Child Protection Reform and Other Legislation Amendment Bill 2021

Explanatory Notes

Short title

The short title of the Bill is the Child Protection Reform and Other Legislation Amendment Bill 2021.

Policy objectives and the reasons for them

Queensland is more than half-way through the 10-year *Supporting Families Changing Futures* reform program (SFCF reforms). As part of the SFCF reforms, the *Child Protection Act 1999* (the Act) has been progressively amended (2014, 2016 and 2017) and comprehensively reviewed from 2015-2017. Priority amendments were made through the *Child Protection Reform Amendment Act 2017*, with further opportunities for improvement to be progressed in subsequent stages.

The *Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families* (the discussion paper) was released for public comment in 2019. The discussion paper proposed options for reform relating to three key focus areas: reinforcing children's rights in the legislative framework; strengthening children's voices in decisions that affect them; and reshaping the regulation of care. The options in the discussion paper are intended to address outstanding recommendations from the Queensland Child Protection Commission of Inquiry (QCPCOI), the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), the Queensland Family and Child Commission (QFCC) *Keeping Queensland's children more than safe: Review of the foster care system* report (QFCC's foster care report), and previous consultation. The options in the discussion paper also considered the *Human Rights Act 2019* and legislative frameworks in other jurisdictions.

The former Department of Child Safety, Youth and Women received 54 written submissions and 181 responses through Get Involved, 210 responses through the Youth eHub; and undertook 10 targeted face-to-face consultation sessions attended by over 150 people including children and young people, parents and families, carers, peak bodies, service providers, legal professionals and departmental staff.

There was strong stakeholder support for further legislative reform, particularly for strengthening children's voices in decisions that affect them.

Combined with practical initiatives already underway within the Department of Children, Youth Justice and Multicultural Affairs (the department), the Bill will amend the Act to better support children and young people in care, and streamline, clarify or improve processes. This is proposed to be achieved by:

- reinforcing children's rights in the legislative framework
- strengthening children's voices in decisions that affect them
- streamlining, clarifying and improving the regulation of care.

The Bill also amends the *Adoption Act 2009* (Adoption Act) to resolve technical issues relating to delegations under the *Immigration (Guardianship of Children) Act 1946* (Cth) (IGOC Act).

The Bill also makes priority amendments to the *Working with Children (Risk Management and Screening Act) 2000* (WWC Act). The policy objectives of these amendments are to:

- provide a legislative basis for the chief executive (working with children) to request domestic violence information from the Queensland Police Commissioner (police commissioner) for the purposes of a blue card assessment;
- facilitate Queensland's participation in the Working with Children Check National Reference System (WWCC NRS)—a national database which enables jurisdictions to identify persons who have been deemed ineligible to work with children in another state or territory;
- enable the chief executive (working with children) to have regard to adverse decisions in other jurisdictions as part of a blue card assessment;
- simplify and streamline the categories of regulated employment and regulated business that deals with licensed care services to better reflect the contemporary service delivery model used by licensees in discharging their functions, including greater outsourcing to contractors and sub-contractors; and
- enable a licensee to have greater visibility over the blue card status of each person performing a risk-assessed role for a licensed care service operated under the licence.

Domestic violence information sharing

Information about the existence of domestic violence, particularly where more than one domestic violence order has been issued and there are different complainants, is relevant to a blue card assessment.

Recommendation 39 from the QFCC's report, *Keeping Queensland's children more than safe: Review of the blue card system* (QFCC's blue card report), recommended amendments to the WWC Act to allow Blue Card Services (BCS) to obtain domestic violence information about blue card applicants.

The QFCC acknowledged that considering civil domestic and family violence information as part of a blue card assessment is complex but that accessing this information where there is other criminal history will strengthen the blue card system by enabling a holistic risk assessment.

Participation in the WWCC NRS

All states and territories operate their own working with children check (WWCC) schemes. Currently, Queensland has no visibility of decisions made in other jurisdictions and there is no ability under the WWC Act for BCS to share information about blue card outcomes with worker screening units in other jurisdictions.

The Royal Commission in its *Working with Children Check Report* (WWCC Report) highlighted the lack of visibility of WWCC outcomes across jurisdictions and the limitations for state and territory screening agencies to be able to take into account previous interstate WWCC decisions that may influence the eligibility of an applicant. In particular, the Royal Commission noted that there was little visibility between jurisdictions in relation to individuals who cross borders and who have already been found ineligible to work with children based on their known police or disciplinary information.

The Royal Commission recommended the Commonwealth Government facilitate a national model for WWCCs by establishing a centralised database that is readily accessible to all jurisdictions to record WWCC decisions.

In meeting the intent of the Royal Commission's recommendation, the Commonwealth Government established the WWCC NRS, a centralised database housed and operated by the Australian Criminal Intelligence Commission (ACIC). ACIC commenced operation in July 2016, when the former Australian Crime Commission (ACC) and CrimTrac were merged. A reference in these explanatory notes to the ACC (see section 7(1A) the *Australian Crime Commission Act 2002*) is a reference to the ACIC (see section 8 *Australian Crime Commission Regulation 2018*).

The amendments represent a critical first step towards achieving greater national transparency of WWCCs and demonstrate Queensland's commitment to responding to the recommendations of the Royal Commission.

Licensed care services amendments

The existing categories of regulated employment and regulated business under the WWC Act which deal with care of children by licensed care services were inserted in 2006 – it has not been amended in approximately 15 years. However, the way in which services are delivered by licensed care services has changed in this time with some functions of a licence being outsourced to contractors and subcontractors. As a result, amendments are required to ensure blue card screening requirements remain contemporary and responsive.

Achievement of policy objectives

The Bill will achieve its objective of reinforcing children's rights in the legislative framework by:

- requiring the Aboriginal and Torres Strait Islander Child Placement Principle to be applied to a standard of 'active efforts', meaning efforts that are purposeful, thorough and timely
- broadening the purpose of the Act to better reflect the intent of the legislation and functions of the chief executive
- clarifying how the general principles for ensuring the safety, wellbeing and best interests of a child apply when determining whether a decision or action is in the best interests of a child
- ensuring children are provided with information about their rights and where they can seek help

- expanding the list of rights enshrined in the charter of rights ('Charter') to include rights relating to culture, religion and language, fairness, respect, development of identity, personal belongings, play and recreational activities
- expanding the existing reviewable decisions framework to allow children to more effectively question decisions made about their care
- changing the wording of the 'partnership' element of the Aboriginal and Torres Strait Islander Child Placement Principle to more clearly reflect, and clarify the department's commitment to partnering with Aboriginal and Torres Strait Islander peoples, community representatives and organisations in policy and program development, service design, delivery and individual child protection case decision-making.

The Bill will achieve its objective of strengthening children's voices in decisions that affect them by:

- introducing participation principles to ensure children and young people are provided with real and ongoing opportunities to have a voice and ensure persons involved in the administration of the Act have an obligation to tailor participation to a child's needs and circumstances, and continue to do so in a way that is inclusive and accessible
- ensuring that people involved in the administration of the Act genuinely listen to, engage with, and understand the child's views
- providing for children's views to inform system design and delivery of services.

The Bill will achieve its objective of streamlining, clarifying and improving the regulation of care by:

- providing that the chief executive may request expanded criminal history information for the purpose of assessing the suitability of a person to be a provisionally approved carer (and adult members of the person's house)
- providing for carer certificates to be renewed every three years rather than every two years
- streamlining carer assessment processes for existing kinship carers
- clarifying the operational reporting requirements for foster and kinship carers
- establishing the legislative framework for a carers' register
- strengthening the carer support framework
- ensuring that carers and licensees are provided with all relevant information to allow them to make informed decisions about placements and provide appropriate care
- clarifying that a licence may be amended to add or remove a licensed premise
- removing a requirement for amended, suspended or cancelled licences to be returned to the chief executive.

The Bill will also make a number of minor and technical amendments, including:

- providing that information held by the department about a child may be disclosed to a child's parent if the child dies, regardless of whether the child was subject to a child protection order, or whether they were an adult or a child when they died
- providing that information about a person may be disclosed if a person to whom the information relates is an adult and consents in writing to the disclosure of the information
- clarifying when a notifier's identity can be disclosed to a law enforcement agency (responds to Recommendation 8 of the Royal Commission's Criminal Justice Report)

- clarifying that information that is subject to a privilege is not required to be disclosed under Chapter 5A of the Act, even if it is required by the chief executive under section 159N
- providing that the court may dispense with the need to serve a notice of appeal in certain circumstances
- providing that certain orders continue on application to extend, whether or not they affect custody or guardianship
- clarifying the definition of "kin" to ensure that for Aboriginal or Torres Strait Islander children, it contemplates Aboriginal tradition or Island custom, as well as the cultural connection between the person identified as kin and the child
- providing for families to consent to the involvement of an independent entity in child protection matters and clarifying the role of the independent entity
- clarifying that licensees must ensure that persons performing risk-assessed roles for licensed care services are suitable persons
- streamlining the process for an aggrieved person to apply to QCAT for a review of a decision about in whose care a child has been placed.

In its entirety, the Bill will support or address outstanding recommendations from the Royal Commission (Recommendations 8.17, 8.18, 8.19, 8.20, 8.21, 8.22 and 8.23, and Criminal Justice Report recommendation 8) and QFCC's foster care report (Recommendation 11), as well as some proposals from stakeholders gathered during consultation.

The Bill amends the Adoption Act to resolve technical issues arising with the Adoption Act as a result of the delegation instrument made under the IGOC Act. Section 199 of the Adoption Act enables the chief executive to apply to the Childrens Court for a final intercountry adoption order for a child when the child has been in the custody of the prospective adoptive parents for at least one year, in circumstances mentioned in section 198(1). Section 198(1)(c) provides that these circumstances include where the chief executive, as the child's guardian, placed the child in the prospective adoptive parents' care. The chief executive of the department is usually the guardian, and responsible for the placement of children in Queensland as part of Australia's intercountry adoption program because of a delegation by the Minister responsible for administering the IGOC Act. IGOC Instruments of Delegation refer to specific agencies, work areas and positions, which can have a significant impact on the operation of the Adoption Act in the event of machinery of government (MoG) changes – for example, the instrument of delegation made in 2020 referred to the former Department of Child Safety, Youth and Women which was renamed the Department of Children, Youth Justice and Multicultural Affairs, as a result of the 2020 State Election and the subsequent MoG. Further technical issues with the delegation instrument have been identified that impact the operation of the Adoption Act in relation to intercountry adoptions.

The Adoption Act does not currently allow for the chief executive to supervise the wellbeing and interests of the child under section 198, or to apply for a final adoption order under section 199, unless the chief executive, as the child's guardian, has placed the child in the custody of their prospective adoptive parents.

The Bill retrospectively amends the Adoption Act to enable the chief executive to supervise the wellbeing and interests of non-citizen children in the custody of their prospective adoptive parents, and to apply to the Childrens Court for final adoption orders for non-citizen children. The amendments provide for situations where the non-citizen child has been placed by the

Commonwealth Minister responsible for administering the IGOC Act, and/or where guardianship of the non-citizen child has not been delegated to the chief executive.

Amendments relating to the blue card system

Domestic violence information sharing

The Bill amends the WWC Act to include a new head of power to enable the chief executive (working with children) to request domestic violence information from the police commissioner. A request can only be made where the chief executive (working with children) reasonably believes a domestic violence order may have been made against the person. If there is domestic violence information about a person, the police commissioner may provide the chief executive (working with children) with a brief description of the circumstances of a domestic violence order mentioned in the domestic violence information.

Such an information sharing arrangement already exists for the purposes of disability worker screening under the *Disability Services Act 2006* (DSA). A complementary minor amendment is proposed to the DSA to reflect the nature of information captured by this information sharing arrangement.

The Bill also makes flow-on changes to the decision-making framework in the WWC Act to enable the chief executive (working with children) to have regard to domestic violence information as part of a working with children check assessment.

Participation in the WWCC NRS

From an information sharing perspective, the Bill amends the WWC Act to enable the chief executive (working with children) to:

- enter and upload key decisions on the WWCC NRS – these decisions will be limited to adverse outcomes including negative notices, suspensions, cancellations, and withdrawals;
- give information to an interstate screening unit if the chief executive reasonably believes the information is relevant to the functions of the interstate screening unit; and
- request information from an interstate screening unit about a person if the chief executive believes the unit has information that is relevant to the performance of the chief executive's screening functions.

From a decision-making perspective, the amendments ensure that the chief executive (working with children) can use information obtained from the WWCC NRS – in particular, to mutually recognise an adverse interstate WWC decision about a person which is in effect in another jurisdiction.

This means that a person who is currently prohibited from working with children in another jurisdiction will be prohibited from working with children in Queensland. For example, the amendments specifically provide:

- an applicant who is the holder of a negative notice in another jurisdiction will have their application withdrawn in Queensland;

- a cardholder whose interstate authority is suspended will have their Queensland authority suspended, and the chief executive will not be required to consider lifting their suspension until the suspension in the other jurisdiction ends;
- a cardholder who is issued with a negative notice in another jurisdiction while holding a authority in Queensland will have their Queensland authority cancelled, with no right of review; and
- an applicant for whom an adverse interstate decision is no longer in effect will be risk assessed by the chief executive (working with children).

The types of adverse decisions made in other jurisdictions vary. Therefore, the amendments (in particular the definition of adverse interstate WWC decision in new section 20) have been drafted to be inclusive of any interstate decision which imposes a prohibition (whether temporary or final) on a person working with children. For example, in some jurisdictions, an interim bar is issued to an applicant if the decision-maker considers it is likely that there is a risk to the safety of children if the applicant engages in child-related work pending the determination of the application; while in others, a person has their application refused but is not formally issued with a negative notice.

Licensed care services amendments

The Bill amends the WWC Act by restructuring the categories of regulated employment and regulated business that deal with licensed care services to ensure that blue card screening requirements will be imposed on any person who is performing a risk-assessed role for a licensed care service.

To assist licensed care services in managing their obligations, the Bill also amends the definition of notifiable person to enable a licensee to link to any person performing a risk-assessed role for a licensed care service. This will allow the licensee to receive updates in relation to any changes to the person's blue card status.

Reinforcing children's rights

Since the United Nations Convention on the Rights of the Child came into force in 1990, the rights of children have slowly been gaining worldwide importance and have been adopted comprehensively by other jurisdictions. For example, New Zealand's *Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018* outlines certain rights for children, as well as how a child's support worker will help the child to exercise their rights.

While the Act, which was originally drafted to incorporate the key elements of the United Nations Convention on the Rights of the Child, has a number of provisions to uphold the rights of children in need of protection, the importance of recognising and protecting children's rights and ensuring children are aware of them has been a consistent theme in various inquiries and reviews including the QCPCOI and the Royal Commission. These inquiries and reviews also identified that in practice, many children in care are not aware of their rights and do not feel enabled to challenge decisions that affect them.

On 1 January 2020 the *Human Rights Act 2019* (HR Act) commenced. The HR Act provides that every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child (s26). The HR Act also protects families (s26), cultural rights generally (s27), cultural rights for Aboriginal and Torres Strait Islander peoples (s28), a right to access education appropriate to the child's needs (s36), and the right to access health services without discrimination (s37).

Feedback received during the 2015-2017 comprehensive review of the Act was consistent with the findings of other inquiries and reviews. During this consultation process, stakeholders recognised the importance of the legislative framework for protecting children's rights and felt that many children in care do not know or understand their rights or how to exercise them.

The CREATE Foundation's 2018 national survey of children in care published in the report *Out-of-Home Care in Australia: Children and Young People's Views After Five Years of National Standards*, found that only about 30 percent of children in care in Queensland knew about the charter of rights.

The Bill therefore amends the Act as set out below, to reinforce and strengthen existing provisions relating to children's rights and support a stronger human rights framework.

Aboriginal and Torres Strait Islander Child Placement Principle

Section 5C of the Act provides additional principles that apply for administering the Act for Aboriginal or Torres Strait Islander children.

Section 5C(2) embeds all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle in legislation:

- the *prevention principle* (a child has the right to be brought up within the child's own family and community)
- the *partnership principle* (Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under this Act about Aboriginal or Torres Strait Islander children)
- the *placement principle* (if a child is to be placed in care, the child has a right to be placed with a member of the child's family group)
- the *participation principle* (a child and the child's parents and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child)
- the *connection principle* (a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person).

Section 6AA of the Act prescribes that a relevant authority must have regard to the child placement principle in relation to an Aboriginal or Torres Strait Islander child when making a significant decision about that child. A relevant authority includes the chief executive, the litigation director and an authorised officer.

Section 6AB of the Act provides that the Children's Court must have regard to the child placement principle in relation to an Aboriginal or Torres Strait Islander child when exercising a power under the Act in relation to that child. Similarly, section 59A of the Act provides that

the Children's Court must have proper regard to the child placement principle in relation to an Aboriginal or Torres Strait Islander child when deciding whether to make a permanent care order in relation to that child.

The Bill amends section 6AA(2)(a) to replace the concept of "having regard to" the child placement principle with the concept of applying active efforts in relation to the child placement principle. "Active efforts" is to be defined as meaning purposeful, thorough and timely efforts.

The disproportionate representation of Aboriginal and Torres Strait Islander children involved in the child protection system and an enduring legacy of the Stolen Generations, makes it imperative that Aboriginal and Torres Strait Islander children in the system are connected to family, community, culture and kin.

This amendment aims to ensure positive steps are consistently taken to apply the Aboriginal and Torres Strait Islander Child Placement Principle. It will also set a clear standard for the application of the principle, strengthen the rights recognised by the principle and support transparent and accountable processes.

This is consistent with the current guidance provided in departmental practice about applying active efforts to embed the Aboriginal and Torres Strait Islander Child Placement Principle.

Broader purpose

The current long title of the Act states that it is 'an Act about the protection of children and for other purposes.' Section 4 of the Act provides that the purpose of the Act is to 'provide for the protection of children'.

Section 7 of the Act provides for the chief executive's functions, which include providing, or helping provide, preventative and support services to strengthen and support families and to reduce the incidence of harm to children and providing, or helping provide, services to families to protect their children if a risk of harm has been identified.

A broader purpose for the Act would better reflect the intent of the legislation and functions of the chief executive in administering the Act, and better aligns with the vision for the child protection and family support system.

The Bill therefore amends section 4 of the Act to reflect that the Act has the following additional purposes:

- promoting the safety of children; and
- to the extent that it is appropriate, supporting families caring for children.

The broader purpose is intended to reflect the contemporary role of the child protection system in line with the chief executive's current functions. The broadened purpose is not intended to expand the matters that fall within the scope of the Act, change the threshold for statutory intervention in any way, or impose a requirement for the chief executive to provide support to a broader cohort of families beyond those who are currently captured under the Act.

Best interests considerations

Section 5A of the Act provides that the main principle for administering the Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount. Section 5B of the Act sets out general principles for ensuring the safety, wellbeing and best interests of a child.

Clarifying that the principles in section 5B are relevant when considering whether a decision or action ensures the safety, wellbeing and best interests of a child provides guidance to decision makers to support fair, transparent and consistent decision making. Setting out these matters also aligns with the closed recommendation 14.4 of the QCPCOI.

Accordingly, the Bill amends section 5B to clarify that the general principles set out in the section are relevant to making decisions relating to ensuring the safety, wellbeing and best interests of a child.

Expanding the list of rights enshrined in the Charter

Schedule 1 of the Act establishes the charter of rights for a child in care. The Charter acknowledges the special vulnerability of children who do not have a parent able and willing to protect them and reflects the obligation of the State to provide care for these children in a way that ensures their rights, as documented in the Charter, are met.

The Bill expands the rights in the Charter to include:

- to be treated fairly and with respect;
- to develop, maintain and enjoy a connection to the child's culture of origin;
- for an Aboriginal child—to develop, maintain and enjoy a connection to Aboriginal tradition;
- for a Torres Strait Islander child—to develop, maintain and enjoy a connection to Island custom;
- to develop, maintain and enjoy the child's identity including, for example, the child's sexual orientation or gender identity;
- to choose and practice 1 or more languages;
- to choose and practice 1 or more religions;
- to keep, and have, a safe space to store, personal belongings;
- to engage in play, and other recreational activities, appropriate for the child; and
- to make a complaint to the chief executive if the child considers that this Charter of rights is not being complied with in relation to the child.

Expanding the existing reviewable decisions framework

Schedule 2 of the Act provides for the decisions that can be reviewed by the Queensland Civil and Administrative Tribunal (QCAT). Schedule 2 also provides for who may apply to have the decision reviewed. This is referred to as an "aggrieved person".

Independent review by QCAT supports transparency, accountability and consistency in decision making. It also helps protect rights by ensuring affected people can effectively question decisions and have them reviewed by an independent party.

Under Schedule 2, it is a reviewable decision to refuse a request to review a case plan for a child who has a long-term or permanent guardian, other than the chief executive. For a child who is under the guardianship of the chief executive, there is no ability to request review of a case plan or seek external review of a refusal to do so by QCAT.

The Bill amends section 51V to provide that a child who does not have a long-term guardian may also request that the chief executive reviews their case plan. It also expands the decisions that can be reviewed by QCAT to include a decision to refuse a request to review a case plan under section 51V(6).

'Partnership' element of the Aboriginal and Torres Strait Islander Child Placement Principle

Section 5C of the Act provides additional principles that apply for administering the Act in relation to Aboriginal and Torres Strait Islander children. This includes embedding all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle – prevention, partnership, placement, participation and connection.

The Bill amends the 'partnership' element of the Aboriginal and Torres Strait Islander Child Placement Principle to more clearly reflect, and clarify the department's commitment to, partnering with Aboriginal and Torres Strait Islander peoples, community representatives and organisations in policy and program development, service design, delivery and individual child protection case decision-making.

Strengthening children's voices

Decisions made by the department, the Director of Child Protection Litigation, courts and tribunals, and service providers can have far-reaching and lifelong implications for children and their families.

Article 12 of the United Nations Convention on the Rights of the Child provides the basic assurance that "a child who is capable of forming his or her own views has the right to express those views freely in all matters".

The CREATE Foundation's *Out-of-Home Care in Australia: Children and Young People's Views After Five Years of National Standards*, found that respondents to the national survey in Queensland were most likely to be involved in decisions about their education, followed by family contact, and were least able to contribute to decisions regarding placement changes. Those in residential care reported the least opportunity for participation overall and older respondents were more likely to participate in decisions than younger children. A critical outcome of having a say, is feeling heard and the CREATE survey found that nationally respondents felt they were listened to around 70 percent of the time.

While Queensland has had provisions in place since the commencement of the Act for children in care to be consulted with, and take part in making, decisions affecting the child's life, these are limited and qualified and other jurisdictions have since included more comprehensive frameworks for children's participation. For example, New Zealand's child protection

framework places a clear emphasis on the importance of children's views and their participation in decisions. New Zealand's Statement of Rights also outlines for children that their support worker must make sure the child has a chance to say what they want to say and must listen to what the child has to say.

The importance of children and young people meaningfully participating in decision making processes for decisions that affect them has been a consistent theme in the various reviews and inquiries including the QCPCOI and the Royal Commission. There is an opportunity for Queensland to learn from other jurisdiction's frameworks and strengthen the current provisions in the Act.

The Royal Commission particularly highlighted that children being able to express their views, having opportunities to participate in decisions and being taken seriously is a core component of a child safe organisation. The Royal Commission found that child safe institutions facilitate and value children's contributions to decision making and listen to their concerns. It also found that policies and practices that are shaped by children's views can better prevent harm to children; for example, children may be able to identify risks that are less visible to adults in institutions. The Royal Commission further found through the research report *Taking us seriously: Children and young people talk about safety and institutional responses to their safety concerns* that to feel safe, children and young people need some power and control in an institution.

The Bill therefore makes a number of amendments to the Act to strengthen and support existing legislative provisions and practices relating to hearing children's voices in child protection decisions.

Participation principles

The charter of rights in Schedule 1 of the Act currently provides that a child in care has the right to be consulted about and take part in making decisions affecting their life and the right to be given information about decisions and plans concerning their future and personal history.

Section 5D(1)(b) of the Act provides that to the extent that it is appropriate, the views of relevant persons should be sought and taken into account before a decision is made under the Act. A relevant person includes a child to whom the decision relates. A decision under the Act would include, for example, plans for a placement for a child or decisions about the child's contact with their family.

Section 5E sets out general principles that apply to anyone acting under the Act, when giving a child an opportunity to express their views under this Act – that is:

- language appropriate to the age, maturity and capacity of the child should be used; communication with the child should be in a way that is appropriate to the child's circumstances;
- if the child requires help to express their views, the child should be given help (for example, a non-English speaking child may require assistance from an interpreter, or processes may need to be tailored to ensure that they are accessible for a child with a disability); and
- the child should be given an appropriate explanation of any decision affecting the child and the child should be given an opportunity, and any help if needed, to respond to any decision affecting the child.

Nothing in section 5E requires a child to express a view about a matter and the section does not apply to a court.

The Bill will amend the Act to significantly strengthen the above framework. In particular, the current requirement for children's views to be sought and taken into account only to "the extent that it is appropriate" will be replaced by a number of principles ensuring that children are offered ongoing and genuine opportunities to participate, and that decision makers genuinely listen to, engage with and try to understand and consider children's views.

This aligns with the Royal Commission's finding that many victims and survivors of child sexual abuse will disclose part of the experience, withhold some information and rely on adults to understand what they are trying to convey.

The Bill amends the Act to require a person making a decision or exercising a power that affects, or may affect a child, to ensure:

- the child is given meaningful and ongoing opportunities to participate in the decision or exercise of power
- if the child participates – the person listens to and engages with, or makes a genuine attempt to listen to and engage with, the child
- if the child does not participate – the person obtains, or makes a genuine attempt to obtain, the views of the child in another way that is appropriate
- the person understands and considers, or makes a genuine attempt to understand and consider, the views of the child obtained by the person.

The Bill also requires a person to ensure that:

- the child is allowed to decide if, and how, the child will participate (for example, a child may choose to participate verbally, directly or indirectly through a particular person, through a written statement or recorded audio or video, or separately from particular persons)
- the child is given information about the making of the decision, or the exercise of the power, that is reasonably necessary to allow the child to participate
- the child's participation is achieved in a way that is appropriate for the child
- the child is given help to participate if required
- the child is allowed to express views different to previously expressed views
- communication with the child is carried out in a way that is appropriate for the child
- a record of the child's participation is made that uses the child's words if appropriate.

The amendments contained in the Bill do not require a child to participate in a decision if the child does not wish to participate. A decision not to participate or inability to participate must not operate to the detriment of the child. Section 5E does not apply to a court or tribunal.

Systemic participation

Section 7 sets out the functions of the chief executive necessary for the proper and efficient administration of the Act. The stated functions do not currently include any functions related to ensuring that children are given the opportunity to participate in decisions that impact upon them individually or the child protection system more broadly.

The Bill amends section 7 of the Act to provide that the chief executive's functions include ensuring that children are given the opportunity to participate in policy and program

development and service design.

Streamlining, clarifying and improving the regulation of care

Children and young people subject to statutory child protection intervention are cared for in several different types of arrangements including foster care, kinship care, residential care and other arrangements.

The Act provides for a system to approve foster and kinship carers to provide care for children, and to grant licences for the provision of care services. The chief executive is responsible for deciding applications for carer approvals and licences, as well as monitoring ongoing compliance with approval and licence requirements, such as the standards of care in the Act.

The chief executive also requires organisations to comply with relevant contracts and to be accredited under the Human Service Quality Framework.

Despite past reforms to the regulation of care in every state and territory, the Royal Commission identified inherent risks to children in care, whose vulnerability is exacerbated by isolation from their families, communities and peers and the instability of the settings in which they live. The Royal Commission highlighted the key role of care is to prevent further serious harm, to protect children, and nurture them to grow and develop without ongoing disadvantage.

Additionally, the QFCC's foster care report made 42 recommendations intended to strengthen the carer assessment, approval and renewal processes and the safeguards for children in care.

The Bill amends the Act to make changes to streamline, clarify and improve the regulation of care.

Expanded criminal history information

The QFCC's foster care report recommended that the department work with the Department of Justice and Attorney-General (DJAG) to become a participating screening unit to the Intergovernmental Agreement for a National Exchange of Criminal History Information for People Working with Children (Intergovernmental Agreement) (recommendation 11).

The department has legislated criminal history screening responsibilities to assess the suitability of a person to be a provisionally approved carer and adult members of the person's household. In assessing the suitability of a person to be a provisionally approved carer, the department currently obtains expanded criminal history information such as charges and spent convictions held in Queensland, but can only receive limited criminal history information from interstate in the form of conviction information, not in a routine manner and only through the police commissioner.

If the department becomes a participating screening unit under the Intergovernmental Agreement, the department will be able to obtain expanded interstate criminal history (such as charges and spent convictions) and information held by a police service about the circumstances of an offence or alleged offence. The information will be used for the purpose of assessing any risk provisionally approved carers and their adult household members might pose to the safety of children and therefore will increase the protections for children who need to be placed in urgent care.

Amendments to the Act are required to meet the participation requirements of the Intergovernmental Agreement for participating screening units. A head of power is required to ensure that the department can obtain expanded criminal history and police information from interstate police commissioners and use it to assess the suitability of prospective provisionally approved carers and their adult household members.

The Bill amends the Act to provide a head of power for the chief executive to request expanded criminal history information from an interstate commissioner about the circumstances of a conviction in another state or an interstate charge against the person. The Bill also makes it clear that in considering whether a person is suitable to be a provisionally approved carer, the chief executive may have regard to the person's expanded interstate criminal history information only to consider whether the person poses a risk to the child's safety; and that the expanded interstate criminal history information is not to be considered when assessing whether a person is able and willing to protect a child from harm.

Carer certificate renewal

Section 134(8) of the Act provides that the expiry day for a renewed carer certificate must be:

- for a foster carer certificate—2 years from the day of issue
- for a kinship carer certificate—not more than 2 years from the day of issue.

To remove unnecessary regulatory burden on certificate holders, carer agencies and the department while maintaining an appropriate level of rigour, the Bill amends the Act to provide that the expiry date for a renewed carer certificate must be:

- for a foster carer certificate—3 years from the day of issue
- for a kinship carer certificate—not more than 3 years from the day of issue.

Streamlined assessment processes

Section 133(7) of the Act requires that a kinship carer certificate must only relate to the care of one child. This means that a new certificate is required for each additional child that comes into a kinship carers care.

In comparison, a foster carer certificate applies more generally and only one certificate is required regardless of how many children come into the carers care.

Kinship carers are assessed as suitable persons in order to become kinship carers, which includes being assessed as able to meet the standards of care in the statement of standards. Therefore it is not necessary to reassess the carer against all criteria for the purpose of approving them be the kinship carer for an additional child. Focusing the assessment on the differences associated with the additional child simplifies and streamlines the process while retaining an appropriate level of rigour in the approval of kinship carers.

The Bill amends the Act to provide that where the applicant is a current kinship carer, the chief executive must not grant an application for a kinship carer certificate relating to another child unless satisfied the applicant is kin to the child and the applicant is able to help in appropriate ways towards achieving plans for the child's protection. The other elements relevant to a

kinship carer certificate, such as the applicant's suitability and ability to meet the standards of care, have already been assessed in relation to the original certificate and are not required to be assessed again.

Reporting requirements

Section 13F of the Act provides for mandatory reporting in relation to children in departmental or licensed care services. Specifically, it requires authorised officers, departmental employees, and persons employed in a departmental or licensed care service to give a written report to the chief executive if they reasonably suspect that a 'child in care' has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse.

Under this section, 'child in care' is defined as a child placed in the care of an entity conducting a departmental care service or a licensee.

To provide clarity and transparency regarding existing non-statutory reporting obligations for carers, the Bill expands section 13F to apply to children in foster and kinship care. This will require foster and kinship carers as well as people in out-of-home care placement support roles, to provide a report to the chief executive when they form a reportable suspicion. The amendment recognises the State's responsibility to protect all children in its custody or guardianship regardless of the care setting in which a child is placed, by bringing statutory reporting obligations for carers into line with those that apply to people who care for children in other care settings and departmental staff members.

Practically, the amendments are unlikely to result in substantial additional obligations for foster and kinship carers due to existing critical incident reporting obligations. While the process by which reports are made may change, the nature of information reported is likely to be consistent with current obligations.

Carers' register

The Royal Commission found that carers' registers, particularly like that established in New South Wales, could contribute to making safer environments for children in foster, kinship and residential care settings. Carers' registers are intended as a preventive mechanism against unsuitable people being approved as carers or in similar roles by making relevant information about suitability available for assessment purposes.

The Royal Commission recommended that state and territory governments introduce legislation to establish carers registers in their respective jurisdictions. The Royal Commission also recommended:

- the registers be nationally consistent in relation to the carer types on the carers register;
- the types of information which, at a minimum, should be recorded on the register; and
- the types of information which, at a minimum, must be made available to agencies or bodies with responsibility for assessing, authorising or supervising carers (Recommendations 8.17 and 8.19).

National discussions around the consistency of carers' registers to be established by each state and territory have been suspended due to the impacts of COVID-19. However, the Bill establishes a legislative framework for a carers' register in Queensland noting the benefits of having necessary systems in place to make institutional environments safer for children in

Queensland.

The Bill provides for a regulation to prescribe the information to be included in the carers' register, which will provide flexibility as agreement is reached about national consistency.

Relevant information and support

Section 83A of the Act provides that before placing a child in care the chief executive must give to the proposed carer (approved carer or an individual who directly provides care to the child) information the chief executive has, that the proposed carer reasonably needs, to help them make an informed decision whether to agree to the placement. Under subsection (3), if a child is placed in the care of a licensee, the requirement to give information to a carer applies to a licensee instead of the chief executive, and the chief executive must ensure the licensee is given the relevant information in order to comply with that requirement.

The section also provides that when placing a child in care, and while the child is in care, the chief executive must give the carer information the chief executive has, that the carer reasonably needs, to provide care for the child under the Act and to ensure the safety of the child, the carer and other members of the carer's household.

The Bill amends section 83A of the Act to provide the following as an example of the information that must be given to a carer before placing a child in their care, if the chief executive has the information:

- information about why the child has come into care
- information about the child's needs, and in particular any critical information relevant to their immediate needs (such as allergies, medications, disability needs)
- the proposed length of the placement
- information the carer needs to know to keep themselves, their household (if applicable) and the child safe.

Providing examples of the information that must be given to certificate holders and care service licensees clarifies existing legislative and policy requirements, supports certificate holders and licensees to make informed decisions about accepting placements and providing appropriate care for a child, and reinforces children's rights.

Providing examples of the information that must be provided, while not limiting the provision of additional information, recognises the importance of certificate holders and licensees having relevant information to make decisions and to provide appropriate care for a child, ensures children are cared for by people or entities who can meet their individual needs and supports fair, transparent and consistent processes.

The Bill also inserts a new provision into the Act that requires the chief executive to provide an approved carer with, or make sure an approved carer has access to, support to assist them to meet the needs of a child in their care, and that support must be provided to a level the chief executive considers appropriate in the circumstances. Support may include:

- access to training to maintain or develop their ability to care for children;
- information about financial assistance for approved carers;
- access to advice and assistance;
- access to respite care; and
- access to a support person.

This amendment recognises the key role carers play in protecting and caring for children and reinforces the need to give them appropriate support.

Amending licences

The Bill also amends the Act to expressly provide for the chief executive to amend a licence at any time to remove, or temporarily remove a licensed premise from the licence. This may occur if a licensed care service provided at the premises does not comply with the standards of care, a person responsible for directly managing a licensed care service provided at the premises is not a suitable person or does not hold a blue card, the methods for the selection, training and management of people engaged at the premises are not suitable, if the premises is a residential service facility – the premises is not suitable for providing accommodation to children in need of protection, or another circumstance prescribed by regulation.

This provides for appropriate, facility level compliance mechanisms and for action to be taken to address non-compliances in relation to a specific facility or outlet or the organisation as a whole. This aligns with existing non-legislative practice and procedures in the licensing system.

Removing the need for licences to be returned

Section 141 of the Act requires that a suspended, amended or cancelled authority must be returned to the chief executive.

The majority of licences are now held in an electronic, rather than paper form. While there are a few remaining paper licences, these will be converted to electronic licences when they are next renewed, amended or suspended. The requirement to return a suspended, amended or cancelled licence, reflects outdated licencing processes, and is no longer relevant for electronically issued licences.

Furthermore, requiring a licence to be returned for an amendment to take effect is unnecessarily cumbersome and delays the effect of the amendment. The purpose of amending a licence is to ensure it reflects the holder's current circumstances. Where a decision has been made that a licence should be amended, that amendment should not be contingent on the licence being returned to the chief executive.

The Bill amends the Act to provide that an authority does not need to be returned to the chief executive if it is a licence.

Minor and technical amendments

Minor and technical amendments within the Bill clarify drafting in the Act and improve its operation.

Disclosing information

Parent of the child

Section 188D of the Act provides that if a child dies while subject to a child protection order, the chief executive may disclose information about the child, excluding notifier details, to a parent or another person acting on behalf of the child unless one of the prescribed exclusions applies. This ensures parents and other relevant persons have appropriate access to information about the child.

However, if the child is no longer subject to a child protection order at the time of their death (for example, the child has turned 18 or the order has been revoked by the court or otherwise ends), or has not been subject to a child protection order (for example, the child was subject to intervention with parental agreement), the chief executive has no authority to disclose information about the child to a parent.

The Bill amends the Act to provide that information held by the chief executive may also be disclosed to the deceased child's parent whether or not the child has been subject to a child protection order. The Bill also provides that the information may be released whether or not the deceased person was a child at the time of their death. This would be relevant where child protection information exists about a person who becomes an adult before they die.

The provision is intended to allow for the chief executive to release child protection information about a person to the person's parents, where the person is the subject child for the relevant child protection information. It is not intended that the provision would be used to disclose child protection information about a parent who is under 18 in circumstances where the information relates to them as a parent and not as the subject child.

Consent

Section 187 of the Act provides that information obtained in the administration of the Act is confidential and must not be disclosed other than in accordance with that section.

The Bill amends section 187 of the Act to provide that information about a person may be disclosed, or access given, to a third party if a person to whom the information relates is an adult and consents in writing to the disclosure of the information.

Law enforcement

Section 186 of the Act provides for the confidentiality of the identity of a person who notifies the chief executive that they suspect a child has been, is being or is likely to be, harmed, or an unborn child may be at risk of harm after they are born. A person who receives a notification, or a person who becomes aware of the identity of the notifier, must not disclose the identity of the notifier to another person unless the disclosure is made for certain circumstances in accordance with section 186.

The Royal Commission Criminal Justice Report recommended that state and territory legislation be amended to authorise a person to disclose the identity of a notifier to a law enforcement agency.

Disclosure of notifier information to law enforcement may assist to safeguard the wellbeing and safety of children, assist investigators to reach more reliable conclusions more quickly, and increase the ability of police and prosecutors to successfully prosecute persons who have committed crimes against children.

The Bill amends section 186 of the Act to provide that notifier details may be released to a senior police officer if the identity is required for the prevention, detection, investigation, prosecution or punishment of a criminal offence against a child. The person disclosing the information must be reasonably satisfied the disclosure is necessary to ensure the safety, welling or best interests of the child, or another child. The person disclosing the information must inform the notifier as soon as practicable unless the person considers that to do so will or may prejudice an enforcement action.

Only the chief executive or an appropriately delegated officer will be able to disclose the notifier's identity.

Privileged information

Chapter 5A of the Act provides a framework for service delivery coordination and information sharing. Section 159R(3) provides that the disclosure of information under Chapter 5A does not waive, or otherwise affect, a privilege a person may claim in relation to the information under another Act or law.

The Bill amends the Act to make it explicit that a privilege a person may claim under another Act or law in relation to information is not affected only because the information may be, or is, disclosed under Chapter 5A.

The amendment includes an example that provides a person may decide to withhold information that may be disclosed because the information is subject to legal professional privilege.

Notice of appeal

Section 118 of the Act provides the process for how an appeal may be started. Section 118(2) provides that the appellant must serve a copy of the notice of appeal on other persons entitled to appeal against the decision.

In some circumstances, such as a decision to not make a temporary order, any delay in an appeal may place a child at an immediate risk of harm. This is particularly relevant where the original application was decided on an *ex-parte* basis due to immediate safety concerns regarding the child.

The Bill amends the Act to provide that the appellant may ask for the appeal to be heard by the court before a person is served with a notice of appeal. The court may decide to dispense with service of the notice of appeal and the court may hear the appeal in the absence of the respondent.

Orders continue on application

Section 99 of the Act provides that if a child is in the chief executive's custody or guardianship, or the custody of a member of the child's family under an order, and an application is made to extend the order or for another order before the order ends, the order granting custody or guardianship of the child continues until the application is decided unless the Childrens Court orders an earlier end to the order.

A similar provision for extension of an order on application does not exist if the order does not grant custody or guardianship of the child. For example, a child protection order under section 61 of the Act may direct a parent of the child to do or refrain from doing something directly related to the child's protection but may not alter the custody or guardianship of the child.

This means that if an application to extend an order that does not grant custody or guardianship of a child is not heard before the expiry of the order, there may be a gap in protection for the child.

The Bill amends the Act to provide that all provisions of an order continue upon an application made by the litigation director or chief executive for the extension of the order or another order to replace the order, regardless of whether the order grants custody or guardianship, until the application is decided, or the Childrens Court or a magistrate orders otherwise.

The Bill clarifies that notwithstanding the above, a magistrate may not order an end to a custody or guardianship order made by the Childrens Court.

Definition of "kin"

Schedule 3 of the Act defines kin to mean any of the child's relatives who are persons of significance to the child and anyone else who is a person of significance to the child.

The current definition of kin, in particular the unrestricted inclusion of any person of significance to the child, may result in the provision operating in a way other than intended, particularly for Aboriginal and Torres Strait Islander peoples.

The Bill amends the Act to confirm that 'kin' means:

- a member of the child's family group who is a person of significance to the child
- if the child is an Aboriginal child—a person who, under Aboriginal tradition, is regarded as kin of the child
- if the child is a Torres Strait Islander child—a person who, under Island custom, is regarded as kin of the child
- another person who is recognised by the child, or the child's family group, as a person of significance to the child, and for an Aboriginal or Torres Strait Islander child, has a cultural connection with the child.

The amended definition is intended to ensure that the determination of who is kin for an Aboriginal or Torres Strait Islander child includes meaningful mapping, identification, support and enabling of people who have a legitimate cultural connection to the child.

Independent entities

The Act provides a framework for an independent Aboriginal or Torres Strait Islander entity to facilitate the participation of an Aboriginal or Torres Strait Islander child and their family in decision-making processes.

The Act recognises that Aboriginal and Torres Strait Islander peoples have the right to consent or not consent to the involvement of an independent entity in decisions and court proceedings under the CP Act. It also recognises that Aboriginal or Torres Strait Islander peoples and

organisations can support Aboriginal or Torres Strait Islander children and their families to meaningfully participate in decision making.

The Bill amends the Act to clarify that Aboriginal and Torres Strait Islander peoples are able to choose both who becomes an independent entity for an Aboriginal and Torres Strait Islander child and how that independent entity is involved in various aspects of the child protection and family support system.

The Bill also amends section 21A of the Act to clarify that the role of an independent Aboriginal or Torres Strait Islander entity is to facilitate participation rather than to offer help and support.

Persons performing risk-assessed roles for licensed care services must be suitable persons

The Act provides that a licensee's obligations include ensuring that each person engaged by the licensee to provide care services is a suitable person and holds a blue card. However, there is a lack of clarity about whether this requirement applies in relation to contractors and subcontractors.

The Bill therefore amends the Act to remove the concept of "a person engaged by a licensed care service." The Bill instead requires licensees to ensure that person who carry out "risk assessed roles in a licensed care service" are suitable and hold a blue card.

A risk assessed role for a licensed care service is defined as work carried out in a role which relates to providing a function of a licensed care service, and involves, may involve, or may allow a person to make contact with a child or children, that is of a kind, or happens in a context, that may create an unacceptable level of risk for the child or children.

Roles that may allow a person to make contact with a child or children would include roles which involve accessing a child's personal information such as the child's contact details, which would allow a person to make direct contact with a child. It would also include roles which do not involve providing care to a child but which occur in an environment (such as a licensed residential facility where children live) that would enable direct contact with a child.

The changes are intended to support the Bill's amendments to the WWC Act, requiring any person carrying out a risk assessed role in a licensed care service to hold a blue card.

QCAT review process for certain placement decisions

The Bill amends the Act to ensure that where the chief executive has made a decision to withhold details of where a child is living from a parent, but has disclosed the identity of the child's carer, the parent may apply to QCAT for a review of the placement decision without first needing to seek a review of the withholding decision.

This is intended to ensure fairness of review rights for parents and reduce the need for unnecessary applications to QCAT.

Alternative ways of achieving policy objectives

The policy proposals will be complemented by operational initiatives following implementation.

Where possible, practical and operational measures have been prioritised to respond to recommendations of the various reviews and inquiries and issues raised during consultation.

However, some recommendations from the various reviews and inquiries require legislative amendments to be implemented, or can only be properly supported by an amended legislative framework. For other proposals in the Bill, legislative amendment is considered the most effective way to acheive the policy objectives.

There are no alternative ways of achieving the policy objectives related to the Adoption Act or the WWC Act.

Estimated cost for government implementation

The policy proposals for the Bill's legislative amendments will support and drive a number of reforms and initiatives already funded under the SFCF reform program or through previous allocations to the department.

It is anticipated that there will be some implementation costs for the policy proposals associated with staff and sector training, information system updates, and operational policy and procedure updates. These costs will be met from within existing resources.

Any impacts related to the amendments to the WWC Act will be met through existing resources.

Consistency with fundamental legislative principles

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

Legislation has sufficient regard to the rights and liberties of individuals, including privacy and confidentiality and imposing obligations retrospectively (section 4(2) of the *Legislative Standards Act 1992* (LSA))

Clause 11 – Principles for participation of children

Clause 11 of the Bill introduces new principles for children's participation in decisions that affect them. This includes that the child is given information that is reasonably necessary to allow the child to participate. Depending on the decision the child is participating in, this may relate to another person, such as a parent, sibling, family member or carer. This is a potential departure from the fundamental legislative principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality under section 4(2) of the LSA.

The amendment is necessary to ensure that children have access to all information required to support their informed participation in decision making.

The Bill includes a safeguard by providing the information to be given to the child is the information that is reasonably necessary to allow the child to participate. The departure is also mitigated by the fact that where information is confidential under the Act or another law, this information would be redacted from what is provided to the child.

Clause 32 – Giving information to children and carers

Clause 32 clarifies the information to be provided to carers to help them make an informed decision whether to agree to the placement, or that the carer needs to provide care for the child.

The clause may be a departure from the fundamental legislative principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, as the information given to the carer will be information about the child.

The departure is justified as the information is necessary to enable the carer to make an informed decision about the placement or to support the carer to provide care to the child. The departure is also mitigated as it relates to information that the carer reasonably needs and does not extend beyond this.

Clause 55 – Expanded interstate criminal history

Clause 55 of the Bill provides a head of power to obtain and use certain expanded interstate criminal history for the purpose of considering whether a person poses a risk to a child's safety or the safety of children. The clause is intended to support an application for the department to become a participating screening unit of the Intergovernmental Agreement, recommendation 11 of the QFCC's foster care report.

The clause may be a departure from the fundamental legislative principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, as it provides for the department to obtain and consider expanded interstate criminal history in certain circumstances.

This departure is justified as the information is necessary to assist decision makers to make informed decisions that protect vulnerable children who may be placed in the care of a provisionally approved carer.

Clauses 3 - 5 – Adoption Act amendment

The amendments to the Adoption Act represent a departure from the fundamental legislative principle that legislation does not adversely affect rights and liberties or impose obligations retrospectively. However, it is considered that this departure is justified given the positive impact the amendments will have on the operation of Australia's intercountry adoption program in Queensland for non-citizen children and prospective adoptive parents. For example, the amendment enables the chief executive to provide post-placement supervision of the child's wellbeing and interests while the child is in the custody of the prospective adoptive parents as well as enabling the chief executive to apply for a final adoption order.

Clause 87 – Domestic violence information sharing

The proposed amendments to the WWC Act to enable the chief executive (working with children) to request domestic violence information from the police commissioner is a potential departure from the fundamental legislative principle under section 4(2)(a) of the LSA that sufficient regard be given to the rights and liberties of individuals—specifically the right to an individual's information being kept private and confidential.

The information sharing framework includes enabling provisions to allow the chief executive to request domestic violence information from the police commissioner if the chief executive reasonably believes a domestic violence order may have been made or a police protection notice may have been issued against a person and provisions to enable the police commissioner to share that information with the chief executive (working with children).

These provisions are considered justified as they will enable the effective operation of the WWC Act by ensuring that the chief executive (working with children) has the most current, relevant and comprehensive information about a person when assessing a person's eligibility to engage in child-related work.

Further, the new information sharing arrangement is supported by appropriate safeguards to protect the confidentiality of information. The information shared will be subject to section 384 of the WWC Act which provides specific protections in relation to the confidentiality of protected information.

Clauses 96-99 – addition of aggravating circumstances to existing offences

The Bill adds new circumstances of aggravation to some existing offences across the WWC Act (circumstances of aggravation attract higher penalties). Changes to offences potentially breach 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.

Consistent with the existing circumstances of aggravation in sections 175, 176A, 176C and 176E of the WWC Act, the Bill ensures that the following scenarios where the person represents a much greater risk to children because of a previous adverse outcome attract a higher penalty: (i) a person who engages in regulated employment without a working with children authority and is the subject of an adverse interstate WWC decision that is in effect; and (ii) an employer who engages a person in regulated employment without a working with children authority and an adverse interstate WWC decision is in effect and the employer knows, or ought reasonably to know, the decision is in effect.

Clauses 119 and 124 – Participation in the WWCC NRS

The amendments introduce new information sharing arrangements between:

- the chief executive (working with children) and the ACC to facilitate the entry of relevant Queensland decisions on the WWCC NRS; and
- the chief executive and corresponding interstate screening units by enabling the chief executive to share information with an interstate screening unit if the chief executive reasonably believes the information is relevant to the functions of the interstate unit.

Information shared under these new arrangements could include the adverse clearance history of people who have applied for a working with children authority as well as their personal information.

The amendments in the Bill will also allow the chief executive (working with children) to request information from an interstate screening unit if the chief executive believes the information is relevant to the performance of the chief executive's screening functions.

The information sharing framework required to support Queensland's participation in the WWCC NRS is a potential departure from the fundamental legislative principle under section 4(2)(a) of the LSA that sufficient regard be given to the rights and liberties of individuals, specifically the right to an individual's information being kept private and confidential.

This potential departure is justified as the provisions enable the chief executive (working with children) to have the most comprehensive information to undertake an assessment of whether it is in the best interests of children for a person to carry out child-related work. By being able to make an informed decision, the risk of harm to children is mitigated. Similarly, the power to provide information to an interstate screening unit will ensure the relevant decision maker in that jurisdiction has the information they require to undertake their corresponding functions.

The ability to share information also raises the fundamental legislative principle under section 4(3)(a) of the LSA that the legislation should make rights and liberties or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. As part of the initial upload to the WWCC NRS, the chief executive (working with children) will be entering information obtained from working with children check applications that were processed by the chief executive prior to the commencement of the amendments. This retrospective application is considered necessary to enable the WWCC NRS to be an effective and useful safeguard for children from the commencement of the amendments.

The confidentiality of the information accessed by the chief executive (working with children) through the WWCC NRS will be protected by the existing confidentiality provisions in the WWC Act. Also, interstate screening units that receive information from the chief executive (working with children) will be bound by the confidentiality protections of their respective legislation.

Legislation has sufficient regard to the institution of Parliament (section 4(2) of the *Legislative Standards Act 1992*)

Clause 58 – Carers' register

Clause 58 of the Bill establishes the legislative framework for a carers' register in line with recommendation 8.17 of the Royal Commission. This includes providing that the information to be kept is to be prescribed by regulation. This may be a departure from the fundamental legislative principle that sufficient regard be given to the institution of Parliament, as it is proposed that the information required in the register will be included in the Regulation rather than the Act.

Recommendation 8.17 of the Royal Commission recommended national consistency in relation

to each jurisdiction's carers' register. National discussions around the consistency of carers' registers to be established by each state and territory have been suspended due to the impacts of COVID-19. As such it is necessary to maintain flexibility about the information that is included in the register to allow the outcomes of national discussions to be implemented.

This departure is justified given the need to maintain appropriate flexibility to implement the outcomes of any further national discussions related to the carers' register.

Consultation

The discussion paper, *Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families* was released on 25 July 2019. Following a three-week extension to the public consultation period, submissions closed on 27 September 2019.

The discussion paper outlined options for legislative reform in three focus areas:

- reinforcing children's rights in the legislation
- strengthening children's voices in decisions that affect them
- reshaping the regulation of care.

The former Department of Child Safety, Youth and Women received 54 written submissions in response to the discussion paper. Submissions were received from key organisations including PeakCare, the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP), QFCC, the Office of the Public Guardian (OPG), Queensland Law Society and Legal Aid Queensland.

In addition to the discussion paper, public surveys were available on Get Involved and the Youth eHub. 181 people responded to the Get Involved survey, and a further 210 young people responded to the Youth eHub survey.

People from all regions across Queensland took the opportunity to respond to the surveys: seven per cent of respondents to the Get Involved Survey identified as Aboriginal or Torres Strait Islander and a further six per cent identified as culturally and linguistically diverse. Foster and kinship carers made up 32 per cent of respondents; 12 per cent of respondents were parents; four per cent family members and seven per cent were children or young people aged under 18.

Half of the respondents to the Youth eHub survey were aged 15-17 years, with another 31 per cent aged 18-25 years and 11 per cent aged 13-14 years. 34 per cent of respondents to the Youth eHub had previous contact with the child protection system.

Ten targeted consultation workshops were facilitated with children and young people, parents and families, carers, peak bodies, service providers, legal professionals and frontline departmental staff. More than 150 people attended these workshops.

Separate consultation meetings also took place with the Truth, Healing and Reconciliation Taskforce and the First Nations Council, as well as PeakCare's Quality Collaboration Network (including representatives from Life Without Barriers, UnitingCare, Multicap, Anglicare Southern Queensland, Mamre Association Inc, Churches of Christ in Queensland, Care Connect, PCYC Queensland and Centacare Brisbane) and QATSICPP.

The OPG, Legal Aid Queensland and the Director of Child Protection Litigation were consulted through targeted workshops.

The QFCC, OPG, Magistrates Court, President of the Childrens Court and Queensland Civil and Administrative Tribunal (QCAT) were consulted on draft policy proposals for legislative amendment.

In July and August 2021, the department also undertook further targeted consultation with stakeholders on the detailed proposals for legislative reform and a draft Bill. This included QATSICPP, the CREATE Foundation, PeakCare, QFKC, the Queensland Council of Social Services (QCOSS), QFCC, the Queensland Teacher's Union and the Family Inclusion Network. In August 2021, these stakeholders were also advised of the proposed changes to licensed care services and reviewable decisions.

In August 2021, consultation on the amendments relating to the blue card system, including the amendments to facilitate Queensland's participation in the WWCC NRS and the domestic violence information sharing arrangements, was undertaken through an information sharing session with a range of key organisations. This included the Queensland Foster and Kinship Care (QFKC), Aboriginal and Torres Strait Islander Legal Service (ATSILS), PeakCare, QCOSS, Family Day Care Association Queensland, Independent Schools Queensland, Catholic Schools Queensland, Anglican Diocese of Brisbane and Scouts Queensland.

In relation to the amendments to the Adoption Act, consultation external to government has not been undertaken given the limited application and technical nature of the amendment.

Consultation was undertaken with the Australian Government in relation to the delegation issues, which informed the need for the amendments.

Consistency with legislation of other jurisdictions

Reinforcing children's rights

Child protection statutes in several other Australian states and territories have purposes broader than the current purpose of the Act. New South Wales, Western Australia, the Northern Territory and the Australian Capital Territory all include promoting the wellbeing of children and recognising and supporting those who care for children, including their parents, communities and organisations. The Bill will amend section 4 of the Act to expand the current purpose of 'to provide for the protection of children' to also include to promote the safety of children, and to the extent that it is appropriate, to support families caring for children.

The majority of Australian states and territories incorporate the placement hierarchy element of the Aboriginal and Torres Strait Islander child placement principle in their child protection legislation. However, Queensland is the only jurisdiction to have embedded all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle – prevention, partnership, placement, participation and connection.

No Australian jurisdiction currently has a statutory requirement for active efforts to be applied in relation to the placement principle—the provisions generally require the relevant authority to 'take into account' or 'give consideration to' the specified principle, or the principle is focused on what 'should' occur. By introducing the standard of 'active efforts', meaning efforts that are purposeful, thorough and timely, Queensland will continue to lead the way in promoting the safe care and connection of Aboriginal and Torres Strait Islander children in legislation. This approach supports the ongoing implementation of the *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families*, contributes to reducing the over-representation of Aboriginal and Torres Strait Islander children in the child protection system, and ensures all Aboriginal and Torres Strait Islander children grow up safe and cared for in family, community and culture.

Strengthening children's voices

Most other Australian states and territories have legislative provisions expressing that children and relevant family members should be encouraged and given adequate opportunity to participate fully in the decision-making process. Victoria's legislation, for example, requires that decision-making processes should be conducted in a way that the persons involved are able to participate in and understand the process, including any meetings that are held and decisions that are made.

New South Wales, the Australian Capital Territory and Tasmania all provide that children must be given the opportunity to express their views and wishes freely. In New South Wales, the legislation specifies that a child must also be provided with: any assistance necessary to do so, information about how their views will be taken into account, what outcome was reached, and why. Tasmania's legislation specifies that a child is not required to express their views.

A robust framework for children's participation is provided by New Zealand's *Oranga Tamariki Act 1989* and *Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018*, which places a clear emphasis on the importance of children's participation in decisions. The *Oranga Tamariki Act 1989* provides that a child must be encouraged and assisted to participate in the proceedings or process to the degree appropriate for their age and level of maturity in all court, planning and other processes. Those views must be taken into account and any written decision must set out the child's or young person's views and, if those views were not followed, include the reasons for not doing so. Furthermore, the related Regulations prescribe that certain information must be provided to a child, including the reasons for the child being in care, how they can participate in decisions to be made, and how their views will be used to inform decisions.

The proposed amendments in the Bill extend beyond similar provisions in other jurisdictions. No other jurisdiction places a proactive obligation on a decision-maker to genuinely listen to, engage with and try to understand a child's views. Further, no other jurisdiction expressly requires an opportunity to be given to children to express views that are different to those they have previously expressed or for the child's views to be documented in their own words wherever possible.

There is also an opportunity for Queensland to lead the way in introducing a legislative obligation for the chief executive to ensure the voices of children are heard in service design and delivery, as no other jurisdiction has a similar obligation to ensure systemic participation.

Streamlining, clarifying and improving the regulation of care

In most jurisdictions, carer approvals remain valid indefinitely once granted. The exceptions to this are the Australian Capital Territory, which has a three-year term for carer approvals, and the Northern Territory, which has a two-year term. In New Zealand, carer approvals are indefinite, however are reviewed every two years. Extending the term of carer certificates in Queensland will reduce the impact on carers and improve consistency with other jurisdictions.

Both New South Wales and Victoria have introduced legislative amendments to establish carers' registers, and Tasmania commenced consultation to introduce a similar scheme in July 2021. The proposed amendments in the Bill will bring Queensland in line with these jurisdictions.

Only Victoria currently has provisions in place to specify that the Secretary or out of home care service must provide the carer with all information that is known to the Secretary or the service and that is reasonably necessary to assist the carer to make an informed decision as to whether or not to accept the care of the child. The Secretary must also provide the carer with information as to the child's medical status so that appropriate care can be provided. The proposed amendments in the Bill lead the way among Australian jurisdictions by providing examples of information to be shared with the carer, as well as requiring that the chief executive must provide carers with information to support them in their role, including about financial assistance and other supports available to them.

Adoption Act

The adoption of children through an intercountry adoption program is governed by the Commonwealth and relevant state or territory adoption legislation as well as the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. The IGOC Act (Cth) allows the Australian Government Minister responsible for its administration to delegate any of his or her powers and functions in relation to non-citizen children to any officers or authority of the Commonwealth, and state and territory agencies under an Instrument of Delegation.

Other Australian states and territories take varying approaches to how their legislation provides for non-citizen children under the IGOC Act including who is responsible for their placement or guardianship, the role of the person in the chief executive officer position in relation to the making of an application for a final adoption order, and the role of the prospective adoptive parents in the making of applications for final adoption orders. The Bill is not varying the intent of the Queensland legislation in relation to intercountry adoptions.

Notes on provisions

Part 1 – Preliminary

Clause 1 provides that the Bill, when enacted, may be cited as the *Child Protection Reform and Other Legislation Amendment Act 2021*.

Clause 2 provides that Parts 3 and 4, Division 3 of Part 6, Part 7 and Schedule 1 of the Act will commence on a date to be fixed by proclamation. Parts 1, 2, 5 and the remaining divisions within Part 6 will commence on assent.

Part 2 – Amendment of the *Adoption Act 2009*

Clause 3 provides that Part 2 amends the *Adoption Act 2009*.

Clause 4 amends section 198 to expand the circumstances in which the chief executive is obligated to supervise the wellbeing and interests of a child.

This will enable the chief executive to also apply to the Childrens Court under section 199 of the *Adoption Act 2009* for a final adoption order for the adoption of a child by the prospective adoptive parents, in those expanded circumstances.

Clause 5 inserts a new Part 16, division 4 that includes a transitional provision which clarifies that the amendment to section 198 will have retrospective operation in particular circumstances.

Part 3 – Amendment of the *Child Protection Act 1999*

Clause 6 states that Part 3 amends the *Child Protection Act 1999*.

Clause 7 replaces the purposes of the Act in section 4 to include additional purposes, which is intended to reflect the contemporary role of the child protection system in line with the chief executive's current functions.

Clause 8 amends section 5B of the Act to clarify that the general principles apply when making a decision relating to a child's safety, wellbeing and best interests. In line with the participation principles in the Bill, clause 8 provides that a child can express views about what is, and is not, in their best interests.

Clause 9 amends section 5C of the Act to rename the "child placement principles" the "Aboriginal and Torres Strait Islander child placement principle".

The clause also amends the 'partnership' element of the Aboriginal and Torres Strait Islander child placement principle to clarify that it is relevant to both significant decisions about Aboriginal and Torres Strait Islander children and decisions relating to the development and delivery of services provided by the department.

This is intended to more closely align with the broadly accepted language related to the principle.

Clause 10 amends section 5D of the Act to clarify that section 5E applies for making a decision or exercising a power that affects, or may affect, a child.

Clause 11 replaces section 5E of the Act to insert the new principles for children's participation.

The principles relate to any decision or exercise of power under the Act that affects or may affect a child. In line with the principles, a person making a decision or exercising a power must ensure that the child is given meaningful and ongoing opportunities to participate in a way that is appropriate for the child. This may vary based on the child's age, maturity, ability to understand and culture.

The person obtaining the child's views must listen to, engage with, and make a genuine attempt to understand the child's views.

The person must ensure the child is given information that is reasonably necessary to allow the child to participate and is advised about what help is available to the child to assist the child to participate.

The child is able to decide whether or not to participate. If the child decides to participate, the child is allowed to decide how they will participate. Where the child expresses views, the person must record the views in a way that uses the child's words, if appropriate.

If the child decides not to, or is unable to, participate, the person must ensure they obtain or make a genuine attempt to obtain the child's views in another way that is appropriate for the child. The principles provide that the child must not be disadvantaged because they have decided not to, or are unable to, participate.

The principles acknowledge that how and when a child chooses to participate in making decisions or exercising powers will vary between children and may vary over time for each individual child. The principles also reflect that a child's views may change over time or may vary depending on the decision to be made.

The principles are not intended to require a child to participate in a decision or place responsibility for making a decision with the child but are intended to ensure children have a voice in decisions that affect them.

Clause 12 amends and renumbers section 6AA of the Act to require the chief executive, litigation director and authorised officers to make active efforts to apply the Aboriginal and Torres Strait Islander child placement principle. The Bill defines active efforts to mean purposeful, thorough and timely efforts to apply the principle.

Clause 13 amends and renumbers section 6AB to replace the term "child placement principles" with "Aboriginal and Torres Strait Islander child placement principle".

Clause 14 inserts a new section 5H to the Act. The new section 5H provides a principle about the involvement of independent Aboriginal or Torres Strait Islander entities for Aboriginal and Torres Strait Islander children and families.

The principle clarifies that the family and, if appropriate, the child can consent to an independent Aboriginal or Torres Strait Islander entity facilitating the child and family's participation in a decision-making process, or participating in or attending certain other activities or events, relating to the child.

Clause 15 amends section 7 to provide that it is a function of the chief executive to ensure that children have meaningful and ongoing opportunities to participate in decisions about programs and services relating to the purposes of the Act.

This is intended to ensure that children have a voice in the design of programs and service delivery as well as individual case decisions.

Clause 16 inserts a note in section 11 to refer to the definition of 'parent' in Schedule 3.

Clause 17 amends section 13F to expand the application of the section. Section 13F currently requires an authorised officer, a departmental employee and a person employed in a care service to report a reportable suspicion to the chief executive. A reportable suspicion is a reasonable suspicion that a child placed in the care of an entity conducting a departmental or licensed care service has suffered, is suffering or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse.

The amended section will expand this obligation to capture any child placed in care under section 82(1) of the Act. The obligation will be extended to approved carers and persons employed by an entity mentioned in section 82(1)(f) of the Act.

Clause 18 clarifies that the role of an independent Aboriginal or Torres Strait Islander entity in relation to unborn children is to facilitate the participation of the pregnant woman and the child's family rather than to offer help and support.

Offering help and support to the pregnant woman is an action that may be taken by the chief executive rather than being a role for an independent Aboriginal or Torres Strait Islander entity.

Clause 19 omits the definition of parent in Part 2. The definition of parent is clarified in Schedule 3.

Clause 20 omits the definition of parent in Part 3. The definition of parent is clarified in Schedule 3.

Clause 21 omits the definition of parent in Part 3AA. The definition of parent is clarified in Schedule 3.

Clause 22 omits the definition of parent in Part 3A. The definition of parent is clarified in Schedule 3.

Clause 23 amends section 51L of the Act to clarify that the principle for independent Aboriginal or Torres Strait Islander entities in new section 5H applies.

Clause 24 amends section 51V to provide that a child who does not have a long-term guardian may request that the chief executive review the child's case plan. This includes where the child is subject to a child protection order granting long-term guardianship to the chief executive.

The chief executive may decide not to review the case plan if the chief executive is satisfied that the child's circumstances have not changed significantly since the plan was finalised or most recently reviewed, or if it would not be appropriate for another reason.

If the chief executive decides not to review the case plan, the decision is reviewable by QCAT.

This is consistent with the provisions relating to a child who has a long-term guardian or a permanent guardian.

Clause 25 amends section 51W of the Act to clarify that the principle for independent Aboriginal or Torres Strait Islander entities in new section 5H applies.

Clause 26 omits the definition of parent in Part 4. The definition of parent is clarified in Schedule 3.

Clause 27 amends section 59A to replace the term "child placement principles" with "Aboriginal and Torres Strait Islander child placement principle".

Clause 28 omits the definition of parent in section 67. The definition of parent is clarified in Schedule 3.

Clause 29 amends section 74 of the Act. The amended section clarifies the chief executive's obligations about the charter of rights if the chief executive has custody or guardianship of a child

under a child protection order or has custody of a child under a care agreement. The amended section clarifies that the obligation under section 74(4), to ensure a child is told something or given information, is an obligation to ensure the child is told regularly. For example, the chief executive must ensure the child is regularly told about the charter of rights and its effect.

The amended section also provides that the chief executive must ensure the child is regularly told about the chief executive's obligations to ensure the charter of rights is complied with, as well as child's right to contact the chief executive if the child has any questions or concerns about the child's protection and care needs.

The amended section also clarifies that information given to the child must use language that is appropriate for the child and be carried out in a way that is appropriate for the child. This may vary based on the child's age, maturity, capacity, culture and circumstances.

Clause 30 amends section 74A to clarify the chief executive's obligations about the charter of rights if a child is subject to a child protection order granting long-term guardianship of the child to a person other than the chief executive or a permanent care order.

The amended provision clarifies that an obligation to ensure a child is told about something or given information is an obligation to ensure the child is regularly told or regularly given the information.

The amended provision also provides that the information must use language that is appropriate for the child and be carried out in a way that is appropriate for the child. This may vary based on the child's age, maturity, capacity, culture and circumstances.

Clause 31 amends section 83 of the Act to clarify that the principle for independent Aboriginal or Torres Strait Islander entities in new section 5H applies.

Clause 32 amends section 83A to provide examples of the information that proposed carers and carers may need.

The amended provision provides examples of the information a proposed carer may reasonably need to help them make an informed decision about whether to agree to a placement for a child. This may include information about any special needs of the child and the proposed length of time of the placement.

The amended provision also provides examples of information that a carer may reasonably need to provide care for a child. This may include, for example, a copy of the child's case plan or information about the child's cultural needs.

The obligation to give the information to a proposed carer or a carer applies to the extent the chief executive has the information. For example, if there is not yet a case plan for a child, it would not be possible for the chief executive to provide this information.

Clause 33 amends section 86 to enable the chief executive to withhold from a parent the name of their child's carer, or information about where the child is living, or both, in circumstances where disclosing the information may constitute a significant risk to the safety of the child or anyone else with whom the child is living. This amendment has the effect of enabling a parent to seek review from QCAT of their child's placement itself without first having to seek review of the chief executive's decision to withhold information about where the child is living.

Clause 34 replaces section 99 to broaden its application. The current section 99 provides for orders granting custody or guardianship to automatically continue when an application is made for the extension of the order, until the application for the extension is heard, unless the court orders an earlier end to the order.

A similar provision does not exist for the continuation of orders that do not grant custody or guardianship, such as orders directing a parent of the child to do or refrain from doing something directly related to the child's protection or orders requiring the chief executive to supervise the child's protection. This means that if an application is made to extend an order that does not grant custody or guardianship, and the application is not heard before the order expires, there may be a gap in protection for the child until the application is heard.

The new section 99 will provide for an order made under Chapter 2 of the Act to continue when an application is made by the chief executive or litigation director or for the extension, variation, revocation or substitution of the relevant order, unless the court orders otherwise.

Clause 35 makes a minor drafting amendment to the heading of section 99D.

Clause 36 omits the definition of parent in section 117. The definition of parent is clarified in Schedule 3.

Clause 37 inserts a new section 118A to the Act. The new section 118A provides that an appellant may ask for an appeal to be heard before a person is served with a notice of appeal under section 118(2). This is intended to allow decisions to be appealed immediately in circumstances where any delay may place a child at risk of harm. This is particularly relevant where the original application was decided on an *ex-parte* basis due to immediate safety concerns.

Clause 38 replaces section 121 with new sections 121 and 121A. The new section 121 provides for the powers of the appellate court where the respondent appears, in line with the existing section 121.

The new section 121A provides for the appellate court to hear an appeal in the absence of the respondent if the court is satisfied the respondent has been served with the notice of appeal under section 118(2) or the court dispenses with the requirement for service under section 118(2).

This aligns with the new section 118A which enables an appellant to ask for an appeal to be heard before a person is served with a notice of appeal under section 118(2).

Clause 39 inserts new section 123A to describe the meaning of a 'risk-assessed role' for a licensed care service. A risk-assessed role involves normal duties which require a person to contact a child or allows a person to permit or facilitate contact with a child that may create an unacceptable level of risk for the child. The provision will assist licensees to conduct the required risk assessment of its roles and identify whether a role requires a suitable person.

Clause 40 makes minor drafting amendments to section 126 and replaces existing section 126(b)(iv) to ensure that, prior to granting a licence, the chief executive must be satisfied that persons who perform risk-assessed roles under the care service the subject of the application are suitable.

Clause 41 amends section 129A to require licensees to ensure that persons performing risk-assessed roles for a licensed care service are suitable persons.

Clause 42 makes minor drafting amendments to section 134 and amends the renewal period for a certificate of approval for approved foster carers and approved kinship carers.

For a foster carer certificate, the expiry day will be 3 years from the day of issue. For a kinship carer certificate, the expiry day will be not more than 3 years from the day of issue.

The initial grant of a certificate will continue to be a one-year term. This will allow the department to more closely monitor and reassess new carers, while reducing regulatory burden on certificate holders, carer agencies and departments through the renewal process.

Clause 43 amends section 135 to streamline the assessment process for existing kinship carers. As kinship carers have previously been assessed as a suitable person to be a kinship carer and as being able to meet the standards of care in the statement of standards, it is not necessary to reassess the carer against these criteria for the purpose of approving them be the kinship carer for an additional child. Focusing the assessment on the differences associated with the additional child simplifies and streamlines the process while retaining an appropriate level of rigour in the approval of kinship carers.

It will continue to be relevant that the applicant is kin to the child and the applicant is able to help in appropriate ways towards achieving plans for the child's protection.

Clause 44 amends section 137 to provide for a licence to be amended to add a licensed premises. The amended section 137 provides the matters to be considered in deciding whether the amendment is necessary or desirable. This includes, for example, whether each care service complies with the standards of care stated in the statement of standards (section 122) and whether each person responsible for managing a care service is a suitable person.

Clause 45 amends section 138 to clarify that the chief executive may amend a license to remove a licensed premises from the licence in certain circumstances. This includes, for example, if the licensed care service does not comply with the standards of care stated in the statement of standards or if a person responsible for directly managing a licensed care service is not a suitable person.

Clause 46 amends section 138A(3)(b) to provide that the chief executive may amend a renewed kinship carer certificate to extend the expiry date to a day that is not more than 3 years after the day it was issued. This aligns with the amendments to section 134 to provide that the expiry date for a renewed kinship carer certificate must be not more than 3 years form the date of issue.

Clause 47 provides a definition of 'relevant person' in section 139 to provide clarity regarding who is captured by the provision. The provision applies to a person responsible for directly managing a licensed care service and any person who is performing a risk-assessed role for a licensed care service under a licence.

Clause 48 inserts a new section 140B to the Act. The new section 140B clarifies when a decision to amend, suspend or cancel a licence takes effect.

Clause 49 amends section 141 to clarify the section applies to the amendment, suspension or cancellation of authorities other than licences, which are captured by the new section 140B.

Clause 50 makes a drafting amendment to replace the heading of Chapter 4, Part 2, Division 7.

Clause 51 amends section 141D(1)(c) to provide that a person who is performing a risk-assessed role for a licensed care service must notify the nominee for the licensee if there is a change to the person's personal history.

Clause 52 defines "relevant person" for the purposes of section 141H, to capture persons directly managing a licensed care service or persons performing risk-assessed roles for a licensed care service.

Clause 53 amends section 142A to capture any person who performs a risk-assessed role for a licensed care service as a person whose suitability may be investigated.

Clause 54 makes a drafting amendment to the heading of section 142C to clarify that the information being obtained is from the police commissioner.

Clause 55 inserts new sections 142E and 142F to the Act. The new provisions provide a head of power for the chief executive to obtain and consider expanded interstate criminal history from an interstate commissioner of police, for the purpose of assessing the suitability of a person to be a provisionally approved carer, including and adult members of the person's household.

A head of power to obtain and consider this information is one of the requirements the department must comply with to become a participating screening unit of the Intergovernmental Agreement as recommended by the QFCC's foster care report (recommendation 11).

Clause 56 replaces section 148BB(3)(a)(iii) to reflect the need of a delegate to have a working with children authority rather than a notice.

Clause 57 replaces section 148BE(1)(b) and 148BE(2)(b) to reflect the need for a delegate to hold a working with children authority rather than a notice.

Clause 58 inserts new Parts 4 and 5 into Chapter 4.

The new Part 4 requires the chief executive to provide an approved carer with, or ensure the approved carer has access to, support to help the carer care for a child and training programs that maintain or develop the carer's ability to care for children.

The provision provides examples of what support may include, such as information about financial assistance and access to support persons.

Providing for the chief executive to ensure an approved carer has access to support and training is intended to reflect that the support and training may be provided by a third party, such as a carer support agency.

The provision also clarifies that the chief executive need only comply to the extent it is practicable to do so and the support or training is appropriate in the circumstances.

The new Part 5 establishes the legislative basis for a register of authority holders. The new Part 5 is intended to align with the recommendations of the Royal Commission, which recommend that state and territory governments introduce legislation to establish carers registers in their respective jurisdictions (Recommendation 8.17).

As national discussions around the consistency of each state and territory's carers' registers are yet to be finalised, the detail about the information to be included in the register will be prescribed by regulation. This will enable flexibility as national discussions progress.

Clause 59 amends section 159R to clarify that nothing in Chapter 5A requires privileged information to be disclosed, even if it is required by the chief executive under section 159N.

Clause 60 amends section 166 to ensure the term "place" is used consistently throughout the Act rather than the term "premises".

Clause 61 replaces section 186 to implement recommendation 8 of the Royal Commission's Criminal Justice Report. Section 186 prohibits the disclosure of the identity of a notifier, or information from which the notifier's identity could be deduced, other than as allowed by that section.

New section 186B provides that a notifier's identity, or information from which the notifier's identity could be deduced, may be disclosed to a senior police officer, of at least the rank of sergeant. The senior police officer must make a written request for the information and the information must be required for the prevention, detection, investigation, prosecution or punishment of a criminal offence against a child. The person making the disclosure must also be reasonably satisfied it is necessary to ensure the safety, wellbeing or best interests of a child.

The disclosure may only be made by an authorised person, which includes the chief executive or a person approved by the chief executive to disclose a notifier's identity.

At the time of disclosure, an authorised person is required to notify the senior police officer to whom they are disclosing the information that the information responds to their written request and contains the identity or information that states the identity of a notifier. This is intended to avoid situations of inadvertent disclosure of information by the senior police officer where it may be unclear that disclosed information identifies a notifier of harm.

After disclosing the identity or information of a notifier, the person disclosing must inform the notifier of the disclosure unless informing the notifier may prejudice an enforcement action or is not practicable. For example, it may not be practicable to inform the notifier if the authorised person does not have, or cannot obtain, the notifier's contact details.

Under new section 186C, it continues to be the case that evidence of the identity of the notifier, or from which the identity of the notifier could be deduced, must not be given in a proceeding before a court or tribunal without leave of the court or tribunal.

The provision is intended to facilitate the department sharing information with the Queensland Police Service in certain circumstances. It is not intended to apply more broadly, for example where information is obtained under a warrant.

Clause 62 amends section 187 of the Act to provide that information obtained in the administration of the Act may be disclosed with the written consent of the person to whom the information relates, if the person is an adult. This is consistent with the information privacy principles governing the fair collection and handling of personal information in the public sector. Limiting disclosure with consent to adults, provides appropriate safeguards for vulnerable children.

Providing for the consent to be in writing balances the need to safeguard an adult's information with the need to provide flexibility to appropriately deal with their circumstances. Where an adult wants their information to be disclosed to an organisation that is supporting them or acting on their behalf, their right to decide how their information is disclosed should be supported.

Clause 63 amends section 188D to broaden the application. Section 188D currently allows the chief executive to disclose information to a child's parent if the child dies while subject to a child protection order.

The amended section will allow the chief executive to disclose information to a parent of a child who has died, whether or not they were subject to a child protection order. The section clarifies that it is not necessary for the person to have been a child at the time of their death. For example, it may be appropriate to release relevant child protection information to a parent about a person who has died after turning 18.

The amendment also clarifies that a person is not able to act on behalf of a person who is deceased.

Clause 64 omits the definition of parent in Chapter 7, Part 1, Division 4. The definition of parent is clarified in Schedule 3.

Clause 65 inserts transitional provisions into the Act for the operation of the amendments.

For an application made under the previous section 99 that has not been decided, the former section 99 will continue to apply.

The transitional provisions also provide that for an application made under section 118 that has not been dealt with, the former section 121 continues to apply and the new sections 118A, 121 and 121A do not apply.

For applications for authorities made and not decided prior to the commencement of the new provisions, the new section 134(8) and Chapter 4, Part 2, Division 7 will apply. This will enable the longer term for renewal of a certificate to apply and will enable the provisions about obtaining and considering expanded interstate criminal history to apply. Other than those sections, the former provisions of the Act will apply to the application.

The transitional provisions provide that for existing kinship carers, the existing definition of kin will continue to apply for the duration of their certificate. If the holder of the kinship carer certificate makes an application for a foster carer certificate prior to the expiry of their kinship carer certificate (because they do not fall within the new definition of kin), their existing kinship carer certificate will remain in force until their application for a foster carer certificate is decided or withdrawn.

For a person performing a risk-assessed role who has a domestic violence history or a traffic history that was undisclosed before commencement, sections 141B and 141D apply as if the person had acquired the domestic violence history or traffic history on commencement.

For a review under section 247 of a decision made by the chief executive under section 86(4) prior to commencement of the Bill, former schedule 2 applies.

Clause 66 amends Schedule 1 of the Act to insert new rights into the charter of rights for a child in care. The additional rights are intended to ensure the Charter is contemporary, aligns with social values and community expectations and reflects the rights Australia has agreed to recognise and promote as a party to the United Nations Convention on the Rights of the Child.

Clause 67 amends Schedule 2 of the Act to provide an additional decision that may be reviewed by QCAT and to clarify the operation of the existing reviewable decision relating to section 86.

The amended Schedule 2 provides that a decision not to review a case plan under section 51V is a reviewable decision. This aligns with section 51V as amended by clause 24. It also provides that a parent or child may seek review of a decision by the chief executive to not inform a parent of who their child has been placed with, or where the child is living. This reflects changes to section 86 as amended by clause 33.

Clause 68 amends the dictionary in Schedule 3 of the Act.

The new definition of "appropriate for a child" clarifies that what is appropriate for a child varies based on the child's age, maturity, capacity, culture and circumstances.

The new definition of kin clarifies that kin for a child is a member of the child's family group who is a person of significance to the child, for an Aboriginal child – a person who is regarded as kin under Aboriginal tradition, for a Torres Strait Islander child – a person who is regarded as kin under Island custom, and another person who is a person of significance as recognised by the child or the child's family group, and, for an Aboriginal or Torres Strait Islander child, has a cultural connection to the child.

The definition of parent consolidates definitions that were previously in various sections of the Act.

The definition of parenting order updates the definition based on terminology changes in the *Family Law Act 1975* (Cth).

The definition of participate clarifies that participating includes expressing views about the making of a decision or exercise of a power.

Part 4 – Amendment of the *Child Protection Regulation 2011*

Clause 69 states that Part 4 amends the *Child Protection Regulation 2011* (the Regulation).

Clause 70 replaces the existing Part 3A of the Regulation. The new Part 3A includes relevant definitions and the information that is required to be kept on the register of applicants, authority holders and former authority holders. The requirements are intended to generally align with recommendation 8.17 of the Royal Commission. The clause also renames existing Part 3A as Part 3B.

Clause 71 replaces section 21 to align with the amendments made by the Bill regarding the requirement for persons who perform risk-assessed roles for a licensed care service to be suitable which is where they are determined to not pose a risk to the safety of children.

Part 5 – Amendment of the *Disability Services Act 2006*

Clause 72 provides that this Part amends the *Disability Services Act 2006.*

Clause 73 amends section 138D (Chief executive's request for domestic violence information about relevant person) to provide that the chief executive may also ask the police commissioner for domestic violence information about a relevant person if the chief executive reasonably believes a police protection notice may have been issued against a relevant person.

Clause 74 amends schedule 8 (Dictionary) to include a definition of police protection notice by cross-referencing the *Domestic and Family Violence Protection Act 2012* and to change the existing definition of 'domestic violence information' so that it also captures police protection notices issued.

Part 6 – Amendment of the *Working with Children (Risk Management and Screening) Act 2000*

Clause 75 provides that the Part amends the *Working with Children (Risk Management and Screening) Act 2000*.

The amendments contained in division 2 commence on assent.

Clause 76 amends section 8 (Chief executive's main functions) to make a minor technical change which clarifies that the chief executive's main functions include to administer the scheme under both chapters 7 and 8.

Clause 77 amends section 199 (Deemed withdrawal—applicant charged with serious offence or disqualifying offence etc.) to make a minor and technical correction.

Clause 78 replaces existing section 221 (Deciding application—no conviction or conviction etc. for non-serious offence) with a new section 221 (Deciding application—no relevant information or conviction etc. for non-serious offence) which recasts and restructures the positive presumption decision-making test. The positive presumption test requires the chief executive to issue a negative notice only if the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the chief executive to issue a working with children clearance to the person. The new restructured section includes all of the information in previous section 221 which triggers the positive presumption test with the addition of domestic violence information.

Clause 79 amends section 223 (Deciding application—negative notice cancelled or holder of eligibility declaration) to provide that domestic violence information can be considered as new assessable information when the holder of an eligibility declaration or a person who has had their negative notice cancelled makes a working with children check (general) application.

Clause 80 amends section 228 (Deciding exceptional case if disciplinary information or other relevant information exists) to provide how the chief executive is to have regard to domestic violence information in deciding whether there is an exceptional case for a person.

Under new section 228(2)(a), if the chief executive is aware of domestic violence information about the person, the chief executive must have regard to the circumstances of a domestic violence order or police protection notice mentioned in the information, including the conditions imposed on the person by the order or notice. In considering the domestic violence information, the chief executive must also have regard to the length of time that has passed since the event or conduct the subject of the information occurred; the relevance of the information to employment, or carrying on a business, that involves or may involve children; and anything else relating to the information that the chief executive reasonably believes is relevant to the assessment of the person.

While subclause (4) restructures existing section 228(2) and (3), the factors which must be considered in relation to disciplinary information and other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person are simply restated.

Clause 81 amends section 229 (Chief executive to invite submissions from person about particular information) to ensure that the chief executive must give the person a written notice

stating any domestic violence information that the chief executive is aware of to aid the person's response to that particular information as part of the submissions process.

Clause 82 amends section 283 (Deciding application—police officer if further screening not required) to provide that the chief executive must issue a working with children exemption to a police officer only if the chief executive is not aware of domestic violence information about the person. This is in addition to the existing requirements of section 283 which only allow the chief executive to issue a working with children exemption to a person under this section if the chief executive is also not aware of any police information about the person; or any other information about the person that would be relevant to deciding whether it would be in the best interests of children for the chief executive to issue the exemption to the person.

Clause 83 amends section 284 (Deciding application—registered teacher if further screening not required) to provide that the chief executive must issue a working with children exemption to a registered teacher only if the chief executive is not aware of domestic violence information about the person. This is in addition to the existing requirements of section 284 which only allow the chief executive to issue a working with children exemption to a person under this section if the chief executive is also not aware of any police information or disciplinary information about the person; or any other information about the person that would be relevant to deciding whether it would be in the best interests of children for the chief executive to issue the exemption to the person.

Clause 84 amends section 289 (Term of exemption) to provide that a term of a working with children exemption ends under section 350A when the holder of the exemption stops being a police officer or registered teacher, or the exemption is cancelled under Part 5A.

Clause 85 amends section 295 (Application of division) to make a minor and technical amendment.

Clause 86 amends section 299 (When suspension of authority ends) to clarify that the term of a person's working with children exemption which is suspended ends under section 350A because the person stops being a police officer or registered teacher.

Clause 87 inserts new section 315A (Chief executive's request for domestic violence information about person).

New section 315A enables the chief executive to request domestic violence information from the police commissioner if the chief executive reasonably believes a domestic violence order may have been made, or a police protection notice may have been issued, against the person. A person for the purposes of this new section is any person captured under existing section 310.

Subsection (3) provides that the police commissioner must comply with such a request by either giving the chief executive the domestic violence information that exists about the person; or telling the chief executive that there is no domestic violence information about the person.

Subsection (4) provides that if there is domestic violence information about the person, the chief executive may ask the police commissioner for a brief description of the circumstances of a domestic violence order or police protection notice mentioned in the domestic violence information.

Subsections (5) and (6) provide that the police commissioner must comply with a request under subsection (4) if it is information in the police commissioner's possession or to which the police commissioner has access.

Subsection (7) provides that if the chief executive no longer needs the information requested, the chief executive must tell the police commissioner that the information is no longer needed, and the police commissioner's obligation to comply with the chief executive's request ends.

Clause 88 amends section 344 (Giving information to chief executive (disability services)) to provide that the information the chief executive may give to the chief executive (disability services) includes domestic violence information about a person.

Clause 89 amends section 347 (Replacement of lost or stolen card) to make a minor technical change.

Clause 90 amends section 348 (Replacement card for change of name or contact details) to make a minor technical correction to clarify that a person is required to pay the prescribed fee for a replacement card when a person requests a new card because they have changed their name or contact details.

Clause 91 amends section 350A (Holder and notifiable persons notified about expiry of working with children exemption) to make a minor technical change to clarify when the term of a working with children exemption ends.

Clause 92 amends section 384 (Confidentiality of protected information) to ensure that the confidentiality protections of this provision apply to domestic violence information and information related to the domestic violence information.

Clause 93 inserts new Chapter 11, Part 21 (Transitional provisions for Child Protection Reform and Other Legislation Amendment Act 2021).

New section 594 (Definition for part) inserts a definition of 'relevant amendment' for this Part.

New sections 595 to 597 provide for transitional arrangements which deal with:
- existing applications;
- proposed decisions under Chapter 8, Part 5A; and
- reviews and appeals.

New section 595 (Existing application) provides that if, on commencement of a relevant amendment, an eligibility application or working with children check application or application under Chapter 8, Part 5A has been made but not decided or withdrawn, the Act, as in force from commencement of the relevant amendment, applies for deciding that application.

Further, if the chief executive gave the applicant a notice under section 229 in relation to the application before the commencement of the relevant amendment, the chief executive is only required to give the applicant another notice if the chief executive receives further information mentioned in section 229(2)(a) after the commencement of the relevant amendment.

New section 596 (Proposed decision under Ch 8, Pt 5A) applies if, before the commencement of a relevant amendment, the chief executive was proposing to make a decision mentioned in section 294(1) in relation to a person; and the chief executive gave the applicant a notice under section 229, as applied by section 294(2), in relation to making the decision; and, immediately before the commencement of the relevant amendment, had not made the decision. Subsection (2) provides the Act, as in force from the commencement of the relevant amendment, applies for making the decision.

Further, the chief executive is required to give the person another notice under section 229 as applied by section 294(2), after the commencement of the relevant amendment only if the chief executive receives further information mentioned in section 229(2)(a) in relation to making the decision after the commencement of the relevant amendment.

New section 597 (Reviews and appeals) provides that if a review or an appeal in relation to a Chapter 8 reviewable decision was started but not decided or otherwise ended before the commencement of a relevant amendment, or is started under this Act after the commencement of a relevant amendment, the entity hearing the review or appeal must apply the Act, as in force from the commencement of the relevant amendment.

Clause 94 amends Schedule 7 (Dictionary) to include definitions for the terms: domestic violence information, domestic violence order and police protection notice.

The amendments contained in Division 3 commence on proclamation.

Clause 95 inserts new section 19 (Meaning of *interstate working with children check application*, *interstate working with children authority* and related terms) and new section 20 (Meaning of *adverse interstate WWC decision* and related terms).

New section 19 provides definitions for: interstate working with children check application, interstate working with children authority, interstate negative notice, conditional interstate WWC authority and an interstate interim bar.

An *interstate working with children check application* is an application, however called, made under a corresponding WWC law that corresponds to a working with children check application under this Act.

An *interstate working with children authority* is defined to mean an authority, however called, issued under a corresponding WWC law that corresponds to a working with children authority under this Act.

An *interstate negative notice* is defined to mean a notice, however called, issued under a corresponding WWC law that corresponds to a negative notice or imposes a condition that prohibits a person from carrying out child-related work. This latter part of the definition is intended to cover conditional registrations issued under working with vulnerable people registration frameworks in the Australian Capital Territory (ACT) and Tasmania. For example, in the ACT, a conditional registration may be issued with the specific restriction that a person cannot engage in child-related work to help mitigate an identified risk.

A *conditional interstate WWC authority* is an authority, however called, issued under a corresponding WWC law that has the effect of permitting a person to carry out child-related

work subject to stated conditions, including, a condition that a person can only carry out child-related work when under supervision.

An *interstate interim bar* is a restriction, however described, imposed under a corresponding WWC law in relation to a person who made an interstate working with children check application that has the effect of prohibiting the person from carrying out child-related work while the application is decided. While the Queensland blue card system does not provide for interim bars (given it adopts a 'No Card, No Start' approach), other jurisdictions do rely on interim bars to prohibit persons from working with children for a temporary period.

New section 20 inserts definitions for the terms: adverse interstate WWC decision; in effect; and adverse interstate WWC information.

Subsection (1) provides that each of the following decisions made about a person under a corresponding working with children law is an *adverse interstate WWC decision*:

- a decision to refuse an interstate working with children check application made by the person;
- a decision to issue an interstate negative notice to the person;
- a decision to suspend or cancel an interstate working with children authority held by the person; and
- a decision to impose an interim bar on the person.

In particular, a decision to refuse an interstate working with children check application is a category of decision designed to cater for the variations in how each interstate screening unit operates its decision-making framework. For example, in the Northern Territory, a person's application is refused by the screening unit where assessable information indicates a risk but the person is not formally issued with a negative notice.

Subsection (2) provides the circumstances in which an adverse interstate WWC decision is considered to be *in effect*. This includes where the decision has not been overturned on review or appeal and the following situations where the decision has not otherwise stopped having effect because:

- for a decision to refuse an interstate working with children check application made by the person—a later interstate working with children check application made by the person has been decided by the interstate screening unit that refused the application;
- for a decision to issue an interstate negative notice to a person—the notice has expired or been revoked;
- for a decision to suspend an interstate working with children authority held by a person—the suspension has ended and the authority has been cancelled; or
- for a decision to impose an interstate interim bar on a person—the interim bar has ended.

Subsection (3) defines the term *adverse interstate WWC information* about a person to mean each adverse interstate WWC decision made about the person; each decision to issue a conditional interstate WWC authority to the person; and any information related to such a decision, including the reasons for the decision.

Clause 96 amends section 175 (Clearance required to employ person in regulated employment) to provide it is an aggravating circumstance for the offence for an employer to employ or continue to employ a person in regulated employment without a working with children

clearance if an adverse interstate WWC decision made about the employee is in effect and the employer knows, or ought reasonably to know, the decision is in effect.

Clause 97 amends section 176A (Person prohibited from regulated employment without clearance) to provide it is an aggravating circumstance for the offence for a person to start or continue in regulated employment unless the person holds a working with children clearance if the person is the subject of an adverse interstate WWC decision that is in effect.

Clause 98 amends section 176C (Exemption required to employ police officer or registered teacher in regulated employment) to provide it is an aggravating circumstance for the employer to employ, or continue to employ, a police officer or registered teacher in regulated employment without a working with children exemption if an adverse interstate WWC decision made about the employee is in effect and the employer knows, or ought reasonably to know, the decision is in effect.

Clause 99 amends section 176E (Police officer or registered teacher prohibited from regulated employment without exemption) to provide it is an aggravating circumstance for a police officer or registered teacher to start or continue in regulated employment without complying with subsection (1) if the person is the subject of an adverse interstate WWC decision that is in effect.

Clause 100 amends section 176H (Definitions for division) to provide that the definition of a restricted person includes a person who is the subject of an adverse interstate WWC decision that is in effect.

Clause 101 amends section 195 (Notice of withdrawal) to ensure that where a working with children check application is withdrawn, the chief executive must also give a withdrawal notice to the potential employer for the applicant.

Clause 102 amends section 199 (Deemed withdrawal—applicant charged with serious offence or disqualifying offence etc.) to ensure that a notice given to a potential employer because this section applies advises that it is an offence to employ, or continue to employ, the applicant in restricted employment.

Clause 103 inserts new section 201 (Deemed withdrawal—adverse interstate WWC decision in effect).

New section 201 provides that the chief executive must withdraw a person's application if the chief executive becomes aware that an adverse interstate WWC decision has been made about the applicant and the decision is in effect.

Subsection (2) provides that the withdrawal notice provided to the applicant, notifiable person or potential employer for the application must advise of the requirements in relation to restricted employment.

Clause 104 amends section 221 (Deciding application—no relevant information or conviction etc. for non-serious offence) to provide that the positive presumption test applies where the chief executive is aware of an adverse interstate WWC information.

Clause 105 amends section 223 (Deciding application—negative notice cancelled or holder of eligibility declaration) to provide that adverse interstate WWC information can be considered as new assessable information when the holder of an eligibility declaration or a person who has had their negative notice cancelled makes a working with children check (general) application.

Clause 106 amends section 228 (Deciding exceptional case if other relevant information exists) to provide how the chief executive is to have regard to adverse interstate WWC information in deciding whether there is an exceptional case for a person.

Subclause (3) amends section 228(2) to provide that if the chief executive is aware of adverse interstate WWC information about the person, the chief executive must have regard to each adverse interstate WWC decision or decision to issue the conditional interstate WWC authority mentioned in the information, and the reasons for the decision.

In considering the adverse interstate WWC information, the general factors under section 228 also apply. These require the chief executive to have regard to the length of time that has passed since the event or conduct the subject of the information occurred; the relevance of the information to employment, or carrying on a business, that involves or may involve children; and anything else relating to the information that the chief executive reasonably believes is relevant to the assessment of the person.

Clause 107 amends section 229 (Chief executive to invite submissions from person about particular information) to ensure that the chief executive must give the person a written notice stating any adverse interstate WWC information that the chief executive is aware of in order to assist the person's response to that particular information as part of the submissions process.

Clause 108 amends section 283 (Deciding application—police officer if further screening not required) to add adverse interstate WWC information to the scope of information the chief executive is not aware of before the chief executive must issue a working with children exemption to a police officer under the section.

Clause 109 amends section 284 (Deciding application—registered teacher if further screening not required) to add adverse interstate WWC information to the scope of information the chief executive is not aware of before the chief executive must issue a working with children exemption to a registered teacher under the section.

Clause 110 omits and replaces section 295 (Application of division). The circumstances provided for under previous section 295 are restated in subsections (a) and (b). In addition, new limbs are inserted to provide that the division also applies if:

- a person holds a working with children authority and an interstate working with children authority and the person's authority is suspended under a corresponding WWC law; or
- the person holds a working with children authority and is subject to an interstate interim bar.

Clause 111 amends section 300 (Chief executive's decision about suspended authority) to provide that the chief executive is not required to decide a person's application to end a suspension in circumstances where the person holds an interstate working with children authority and the person's authority is suspended under a corresponding WWC law; or where the person is an applicant for an interstate working with children check application and the person is subject to an interstate interim bar in relation to the application.

Subclause (2) inserts new subsection (3) to provide that the chief executive must not make a decision under section 300(1) if the chief executive is required to cancel the person's working with children authority under section 303 or 303A.

Clause 112 amends the heading of Chapter 8, Part 5A, Division 3 (Cancelling working with children authority without suspension) to include the words 'by chief executive'.

Clause 113 inserts new section 303A (Cancelling authority if adverse interstate WWC decision).

New section 303A(1) provides that the chief executive must cancel a person's working with children authority if a person's interstate working with children check application is refused under a corresponding WWC law; the person is issued an interstate negative notice; or an interstate working with children authority held by the person is cancelled under a corresponding WWC law. Subsection (2) provides that this section applies regardless of whether the person's working with children authority is suspended under section 296.

Clause 114 amends section 304A (Cancelling authority because of subsequent information) to include adverse interstate WWC information.

Clause 115 amends section 304B (Action after decision) to clarify the actions which must be taken after the chief executive has cancelled an authority under this division.

Subclause (3) inserts new subsection 304B(1A) which restates current section 304B(1)(c) to prescribe what a written notice to the person must include if the person's authority is cancelled under sections 303, 304 or 304A.

Subsection (1B) provides that if the person's working with children authority is cancelled under section 303A, the chief executive must give the person a notice stating that the person's working with children authority is cancelled because of the adverse interstate WWC decision mentioned in section 303A; the person must return their working with children card to the chief executive immediately, unless the person has a reasonable excuse; and that there is no review or appeal of the decision to cancel the person's authority.

Clause 116 amends section 304C (Notifiable persons and potential employers notified about cancellation) to clarify 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 that states the person has been issued a negative notice only if the person's authority is cancelled under sections 303, 304 or 304A.

Subclause (2) inserts new section 304(2A) to provide that if the person's working with children authority was cancelled under section 303A, a notice given to each notifiable person or potential employer must state that the person's authority was cancelled under that section.

Clause 117 amends section 304G (Application to cancel negative notice) to provide that a person may only apply to the chief executive to cancel a negative notice if the person holds a negative notice; is not a relevant disqualified person; and is not the subject of an adverse interstate WWC decision that is in effect.

Clause 118 amends the heading of Chapter 8, Part 6, Division 4 (Obtaining information from interstate police commissioner) to include the words 'working with children check national reference system or interstate screening unit'.

Clause 119 inserts new section 320A (Obtaining information from working with children check national reference system) and section 320B (Requesting information from other interstate screening units).

New section 320A provides that the chief executive may access the working with children check national reference system to obtain information about a person mentioned in section 310 if the chief executive accesses the system and obtains the information under an arrangement between the chief executive and the ACC, and the information is relevant to the performance of the chief executive's screening functions in relation to the person.

New section 320B(1) provides that if the chief executive reasonably believes that an interstate screening unit has information about a person in section 310 that is relevant to the performance of the chief executive's screening functions in relation to the person, the chief executive may request information from an interstate screening unit.

Subsection (2) provides that the chief executive may ask the interstate screening unit for information. Subsection (3) provides that the chief executive's request may include the person's name, any other name the chief executive believes the person may use or have used, the person's gender, and date and place of birth.

Clause 120 replaces the heading of Chapter 8, Part 6, Division 8 to read 'Giving information to police commissioner and other State entities'.

Clause 121 amends section 339 (Chief executive to give notice to particular entities about a change in police information) to include reference to 'notifiable persons etc' in the heading. Section 339 is relocated to after section 344 and renumbered as section 344AA.

Clause 122 amends section 344 (Giving information to chief executive (disability services)) to provide that the chief executive may give adverse interstate WWC information to the chief executive (disability services) if the chief executive reasonably believes the information is relevant to the functions of the chief executive (disability services) under Part 5 of the *Disability Services Act 2006*.

Clause 123 inserts a new heading of 'Chapter 8, Part 6, Division 9 (Giving information to notifiable persons, authorised entities and self-managed NDIS participants etc.)' before new section 344AA.

Clause 124 inserts new Chapter 8, Part 6, Division 10 (Giving information to ACC and interstate screening units).

New section 345A (Application of division) provides that this division applies to information about a person that the chief executive was given, or given access to, under this Part, or is in the chief executive's possession in relation to the performance of the chief executive's screening functions.

New section 345B (Giving information to ACC) provides that the chief executive may give information about a person to the ACC under an arrangement between the chief executive and the ACC for the purpose of including the information in the working with children check national reference system, or where the chief executive reasonably believes is otherwise relevant to the functions of the ACC under the *Australian Crime Commission Act 2002* (Cth) that relate to the working with children check national reference system.

Subsection (2) provides that, without limiting subsection (1)(a), information is given to the ACC if the information is entered into, or uploaded to, the working with children check national reference system.

New section 345C (Giving information to interstate screening units) applies if the chief executive is aware a person holds an interstate working with children authority issued by an interstate screening unit under a corresponding WWC law; or where an interstate screening unit has asked the chief executive for information about a person in relation to deciding an application made under a corresponding WWC law.

Subsection (2) provides the chief executive may give information about the person to the interstate screening unit if the chief executive reasonably believes the information is relevant to the functions of the interstate screening unit under the corresponding WWC law. Subsection (3) provides that the chief executive must not give a section 93A transcript, or information contained in such a transcript, to an interstate screening unit.

Clause 125 inserts a new heading for Chapter 8, Part 6, Division 11, 'Guidelines for dealing with information'.

Clause 126 amends section 353 (Definitions for div 3) to include within the definition of chapter 8 reviewable decision, decisions made by the chief executive because the person's interstate working with children authority is suspended or is subject to an interstate interim bar and the person claims he or she is not the person who is the subject of the suspended authority or bar.

Clause 127 amends section 384 (Confidentiality of protected information) to ensure that the confidentiality protections of section 384 apply to adverse interstate WWC information.

Clause 128 inserts new sections 598 to 601 into Chapter 11, Part 21, as inserted by this Act.

New section 598 (New regulated employment) provides for a three month grace period for a person who was employed or continuing in employment related to licensed care services which was not regulated employment immediately before commencement.

New section 599 (New regulated businesses) provides for a three month grace period for a person who was carrying on a business related to licensed care services which was not a regulated business immediately before commencement.

New section 600 (Effect of adverse interstate WWC decision made before commencement on existing authority) provides that where a person holds a working with children authority on commencement, for the purposes of suspending or cancelling the person's working with children authority, an adverse interstate WWC decision that is in effect on the commencement

is taken to have been made on the commencement. In addition, it is immaterial whether the person's working with children authority was suspended on the commencement.

New section 601 (Information that may be given under ss 345B and 345C) provides that for the purpose of the information sharing arrangements in sections 345B and 345C, the chief executive may give information about a person to the ACC or an interstate screening unit regardless of whether the information relates to a matter that happened before or after the commencement.

Subsection (2) clarifies that this may include information about a working with children check application made before the commencement; information about a working with children authority or negative notice issued before the commencement; and information about a person obtained by the chief executive under Chapter 8, Part 6 before the commencement.

Clause 129 amends Schedule 1, section 14 (Care of children under *Child Protection Act 1999*) to simplify and streamline the category of regulated employment for persons working in licensed care services. It provides that employment is regulated employment if the usual functions of the employment—

- are carried out, or likely to be carried out, inside a licensed residential facility; or
- include responsibility for directly managing a licensed care service; or
- include performing a risk-assessed role for a licensed care service.

Clause 130 replaces Schedule 1, section 24 (Businesses relating to licensed care service under Child Protection Act 1999). New Schedule 1, section 24 provides that a business is a regulated business if the usual activities of the business include, or are likely to include:

- carrying out activities or providing services inside a licensed residential facility;
- a licensed care service; or
- performing a risk-assessed role for a licensed care service.

The term 'risk-assessed role', as referred to in clauses 129 and 130, is defined by reference to section 123A of the *Child Protection Act 1999*.

Clause 131 subsection (1) amends schedule 7 (Dictionary) to include definitions for: ACC adverse interstate WWC decision; adverse interstate WWC information; chief executive's screening functions; conditional interstate WWC authority; corresponding WWC law; in effect; interstate interim bar; interstate negative notice; interstate screening unit; interstate working with children authority; interstate working with children check application; national policing information; national policing information functions; risk-assessed role; and working with children check national reference system.

Clause 131(2) inserts a new limb into the existing definition of 'notifiable person' to allow the chief executive to notify the licensee of a licensed care service of changes to the blue card status of a person if the chief executive is aware that the person performs a risk-assessed role for the licensed care service.

Part 7 – Minor and consequential amendments

Clause 132 provides that Schedule 1 amends the legislation it mentions,

Schedule 1 – Minor and consequential amendments

Schedule 1 makes minor drafting and consequential amendments to the *Adoption Act 2009*, the *Child Protection Act 1999*, the *Commonwealth Powers (Family Law - Children) Act 1990*, the *Coroners Act 2003*, the *Director of Child Protection Litigation Act 2016*, the *Disability Services Act 2006*, the *Domestic and Family Violence Protection Act 2012*, the *Family Responsibilities Commission Act 2008*, the *Justice and Other Information Disclosure Act 2008*, the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Regulation 2019, the *Working with Children (Risk Management and Screening) Act 2000* and the *Youth Justice Act 1992*, to update cross-referencing to reflect amendments made by the Bill, and to update terminology.