawal – failure to comply with particular requests’ provides that the chief executive must withdraw an application where the applicant does not comply with particular requests.

New section 199 ‘Deemed withdrawal – applicant charged with disqualifying offence etc.’ provides that the chief executive must withdraw a working with children check application if the applicant is charged with a disqualifying offence. If this occurs, a withdrawal notice given to the applicant under section 195 must state that it is an offence for the applicant to start or continue in restricted employment. In addition, a withdrawal notice given to a notifiable person for the applicant must state that it is an offence to employ or continue to employ the applicant in restricted employment.

New section 200 ‘Deemed withdrawal – applicant no longer police officer or registered teacher’ provides that the chief executive must withdraw a working with children check (exemption) application made by a police officer if the applicant or the police commissioner gives the chief executive a written notice that states the applicant is no longer a police officer. The chief executive must also withdraw a working with children

check (exemption) application made by a registered teacher if the applicant or the college of teachers gives the chief executive a written notice that states the applicant is no longer a registered teacher.

Clause 29 inserts new Chapter 8, Part 4, heading ‘Working with children clearances’.

Clause 30 amends the heading of Chapter 8, Part 4, Division 9 to ‘Deciding application’.

Clause 31 replaces existing sections 219 and 220. New section 219 ‘Application of division’ provides that division 9 applies if a person has made a working with children check (general) application and the application has not been withdrawn.

New section 220 ‘Deciding application – generally’ provides that the chief executive must decide to approve or refuse an application. If the chief executive approves an application, the chief executive must issue a written notice (a working with children clearance) that states the application is approved. If the chief executive refuses the application, the chief executive must issue the person a written notice (a negative notice) that states the application is refused.

Clause 32 replaces existing section 224 with new section 224 ‘Issuing notice to relevant disqualified person’ which provides the chief executive must issue a negative notice if the chief executive is aware the person is a relevant disqualified person.

Clause 33 amends section 225 (Issuing prescribed notice to other persons) by inserting a new heading ‘Deciding application—person no longer relevant disqualified persons or convicted of serious offence’, omitting subsection (1)(a) as this is no longer necessary and renumbering the remaining subsections. It also amends section 225(2) to take account of the terminology changes made by the Bill.

Clause 34 replaces sections 230 and 231. New section 230 ‘Chief executive to be notified of change in particular information’ largely replicates existing section 230. It provides that if, before the chief executive decides a person’s application, the person’s personal information or employment details as stated in their application changes, the person must notify the chief executive within seven days after the change happens. The penalty for failing to provide this information is 10 penalty units.

New section 231 ‘Term of clearance and negative notice’ is substantially similar to previous section 231 and provides that a working with children clearance is current for three years unless it is cancelled earlier under chapter 8, part 5A. A negative notice remains in force until it is cancelled under chapter 8, part 5A.

Clause 35 amends the heading of Chapter 8, Part 4, Division 10 to ‘Steps after application decided’.

Clause 36 omits section 232 (Application of div 10) and replaces it with new section 232 ‘Application of division’ and section 232A ‘Issuing working with children card’.

New section 232 clarifies that division 10 applies if the chief executive decides a person’s working with children check (general) application.

New section 232A requires the chief executive to issue a person with a working with children card when the chief executive issues the person a working with children clearance.

Clause 37 makes a minor amendment to the heading of section 234 (Notifiable person to be notified of decision). Further, new section 234(1) has been amended to provide that the chief executive is required to give each notifiable person for the person a written notice stating whether the person was issued a working with children clearance or a negative notice.

New section 234(3) enables the chief executive to give a potential employer for the person a written notice stating whether the person was issued a working with children clearance or a negative notice.

Clause 38 omits Chapter 8, Part 4, Divisions 11 and 12 as they are no longer necessary. These issues are now dealt with in the new Chapter 8, Part 5A.

Clause 39 amends the heading of Chapter 8, Part 5 to ‘Working with children exemptions’.

Clause 40 omits Chapter 8, Part 5, Divisions 1 to 7 as they are no longer necessary.

Clause 41 amends the heading of Chapter 8, Part 5, Division 8 to ‘Deciding application’.

Clause 42 replaces previous sections 281 and 282 with new section 281 ‘Application of division’ and section 282 ‘Deciding application—generally’.

New section 281 inserts a substantially similar provision to previous section 281 and clarifies that division 8 applies if a person has made a working with children check (exemption) application and the application has not been withdrawn.

New section 282 provides that the chief executive must decide to approve or refuse an application. If the chief executive approves an application, the chief executive must issue a written notice (a working with children exemption) that states the application is approved. If the chief executive refuses the application, the chief executive must issue the person a written notice (a negative notice) that states the application is refused.

Clause 43 replaces section 285 with new section 285 ‘Deciding application if ss 283 and 284 do not apply’. New section 285 applies if neither sections 283 nor 284 apply to the person. The chief executive is required to decide the working with children (exemption) application in the way the chief executive is required to decide a working with children check (general) application under part 4, division 9. As a result, sections 221 to 229 apply in relation to making the decision.

Clause 44 omits and replaces section 288 and section 289.

New section 288 ‘Chief executive to be notified of change in particular information’ largely replicates existing section 288. It provides that if, before the chief executive decides a person’s application, the person’s personal information or employment details

as stated in their application changes, the person must notify the chief executive within seven days after the change happens. The penalty for failing to provide this information is 10 penalty units.

New section 289 'Term of exemption and negative notice' provides that a working with children exemption is current for three years unless the holder stops being a police officer or registered teacher or the exemption is cancelled under chapter 8, part 5A. A negative notice remains in force until it is cancelled under chapter 8, part 5A.

Clause 45 amends the heading of Chapter 8, Part 5, Division 9 to 'Steps after application decided'.

Clause 46 replaces section 290 with new section 290 'Application of division' and section 290A 'Issuing working with children card for exemption'.

New section 290 clarifies that division 9 applies if the chief executive decides a person's working with children check (exemption) application.

New section 290A requires the chief executive to issue a person with a working with children card when the chief executive issues the person a working with children exemption.

Clause 47 omits Chapter 8, Part 5, Divisions 10 and 11. These issues are now dealt with in the new Chapter 8, Part 5A.

Clause 48 inserts new Chapter 8, Part 5A 'Suspension or cancellation of working with children authority'. New Part 5A reframes a number of existing provisions but ultimately retains the effect of the existing suspension and cancellation framework.

Division 1 deals with preliminary matters.

New section 294 'Chief executive's decisions under this part' provides that in making a decision under Part 5A as to whether to cancel a person's working with children authority or negative notice or issue a person a working with children authority or negative notice, the chief executive must decide the matter as if it is a decision about a working with children check application. As a result, if the person is a police officer or registered teacher, part 5, division 8 applies to the decision or otherwise, part 4, division 9 applies.

Division 2 deals with the suspension of working with children authorities.

New section 295 'Application of division' provides that division 2 applies if the person who holds a working with children authority is charged with a disqualifying offence or if a registered teacher who holds a working with children clearance has their teacher registration suspended under section 49 of the *Education (Queensland College of Teachers) Act 2005*.

New section 296 'Chief executive must suspend authority' is a reframing and restatement of existing sections 240(2), (3) and (5) and 296(2), (3) and (5). It requires that the chief executive must suspend the person's working with children authority by

issuing the person a suspension notice which includes particular information set out in subsection (2), including that the person must return the person's working with children card immediately after the suspension notice is given, unless the person has a reasonable excuse.

New section 297(1) is a reframing and restatement of existing sections 240(6) and 296(6). It requires the chief executive to give each notifiable person for the suspended person a written notice that indicates the person's working with children authority is suspended, further details about the suspension and its effect, as well as that the notifiable person must not allow the person to perform work that is regulated employment, or restricted employment while the authority is suspended.

New section 297(2) provides that the chief executive may give a notice mentioned in section 297(1) to a potential employer of the person.

New section 298 'Effect of suspension of working with children authority' provides that the suspended person must not start in regulated employment; or if the person is engaged in regulated employment – perform work that is regulated employment; or start or continue to carry on a regulated business. The maximum penalty for this offence is 500 penalty units or 5 years imprisonment. It also provides a person to whom a notice was given under section 297, 342 or 344 must not allow the person to perform work that is regulated employment. The maximum penalty for this offence is 200 penalty units or 2 years imprisonment.

Subsection (4) makes clear that the person's employer must not terminate the person's employment or continued employment solely or mainly because the person's authority is suspended. Subsection (5) provides the authority remains in force even if it would otherwise expire under section 231(1) or 289(1).

New section 299 'When suspension of authority ends' provides that the suspension of a person's working with children authority ends if the chief executive decides to cancel the authority (section 300); the suspension ends (section 302); or the authority is otherwise cancelled under Part 5A.

New section 300 'Chief executive's decision about suspended notice' provides that the chief executive may decide whether to cancel the person's working with children authority on the chief executive's initiative or on application by the person. Subsection (2) makes it clear the chief executive is not required to decide the person's application while: (i) a charge for a disqualifying offence is pending; or (ii) if the person has been convicted of a disqualifying offence and the period allowed for an appeal has not ended; or if an appeal has commenced and not been finalised; or (iii) if the person is a registered teacher – the registration remains suspended under section 49 of the *Education (Queensland College of Teachers) Act 2005*.

New section 301(1) is a reframing and restatement of existing sections 241(6) and (7) and sections 299(6) and (7). It provides if the chief executive decides to cancel the person's working with children authority under section 300, the chief executive must cancel the authority, issue a negative notice and give the person a written notice with the particulars identified in section 301(1)(c). Under subsection (1)(d), the chief executive must give each notifiable person for the person a written notice that states the

authority has been cancelled and a negative notice has been issued – in particular, this notice will state it is an offence to employ or continue to employ the person in regulated or restricted employment.

New section 301(2) provides that the chief executive may give a notice to a potential employer of the person.

New section 302 ‘Chief executive decides not to cancel suspended authority’ deals with when the chief executive decides not to cancel the person’s working with children authority. This has the effect of ending the suspension. The chief executive is required to give a written notice to the person as well as each notifiable person or potential employer who received a notice under section 297. If the person’s authority did not expire while it was suspended, the chief executive must return the person’s working with children card.

Division 3 deals with cancelling working with children authorities without suspension.

New section 303 ‘Cancelling authority if relevant disqualified person’ requires the chief executive to cancel a person’s working with children authority if the person becomes a relevant disqualified person, regardless of whether the person’s authority is suspended under section 296.

New section 304 ‘Cancelling authority issued because of wrong or incomplete information’ is a reframing and restatement of existing sections 237(1)(a) and 296(1)(a). It provides the chief executive may cancel a person’s working with children authority if the chief executive is satisfied the decision to issue the authority was based on wrong or incomplete information and having considered the correct or complete information, it is appropriate to issue a negative notice.

New section 304A ‘Cancelling authority because of subsequent information’ is a reframing and restatement of existing sections 237(1)(b) and 296(1)(b). This section applies if, after issuing a working with children authority, the chief executive becomes aware of further information. Further information is disciplinary information or other criminal history that was not known when the decision to issue the authority was made or a decision made by a court or tribunal, after the authority was issued. After considering this further information, the chief executive may cancel a person’s working with children authority if it is appropriate to do so.

New section 304B ‘Action after decision’ deals with the action the chief executive is to take after making a decision under this division. If the chief executive is required, or decides, to cancel a person’s working with children authority, the chief executive must cancel the authority, issue a negative notice and give the person a written notice with the particulars set out in subsection (1)(c). If the chief executive’s decision is not to cancel a person’s authority, the person’s authority continues in force, subject to sections 231(1) or 289(1).

New section 304C ‘Notifiable persons and potential employers notified about cancellation’ provides that if the chief executive cancels a person’s working with children authority under this division, the chief executive must give each notifiable person for the person a written notice with the particulars identified in subsection (1).

Subsection (3) provides that the chief executive may give a notice to a potential employer of the person.

Division 4 deals with cancelling a working with children authority on the holder's request.

New section 304D 'Request to cancel working with children authority' is a reframing and restatement of existing sections 244(1) and 302(1). It provides that a person may ask the chief executive in writing to cancel the person's working with children authority, even if the authority is suspended.

New section 304E 'Cancellation of working with children authority' is a reframing and restatement of existing sections 244(2) and 302(2). It provides that after receiving the person's request, the chief executive must cancel the working with children authority and give the person a written notice with the particulars identified in subsection (b).

New section 304F(1) is a reframing and restatement of existing sections 244(4) and 302(4). It provides that the chief executive must give each notifiable person a written notice that states the person's authority has been cancelled on the person's request; and that it is an offence to employ or continue to employ the person in regulated employment, other than as allowed under sections 175 or 176C. Subsection (2) enables the chief executive to give a potential employer for the person a notice of the cancellation.

Division 5 deals with the cancellation of a negative notice on the holder's request.

New section 304G 'Application to cancel negative notice' is a reframing and restatement of existing sections 236(1)-(3) and 294(1)-(3). It provides that a negative notice holder who is not a relevant disqualified person may apply to the chief executive to cancel the negative notice. The application must be made more than two years after the negative notice was issued or, if a previous application to cancel the notice had been made, two years after the previous application.

Alternatively, the person may apply within the two year period if the decision to issue the negative notice was based on wrong or incomplete information or because the notice was issued to the person because the person was a relevant disqualified person and the person is no longer a relevant disqualified person.

New section 304H 'Form of application' is a reframing and restatement of existing sections 236(4)-(5) and 294(4)-(5). It provides that the application to cancel the negative notice must be in the approved form; made in an approved way; signed by the person and accompanied by the prescribed fee (if the person is not a police officer or registered teacher). The person's application may include anything the person considers relevant to assist the chief executive in making the decision, including how the person's circumstances have changed since the negative notice was issued.

New section 304I 'Deciding application' is a reframing and restatement of existing sections 236(7)-(8) and 294(7)-(8). It provides that if the chief executive decides to cancel the negative notice, the chief executive must cancel the notice and provide notification of this cancellation to the person. Alternatively, if the chief executive

decides not to cancel the negative notice, the chief executive must give the person a written notice which states the application has been refused and that the negative notice continues in effect, the reasons for the decision and the relevant review and appeal information.

Division 6 deals with other cancellations of negative notices.

New section 304J ‘Chief executive may act on own initiative or application’ is a reframing and restatement of existing sections 238(6) and 296(6). It provides that the chief executive may decide to act under this division on the chief executive’s own initiative or on application by a person to cancel the person’s negative notice.

New section 304K(1) is a reframing and restatement of existing sections 238(1)(b) and 296(1)(b). It provides that the chief executive may cancel a person’s negative notice if the chief executive is satisfied the negative notice was issued because the person was a relevant disqualified person and the person is no longer a relevant disqualified person. Subsection (2) provides that the chief executive may decide to substitute a working with children authority if the chief executive is satisfied it is appropriate to issue the authority to the person.

New section 304L ‘Negative notice issued because of wrong or incomplete information’ is a reframing and restatement of existing sections 238(1)(a) and 296(1)(a). It provides that the chief executive may cancel a person’s negative notice and substitute a working with children authority if the decision to issue the negative notice was based on wrong or incomplete information and having considered the correct or complete information, it is appropriate to issue the person a working with children authority.

New section 304M ‘Subsequent information’ is a reframing and restatement of existing sections 238(1)(c) and 296(1)(c). It provides that the chief executive may cancel a person’s negative notice and substitute a working with children authority if the chief executive becomes aware of subsequent information not known at the time the negative notice was issued and having considered this information, it is appropriate to issue the person a working with children authority.

New section 304N ‘Action after making decision’ sets out the actions available to the chief executive after making a decision under this division. If the chief executive decides to cancel a person’s negative notice under this division, the chief executive must cancel the notice. Subsection (2) provides if the chief executive decides to substitute a working with children authority for a person’s cancelled negative notice, the chief executive must issue the person with a working with children exemption, if the person is a police officer or a registered teacher, or otherwise, with a working with children clearance. Subsection (3) prescribes the action the chief executive must take if the chief executive decides to refuse an application mentioned in section 304J(b).

Division 7 deals with the return of a person’s working with children card.

New section 304O ‘Requirement to return suspended card’ applies to a person who has had their working with children authority suspended. It provides that the person must return the person’s working with children card immediately after a suspension notice is

given, unless the person has a reasonable excuse. The maximum penalty for failure to comply with this requirement is 100 penalty units.

New section 304P 'Requirement to return cancelled card' applies to a person if the chief executive has given the person a written notice that states the person's working with children authority is cancelled. It provides that the person must return their working with children card immediately, unless the person has a reasonable excuse. The maximum penalty for failure to comply with this requirement is 100 penalty units.

Clause 49 omits and replaces section 310 (Application of div 2) with new section 310 'Application of division'. New section 310 clarifies the persons to whom the division applies in relation to the chief executive obtaining information from the police commissioner.

Clause 50 replaces section 323 (Effect of change in police information about employee) with new section 323 'Notice of change in police information' which requires a person who holds a working with children authority or has made a working with children check application to notify the chief executive of a change in the person's police information.

The notice to the chief executive must be given in the approved form, in an approved way and, if the person is engaged in regulated employment, include information about the person's employment. The maximum penalty for failing to notify the chief executive of a change is 100 penalty units.

Clause 51 omits sections 324 and 325 as they are no longer necessary.

Clause 52 amends section 339 (Chief executive to give notice to particular entities about a change in police information). Subsection (1) omits section 339(c) as this is no longer necessary and subsection (2) makes technical changes.

Subsection (3) replaces section 339(3)(g) to provide that a notice given to a notifiable person must provide that, if a relevant person's change in police information is a conviction for a serious offence, it is an offence for an employer to allow the person to perform work that is regulated employment, unless and until a prescribed event happens for the person.

Subsection (4) inserts new section 339(4A) to provide that an employer to whom a notice is given about the conviction for a serious offence must not allow the relevant person to perform work that is regulated employment unless and until a prescribed event happens for the person. This offence relocates and restates the offence in existing section 194(2)(c)(ii). The maximum penalty is 200 penalty units or 2 years imprisonment.

Subsection (5) replaces section 339(6) to insert definitions for 'employer' and 'relevant person'. A 'relevant person' is a holder of a working with children authority, other than an authority that is suspended or cancelled under section 296 or a person who has made a working with children check application, if the application has not been decided or withdrawn. 'Employer' means a person who employs a relevant person. Subsection (6) renumbers section 339(4A) to (6) as section 339(5) to (7).

Clause 53 inserts new sections 344A ‘Chief executive may give authorised entities particular information’ and 344B ‘Use of information obtained under s 344A about a person’.

New section 344A(1) provides for who an authorised entity is for a person. Subsection (2) lists the types of information the chief executive may give to an authorised entity about the person. Information about the person may be accessed by the authorised entity electronically if the chief executive permits access to the information. Subsection (4) defines working with children notice for the section.

New section 344B provides for the confidentiality of information given or accessed by an authorised entity under section 344A. It provides that the person must not use the information, or disclose or give access to the information to anyone else, unless it is permitted under section 344B(3). The maximum penalty for breaching section 344B is 100 penalty units.

Clause 54 amends the heading of Chapter 8, Part 7 to ‘Miscellaneous provisions’.

Clause 55 omits and replaces Chapter 8, Part 7, Division 1 (Replacement notice).

New Division 1 deals with replacement cards.

New section 347 ‘Replacement of lost or stolen card’ requires a person to notify the chief executive if their working with children card is lost or stolen, within 14 days after the loss or theft. The maximum penalty for failing to notify the chief executive of the loss or theft is 10 penalty units. As part of the notification to the chief executive, the person has the option of either requesting a replacement card or asking the chief executive to cancel the person’s working with children authority under section 304D.

Subsection (3) requires the chief executive to cancel the lost or stolen card and, if the person has applied for a replacement card, issue a replacement working with children card to the person. Further, the chief executive is required to give the police commissioner written notice about the loss or theft.

New section 348 ‘Replacement card for change of name or contact details’ inserts a substantially similar provision to previous section 348. It provides that a person who holds a working with children authority or has applied to have their negative notice cancelled must notify the chief executive of any changes to their personal information, including their name, within 14 days after the change happens. The maximum penalty for failing to notify the chief executive of this change is 10 penalty units.

If the chief executive considers it appropriate to do so, the chief executive may issue a replacement working with children card to the person.

New section 348A ‘Requirement to return replaced card’ provides that a person who holds a working with children card (the replaced card) who is issued a further working with children card, must, within 7 days after the further card is issued, return the replaced card to the chief executive. The maximum penalty for this offence is 10 penalty units.

New Division 1A deals with changes in regulated employment or regulated business.

New section 349 ‘Holder must notify change of regulated employment or regulated business’ inserts a similar provision to previous section 349. It provides that if a holder of a working with children authority (that is not suspended) has a change in their circumstances as prescribed by subsection (1), the holder must notify the chief executive of this change within 14 days.

The changes include if the person ends their regulated employment or changes to a new type of regulated employment; or the person stops carrying on a regulated business; or the person starts carrying on another regulated business (which is different to the one the person was carrying on, or proposing to carry on, when the authority was issued). The maximum penalty for this offence is 10 penalty units.

New section 350 ‘Holder must notify change and pay prescribed application fee—volunteer or business carried on other than for financial reward’ applies to a holder of a working with children clearance (that is not suspended) who, during the term of their clearance, is or was employed in regulated employment only as a volunteer; or is, or was carrying on a regulated business on a not-for-profit basis and then becomes employed in regulated employment as a paid employee or starts carrying on a regulated business for financial reward.

Subsection (2) provides the person must notify the chief executive of this change within 14 days and also pay the prescribed fee if subsection (3) applies. If the chief executive considers it appropriate to do so, the chief executive may issue a replacement working with children card to the person.

Division 1B deals with the holder of a working with children exemption who stops being a police officer or registered teacher.

New section 350A ‘Holder and notifiable persons notified about expiry of working with children exemption’ applies to persons who stop being a police officer or registered teacher and, as a result, their working with children exemption ends. The chief executive is required to give written notice to the person as well as each notifiable person. In addition, the person is required to return their working with children card to the chief executive immediately, unless the person has a reasonable excuse.

New section 350B ‘Effect of negative notice if holder no longer police officer or registered teacher’ applies if a police officer or registered teacher who holds a negative notice stops being a police officer or registered teacher. Subsection (2) provides that the person’s negative notice continues in effect.

Clause 56 inserts new section 351 ‘False or misleading disclosure’. New section 351 largely replicates existing section 351 and provides that a person must not knowingly state anything the person knows to be false or misleading in a material particular to the chief executive for the purposes of chapter 7 or chapter 8. The maximum penalty for a breach of this provision is 100 penalty units or 2 years.

Clause 57 amends section 352 (False or misleading documents) by inserting the words ‘chapter 7 or’ after ‘document for’ in section 352(1).

Clause 58 inserts new section 354A ‘Stay of operation of particular decisions on application for review’. New section 354A applies to a decision of QCAT on application for review of a chapter 8 reviewable decision under section 354 to set aside an exceptional case decision. Subsection (2) provides that QCAT’s decision does not take effect until the end of the period within which an appeal against QCAT’s decision may be started; or, if an appeal against QCAT’s decision is started, the appeal is decided or withdrawn. Subsection (3) puts beyond doubt that this section applies despite sections 145 and 152 of the QCAT Act.

For the purposes of new section 354A, ‘exceptional case decision’ includes 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 to the person; or refused to cancel the person’s negative notice.

Clause 59 amends section 357 ‘Disqualification order’ to provide that the effect of a disqualification order made by a court is that a person may not hold a working with children authority, or make a working with children check application for a stated period; or may never hold a working with children authority or make a working with children check application. Subsection (2) makes minor terminology changes.

Clause 60 omits old Chapter 8A (Criminal history checks, and assessing suitability, of persons employed in the department) and replaces it with new Chapter 8A ‘Register of regulated persons who provide home-based care services’.

Part 1 deals with preliminary matters.

New section 357A ‘Definitions for chapter’ inserts and signposts the relevant definitions for the purposes of the register.

New section 357B ‘Meaning of *home-based care service*’ defines home-based care service to mean:

- care provided to a child by an approved foster carer or approved kinship carer under the *Child Protection Act 1999* (foster or kinship care);
- care provided to a child as part of a family day care service provided in a family day care residence (home-based family day care service);
- a stand-alone service provided to a child in the home of a carer in relation to the service (home-based stand-alone care service).

New section 357C ‘Meaning of *regulated person*’ defines regulated person for a home-based care service as follows:

- for foster or kinship care—the approved foster carer or kinship carer under the *Child Protection Act 1999* who provides the care; or
- for a home-based family day care service—a family day educator or family day educator assistant under the Education and Care Services National Law (Queensland) who provides the service; or
- for a home-based stand-alone care service—the carer, or a staff member, in relation to the service.

New section 357D ‘Meaning of *associated adult* of a regulated person’ provides that a person is an associated adult of a regulated person if the person is:

- for a regulated person who is an approved foster carer or kinship carer—an adult member of the carer’s household under the *Child Protection Act 1999*; or
- for a regulated person who is a family day care educator or family day care educator assistant—an adult occupant of the family day care residence from which the service is provided; or
- for a regulated person who is a carer or staff member for a home-based stand-alone care service—an adult occupant of the home from which the service is provided.

New section 357E ‘Who is an *authorised user*’ sets out the authorised users of the register.

Part 2 deals with the register.

New section 357F ‘Register of regulated persons who provide home-based care service to children’ requires the chief executive to keep an up-to-date register of regulated persons who provide a home-based care service. The purpose of the register is to promote the safety of children by enabling authorised users to access up-to-date information about a regulated person who provides a home-based care service and each person who is an associated adult. In addition, the chief executive may keep the register in the form the chief executive considers appropriate.

New section 357G ‘Contents of the register’ prescribes the information the register must contain about each regulated person for a home-based care service and each associated adult of the regulated person. For example, this includes identifying information about the person and information about a working with children check application made by the person or a working with children authority the person holds. Subsection (2) clarifies that the register may also contain information about a person who is no longer a regulated person for a home-based care service or an associated adult of a regulated person as well as other information the chief executive considers appropriate to ensure the register is accurate, comprehensive and usable and to enable its effective and efficient operation.

New section 357H ‘Access to register’ states that the chief executive may allow an authorised user to access information in the register.

New section 357I ‘Use, disclosure and giving access to confidential information’ provides for the confidentiality of information in the register. It applies to a person who is, or has been, an authorised user and, in that capacity, was given, or given access to, confidential information in the register; or a person who is given, or given access to, confidential information in the register by an authorised user.

Subsection (2) provides the person must not use the information, or disclose or give access to the information to anyone else, unless it is permitted under section 357I(3). The maximum penalty for this offence is 100 penalty units.

Clause 61 omits existing section 375 (Positive notice blue card is evidence of holding positive notice) and replaces it with new section 375 ‘Working with children card is evidence of authority’. New section 375 provides that:

- a working with children card issued to a person, other than a person who is a police officer or registered teacher, is evidence that the person holds a working with children clearance; and
- a working with children card issued to a police officer or registered teacher is evidence that the person holds a working with children authority.

Clause 62 amends section 377 (Indictable and summary offences) to provide an offence against the WWC Act is an indictable offence, and a crime, if the maximum penalty for the offences is 500 penalty units or more or five years imprisonment or more.

Clause 63 amends section 378 (Proceedings for indictable offences) to provide that the magistrate must not hear an indictable offence summarily if satisfied the defendant, if convicted, may not be adequately punished on summary conviction; or the magistrate is satisfied, on application made by the defence, that because of exceptional circumstances, the offence should not be heard and decided summarily.

Subsection (2) amends section 378(4) to provide that the maximum penalty which can be imposed summarily is 100 penalty units or three years imprisonment.

Clause 64 omits existing section 384 (Confidentiality of information about criminal history or related information) and replaces it with new section 384 (Confidentiality of police, disciplinary and mental health information) to modernise and simplify the duty of confidentiality under the WWC Act.

New section 384 applies to a person who is or has been a public service employee employed in the department and, in that capacity, was given, or given access to a document containing information prescribed in section 384(1)(b). Subsection (2) provides section 384 also applies to a person who is or has been: (i) the Minister and, in that capacity, received a report under section 395 that contains information mentioned in section 385(1)(b); (ii) a member of the Minister's staff and, in that capacity, was given, or given access to, a report under section 395 or information mentioned in section 384(1)(b).

Subsection (3) provides a person must not use the information, or disclose or give access to the information to anyone else, unless it is permitted under section 384(4). The maximum penalty for this offence information is 100 penalty units or 2 years imprisonment.

Clause 65 inserts new section 398A 'Chief executive may arrange for use of information system' which provides that the chief executive may approve an information system for generating, sending, receiving, storing or otherwise processing electronic communications between the chief executive and another person; or generating a decision of the chief executive.

Clause 66 inserts new Chapter 11, Part 19 'Transitional provisions for Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2018'.

Division 1 deals with preliminary matters. New section 549 'Definitions for part' prescribes definitions for new Chapter 11, Part 19.

Division 2 deals with the application of particular provisions before changes to employment screening. New sections 550 to 552 provide transitional arrangements to deal appropriately with the following matters:

- the effective operation of the register of home-based care services from its commencement;
- the stay of operation of particular decisions of QCAT; and
- new regulated employment.

Division 3 deals with new disqualifying offences. New section 553 inserts definitions for this division. New sections 554 to 565 provide transitional arrangements to deal appropriately with the following matters:

- the effect of a conviction or charge for new disqualifying offences;
- existing eligibility applications;
- expiry of eligibility declarations for new disqualifying offences;
- existing prescribed notice applications and exemption notice applications;
- cancelling positive notices or positive exemption notices held by new disqualified persons;
- existing applications to cancel a negative notice or a negative exemption notice;
- existing applications to cancel a suspended positive notice or positive exemption notice;
- undecided reviews and appeals by new disqualified persons;
- reviews of chapter 8 reviewable decisions about new disqualified persons;
- appeals by new disqualified persons against a QCAT decision;
- existing appeals by the chief executive against a QCAT decision; and
- existing rights of appeal by the chief executive against a QCAT decision.

Division 4 deals with transitional provisions for changes to employment screening. New section 566 inserts definitions for this division. New subdivision 2 deals with existing eligibility declarations, prescribed notices, exemption notices and related applications.

New sections 567 to 577 provide transitional arrangements to deal appropriately with the following matters:

- existing eligibility applications or eligibility declarations;
- existing prescribed notice applications;
- existing positive notices and positive notice blue cards;
- existing negative prescribed notices;
- existing exemption notice applications;
- existing positive exemption notices and positive exemption notice cards;
- expiry of transitioned positive exemption notices;
- existing negative exemption notices;
- existing applications to cancel a positive notice or positive exemption notice;
- existing applications to cancel a negative notice or negative exemption notice; and
- existing applications to cancel suspended positive notice or positive exemption notice.

New subdivision 3 deals with reviews and appeals. New sections 578 to 580 provide for transitional arrangements in relation to the following matters:

- reviews not started on commencement;
- appeals not started on commencement; and
- undecided reviews and appeals.

New subdivision 4 deals with other transitional provisions. New section 581 provides for definitions for this subdivision. New sections 582 to 588 provide for transitional arrangements in relation to the following matters:

- things done before commencement in relation to eligibility declarations, prescribed notices or exemption notices;
- obligations or powers arising before commencement in relation to eligibility declarations, prescribed notices or exemption notices;
- existing employer notices about employment or proposed employment of a person
- existing orders under section 357;
- particular references in the WWC Act or a document;
- applications withdrawn or taken to have been withdrawn before commencement; and
- the continuing obligation of confidentiality under section 384.

Division 5 deals with the transitional regulation-making power. New section 589 inserts a transitional regulation-making power.

Clause 67 omits existing Schedule 1, sections 4 and 4A and replaces it with new section 4 'Education and care services and similar employment' and 4A 'Child care and similar employment'.

Schedule 1, section 4(1) and (4) consolidate and simplify the existing components of this category of regulated employment. The new inclusions are subsections (2) and (3) which provide:

- if an adult is an occupant of a home in which a home-based stand-alone care service—the adult is taken to be a volunteer who is employed in regulated employment; and the carer who provides the service is taken to be the person who employs the adult in the regulated employment; and
- if an adult is an occupant of a family day care residence—the adult is taken to be a volunteer who is employed in regulated employment; and the approved provider under the Education and Care Services National Law (Queensland) of the family day care service provided in the residence is taken to be the person who employs the adult in the regulated employment.

New Schedule 1, section 4A largely replicates the existing section and improves its readability.

Clause 68 amends Schedule 1, section 6 (Health, counselling and support services) by omitting section 6(3)(a). This has been relocated to new Schedule 1, Part 3, section 28A. Subsection (2) renumbers the remainder of Schedule 1, section 6(3).

Clause 69 inserts new Schedule 1, section 28A after section 28. New section 28A 'Employment of lawyers' provides that chapter 7 of the WWC Act does not apply to

the employment of a person who is an Australian lawyer who may engage in legal practice in this State under the *Legal Profession Act 2007*, to the extent the person is engaging in legal practice.

Clause 70 amends Schedule 4 (Current disqualifying offences) by inserting the following entries for the Criminal Code –

- section 211 (Bestiality)
- section 354 (Kidnapping) with the qualifier that the offence was committed against a child and the context in which the offence was committed was not familial
- section 354A (Kidnapping for ransom) with the qualifier that the offence was committed against a child
- section 363 (Child-stealing) with the qualifier that the context in which the offence was committed was not familial
- section 363A (Abduction of a child under 16) with the qualifier that the context in which the offence was committed was not familial.

Subsection (2) and (3) remove relevant qualifiers so that the murder of an adult and the rape of an adult will be treated as disqualifying offences.

Clause 71 amends Schedule 7 (Dictionary) by omitting unnecessary terms and inserting a range of new definitions.

In particular, changes are made to the definition of ‘notifiable person’ in Schedule 7 is to provide if the chief executive is aware the person:

- is employed at a State school within the meaning of *the Education (General Provisions) Act 2006*—the notifiable person is the principal of the State school; and the chief executive of the department in which the *Education (General Provisions) Act 2006* is administered;
- is an approved provider or staff member for a QEC service, or a volunteer who works in or as part of a QEC service, under the *Education and Care Services Act 2013*—the notifiable person is the chief executive (education and care);
- is an adult occupant of a home in which a home-based stand-alone care service is provided—the notifiable person is the chief executive (child care);
- is an approved provider or staff member in relation to an education and care service under the Education and Care Services National Law (Queensland)—the notifiable person is the chief executive (education and care); and
- is an adult occupant of a family day care residence—the notifiable person is the chief executive (education and care).

Part 3 Amendment of other Acts

Division 1 Amendment of Disability Services Act 2006

Clause 72 states that this division amends the *Disability Services Act 2006*.

Clause 73 inserts new section 109A ‘Stay of operation of particular decisions on application for review’ that applies to a decision of QCAT, when hearing an application for a review of a part 5 reviewable decision under section 109 to set aside an exceptional case decision. Subsection (2) provides that QCAT’s decision does not take effect until

the end of the period within which an appeal against QCAT's decision may be started; or, if an appeal against QCAT's decision is started, the appeal is decided or withdrawn. Subsection (3) puts beyond doubt that this section applies despite sections 145 and 152 of the QCAT Act.

For the purposes of new section 109A, 'exceptional case decision' includes 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 the person; or refused to cancel the person's negative notice or negative exemption notice.

Division 2 Amendment of Public Service Act 2008

Clause 74 states this division amends the *Public Service Act 2008*.

Clause 75 amends section 150 (Definitions for pt 6) by omitting the definitions for 'positive exemption notice' and 'positive prescribed notice' and inserting a definition for 'working with children authority'. In addition, other consequential and technical changes to numbering and cross-referencing are made.

Clause 76 makes consequential and technical amendments to section 151 (Application of div 2) as a result of numbering and cross-referencing changes.

Clause 77 makes consequential and technical amendments to 156 (Application of div 3) as a result of numbering and cross-referencing changes.

Clause 78 amends section 157 (Definitions for div 3) by omitting unnecessary definitions and inserting a new definition for 'negative notice'.

Clause 79 amends section 158 (Prescribed notice or exemption notice required for child-related duties) to provide that the chief executive of a department must ensure a person does not perform child-related duties in the department unless the person holds a working with children authority; or if the person is a police officer or registered teacher, the person has made a working with children check (exemption) application.

Clause 80 omits section 159 (Chief executive to apply for prescribed notice or exemption notice) as this provision is no longer necessary.

Clause 81 omits existing sections 161 and 162 and replaces it with new section 161 'Engaging a police officer or registered teacher who is a public service employee before exemption is issued' and new section 162 'Engaging a police officer or registered teacher who is not a public service employee before exemption is issued'.

New section 161 provides that if the chief executive of a department engages a police officer or a registered teacher who is also a public service employee to perform child-related duties and that person is either issued with a negative notice or the person's application is withdrawn under the WWC Act, the chief executive must ensure that the person does not continue to perform child-related duties.

New section 162 provides that if the chief executive of a department engages a police officer or a registered teacher to perform child-related duties and the person is not a public service employee, the chief executive may only appoint the person as prescribed under section 162(2).

Clause 82 amends section 163 (Effect of suspension or cancellation of positive prescribed notice or positive exemption notice) to reflect changes in terminology.

Clause 83 amends the heading of Chapter 5, Part 6, Division 3A to 'Further assessment of person to whom working with children authority is issued'.

Clause 84 makes minor consequential amendments to section 165A (Chief executive may decide to obtain criminal history).

Clause 85 amends Schedule 4 (Dictionary) by omitting redundant terms and inserting new definitions for 'negative notice', 'working with children authority' and 'working with children exemption'. Minor consequential changes are also made to the definition of 'child-related duties' and 'relevant duties'.

Division 3 Other amendments

Clause 86 states that Schedule 1 amends the WWC Act and Schedule 2 amends the legislation mentioned in it.