

Children and Community Development Bill 2003

Explanatory Memorandum

The Children and Community Development Bill 2003 is a Bill for an Act:

- to confer functions in relation to the provision of social services, the provision of financial and other assistance, and other matters concerning the wellbeing of children, other individuals, families and communities;
 - to make provisions about the protection and care of children, the employment of children, and child care services;
 - to repeal the *Child Welfare Act 1947*;
 - to repeal the *Welfare and Assistance Act 1961*;
 - to repeal the *Community Services Act 1972*;
 - to amend certain Acts,
- and to provide for related matters

Part 1 — Preliminary

Part 1 of the Bill contains the title of the Act, the relevant commencement provisions, definitions of terms used within the Bill, presumptions of parentage as set in the *Family Court Act 1997* and the status of notes in the Act.

Clause 1: Short title

The short title of the Bill is the *Children and Community Development Act 2003*.

Clause 2: Commencement

The Bill is to come into operation on a day, or different days, to be fixed by proclamation to be published in the Government Gazette.

Clause 3: Terms used in this Act

This clause contains definitions of terms and expressions used throughout the Bill. These terms have been defined to ensure the provisions of the Bill are interpreted and applied in the manner intended.

Of particular note are the following terms:

“authorised officer” – means an officer appointed under clause 25 by the CEO for the purposes of this Act or for the purposes of provisions of the Bill specified in the appointment.

“child” – means a person who is under 18 years of age;

“negotiated placement agreement” – means an agreement under clause 75(1) of this Bill where the parents of a child (who are unable to care for a child) and the CEO enter into an agreement under which the CEO is required to make a placement arrangement for the child;

“parent” – means a person, other than the CEO, who at law has the responsibility for the long-term or day-to-day care, welfare and development of the child;

“party” – in relation to protection proceedings, means a person who is a party to proceedings under clause 147 of the Bill. In protection proceedings a party to proceedings can include the child, each parent of the child, CEO and any other person considered by the Court to have a direct and significant interest in the wellbeing of the child;

“placement arrangement” – means an arrangement under clause 79(2) of the Bill for the placement of a child. The CEO may make an arrangement for the placement of a child:

- with an individual approved by the CEO;
- with a person who has entered into an agreement under clause 15(1) of the Bill for the provision of social services; or
- in a residential facility operated or managed by the Department or another public authority; or
- any other arrangement for the placement of the child that the CEO considers appropriate.

“protection order” – has the meaning given to that term in clause 43. The term may refer to any one of the following:

- a protection order (supervision)
- a protection order (time-limited)
- a protection order (until 18)
- a protection order (enduring parental responsibility).

“relative” – in relation to a child, means each of the following people whether the relationship is established by, or traced through, consanguinity, marriage, a de facto relationship, a written law or a natural relationship:

- parent, grandparent or other ancestor;
- step-parent;

- sibling;
- uncle or aunt;
- cousin;
- spouse or de facto partner.

In the case of an Aboriginal child, a person regarded under the customary law or tradition of the child's community as the equivalent of a person mentioned above.

In the case of a Torres Strait Islander child, a person regarded under the customary law or tradition of the Torres Strait Islands as the equivalent of a person mentioned above.

"social services" – means services provided to assist children, other individuals, families and communities including, but not limited to, the following services:

- preventative services;
- protective services;
- placement services;
- child care services;
- information and advisory services;
- education and training services;
- counselling services;
- therapeutic services;
- advocacy services;
- mediation services;
- crisis services;
- family and domestic violence services;
- support services.

"wellbeing" – of a child includes the care, development, health and safety of the child.

Clause 4: Presumptions of parentage

The presumptions of parentage set out in the *Family Court Act 1997* Part 5 Division 11 subdivision 3 apply when considering, for the purposes of Part 4 (Protection and care of children) and Part 5 (Protection proceedings) of the Bill, who is a parent of a child. The presumptions of parentage include:

- parentage arising from marriage;
- paternity arising from cohabitation;
- parentage arising from registration of birth;
- parentage arising from findings of courts;
- paternity arising from acknowledgments.

Clause 5: Status of notes

Notes are appended to some clauses in the Bill. The notes are to assist understanding and do not form part of the Bill.

Part 2 — Objects and principles

Division 1 — Objects

Clause 6: Objects

Clause 6 sets out the objects or purposes of the Bill. These are to promote the wellbeing of children, other individuals, families and communities; to acknowledge the primary role of parents, families and communities in safeguarding and promoting the wellbeing of children and to encourage and support them in this role; to provide protection and care for children where their parents have not given or are unable to give that protection and care; to protect children from exploitation in employment and to protect and promote the best interests of children who receive child care services.

Division 2 — General principles relating to children

This Division articulates the principles that must be taken into consideration in the performance of a function or action under the Bill.

Clause 7: Principle that best interests of child paramount

The overriding principle of the Bill is the best interests of the child are paramount. In performing a function or exercising a power under the Bill in relation to a child, a person or the Court must regard this principle as the paramount consideration.

Clause 8: Determining the best interests of a child

Subclause (1) lists those factors that must be taken into account in determining the best interests of a child:

- (a) the need to protect the child from harm;
- (b) the capacity of the child's parent's to protect the child from harm;
- (c) the capacity of the child's parents or any other person to provide for the child's needs;
- (d) the nature of the child's relationships with the child's parents, siblings and other relatives and significant persons in the child's life;

- (e) the attitude to the child, and to parental responsibility, demonstrated by the child's parents;
- (f) the wishes or views of the child, having regard to the child's age and level of understanding in determining the weight to be given to those wishes or views;
- (g) the importance of permanency in the child's living arrangements and the likely effect on the child of disruption of those living arrangements, including separation from parents, siblings, carers and significant others;
- (h) the need to maintain contact with a child's parents and significant others;
- (i) the child's age, maturity, sex, sexuality, background and language;
- (j) the child's cultural, ethnic or religious identity (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal people or Torres Strait Islanders);
- (k) the child's physical, emotional, intellectual, spiritual, developmental and educational needs;
- (l) any other relevant characteristics of the child;
- (m) the likely effect on the child of any change in the child's circumstances.

Subclause (2) provides that the matters that may be taken into account in determining what is in the best interest of a child are not limited to matters in clause (1).

Clause 9: Guiding principles

Clause 9 lists the guiding principles that must be observed in the administration of the Bill. They are in addition to the principle of the best interests of the child.

While they are self explanatory the guiding principles are listed below with some further explanation:

- (a) the principle that the parents, family and community of a child have the primary role in safeguarding and promoting the child's wellbeing;
- (b) the principle that the preferred way of safeguarding and promoting a child's wellbeing is to support the child's parents, family and community in the care of the child;
- (c) the principle that every child should be cared for and protected from harm;
- (d) the principle that every child should live in an environment free from violence. (This principle is directly related to family and domestic violence).
- (e) the principle that every child should have stable, secure and safe relationships and living arrangements. (This principle applies, in particular, to desirable outcomes in the process of permanency planning for the child).
- (f) the principle that court action should only be taken in respect of a child in circumstances where there is no other reasonable way to safeguard and promote the child's wellbeing;

- (g) the principle that a child who is removed from the child's family should be given encouragement and support to maintain contact with the family, so far as consistent with the child's best interests;
- (h) the principle that decisions about a child should be made promptly having regard to the age, characteristics, circumstances and needs of the child;
- (i) the principle that decision about a child should be consistent with cultural, ethnic and religious values and traditions relevant to the child;
- (j) the principle that a child's parents and any other people who are significant in the child's life should be given an opportunity and assistance to participate in decision-making processes under the Bill that are likely to have a significant impact on the child's life;
- (k) the principle that a child's parents and significant others be given adequate information in a manner that they can understand about decision-making processes that are likely to have a significant impact on the child's life; the outcome of any decision; and the reasons for the decision and any relevant complaint and review procedures;
- (l) the principle set out in clause 10 (1) which relates to child participation.

Clause 10: Principle of child participation

Clause 10(1) requires that where a decision is likely to have a significant impact on the child's life, the child should be given information and assistance, to ensure the child's involvement in the decision making process.

The child should be given:

- (a) adequate information in a manner and language that the child can understand about the decision being made, the reasons for the Department's involvement, the ways in which the child can participate in the decision making process and any relevant complaint or review procedures;
- (b) the opportunity to express the child's wishes and views freely, according to the child's ability;
- (c) any assistance that is necessary for the child to express those wishes and views;
- (d) adequate information as to how the child's wishes and views will be recorded and taken into account;
- (e) adequate information about the decision made and a full explanation of the reasons for the decision; and
- (f) an opportunity to respond to the decision made.

Subclause (2) In applying clause (1) due regard must be taken of the child's age and level of understanding.

Subclause (3) outlines the various decisions that are likely to have a significant impact on a child's life. They include, but are not limited, to:

- (a) decisions about placement of the child;
- (b) decisions in the course of preparing, modifying or reviewing care plans or provisional care plans for the child;
- (c) decisions about the provision of social services to the child; and
- (d) decisions about contact with the child's parents, siblings and other relatives and with any other people significant in the child's life

Subclause (4) defines the terms used in subclause (3) (b).

Division 3 — Principles relating to Aboriginal and Torres Strait Islander children

This Division focuses on three key principles: the child placement principle, the principle of self determination and the principle of community participation.

Clause 11: Relationship with principles in Division 2

Clause 11 states that the principles in Division 3 are in addition to, not in substitution for, the principles in Division 2. The best interests of the child is paramount to any other principle including the principles in this Division.

Clause 12: Aboriginal and Torres Strait Islander child placement principle

Subclause (1) explains that the object of the principle set out in subclause (2) is to maintain a connection with family and culture for Aboriginal children and Torres Strait Islander children who are the subject of placement arrangements.

Subclause (2) In making decisions under the Bill about the placement of an Aboriginal child or Torres Strait Islander child the following order of priority must, as far as practicable, be applied:

- (a) placement with a member of the child's family;
- (b) placement with a person who is an Aboriginal person or a Torres Strait Islander in the child's community in accordance with local customary practices;
- (c) placement with a person who is an Aboriginal person or a Torres Strait Islander;
- (d) placement with a person who is not an Aboriginal person or a Torres Strait Islander but who, in the opinion of the CEO, is sensitive to the needs of the child and capable of promoting the child's ongoing affiliation with the child's culture, and where possible, the child's family.

Clause 13: Principle of self-determination

Aboriginal people and Torres Strait Islanders should be allowed to participate in the protection and care of their children with as much self-determination as possible. The principle is to be observed in the administration of the Bill.

Clause 14: Principle of community participation

A kinship group, community or representative organisation of Aboriginal people or Torres Strait Islanders should be given, where appropriate, an opportunity and assistance to participate in decision-making processes under the Bill that are likely to have a significant impact on the life of a child who is a member of, or represented by, the group, community or organisation. This principle is to be observed in the administration of the Bill.

Part 3 — Administrative matters

This Part establishes the administrative structure and processes by which the functions of the Bill are carried out. It provides for the setting up of a corporate Ministerial Body and for the Minister to enter into agreements on behalf of the State for the provision of social services.

The functions of the CEO are identified together with the factors he or she needs to consider in performing his or her duties.

Division 1 — The Minister

Clause 15: Agreements in respect of social services

This clause empowers the Minister, on behalf of the State, to enter into agreements with public bodies, associations or organisations to facilitate the provision or promotion of social services and to undertake social research.

Subclause (2) provides that any conditions the Minister considers appropriate may be included such agreements.

Subclause (3) is intended to ensure that the Minister's ability to enter into agreements or arrangements other than under clause 15 is not limited by clause 15.

Clause 16: Delegation by Minister

Subclause (1) provides for the Minister to delegate any of his or her powers or duties under the Bill to the CEO.

Subclause (2) specifies that the delegation of powers to the CEO includes powers associated with the governance of the Ministerial Body.

Subclause (3) provides that any such delegation must be in writing and signed by the Minister.

Subclause (4) The Minister may authorise the CEO to further delegate a power or duty.

Subclause (5) Unless it is shown otherwise, where a person is exercising a power or performing a duty that has been delegated to that person, it is assumed that the person is doing so in accordance with the terms of the delegation.

Subsection (6) Nothing in clause 16 limits the ability of the Minister to perform a function through an officer or agent.

Division 2 — The Community Development Ministerial Body

Clause 17: Meaning of “Ministerial Body”

In this Division the “Ministerial Body” means the Community Development Ministerial Body.

Clause 18: The Community Development Ministerial Body

This clause is similar to parts of section 6 of the *Community Services Act 1972*.

Subclause (1) establishes the Community Development Ministerial Body.

Subclause (2) states the Ministerial Body is a body corporate with perpetual succession, that is, having the capacity to continue indefinitely as a body regardless of any change in the person holding the office of Minister.

Subclause (3) Proceedings may be taken by and against the Ministerial Body in its corporate name.

Subclause (4) The Minister is to have governing control of the Ministerial Body.

Subclause (5) identifies the Ministerial Body as an agent of the State with the status immunities and privileges of the State.

Clause 19: Purpose and nature of the Ministerial Body

Subclause (1) The purpose of the Ministerial Body, is to provide a corporate body through which the Minister can perform functions under the Bill that are more conveniently done by a body corporate than an individual.

Subclause (2) clarifies that the body corporate created to assist the Minister carry out the responsibilities and functions of the Act and any Ministerial officers employed to perform functions associated with the Ministerial Body do not constitute an organisation for the purpose of the *Public Sector Management Act 1994*.

Clause 20: Execution of documents by the Ministerial Body

Subclause (1) requires the Ministerial Body to have a common seal.

Subclause (2) A document is duly executed by the Ministerial Body in the following ways:

- a) the common seal is affixed to in accordance with subclause (3) and (4)
- b) it is signed on behalf of the Ministerial Body by the Minister; or
- c) it is signed on behalf of the Ministerial Body as authorised under subclause (5) by the CEO or another person.

Subclause (3) stipulates that the common seal is not to be affixed to a document except as authorised by the Ministerial Body.

Subclause (4) requires that the common seal to be affixed to a document in the presence of the Minister and signed by the Minister to verify that the seal was properly affixed.

Subclause (5) provides for the Ministerial Body to authorise the CEO or another officer of the Department to sign documents on behalf of the Ministerial Body. The authorisation must be in writing under the Ministerial Body's common seal. The authorisation may be general or have conditions or restrictions attached to it.

Subclause (6) provides that a document purporting to be duly executed is to be presumed to be properly executed unless the contrary is shown.

Subclause (7) Specifically relates to deeds. A document is executed by the CEO or another person, without the common seal, is not to be regarded as a deed unless it is executed as a deed as authorised under subclause (5).

Subclause (8) provides that where a document is produced bearing a seal purporting to be the common seal of the Ministerial Body, it is to be presumed that it is the seal unless shown otherwise.

Subclause (9) permits the use of a facsimile or exact copy. A facsimile of the Ministerial Body's common seal, or the facsimile of the signature of the Minister or a person authorised under subclause (5) may be used. A deed or other document purporting to be endorsed with such facsimile is to be regarded as bearing it until the contrary is shown.

Division 3 — The CEO

Clause 21: Functions of CEO

Subclause (1) identifies the CEO's functions. The CEO's functions include providing social services for children and families, managing property for the purposes of the Act and establishing procedures for dealing with complaints relating to the administration of the Act.

Subclause (2) provides a list of factors the CEO must consider in carrying out the functions of the Act and in assisting the Minister in the administration of the Act. For example, the CEO must encourage a collaborative approach with other public authorities and the non government sector in the provision of social services and in responding to child abuse and neglect; promote diversity and participation in community life with particular consideration to identified groups; and recognise the need to strengthen families and communities so that they can achieve self reliance and provide for the care and wellbeing of their members.

Clause 22: Cooperation and assistance

Subclause (1) requires the CEO to work in cooperation with public authorities and non-government agencies and service providers in carrying out functions under the Act.

Subclause (2) requires the CEO to promote the establishment, implementation and regular review of procedures for working in cooperation with public authorities and non-government agencies and service providers relation to the protection and care of children, and the provision of financial or any other assistance.

Subclause (3) empowers the CEO to request a public authority or service provider to take specific action to assist in carrying out functions under the Bill.

Subclause (4) obliges a public authority or service provider, where it is consistent with its functions and not likely to adversely affect its responsibilities, to endeavour to comply wherever possible with any request made by the CEO under subclause (3).

Subclause (5) is intended to ensure that nothing in this clause will limit the operation of clause 23, relating to the exchange of information.

Clause 23: Exchange of information

The following provisions enable the exchange of certain information in particular circumstances, provided it is relevant to the wellbeing of a child or a class or group of children, or the performance of a function under the Bill. This clause is similar to section 10C of the *Child Welfare Act 1947* introduced in the *Child Welfare Amendment Act 2002* and is extended to include "interested persons".

Subclause (1) defines the terms "corresponding authority", "interested person" and "relevant information" for the purposes of this clause. "Relevant information" is information which, in the opinion of the CEO is, or is likely to be, relevant to the wellbeing of a child or a class or group of children or to the performance of a function under this Bill.

Subclause (2) authorises the CEO or an authorised officer of the Department, in performing the functions of the Bill, to disclose relevant information to a public authority, "corresponding authority" or an "interested person".

Subclause (3) enables the CEO or an authorised officer of the Department to request a public authority, "corresponding authority" or an "interested person" to disclose relevant information relevant to them.

Subclause (4) is intended to ensure that another law of this State relating to secrecy or confidentiality does not prevent a public authority, service provider or "interested person" from complying with a request under subclause (3).

Subclause (5) protects a person who has provided information in good faith, in response to a lawful request under subclauses (2) and (3) from civil or criminal liability. In addition, the disclosure of the information is not to be considered a breach of any duty of confidentiality, professional ethics or secrecy imposed by law or viewed as a breach of professional ethics or as unprofessional conduct.

Subclause (6) requires the CEO to establish procedures for the disclosure of information under subclause (2).

Subclause (7) provides for regulations to be made in respect of the receipt and storage of information disclosed under this clause and restrictions on access to the information.

Clause 24: Delegation by CEO

Subclause (1) allows for the CEO to delegate to an officer of the Department any of his or her powers or duties under the Bill.

Subclause (2) requires that the delegation to be in writing and signed by the CEO.

Subclause (3) prevents a person to whom a power or duty is delegated under this clause from further delegating the power or duty.

Subclause (4) specifies that when a person carries out a delegated function under this clause it is to be assumed that he or she is carrying out the function as delegated unless the contrary is shown.

Subclause (5) provides that nothing in clause 24 limits the ability of the CEO to carry out a function through an officer or agent.

Division 4 — Authorised officers

Clause 25: Appointment of authorised officers

This clause enables the CEO to appoint authorised officers to carry out functions and duties under the Bill. The appointment may be general or relate to specific functions.

Clause 26: Identity cards

Subclause (1) requires the CEO to issue an identity card to each authorised officer. The identity card must be in a form approved by the CEO.

Subclause (2) requires an authorised officer to show his or her identity card when carrying out a function under the Bill if requested by the person in respect of whom the officer is exercising a power under the Bill.

Subclause (3) provides that the showing of an identity card is to be taken as conclusive proof of the officer's appointment under clause 25.

Division 5 — Advisory bodies

Clause 27: Establishment of advisory bodies

Subclause (1) defines the term "advisory body" for the purpose of this clause.

Subclause (2) enables the Minister to establish advisory bodies to give advice or assist the Minister or the CEO on issues relevant to the administration of the Act. Examples of such bodies would be the Child Protection Advisory Committee and Child Death Review Committee.

Subclause (3) clarifies that subclause (2) does not give the Minister the power to establish a body corporate.

Subclause (4) provides the Minister with the authority to appoint anyone he or she considers appropriate to an advisory body.

Subclause (5) sets out the details to be included in an instrument of appointment for establishing an advisory body and stipulates that the Minister must sign the instrument.

Subclause (6) enables the Minister, by a signed instrument, to amend or cancel any appointment or condition made under subclause (5).

Subclause (7) requires the Minister to ensure that the details of an instrument of appointment establishing an advisory body are published in the *Gazette*.

Subclause (8) provides for remuneration and allowances to members of an advisory body. Remuneration and allowances are to be determined on the recommendation of the Minister for Public Sector Management.

Part 4 — Protection and care of children

This Part contains divisions 1- 10; clauses 28 – 130 this is the largest part of the Bill and relates to the protection and care of children. The powers in this Part include a general capacity for the CEO to safeguard children’s wellbeing; investigation; application to the Court for protection orders; protection proceedings; arrangements for children in the CEO's care, and provisions for leaving care and offences.

Part 4 of the Bill substantially replaces Part IV – Wards and children under Departmental control of the *Child Welfare Act 1947*. Since the enactment of the *Child Welfare Act*, 56 years ago, significant advances have been made in our understanding of the problem of child abuse and in the development of child protection practice.

Child protection practice is now recognised as being part of a continuum of service to children and families, from safeguarding and supporting wellbeing through to protection of children who have suffered, or are at risk of suffering, significant harm, and the provision of alternative arrangements to parental care.

This legislative reform will reflect new research knowledge and practice developments, together with changing community expectations for inclusion, informed decision-making, procedural fairness and accountability.

Division 1 — Introductory matters

Division 1 of Part 4 provides for matters preliminary to the protection and care of children to be addressed.

Clause 28: When child is in need of protection

This clause defines when a child may be deemed to be in need of protection for the purposes of the Bill.

This replaces the out of date section 4(1) of the *Child Welfare Act 1947*.

Subclause (1) defines the term “neglect” as including an inability by the child’s parents to either provide, or arrange for, the provision of adequate care or effective medical, therapeutic or other required remedial treatment.

Subclause (2) sets out the grounds for finding a child in need of protection. The grounds for determining that a child is in need of protection include circumstances where a child:

- has been abandoned by the parents or the parents are unable or unwilling to care for the child, or
- has suffered, or is likely to suffer, significant harm as a result of abuse, lack of care or failure to provide medical, therapeutic or remedial treatment.

The critical departure from the provisions in section 4(1) of the *Child Welfare Act 1947* is that instead of listing activities and circumstances which would warrant a child being deemed to be in need of protection, this Bill focuses on ‘significant harm’ as a result of any abuse.

Clause 29: Provisional protection and care: meaning and effect

This clause is a new provision clarifying that any child taken into or placed in the care of the CEO, or for whom the CEO has a protection application before the Court, will be deemed to be a child in the CEO’s care and will receive the same level of care and attention to their general wellbeing as any other child in the CEO’s care.

This provision will ensure that delays between lodging an application and any decision by the Court will not have a negative impact negatively on the level of service provision to a child. It recognises that delays in responding to children's needs can be detrimental to the child and extends to children awaiting a hearing the same level of day to day care and service as any other child for whom the CEO is responsible.

Subclause (3) sets out the circumstances under which a child ceases to be in provisional protection and care. They are: when the CEO has decided not to proceed with a protection application and returns the child to the parent or a person of the parent's choosing, or through the making of an interim order relating to placement under clause 133 (2)(a) and (c), or a protection order.

Clause 30: Child in the CEO's care

This clause lists the classes of children who for the purpose of Part 4, are in the CEO's care. The intention is that all children in the CEO's care, whether or not they are the subject of orders in the Children's Court will receive the same level and quality of services and supports.

Division 2 — Powers available to safeguard or promote child's wellbeing

This Division sets out the broad powers available to the CEO in safeguarding and protecting a child's wellbeing. It covers strategies from the general and preventative through to the specific and interventionist.

Subdivision 1 — General powers of CEO

This subdivision provides for the actions the CEO may take on becoming aware of concerns about child.

Clause 31: CEO may cause inquiries to be made about child

This clause provides that on receiving information of concern about a child, the CEO may make any inquiries in order to ascertain the appropriate action for safeguarding and promoting the child's wellbeing. The purpose of this clause is to ensure flexibility in responding to the complex needs of children and families.

Clause 32: Further action by CEO

This clause describes a range of actions may be taken by the CEO having determined that action is required to safeguard or promote the child's wellbeing.

Subclause (1) lists the range of actions that the CEO may take, including intervention action.

Subclause (2) defines "**intervention action**" as that which involves making an application for either a protection order or a warrant (provisional protection and care), or taking a child into provisional care. The purpose of intervention action is to have the circumstances of the child examined by the Court and decisions made regarding future action.

Subdivision 2 – Powers relating to investigation

This subdivision relates to the powers an authorised officer for the purpose of investigating concerns regarding a child's wellbeing.

Clause 33: Access to child for purposes of investigation

This clause provides the parameters for an authorised officer to have access to a child, without parental knowledge when investigating concerns regarding the child's wellbeing. Ordinarily parents have a right to be informed about, and to consent to, people seeking access to their child. This provision constitutes an exception to this right.

Subclause (1) stipulates that an authorised officer may have access to a child at the school, hospital or at a child care service, without informing the parents, for as long as is necessary for the purpose of the investigation; provided it would be in the child's best interests for the officer to have that access and that the investigation would be likely to be compromised by the parents knowing in advance.

Subclause (2) requires the authorised officer to advise the person in charge of the place where the child is in advance of seeking access to a child under subclause (1).

Subclause (3) requires the authorised officer informing at least one parent as soon as practicable following access to a child under subclause (1).

Subclause (4) provides an exception to the notification requirement in circumstances where it might expose the child to risk of harm, the child has requested that the parents not be informed and compliance with this request is believed to be in the child's best interest or a person is likely to be charged with an offence involving harming the child and advising the parent could place the investigation at risk.

Clause 34: Warrant (access)

This clause provides for an authorised officer to apply to a magistrate for a warrant (access) in order to ensure access to a child. As parents would usually have the right to decide who has access to their child, legislation is required to ensure such access where parental cooperation may be withheld.

Subclause (1) sets out the grounds for making an application for a warrant (access) as being when an authorised officer has been denied access to the child, is likely to be denied access or the officer has not been able to gain access to the place where the child is believed to be.

Subclause (2) ensures that an application for a warrant (access) is undertaken in accordance with clause 119. (Applying for warrant).

Subclause (3) provides that the magistrate may issue a warrant (access) sought under subclause (1) only if satisfied that the conditions of that subclause are met.

Subdivision 3 – Provisional protection and care

This subdivision provides for a child to come under the care of the CEO through a process called provisional protection and care. It recognises that if an application for an order is being made a level of protection and care may need to be extended to the child in advance of the application for protection being heard. This clarifies the legal status of the child in the interim.

Clause 35: Warrant (provisional protection and care)

This is a new procedure for taking a child into care and provides for greater accountability.

Subclause (1) describes the circumstances under which an authorised officer may, in relation to a child believed to be in need of protection, apply to a magistrate for a warrant (provisional protection and care). They are: the child cannot be located, will be placed at an unacceptable risk if left in the same place or the child will either be moved or placed at risk if the parents or another person becomes aware of the intended protection application.

Subclause (2) ensures that an application for a warrant (provisional protection and care) is undertaken in accordance with clause 119. (Applying for warrant).

Subclause (3) provides that the magistrate may issue a warrant (provisional protection and care) under subclause (1) only if satisfied that the authorised officer has reasonable grounds to believe the child is in need of protection and the conditions of subclause (1) are met.

Clause 36: Action after child taken into provisional protection and care under warrant

Subclause (1) makes it clear that the clause applies to children following the execution of a warrant (provisional protection and care).

Subclause (2) provides that where the warrant is executed in a prescribed area of the State the CEO must make a protection application in respect of the child as soon as practicable following the child being taken into provisional protection and care or in any other case no later than 2 working days.

Subclause (3) requires the Court to endeavour to ensure that the protection application is listed no later than 3 working days following the child being taken into care.

Clause 37: Provisional protection and care without warrant if child at immediate and substantial risk

This clause provides that in the event of the child being at immediate and substantial risk of harm an authorised officer or police officer may take a child into provisional protection and care without a warrant. This clause would be used in an emergency situation where any delay could place the child at greater risk of harm.

Subclause (1) defines "officer" for the purpose of this clause as being both a police officer and an authorised officer.

Subclause (2) enables an officer to take a child into provisional protection and care at any time the child is suspected on reasonable grounds of being at immediate and substantial risk.

Subclause (3) provides an officer with the power for the purposes of subclause (1) to enter premises, at any time, and search for a child suspected of being there.

Subclause (4) requires a police officer, after taking a child into provisional protection and care, to notify the CEO as soon as practicable of his or her actions and the reasons for it.

Subclause (5) permits an officer to exercise the powers under this clause without obtaining a warrant.

Subclause (6) permits an officer to use reasonable force when exercising power under this clause.

Clause 38: Action after child taken into provisional protection and care without warrant

This clause details the process to be observed in relation to a child not the subject of either an existing protection application or a protection order who is taken into provisional protection and care without a warrant.

Subclause (1) states that this clause applies to a child taken into provisional protection and care under clause 37.

Subclause (2) provides that if, having taken a child into provisional protection and care, the CEO decides not to make a protection or other application under this Part, then subject to subclause (3), the CEO must return the child to a parent, to the child's day-to-day carer or to another person consented to by the parent.

Subclause (3) provides the CEO with the power to make any appropriate arrangements for the care of the child if the child were in the CEO's care immediately prior to being taken into provisional protection and care.

Subclause (4) provides that if the CEO decides to make a protection application he or she must do so n (a) if the child is taken into provisional protection and care in a prescribed area of the State, as soon as practicable; or otherwise as soon as practicable, but anyway, not more than 2 working days after the child is taken into provisional protection and care.

Subclause (5) requires the Court to ensure a first listing date is not more than 3 working days following the receipt of an application.

Clause 39: Provisional care plan

This clause ensures that every child coming into provisional protection and care has a plan identifying his or her needs and outlining steps to address those needs and setting out decisions about the care of the child.

Subclause (1) defines the necessary content of a provisional care plan.

Subclause (2) places a requirement on the CEO to prepare and implement a provisional care plan within 7 working days after a child is taken into provisional protection and care.

Subclause (3) allows the provisional care plan to be amended as appropriate. This will ensure the provisional care plan remains relevant to a child's changing needs.

Subclause (4) lists the people who must be provided with a copy of the provisional care plan and any amended plan.

Subdivision 4 — Other powers

Clause 40: Power to keep child under 6 years of age in hospital

This clause enables a hospital to keep a child if it is believed that the child is in need of protection. This replaces s.29 (3a) of the *Child Welfare Act 1947*.

Subclause (1) defines the term "officer in charge".

Subclause (2) allows an officer in charge to hold, for observation, assessment, treatment or to safeguard or promote the wellbeing of the child under 6 years, if the officer believes on reasonable grounds that the child is in need of protection.

Subclause (3) clarifies that this action can be taken regardless of whether the parents consent.

Subclause (4) requires the officer in charge to notify the CEO as soon as possible.

Subclause (5) details how notification should occur.

Subclause (6) enables the officer in charge to provide information to the CEO regarding the child.

Subclause (7) stipulates that a child can be held in hospital under this clause for not more than 2 working days.

Subclause (8) makes it an offence to remove a child being held in hospital under this clause, without consent of the CEO or the officer in charge.

The penalty for contravening this subclause is \$12,000 and imprisonment for one year.

Subclause (9) requires the officer in charge to consult with the CEO before giving consent for a child to be removed from the hospital under subclause (8).

Subclause (10) provides a defence for a person who removes a child from a hospital who did not know that the child was being kept in the hospital under subclause(2).

Clause 41: Power to move child to safe place

This clause provides the power for a child to be moved to a safe place. The clause outlines the conditions required to be met, the action that has to be taken and limitations on what resources can be used. This replaces section 138B of the *Child Welfare Act 1947*.

Subclause (1) defines the term "officer" and "responsible person" for use the purposes of this clause.

Subclause (2) allows an officer to move a child to a safe place when the child is not at his usual residence and the officer believes on reasonable grounds that the child is not adequately supervised and there is risk to the child's wellbeing or the child is an absent student.

Subclause (3) places parameters on what can be considered a safe place for the purpose of subclause (2).

Subclause (4) provides that an officer does not need a warrant to exercise the power in subsection (2).

Subclause (5) enables an officer to use reasonable force and assistance when exercising the power under subsection (2).

Subclause (6) requires that having moved a child to a safe place other than the child's home or school, an officer is to immediately take reasonable steps to inform a responsible person of the child having been moved and the child's location and where the officer is a police officer that person must similarly inform the CEO.

Subclause (7) outlines what the officer must do if a responsible person is contacted, that is, the officer must cause arrangements to be made for the child to be placed in, or returned to, the care of that person.

Subclause (8) outlines what an officer must do if a responsible person can not be contacted under subsection (6).

Division 3 — Protection orders

This Division provides for various protection orders that may be granted by the Court on hearing an application for protection and care.

Subdivision 1 — Introductory matters

Subdivision 1 defines terms used and lists the types of protection orders available to the Court.

Clause 42: Terms used in this Division

This clause defines the terms “child”, “enduring parental carer”, “parent” and “party to the initial proceedings” used in Division 3.

In particular the concept of ‘enduring parental carer’ is introduced, meaning a person or persons other than the parents who will be given parental responsibility for a child through a protection order (enduring parental responsibility) under the Bill.

Clause 43: Protection order

This clause lists the types of protection orders available under the Bill.

Two new orders are introduced here. These are protection order (supervision) and protection order (enduring parental responsibility). Both of these orders are intended to provide safety for a child without the child entering the care of the CEO.

Subdivision 2 — Applications for, and making of, protection orders

This subdivision relates to the application process and the making of protection orders.

Clause 44: Application for protection order

This clause outlines the process for making a protection application.

Subclause (1) states that only the CEO can lodge an application.

Subclause (2) sets out the requirements for a protection application – the application must be lodged with the Court, identifying the specific type of order being sought, state the grounds for the application under clause 28(2) and complying with other applicable rules of the Court.

Subclause (3) requires that where a protection order (enduring parental responsibility) is being sought, the application must nominate the intended person or persons to whom parental responsibility for the child is proposed to be given.

Subclause (4) requires that at the time of lodgement, the Court fixes a date, time and place for dealing with the application.

Subclause (5) identifies the individuals to whom the CEO must give copies of a protection application once it has been lodged. The purpose of this and other such provisions in the Bill is to ensure opportunities for participation are maximised for the child, the parents and any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

Subclause (6) requires that the copy of the protection application is accompanied by notice of the first listing date.

Clause 45: Court may make protection order

This clause provides that the Court, having determined that a child is in need of protection and care, may make any of the protection orders available under this Part.

Clause 46: No order principle

This clause provides that if, on a protection application the Court is of the view that a child will not benefit from the making of any of the orders, the Court is to make no order at all.

Subdivision 3 — Protection orders (supervision)

This subdivision describes the parameters for a protection order (supervision).

The protection order (supervision) is not a feature of the *Child Welfare Act 1947*. Under this order, a parent retains parental responsibility, the Court may set conditions and the CEO is to supervise the wellbeing of the child.

The purpose of this subdivision is to add to the range of flexible options for working successfully with families in ensuring the wellbeing and safety of their children.

Clause 47: Protection order (supervision)

This clause describes the purpose of a protection order (supervision).

Subclause (1) provides for the power for the CEO to supervise the wellbeing of the child for a specified period of time.

Subclause (2) stipulates that a protection order (supervision) does not affect parental responsibility except as required to give effect to the order.

Clause 48: Duration of protection order (supervision)

The duration of a protection order (supervision) is described in this clause.

Subclause (1) provides for the order to be in force for the period determined by the Court, unless extended or revoked.

Subclause (2) limits the time specified in a protection order (supervision) to 2 years and must end prior to the child reaching the age of 18 years.

Clause 49: Extension of protection order (supervision)

This clause provides for the extension of a protection order (supervision). The Court must be satisfied that it is in the best interest of the child to make an extension. An application may be made by the CEO prior to the termination of the original protection order (supervision), but if the matter is not determined before the expiry of that order the original order remains in force until the application is determined. A protection order (supervision) may not be extended more than once under this provision.

Clause 50: Conditions of protection order (supervision)

This clause provides for conditions to a protection order (supervision).

Subclause (1) requires the parent of a child to keep the CEO informed of where the child is living.

Subclause (2) allows the Court to make conditions to be complied with by, the child, the parent or a person with whom the child is living.

Subclause (3) prevents a condition being made by the Court about where the child is to live or who is to have day to day responsibility for the child.

Clause 51: Variation of conditions of protection order (supervision)

This clause defines the term "condition" and provides for the variation of conditions placed on a protection order (supervision) except for the condition that the CEO be kept informed of the place at which the child is living.

Clause 52: Authorised officer entitled to have access to child

This clause provides for an authorised officer to have access to a child at any reasonable time under a protection order (supervision).

In addition the clause provides for an authorised officer to apply for and for a magistrate to issue a warrant (access) if access to a child is denied or a child cannot be located for the purpose of access.

Clause 53: Provision of social services

This clause requires the CEO is to ensure that a child and the child's parents are provided with appropriate social services where a protection order (supervision) is in place.

Subdivision 4 – Protection orders (time-limited)

This subdivision relates to a protection order (time-limited).

Clause 54: Protection order (time-limited)

This clause describes a protection order (time limited) as an order giving the CEO parental responsibility for a child, to the exclusion of any other person for the time specified.

Clause 55: Duration of protection order (time-limited)

This clause provides for the duration of a protection order (time-limited), as not exceeding 2 years and ending prior to the child reaching 18 years of age.

Clause 56: Extension of protection order (time-limited)

This clause provides for the provisions relating to the extension of a protection order (time-limited). The Court must be satisfied that the extension of a protection order (time limited) is in the best interest of the child.

Subclause (1) allows the CEO to apply to the Court for an extension to a protection order (time-limited).

Subclause (2) stipulates that an application for an extension of a protection order (time limited) may be lodged at any time prior to the expiry of the order, but before this a review of the child's care plan under clause 89 must occur.

Subclause (3) states that the order will remain in force until the application for extension made under this clause is determined.

Subclause (4) enables the Court, on application, and if satisfied that this is in the best interest of the child, to extend the protection order (time-limited) for a period of up to 2 years ending prior to the child turning 18 years of age.

Subclause (5) empowers the Court to extend a protection order (time-limited) on more than one occasion. The purpose of this provision is to enable the Court to continue with the time limited provision where this remains the most appropriate response for a child.

Subclause (6) authorises the Court to extend a protection order (time-limited) without the parties to the original proceedings being present, if it is satisfied that those parties consent to the extension.

Subclause (7) provides that the parties to the initial proceedings referred to in Subclause (6) do not include the child except where the child has separate legal representation or the Court determines the child is of sufficient maturity and understanding to consent.

Subdivision 5 – Protection orders (until 18)

This subdivision relates to a protection order (until 18).

Clause 57: Protection order (until 18)

This clause describes a protection order (until 18) as an order giving the CEO parental responsibility for a child until the child turns 18 years of age.

Clause 58: Restriction on making protection order (until 18)

This clause requires that the Court not make a protection order (until 18) unless satisfied that long-term arrangements are necessary for the wellbeing of the child.

Clause 59: Duration of protection order (until 18)

This clause provides for a protection order (until 18) remaining in force until the child attains the age of 18 years unless the order is revoked.

Subdivision 6 – Protection orders (enduring parental responsibility)

This subdivision relates to a protection order (enduring parental responsibility).

Clause 60: Protection order (enduring parental responsibility)

This clause describes a protection order (enduring parental responsibility) as an order giving parental responsibility to a person or 2 people jointly who are not the parents or the CEO.

Clause 61: Restriction on making protection order (enduring parental responsibility)

This clause outlines the restrictions on the Court in making a protection order (enduring parental responsibility).

Subclause (1) defines the term “proposed carer” for the purpose of this subdivision.

Subclause (2) outlines the factors the Court must be satisfied of to make a protection order (enduring parental responsibility). These include that long-term arrangements should be made for the wellbeing of the child and that the proposed carer be a suitable person who is willing and able to provide such care.

Subclause (3) requires that when the Court is considering a protection order (enduring parental responsibility) the CEO must provide a written report to the Court containing specified information.

Subclause (4) specifies that the Court must, in reviewing the suitability of the proposed carer, consider the Aboriginal and Torres Strait Islander child placement principle with regard to an Aboriginal or Torres Strait Islander child.

Subclause (5) specifies that the Court must consider any guidelines established under clause 80, in reviewing the suitability of the proposed carer for a child of a culturally or linguistically diverse background.

Clause 62: Duration of protection order (enduring parental responsibility)

This clause provides for a protection order (enduring parental responsibility) to the age of 18 years unless revoked.

Clause 63: Conditions of protection order (enduring parental responsibility)

This clause relates to the conditions that can be included in a protection order (enduring parental responsibility).

Subclause (1) gives the Court authority to include conditions for contact between the child and another person.

Subclause (2) limits the Court’s ability to make other conditions.

Clause 64: Variation of conditions of protection order (enduring parental responsibility)

This clause outlines the process for varying the conditions of a protection order (enduring parental responsibility).

Subclause (1) defines the term “condition”.

Subclause (2) outlines who can apply for a change to a condition of a protection order (enduring parental responsibility).

Subclause (3) outlines what the Court can do in response to an application for a variation of a condition.

Subclause (4) requires that the Court not grant an application for the varying of conditions under this clause unless the application is based on new information or all parties to the initial proceedings consent.

Subclause (5) provides that parties to initial proceedings referred to in subclause (4) do not include the child except where the child has separate legal representation or the Court determines they are of sufficient maturity and understanding to consent.

Clause 65: Court may order payments to enduring parental carer

This clause enables the Court, at any time during a protection order (enduring parental responsibility) to make an order requiring the CEO to pay an enduring parental responsibility carer amounts in accordance with prescribed intervals and at a prescribed scale.

Clause 66: Provision of social services

This clause enables the CEO to provide a child and his or her enduring parental responsibility carer with any appropriate social service at any time whilst the order is in force.

Subdivision 7 — Revocation and replacement of protection orders

This subdivision outlines the process for application for the revocation and replacement of a protection order and options available to the Court upon such applications.

Clause 67: Revocation of protection order

This clause outlines the process to revoke a protection order.

Subclause (1) provides that a party to initial proceedings may apply to revoke a protection order.

Subclause (2) outlines the options available to the Court if satisfied that it is in the best interest of the child.

Clause 68: Replacement of protection order

This clause outlines the process for the replacement of a protection order.

Subclause (1) indicates that the CEO may apply to the Court for a revocation and replacement of a protection order.

Subclause (2) stipulates that an application in subclause (1) must specify the type of order being sought.

Subclause (3) requires an application for a protection order (enduring parental responsibility) to nominate the person(s) to whom parental responsibility is proposed to be given.

Subclause (4) outlines the criteria that the Court must use to make a decision and outlines the options available to the Court.

Subdivision 8 — General

Subdivision 8 makes some general provisions in relation to protection orders

Clause 69: Applications for extension, variation, revocation or replacement of protection orders

This clause sets out the application process for an extension, variation, revocation or replacement of protection orders.

Clause 70: Form of protection order

Subclause (1) provides that a protection order must be in writing and must state the child's name and date of birth.

Subclause (2) specifies that the protection order must identify the basis under section 28 for finding a child is in need of protection.

Clause 71: Child's date of birth

Subclause (1) enables the Court for the purposes of the proceedings to determine a date of birth for a child in the absence of evidence of the date of birth.

Subclause (2) gives the Court an ability to correct the child's date of birth stated in the protection order for the purposes of the Bill.

Clause 72: Parties to proceedings to be given copy of protection order

This clause requires the Court to take all reasonable steps to ensure that all parties to the proceedings receive a copy of the order.

Clause 73: Maintenance of children under certain orders

This clause is based on a similar provision in the *Child Welfare Act 1947* (section 40A).

Subclause (1) defines “relevant person” for the purpose of this clause.

Subclause (2) enables the Court to order payment of or contribution to maintenance from a parent when their child is under a protection order (time limited), a protection order (until 18) or a protection order (enduring parental responsibility). The Court must consider what is appropriate in terms of the past maintenance of the child and the future maintenance.

Subclause (3) allows for the Court to make an order under subclause (2) in the absence of the parent if satisfied that adequate notice has been given.

Subclause (4) requires that where the Court makes an order under subclause (2) the Court must send a certified copy of the order to be registered by the Family Court or a Court of a kind referred to in the *Family Court Act 1997* section 39(a).

Division 4 — Negotiated placement

Division 4 relates to negotiated placement agreements. There is no Court process involved.

The purpose of this Division is to provide parents who are actively seeking to provide for the care of their child but are unable to provide that care themselves, with a framework within which to seek assistance from the CEO. This Division relates specifically to children for whom there are no protection concerns.

The reason for this dichotomy is to prevent confusion between situations in which a child is placed with the consent of the parents who retain continuing capacity as decision makers, and situations in which a child is removed from the parents’ care to ensure the child’s protection. In this Bill placement of a child because of a need for protection would require an application for a protection order and the resulting scrutiny of the Court.

Clause 74: Meaning of “child”

This clause defines “child” for the purpose of this section.

Clause 75: Negotiated placement agreement

This clause specifies the conditions under which a negotiated placement agreement may be made.

Subclause (1) allows the CEO to enter into an agreement with the parents to make a placement arrangement for the child where it is apparent that the parents are unable to provide the care.

Subclause (2) permits the parents and the CEO to extend the negotiated placement agreement at any time before the original placement agreement expires.

Subclause (3) provides for one parent being able to enter into or extend a negotiated placement agreement where the other parent is not, for a range of possible specified reasons, readily available.

Subclause (4) requires that the wishes of the child must be considered whenever a negotiated placement agreement is entered into, extended or terminated.

Subclause (5) prevents the CEO from entering into or extending an agreement under this clause where there is reason to believe that the child is in need of protection.

Subclause (6) requires that a negotiated placement agreement must be in writing and signed by the CEO and the participating parent/s.

Clause 76: Duration of negotiated placement agreement

This clause enables the duration of a negotiated placement agreement to be determined as part of the agreement and indicates that the agreement is to remain in force until terminated.

Clause 77: Termination of negotiated placement agreement

This clause permits, and describes the process for, the termination of a negotiated placement agreement.

Division 5 — Children in the CEO's care

Division 5 sets out the obligations and powers of the CEO in relation to children in the CEO's care. A child for whom this Division is applicable is a child in the CEO's care as defined in clause 30.

Subdivision 1 — Charter of Rights

This subdivision requires the CEO to prepare a Charter of Rights for all children in the CEO's care.

Clause 78: CEO to prepare Charter of Rights

Requires the CEO within 12 months of the commencement of this Part to prepare a Charter of Rights for all children in the CEO's care and to promote access to, publication of, and compliance with, the Charter.

Subdivision 2 — Placement arrangements

Subdivision 2 relates to the making of placement arrangements.

Clause 79: Power of CEO to arrange placement of child

This clause gives the CEO the power to make placement arrangements for a child.

Subclause (1) defines the term "child" for the purpose of this subdivision.

Subclause (2) confers on the CEO the capacity to make placement arrangements, within given parameters, for a child in the CEO's care.

Subclause (3) enables the CEO to cancel a placement arrangement and at any time make an alternative placement arrangement that the CEO believes to be in the child's best interests.

Subclause (4) provides for the making of regulations in relation to subclause (2)(a)(i).

Clause 80: Guidelines for placement of certain children

This clause requires that within 12 months of commencement of this Part the CEO establish guidelines for making placement arrangements for children of culturally and linguistically diverse backgrounds. In particular the guidelines must address promoting and preserving a child's cultural, ethnic and religious identity. The CEO may amend or replace the guidelines at any time. These guidelines do not apply to Aboriginal or Torres Strait Islander children. Specific guidelines are set out for these children in clause 12.

Clause 81: Matters relevant to placement of Aboriginal or Torres Strait Islander children

This clause deals with matters relating to Aboriginal and Torres Strait Islander children and are in addition to the provisions of Part 2.

Subclause (1) places a requirement on the CEO to ensure that an Aboriginal or Torres Strait Islander officer is involved in the making of any placement arrangement for an Aboriginal or Torres Strait Islander child.

Subclause (2) requires the CEO consult with an Aboriginal or Torres Strait Islander agency when making placement arrangements for an Aboriginal or Torres Strait Islander child.

Clause 82: Payment for care under placement arrangement

This clause provides for the CEO to make payments in relation to the care of a child under a placement arrangement.

Clause 83: Inspection of place where child living

This clause allows an authorised officer to enter at any time a place where a child is in a placement arrangement in order to inspect the place and ensure the child's wellbeing.

Clause 84: Authorised officer may request carer to hand over child

This clause provides for an authorised officer, at any time, to request the handing over of a child in a placement arrangement.

Clause 85: Warrant (apprehension) where child not handed over

This clause provides for the obtaining of a warrant (apprehension) in the event of a child not being handed over under clause 84.

Subclause (1) determines the right of an authorised officer to make an application to a magistrate for a warrant (apprehension) where a carer has failed to hand over a child as requested under clause 84.

Subclause (2) stipulates that an application under subclause (1) must be made in accordance with clause 119. This clause sets out the process for a warrant application.

Subclause (3) enables a magistrate to issue a warrant (apprehension) when satisfied that a carer has not complied with a request.

Clause 86: Warrant (apprehension) where child absent or taken without authority

This clause provides for a child who is in the care of the CEO to be apprehended with a warrant when the child has without approval either left, or been taken from, the place where he or she has been living.

Subclause (1) enables an authorised officer or a police officer to apply for a warrant (apprehension) when he or she believes that a child under the CEO's care has without approval either left, or been taken from, the place where the child was living.

Subclause (2) ensures that an application made under this clause is in accordance with clause 119. This clause sets out the process for a warrant application.

Subclause (3) confers on a magistrate the power to issue a warrant (apprehension) if he or she is satisfied that there are reasonable grounds for an application under this clause.

Clause 87: Apprehension without warrant in certain circumstances

This clause sets out the circumstances in which a child who is in the care of the CEO may be apprehended without a warrant.

Subclause (1) defines "officer" for the purpose of this clause.

Subclause (2) permits an authorised officer or police officer to apprehend a child, without a warrant, where he or she reasonably suspects that the child has without approval either left, or been taken from, the place where he or she has been living and there is a significant risk either to the wellbeing of the child or that the child will be taken to an unknown location. When a child is apprehended the child may either be returned to the place where he or she was living or taken to another location approved by the CEO.

Subclause (3) confers on an authorised officer or police officer the right to enter and search a place at any time for the purpose of apprehending a child under this clause.

Subclause (4) authorises apprehension of a child without a warrant under this clause.

Subclause (5) permits the use of reasonable force and assistance under this clause.

Subclause (6) enables a police officer to accompany an authorised officer, without limiting subclause (5).

Subdivision 3 – Care plans

This subdivision confers on the CEO a responsibility to develop and review care plans for any child in the CEO's care.

Clause 88: Care plan

This clause provides for care plans.

Subclause (1) defines a “care plan”.

Subclause (2) requires the CEO prepare and implement a care plan as soon as practicable after a child comes into care.

Subclause (3) excludes a child in provisional protection and care from the provisions of subclause (2), as there is a requirement under clause 39 for a provisional care plan.

Subclause (4) enables the CEO to respond to the changing needs of the child by modifying the care plan any time as he or she considers appropriate.

Subclause (5) places a requirement when a child is leaving care, on the CEO to modify the child’s care plan to identify the child’s needs for transition to other living arrangements and how these may be met. This clause does not limit the CEO’s power in subclause (4).

Subclause (6) identifies the range of people to whom a copy of the care plan and any subsequent modification must be given.

Clause 89: Review of care plan

This clause provides for the process for review of a care plan.

Subclause (1) requires the CEO to review the care plan at least every 12 months.

Subclause (2) requires the CEO when reviewing a care plan to take note of the views of the child, the child’s parents and any carer of the child.

Subclause (3) requires that CEO to prepare a written report on the outcome of any review and provide a copy to each of the people listed in subclause (2).

Subclause (4) stipulates that the CEO must keep a record of any reviews and reports prepared under this clause.

Subdivision 4 — Review of case planning decisions

This subdivision provides for the establishment of a case review panel to review case planning decisions. The purpose of this subdivision is to ensure transparent, independent review processes.

Clause 90: Terms used in this Subdivision

This clause defines the terms “applicant”, “care plan”, “case planning decision” and “case review panel”.

Clause 91: Case review panel

Subclause (1) requires the CEO to establish a case review panel.

Subclause (2) stipulates a minimum of 3 members for the case review panel and gives the CEO the power to appoint members.

Subclause (3) enables the CEO to determine the qualifications required for a panel member to effectively carry out his or her functions.

Subclause (4) prevents an officer of the department from being a member of the case review panel.

Subclause (5) gives the CEO the power to remove and replace panel members.

Subclause (6) states that the CEO must appoint a chairperson.

Subclause (7) describes the CEO's ability and any restrictions to pay the case review panel.

Subclause (8) requires the CEO to provide support services to the case review panel.

Clause 92: Initial review

Subclause (1) identifies who can apply to the CEO for the review of a case planning decision.

Subclause (2) sets out how the application must be presented.

Subclause (3) specifies the time frame in which an application must be lodged and allows for the CEO to extend the period in special circumstances.

Subclause (4) outlines what the CEO must do on receipt of an application.

Subclause (5) specifies that on a referral the case review panel must consider the application and provide a report with recommendations to the CEO.

Subclause (6) outlines what the CEO must do on receiving the report from the case review panel.

Subclause (7) requires the CEO to give the applicant written notice of his or her decision and the reasons for the decision.

Clause 93: Review of CEO's decision

This clause provides for an applicant who disagrees with a decision made by the CEO under subclause 91(6)(a) or (b) to seek a review through the State Administrative Tribunal.

Clause 94: Procedure

Subclause (1) clarifies the role of the CEO and the panel in determining the procedures for the case review panel.

Subclause (2) specifies that each applicant must be given an opportunity to be heard by the case review panel.

Division 6 — Provisions about leaving the CEO's care

This Division includes a range of provisions for children and young people leaving the CEO's care.

These provisions are new to this Bill, recognise the vulnerability of this group and enable the CEO to extend a range of supports to children and young people who qualify.

Clause 95: People who qualify for assistance

This clause identifies a person who qualifies for assistance under this Division as someone who has left the CEO's care, is under the age of 25 years and after the age of 15 years was in the care of the CEO in certain circumstances.

Clause 96: Entitlement to personal material

Subclause (1) defines the term "personal material".

Subclause (2) provides for the release of personal material to a child leaving the CEO's care.

Clause 97: Social services

This clause requires that the CEO ensures that a child leaving his or her care is provided with appropriate social services to meet the child's needs as identified in a care plan under clause 88. This requirement does not apply to a child leaving provisional protection and care.

Clause 98: Information and advisory services

Without limiting the provisions of clause 97, this clause places an obligation on the CEO to ensure that a person who meets the qualifying conditions of this Division receives relevant information and advisory services.

Clause 99: Financial assistance

This clause enables the CEO to provide financial assistance to a person who qualifies under this Division and describes the nature of, conditions for, and the assistance.

Subclause (1) describes a range of financial assistance the CEO may provide.

Subclause (2) enables the CEO to provide financial assistance under subclause (1) on any terms and conditions he or she considers appropriate.

Subclause (3) without limiting subclause (2) allows for the terms and conditions to include the repayment and recovery of outstanding amounts.

Division 7 — Offences

This Division contains offences in relation to children in general.

Subdivision 1 — Children generally

Subdivision (1) contains the offences in relation to children in general.

Clause 100: Failing to protect child from significant harm

Subclause (1) makes it a crime for a person who has the care and control of a child to recklessly engage in conduct or knowingly engage in conduct that may result in the child suffering significant harm. A person committing this crime is liable to imprisonment for 10 years.

Subclause (2) defines the meaning of the terms “engage in conduct” and “harm” for the purpose of subclause (1).

Clause 101: Leaving child unsupervised in vehicle

This clause makes it a crime or an offence to leave a child in a vehicle without proper supervision for such a period or in such circumstances that a child becomes or is likely to become emotionally distressed or a child’s health becomes or is likely to become permanently or temporarily impaired. This is a new offence provision.

A person committing this crime is liable to imprisonment for 5 years. On a summary conviction, the penalty is \$36,000 and imprisonment for 3 years.

Clause 102: Tattooing or branding

This clause makes it an offence for a person to tattoo or brand any part of the body of a child, in any manner, unless the person first obtains the written consent of a parent of the child. This provision replaces an offence regarding tattooing in the *Child Welfare Act 1947*.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Clause 103: Providing long-term care for young children

This clause establishes the conditions under which it is an offence to provide long term care for young children.

Subclause (1) defines the terms “prescribed period”, “provide care”, “residence order”, “specific issues order”, and “young child” for the purpose of this clause.

Subclause (2) establishes conditions outside of which a person must not provide care for a child for longer than a prescribed period, and states the penalty.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Subclause (3) provides the power for the CEO to approve of a person to provide care for a young child.

Subclause (4) outlines the conditions of approvals given under subclause (3).

Subdivision 2 — Children under placement arrangements

This subdivision contains offences in relation to children under placement arrangements, that is for children in the care of the CEO.

Clause 104: Terms used in this Subdivision

Subclause (1) defines the terms “child” and “place of residence” for use in this subdivision.

Subclause (2) identifies the conditions for the lawful authority for an act in this subdivision.

Clause 105: Removing child from State

This clause makes it an offence for a person without lawful authority, to remove a child, or cause or permit a child to be removed from the State.

Provision is made for a penalty of \$24,000 and imprisonment for 2 years.

Clause 106: Removing child from place of residence

Subclause (1) defines the term "another law" for use in this clause.

Subclause (2) makes it an offence for a person, without lawful authority, to remove a child from the child's place of residence.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Subclause (3) makes it an offence for a person to unlawfully counsel, induce or assist a child to leave the child's place of residence.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Subclause (4) stipulates that an offence is committed under subsections (2) and (3) whether the conduct occurs within or outside of the state or partly within or outside the State.

Subclause (5) stipulates that if a person's conduct constitutes an offence under this clause and an offence under another law, if convicted, found guilty or acquitted of the offence under another law then the person cannot be prosecuted for the offence under this clause.

Clause 107: Harboursing child

This clause makes it an offence for a person to harbour a child he or she knows has left, or has been removed from his or her place of residence without lawful authority.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Clause 108: Preventing child's return

This clause makes it an offence for a person to prevent a child from returning to the child's place of residence if the person knows that the child has left, or has been removed from the place of residence without lawful authority.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Clause 109: CEO may prohibit communication with child

Subclause (1) enables the CEO, by written notice, to direct a person not to communicate, or attempt to communicate, in any manner with a child specified in the notice.

Subclause (2) makes it an offence for a person to fail to comply with subclause (1).

Provision is made for a penalty of \$6,000.

Clause 110: Evidentiary provision

This clause provides that in the proceedings for an offence under this subdivision, if it is alleged in the complaint that an act was done without lawful authority, then if this act was done, it is proof that the act was done without lawful authority unless the contrary is proved.

Division 8 — Powers of restraint, search and seizure

This Division provides for authorised officers to exercise certain powers in situations where a child is likely to endanger his or her own health and safety or that of another person or cause serious damage to property. Those powers include powers of restraint, search and seizure under prescribed circumstances.

Clause 111: Terms used in this Subdivision

This clause defines the terms used in this subdivision including "child", "disposable article", "firearm", "intoxicant" "prohibited article" and "weapon"

Clause 112: Prerequisites for exercise of power

Subclause (1) This subclause sets out the conditions under which an authorised officer may exercise the powers in this Division. First, the child concerned must be a child who is (a) child in the CEO's care, or (b) is being moved, or has been moved to a safe place under clause 41. Secondly, the officer must believe on reasonable grounds that unless the power is exercised the child is likely to harm himself or herself, another person or cause serious damage to property.

Subclause (2) This subclause sets out the conditions under which a police officer may exercise the powers in this Division. The police officer can use these powers if moving a child to a safe place under clause 41. The police officer must believe on reasonable grounds that unless the power is exercised the child is likely to harm himself or herself, another person or cause serious damage to property.

Clause 113: Child may be restrained

This clause permits an officer to restrain a child. The restraint is only to be exercised for a period and to an extent necessary to prevent the child endangering his or her own health and safety or that of another person, or causing serious damage to property.

Clause 114: Child may be searched

Subclause (1) permits an officer to search a child and the child's belongings for articles that may be seized (as defined in clause 115).

Subclause (2) requires that any search must be undertaken by an officer or person designated in subclause (3) of the same sex as the child, and in the presence of at least one other adult.

Subclause (3) enables an officer, if it is necessary, to designate another person to either do the search or assist.

Subclause (4) enables a person designated in subclause (3) to undertake or assist in a search and requires them to obey an officer's reasonable instructions.

Subclause (5) limits the type of search that can be carried out. Removing a child's clothing or examination of a child's body cavities are prohibited.

Clause 115: Certain articles may be seized

This clause authorises an officer to seize any thing or substance from a child if the officer holds the opinion that the seizure is necessary in order to prevent the child endangering his or her own health or safety or that of another person, or causing serious damage to property.

Clause 116: How seized articles to be dealt with

Subclause (1) defines the term "seized".

Subclause (2) requires that if a firearm, weapon or prohibited article is seized from a child an authorised officer must deliver it as soon as practicable to the police.

Subclause (3) authorises the destruction by an officer of seized disposable articles and intoxicants (other than prohibited articles).

Subclause (4) provides for the safe keeping of any seized article or substance, other than those under subclauses (2) and (3), and where practicable for their eventual return to the child.

Subclause (5) requires that where it is not practicable to return any thing or substance held under subclause (4)(a) to a child then the item must be dealt with in accordance with regulations.

Clause 117: Use of reasonable force

The clause authorises the use of reasonable force in searches under clause 114 and seizures under clause 115.

Clause 118: Prescribed procedures

This clause enables for procedures relating to this Division to be prescribed in regulations. All officers must ensure such procedures are complied with when exercising the relevant powers.

Division 9 — Warrants

This Division sets out the requirements an authorised officer and magistrate must follow in relation to the application for, and issue of, warrants. It identifies the circumstances in which a warrant may be used, the powers the warrant confers on an officer and the responsibilities of an officer when executing a warrant.

Provision is made for a warrant to be issued by remote control in certain circumstances.

Clause 119: Applying for warrant

This clause is similar to section 68 of the *Child Welfare Act 1947*.

Subclause (1) defines the term "remote communication" for use in this clause.

Subclause (2) clarifies the applicability of the clause.

Subclause (3) acknowledges the gravity of obtaining a warrant and requires that any application and supporting information is made on oath.

Subclause (4) sets out the circumstances under which an application for a warrant may be made. In all circumstances the application must be made in person except if the warrant is urgently needed and the applicant reasonably believes there is no magistrate available within a reasonable distance in which case the application may be by remote communication. This clause allows for the issuing of a warrant in circumstances where there is no magistrate readily available, for example in country areas where there can be great distances between towns where there is a magistrate.

Subclause (5) sets out the procedure to be followed when making an application for a warrant by remote communication. It requires a written application to be sent to the magistrate, or if this is not practicable, the application may be made orally. If it is not practicable for the application and supporting information to be given on oath, it allows for it to be given in an unsworn form. A magistrate must not grant an application under this clause unless he or she is satisfied that the grounds exist under subclause (4) for the application not to be made in person.

Subclause (6) requires a magistrate to complete an application form where an application is made orally, under subclause 5(b).

Subclause (7) requires a magistrate to keep a record of any information provided orally in support of a warrant application made by remote communication.

Subclause (8) makes it a requirement when unsworn supporting information has been given under subclause 5(c) and a warrant is issued, for the applicant to send the magistrate an affidavit with all the supporting information as soon as practicable.

Subclause (9) sets out the procedures to be followed, if a warrant has been issued by remote communication, to allow a copy of the warrant to be used with the same effect as an original warrant.

Subclause (10) provides that when the requirements of subclauses 9(a) and 9(b)(iii) are followed in issuing a warrant by remote communication the warrant has the same effect as an original warrant issued in person.

Clause 120: Authority conferred by warrant (access)

This clause sets out the powers a warrant (access) confers on an authorised officer. Authority is given for an officer to enter and search any place, at any time, if the officer reasonably believes a child to be for the purpose of finding a child. The officer can remain at the place for as long as he or she considers reasonably necessary to find and have access to the child. Once found the authority allows the officer to see and talk to the child without the parent or any other person present.

The authority is given to enter any place to provide for situations where the exact location of a child is not known at the time of an application or for the moving of a child prior to the executing of the warrant.

This provision may be used in situations where there is concern for a child's wellbeing and the authorised officer is denied access to the child or believes he or she will be denied access for the purpose of investigating whether the child may be in need of protection.

Clause 121: Authority conferred by warrant (apprehension)

This clause sets out the powers a warrant (apprehension) confers on an authorised officer or police officer to enter and search any place at any time for the purpose of finding and apprehending a child:

- where a carer has refused to comply with a request to hand over a child; or
- a child has been unlawfully taken or is unlawfully away from the place of residence arranged for them by the CEO.

The officer can remain at the place for as long as he or she considers reasonably necessary. Authority is given for the officer upon apprehending the child to take the child to any place directed by the CEO or return the child to the place where the child had been living.

Clause 122: Authority conferred by warrant (provisional protection and care)

This clause sets out the powers a warrant (provisional protection and care) confers on an authorised officer or police officer to enter and search any place at any time for the purpose of taking a child into provisional protection and care. The authority allows the officer to remain at the place for as long as he or she considers reasonably necessary and to take the child to any place directed by the CEO.

This provision would be used in circumstances where it is believed on reasonable grounds that the child is in need of protection and the officer is unable to find the child or believes the child will either be moved or placed at risk if the parents or another person becomes aware of the intended protection application.

Clause 123: Execution of warrant

Subclause (1) allows an authorised officer or police officer to use reasonable force and assistance in executing a warrant issued under this Part and requires the officer to show the warrant or a copy if asked by a person at the place where the warrant is being executed or to be executed.

Subclause (2) provides for an authorised officer to request assistance from a police officer in executing a warrant. The provision may be used when a parent or person caring for a child is known to be violent and there is concern for an officer's safety in executing the warrant.

Subclause (3) allows a police officer to use reasonable force when assisting an authorised officer under subclause (2).

Division 10 — General

This Division contains a range of general provisions.

Clause 124: Access to child

This clause provides that if an authorised officer is given authority under a provision of this Part to have access to a child, then the officer can see and talk to the child without a parent of the child or any other person being present.

Clause 125: Recovery of certain expenditure

Clause 125 enables the CEO to recover certain costs arising from providing for a child under this Act.

Subclause (1) defines the term “child” for the purpose of this clause.

Subclause (2) enables the Court, on application by the CEO, to make an order for the parent of a child to pay or reimburse the Department for expenses incurred, or likely to be incurred, in providing for the child under this Part.

Subclause (3) provides that where a child is the subject of a negotiated placement agreement the Court cannot make an order under subclause (2) that is inconsistent with the terms of that agreement.

Subclause (4) provides that the Court cannot make an order under subclause (2) in respect of a person who is not present unless the Court is satisfied that a person has received adequate notice of an application.

Subclause (5) requires a certified copy of an order made under subclause (2) to be sent for registration in accordance with the *Family Court Act 1997* to whichever of the certain Courts is nearest to that at which the order was made. Such courts are the Family Court or a court referred to in the *Family Court Act 1997* section 39(a), that can exercise the Family Court’s non-federal jurisdictions. Once registered the order is to be taken for all purposes to be an order made under *Family Court Act* by the Family Court or/by the other court referred to.

Clause 126: Power of CEO to give consent

Clause 126 sets out the circumstances under which the CEO may give consent when it is customary for parental consent to be required or sought. The consent must be in writing, signed by the CEO.

Clause 127: Effect of provision requiring document to be given to particular person or child

Subclause (1) provides an exemption from the requirement in this Part for a person to give another person a document, or ensure that a document is given to them, if after reasonable inquiries the other person cannot be found.

Subclause (2) stipulates that subclause (1) does not apply if the document is to be given to a party to protection proceedings.

Subclause (3) without limiting subclause (1) this clause exempts a person from complying with the provisions of this Part requiring the person to give a document to a child if the person considers that the child lacks the maturity to either understand the document or the matter to which the document relates.

Clause 128: Records

Clause 128 requires the CEO to ensure that records are kept in a prescribed manner for every child who is or has been in the CEO's care.

Clause 129: Protection from liability for giving information

Subclause (1) sets out the circumstances in which a person giving information in good faith to the CEO or another officer is protected from liability under this clause.

Subclause (2) sets out the extent of the protection in this clause.

Clause 130: General powers of police officers not affected

Ensures that the powers conferred in this Part upon a police officer do not affect or limit in any way the powers the officer would have had had this Part not been enacted.

Part 5 — Protection proceedings

Division 1 — Terms used in this Part

The provisions in this Part concern requirements and procedures in relation to protection proceedings.

Clause 131: Terms used in this Part

In this Part, "child" means the child the subject of protection proceedings.

“Parent” in relation to a child the subject of a protection order other than a protection order (supervision) includes any person who would have had responsibility for the child if the order had not been made.

Division 2 — Adjournment and interim orders

Clause 132: Adjournment of proceedings

The Court may adjourn protection proceedings at any time, either on its own initiative or on the application of a party, for any appropriate period.

Clause 133: Interim orders

This clause provides for interim orders.

Subclause (1) enables the Court to make an interim order at any time during protection proceedings.

Subclause (2) lists a range of alternative arrangements for the child which may be achieved through an interim order. The purpose of interim orders is to enable the Court to be flexible in responding, in the child’s best interests, to their immediate needs and circumstances, in advance of making any final determination.

Subclause (3) If the Court makes an interim order that the child is to be taken into provisional protection and care, the Court may issue a warrant (provisional protection and care).

Clause 134: Variation or revocation of interim order

This clause provides for the variation or revocation of an interim order.

Subclause (1) enables a party to the proceedings to apply to the Court for an interim order to be revoked or varied.

Subclause (2) provides a range of possible orders the Court may make in dealing with an application under subclause (1).

Subclause (3) requires that the Court not vary or revoke an interim order, or revoke the interim order and make another interim order unless it is satisfied that the circumstances leading to the last interim order or variation have changed, or that all parties to the proceedings consent to the action.

Subclause (4) specifies that the child is not included in the reference to 'each party' in subclause (3) unless the child has legal representation or the Court is satisfied that the child has sufficient maturity and understanding to give consent.

Clause 135: Authorised officer entitled to have access to the child

This clause entitles an authorised officer access to a child who is the subject of certain interim orders.

Subclause (1) permits an authorised officer to have access at any reasonable time, to a child who is subject to an interim order made under clause 133(2) (a) or (c).

Subclause (2) provides that the entitlement in clause (1) includes seeing and speaking to the child without a parent of the child or any other person being present.

Subclause (3) enables the authorised officer to apply for a warrant (access) when the child cannot be found or when access has been denied or is likely to be denied.

Subclause (4) requires that an application for a warrant (access) in subclause (3) above, must be made in accordance with the provisions for applying for warrants under clause 119.

Subclause (5) allows the magistrate hearing the application for a warrant (access) under this clause to issue the warrant if satisfied that either the child cannot be located as in subclause (3) (c) or access has been denied as in subclause (3)(a) or that there are reasonable grounds for suspicion referred to in subclause (3)(b).

Division 3 — Pre-hearing conferences

This subdivision provides for pre-hearing conferences.

Clause 136: Court may order pre-hearing conference

Subclause (1) enables the Court in the course of protection proceedings to refer an application to a pre-hearing conference at any time during the proceedings.

Subclause (2) provides that the purpose of a pre-hearing conference is to give parties the opportunity to discuss and reach agreement on any matter relevant to the application.

Subclause (3) requires the Court to fix a day, time, date and place for pre-hearing conference.

Subclause (4) requires that a pre-hearing conference be presided over by a magistrate or a convenor appointed by the Court according to regulations.

Subclause (5) provides that where the person presiding over the pre-hearing conference is not a magistrate, that person must provide a report on the outcomes of the conference to the Court.

Subclause (6) sets out those aspects of a pre-hearing conference which may be covered by regulations.

Clause 137: Confidentiality of pre-hearing conference

This clause sets out the conditions and limits of confidentiality imposed on the pre-hearing conference.

Subclause (1) requires that the proceedings of the pre-hearing conference are confidential subject to the conditions identified in this clause.

Subclause (2) restricts the admissibility of evidence of things said or done, or of admissions made at a pre hearing conference, before any Court unless that Court grants leave, or all the persons attending the pre hearing conference consent.

Subclause (3) prohibits a person who attends the pre-hearing conference from disclosing any information given by another person at the conference without leave of the Court or the consent of that other person.

There is a penalty of \$12 000 and imprisonment of one year.

Subclause (4) exempts a number of circumstances from the application of subclause (3).

Division 4 — Reports about child

In determining the best interests of a child the legislation enables the Court to ask for reports from Court appointed professionals.

Clause 138: Meaning of "report"

Clause 138 provides that for the purpose of Division 4, 'report' means a report under clause 139.

Clause 139: Court may require report

Subclause (1) authorises the Court, in the course of protection proceedings, to require a person to give the Court a report on a matter relevant to the child's wellbeing.

Subclause (2) defines who is 'a person' referred to in subclause (1).

Subclause (3) specifies that the report must be in writing unless otherwise directed by the Court.

Subclause (4) allows the Court to specify what issues are to be addressed in the report.

Subclause (5) provides that the report is admissible as evidence in protection proceedings.

Subclause (6) provides that the Court may give such weight to a report as it thinks fit.

Subclause (7) specifies what the regulations may provide in relation to this section.

Clause 140: Access to written report

Subclause (1) requires the Court to provide a copy of the report to all parties as soon as practicable after receiving it, unless making an order under subclause (3).

Subclause (2) confers a discretion on the Court as to how a report may be given to a party to the proceedings.

Subclause (3) confers a discretion on the Court not to give a copy of the report to a party to proceedings if the Court determines there are special circumstances as to why it is inappropriate.

Clause 141: Confidentiality of report

Subclause (1) prohibits the author and any person who receives a report from sharing the information contained in the report without leave of the Court.

Penalty: \$6 000

Subclause (2) notwithstanding subclause (1), this clause permits the CEO to disclose information in the report to an authorised officer or any other person after the proceedings have concluded, if it is appropriate to do so, when this may occur, and what conditions must be met for this to occur.

Subclause (3) notwithstanding subclause (1) a person may disclose information contained in the report to the person's legal representative.

Clause 142: Protection from liability for preparing or giving report

This clause provides protection for persons who in good faith prepare a report or give a report to the Court.

Division 5 — Proposals about arrangements for child

This Division requires the CEO in certain circumstances to provide to the Court a proposal about arrangements for a child.

Clause 143: CEO to provide Court with proposal for child

Clause 143 outlines the different circumstances in which a proposal has to be given to the Court. It also outlines what needs to be addressed in the proposal and who should receive a copy of the proposal.

Subclause (1) defines a 'proposal' as a document that outlines the proposed arrangements for the type of protection order being applied for. It relates to all protection orders except protection orders (enduring parental responsibility) which requires a different type of report (clause 61(3)).

Subclause (2) provides that if a protection application is made and the Court finds that a child is in need of protection, the CEO must provide the Court with a proposal.

Subclause (3) sets out the types of subsequent applications for protection orders for which the CEO is required to provide the Court with a proposal. The proposal must be provided when the application is made.

Subclause (4) requires the proposal in relation to subclause (3) (b) (extension of a protection order (time limited)) to include plans for securing the long-term stability, security and safety in the child's relationships and living arrangements.

Subclause (5) provides that the Court may request the CEO to provide a proposal when there is an application to revoke a protection order under clause 67(1) and the Court is considering making another protection order (other than a protection order (enduring parental responsibility)) in respect of a child under clause 67(2)(c).

Subclause (6) requires the CEO to comply with the request for a proposal in subclause (5) as soon as practicable.

Subclause (7) requires the CEO to give copies of such a proposal to the other parties.

Clause 144: Court to consider proposal

Subclause (1) requires the Court to consider a proposal given under clause 143 before making a protection order or extending a protection order (supervision) or protection order (time-limited).

Subclause (2) provides that the Court in considering the proposal in 143(4) must have regard to the likelihood of the plans being achievable.

Division 6 — Procedural matters

Clause 145: General conduct of protection proceedings

This clause requires protection proceedings to be conducted as informally as possible, having sensitivity to a child's ability to understand and to the child and the child's family's time frames.

Subclause (1) Protection proceedings should be conducted with as little formality and legal technicality as possible.

Subclause (2) If a child is in Court the proceedings must be conducted in a way that is sensitive to the child's level of understanding.

Subclause (3) Protection proceedings should be carried out as quickly as possible to minimise the effects of the proceedings on the child and the child's family.

Clause 146: Court not bound by rules of evidence

This clause determines that the Court is not bound by rules of evidence.

Subclause (1) defines 'representation'.

Subclause (2) The Court can inform itself on any relevant matter and is not bound by the rules of evidence.

Subclause (3) The rule against hearsay does not make evidence inadmissible if the matter is relevant to the protection proceedings.

Subclause (4) The Court may give weight as it thinks fit to evidence admitted under subclause (3).

Clause 147: Parties to the proceedings

This clause lists those who are parties to the protection proceedings.

Clause 148: Legal representation of child

Subclause (1) Defines 'lawyer'.

Subclause (2) If it appears that the child ought to have separate legal representation in protection proceedings the Court may order that a child be separately represented by a lawyer.

Subclause (3) The Court may make such an order on its own initiative or on the application of the child, an organisation concerned with the wellbeing of children or any other person.

Subclause (4) A lawyer acting for the child in protection proceedings must act on the instructions of the child if the child has sufficient maturity and understanding to give instructions and if the child wishes to give instructions. In any other cases the lawyer must act in the best interests of the child.

Subclause (5) The Court must determine whether a child has sufficient maturity and understanding to give instructions.

Clause 149: Presence of child in Court

This clause upholds the principle of participation within the Court process.

Subclause (1) The child may be in Court during protection proceedings if he or she wishes.

Subclause (2) Subclause (1) is subject to any order made in respect of the child under the *Children's Court Act 1988* section 31, or the *Evidence Act 1906* section 106K.

Subclause (3) Requires the CEO to ensure that the child is made aware of the right to be in Court is provided with services necessary to enable participation.

Clause 150: Evidence of child

This clause outlines the conditions the Court must meet to compel a child to give evidence or be cross-examined.

Subclause (1) For the purposes of this clause 'child' includes a child who is not the subject of the protection proceedings.

Subclause (2) A child may only be compelled to give evidence or be cross-examined in protection proceedings with the leave of the Court.

Subclause (3) The conditions for granting the leave for the purposes of subclause (2) are that the Court must be satisfied the child will not suffer emotional trauma or be so intimidated or distressed as to be unable to give evidence or be cross-examined.

Clause 151: Standard of proof

The 'standard of proof' in protection proceedings is proof on the balance of probabilities.

Clause 152: Intervention by Attorney General

The Attorney General may intervene in a protection proceeding and in doing so will be treated as a party to the proceedings.

Clause 153: Court to facilitate party's participation in proceedings

This clause sets out the steps the Court must take to ensure participation of the parties in protection proceedings.

Subclause (1) The Court must as far as is practicable ensure that each party understands the nature, purpose and legal implications of the proceedings and of any order or decision made.

Subclause (2) If a party has a difficulty with English or a disability, the Court must take reasonable steps to ensure the services of an interpreter or any other appropriate person.

Subclause (3) states that nothing in this section is to affect the operation of the *Children's Court of Western Australia Act 1988*, section 34 (1).

Clause 154: Court may dispense with requirement for service

This clause applies to all of Part 5. The Court may make an order dispensing with a requirement of a party to give a document to another person if the Court is satisfied the other person cannot be found.

Clause 155: Frivolous or vexatious proceedings

This clause provides the Court with power to control frivolous or vexatious proceedings in the course of protection proceedings. The Court may dismiss the proceedings, make an order as to costs, and order that the person who instituted the proceedings cannot institute protection proceedings without leave of the Court.

The order relating to instituting proceedings applies despite any other provision in Part 5, but the Court may vary or discharge such an order.

Part 6 — Transfer of child protection orders and proceedings

Part 6 of the Bill largely replicates similar provisions in the *Child Welfare Act 1947* which were inserted by the *Child Welfare Amendment Act 2002*. Part 6 implements a national agreement between the Governments of Western Australia, other Australian States and Territories and New Zealand, for the efficient transfer of child protection orders and proceedings for children who move between jurisdictions.

In October 1996, the Australian and New Zealand Community Services Ministers' Council agreed that New Zealand and the States and Territories of Australia should develop model legislation that addressed cross-jurisdictional issues in child protection. By way of example, this might be required when the foster family of a child under the guardianship of the Department needs to move interstate. Or, in some cases, the best placement for a child under guardianship may be with extended family members who live in another State.

The Community Services Ministers' Council endorsed the model legislation in 1999 and agreed that each State, Territory and New Zealand would amend their respective child welfare laws to implement the reciprocal legislation.

A uniform Protocol to provide practical guidelines for the transfer of child protection orders and proceedings has also been implemented. The Protocol outlines a process for States that wish to transfer or accept the transfer of a child protection order or proceeding. The Protocol emphasises the need for the careful planning of transfers and cooperation between the States.

The reciprocal legislation is designed to allow the efficient transfer of children under the legal protection of one state to the legal protection of another State. It recognises that a child's welfare and protection is best managed by the jurisdiction where the child is living.

Most States and New Zealand have already implemented, or are close to implementing the reciprocal legislation.

Division 1 – Introductory matters

Clause 156: Purpose of Part

Clause 156 sets out the purpose of the Part.

Clause 157: Terms used in this Part

Clause 157 sets out the definitions of the Part. The definitions include the meaning of "child protection order", "child protection proceeding", "child welfare law", "Children's Court", "clerk of the Court", "home order", "interim order", "interstate law", "interstate officer", "participating State", "sending State", "State" and "working day".

Division 2 -Transfer of child protection orders

Clause 158 – When CEO may transfer order

This clause provides for the CEO to administratively transfer a child protection order interstate if certain requirements are satisfied, including the requirement for the relevant interstate officer to consent to the proposed transfer.

In addition, it must be possible to make a child protection order in the receiving State, which has the same, or similar effect, as the Western Australian child protection order. If the CEO decides to transfer a child protection order, he or she must indicate the period for which the order is to remain in force in the receiving State. The period of time can not be greater than if the order had not been transferred.

Clause 159: Persons whose consent is required

This clause ensures that consent is gained from the child, if the child has sufficient maturity, and from the parents if the order being transferred is a protection order (supervision). Consent is not required from a parent if the parent cannot be found, is unable to provide consent or resides in the same State that the child is transferring to.

Clause 160: CEO to have regard to certain matters

This clause requires the CEO to have regard to certain matters when deciding whether or not to transfer a child protection order to another State. The matters include having regard to which child protection department would be best able to administer the child protection order and the desirability of a child protection order being an order under the child welfare law of the State where the child resides.

Clause 161: Notification of decision to transfer

This clause requires the CEO, when he or she makes a decision to transfer a Western Australian order to another state, to as soon as practicable but within 3 working days, notify the child's parents, the child (unless he or she is of insufficient maturity to understand) and any other person (who has a direct and significant interest in the wellbeing of the child), of the decision. The CEO must state in his or her notice the date of the decision and that if any person wishes to apply for a judicial review in relation to the decision, then he or she must do so and give written notice to the CEO within 21 working days after the day of the decision. In addition the CEO must also advise the

person that any application to the State Administrative Tribunal for a review of the decision must be made within 21 days.

Clause 162: Limited period in which to apply for judicial review of decision

Clause 162 provides that there is a limited period for reviewing a decision to administratively transfer a child protection order. The reason for restricting the time period for a judicial review is to limit the amount of time that the child must wait before the order can be transferred interstate.

In developing the reciprocal legislation, the participating States recognised that:

- it is inappropriate to transfer and register a child protection order in the receiving State before any review or appeal is heard and completed in the sending State, therefore no transfer should occur until after the expiration of the appeal period;
- it is in a child's best interests to resolve transfer procedures quickly so as to limit the period of time that the child must wait in uncertainty before a transfer decision becomes final. Since the transfer is ineffective until the appeal period has expired, the judicial review period should be shortened without option for extension.

Clause 163: Review by State Administrative Tribunal

Clause 163 enables a person who is aggrieved by a decision by the CEO to transfer a Western Australian order to another state to apply to the State Administrative Tribunal for a review of the decision. The application must be made within 21 days of the decision and has the effect of placing a stay on the decision. There is no capacity for the Tribunal to extend the period of time within which an application must be made.

Clause 164: When Court may transfer order

Clause 164 provides for the Children's Court to order transfer of a child protection order on application of the CEO, provided that the order is not subject to appeal, the appeal period has expired and the relevant interstate officer has consented to the transfer in writing.

Clause 165: Service of application

Clause 165 identifies who must be given a copy of an application by the CEO for the judicial transfer of a child protection order.

Clause 166: Court to have regard to certain matters

Clause 166 sets out the matters that the Children’s Court must have regard to when determining whether to transfer a child protection order to another State. The matters include consideration of whether the CEO or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order, and the desirability of a child protection order being an order under the child welfare law of the State where the child resides.

Clause 167: Type of order

Clause 167 provides for the Children’s Court to determine what the transferred order would become in the receiving State. Unlike administrative transfers, the Children’s Court may specify an order, if in the best interests of the child to do so, which is different to the order that exists at the time of the transfer application. The following are examples of situations when this is likely to occur:

- the sending State may have an order that is not available in the receiving State;
- transferring the order interstate may mean that a different order is appropriate;
- circumstances may have changed since the original order was made and the transferred order should be a different type of order.

The Children’s Court is required to determine the period for which the transferred order should operate in the receiving State. The period of the transferred order is not to be longer than the maximum period possible for an order of that type which could be made in the receiving State.

Clause 168: Court must consider report from the CEO

Clause 168 requires the Court to consider a report from the CEO, in relation to the child, before making a transfer order.

Clause 169: Appeals

Clause 169 outlines the process for appeal of a Children’s Court decision to transfer a child protection order or the refusal to transfer an order. Appeals are to the Supreme Court. The process provides for a short period of 10 days during which an appeal may be lodged and requires a hearing to proceed expeditiously.

Division 3 – Transfer of child protection proceedings

Clause 170: When Court may transfer child protection proceeding

Clause 170 indicates when the Children’s Court may order the transfer of a child protection proceeding to the Children’s Court of a participating State. The order can only be made if the CEO applies for the transfer and the relevant interstate officer has

consented in writing to the transfer. The Children's Court has no power to review a decision made by the interstate officer not to consent to a transfer.

Clause 171: Service of application

Clause 171 identifies who must be served with a copy of an application by the CEO for the judicial transfer of a child protection proceeding.

Clause 172: Court to have regard to certain matters

Clause 172 identifies the matters that the Children's Court must have regard to, when deciding whether to transfer a child protection proceeding to another State. The matters include:

- whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law in the participating State;
- the place where any of the matters giving rise to the proceeding in the Court arose; and
- the place of residence, or likely place of residence, of the child, his or her parents and any other people who are significant to the child.

The section also requires the CEO to inform the Court if the CEO is aware that a child is subject to certain sentencing orders or criminal proceedings.

Clause 173: Interim order

Clause 173 provides for the Children's Court to grant an interim order if the Court has made a decision to transfer a child protection proceeding. An interim order may release the child into a person's care subject to any conditions that the Court considers appropriate. An interim order may also give responsibility for the supervision of the child to an interstate officer or another person in the receiving State. If the Court transferred a child protection proceeding, it would most likely also grant an interim order to clarify the respective rights and responsibilities of the parties in relation to the care of the child. An interim order remains in force as specified by the Court for a period up to 30 days.

Clause 174: Appeals

Clause 174 outlines the process for appeal of a Children's Court decision to transfer a child protection proceeding or the refusal to transfer a proceeding. Appeals are to the Supreme Court. The process provides for a short period of 10 days during which an appeal may be lodged and requires a hearing to proceed expeditiously.

Division 4 - Registration

Clause 175: Filing of interstate orders in the Court

Clause 175 provides directions for the CEO to file interstate documents in the Children's Court, including interim orders, relating to the transfer of child protection orders and proceedings to Western Australia.

Clause 176: Registration of interstate orders

Clause 176 provides for the clerk of the Children's Court to register interstate child protection orders and proceedings that are transferred to Western Australia. The registration is to occur following the filing of documents by the CEO under clause 175.

Clause 177: Notification by Clerk of Court

Clause 177 requires that the clerk of the Western Australian Children's Court must immediately notify the interstate officer and the interstate Children's Court when the Western Australian Children's Court registers or revokes orders relating to the transfer of child protection orders and proceedings to Western Australia. This provision will enable the interstate officer and the interstate Children's Court to know the date when the transferred order is registered in Western Australia and therefore, when their local order no longer applies.

Clause 178: Effect of registration

Clause 178 provides for the effect of registering an interstate child protection order or interim order or the transfer of a child protection proceeding to Western Australia. Such registered orders are to be treated as if they occurred under the *Children and Community Development Act 2003* on the day of registration.

Clause 179: Revocation of registration

Clause 179 provides for the revocation of the registration of any document filed under clause 176. The circumstances in which registration of interstate orders may be revoked are limited to situations where the transfer order was subject to review, appeal or stay, or the time for such a review, appeal or stay had not expired in the sending State. Later re-registration of a transfer order is possible even though revocation has occurred.

Division 5 - General

Clause 180: Separate legal representation of child

This clause states that the Court may order separate legal representation for a child, in the same way as protection proceedings, when the Court transfers an order or a protection proceeding to another State.

Clause 181: Effect of registration of transferred order

Clause 181 provides for the effect of the interstate registration of a Western Australian child protection order that has been transferred. Registration of the order interstate revokes the Western Australian order. Under corresponding interstate legislation, the registration will result in there being a child protection order in the receiving State, which will be regarded as an order of that State.

If the interstate registration of the order were revoked, the Western Australian order would be revived as if it had not been transferred.

Clause 182: Transfer of Court file

Clause 182 provides for the Western Australian Children's Court to transfer the Court documents interstate to the receiving State where the Children's Court has transferred a child protection order or proceeding; and where the transfer is not subject to any review, appeal or stay and the time for seeking a review, appeal or stay has expired.

Clause 183: Hearing and determination of transferred proceeding

Clause 183 enables the Children's Court in Western Australia to not be bound by any finding made in proceedings in the sending State. However, the Court may have regard to the transcript of, or any evidence heard in, such proceedings.

Clause 184: Disclosure of information

Clause 184 enables the CEO to disclose to an interstate officer such information as the CEO considers is necessary for the interstate officer to perform his or her child welfare duties and responsibilities. If the CEO receives information from an interstate officer, that information is to be treated as if given directly to the CEO instead of to an interstate officer.

Clause 185: Discretion of CEO to consent to transfer

Clause 185 enables the CEO to consent, or refuse to consent, to the transfer of a child protection order or proceeding to Western Australia. Transfer of child protection orders and proceedings can not occur without agreement by both the receiving State and sending State.

Clause 186: Evidence of consent of relevant interstate officer

Clause 186 relates to the evidential effect of certain documents or copies of documents that purport to be written by an interstate officer or his or her delegate.

Clause 187: Offence to remove child

This clause imposes a penalty in the event that a person unlawfully removes a child from the place the child lives under an interstate protection order.

Part 7 — Employment of children

Part 7 of the Bill sets out guidelines for the employment of children. The intent of this Part is to provide a balance between the benefits of children participating in the work force and the imperative that their education not be compromised or that they be harmed in any way.

Restrictions are placed on the employment of children under the age 15 of years except in relation to family businesses, light work, the entertainment industry and the making of advertisements. In addition, the CEO is given a broad power to ensure that no child is employed in a situation that is likely to be harmful to his or her development and wellbeing.

Provisions are also included to ensure that children, up to the age of 18 years, are protected from sexual exploitation or abuse.

Clause 188: Terms used in this Part

This clause defines the terms “delivery work”, “employ” and “family business”, for the purposes of this Part.

Clause 189: *School Education Act 1999* not affected

This clause ensures that nothing in this Part of the Act limits or affects the operation of section 29 of the *School Education Act 1999*. Section 29 prohibits the employment of a child during compulsory school hours.

Clause 190: Prohibition on employment of child under 15

Subclause (1) sets a minimum age for the employment of a child. The provision makes it an offence carrying a penalty of \$24 000 for a person to employ a child under the age of 15 years in a business, trade or occupation that is carried on for profit. The clause does not prevent a child under the age of 15 years from being employed by a non-profit organisation.

Subclause (2) sets up a defence to a charge under subclause (1) where the person is able to prove they believed on reasonable grounds that the child had reached 15 years of age.

Subclause (3) makes it an offence carrying a penalty of \$24,000 for a parent to allow a child under 15 years of age to be employed in a business, trade or occupation that is carried on for profit.

Clause 191: Exceptions to section 190

Subclause (1) This subclause recognises the unique circumstances of family businesses. It provides an exemption to clause 190(1) and (3) in relation to a child under the age of 15 years working in a family business.

Subclause (2) recognises the particular needs of the entertainment industry and provides an exemption to clause 190(1) and (3). The clause enables a child under 15 years of age to be employed for the purposes of entertainment including musical and dramatic performances or the making of advertisements.

Subclause (3) recognises that many children participate in the delivery of newspapers, pamphlets and advertising material. It provides an exemption from clause 190 (1) and (3) to enable a child between the ages of 10 and under 13 years to deliver newspapers, pamphlets and advertising material between the hours of 6.00am and 7.00pm. To ensure the child is not placed at risk while undertaking this work the child must be with his or her parent or an adult who has been authorised in writing by the child's parent to accompany the child.

Subclause (4) provides an exemption from clause 190(1) and (3) enabling a child between the ages of 13 and under 15 years to be employed, with the written consent of a parent, between the hours of 6.00am and 10.00pm. The exemption only applies to delivery work (as defined by the Act), work in a shop, other retail outlet or restaurant or any other work that may be prescribed in regulations.

Subclause (5) provides an exemption to a child from clause 190(1) and (3) where it is consistent with the provisions of sections 4 and 11 (1) of the *School Education Act 1999*. This clause ensures that where a child has been given approval under the *School Education Act 1999* to participate in the workforce, either as part of his or her educational program or because it is viewed as in the child's best interests, the employer or parent is not seen to be committing an offence under the provisions of clause 190. A child participating in a school-based traineeship involving working in a bakery early morning starts to their workday are essential, is a typical example.

Clause 192: Prohibition on employment of child to perform in indecent manner

This clause is similar to section 108 of the *Child Welfare Act 1947*. It is intended to prevent a child from being employed for pornographic purposes and protect a child from being sexually exploited or abused. The clause is consistent with the requirements of ILO Convention 182, *Worst Forms of Child Labour*, in relation to child pornography.

Subclause (1) makes it a crime for a person to employ a child, up to the age of 18 years, to perform in an indecent, obscene or pornographic manner in the course of participating in an entertainment, exhibition or the making of an advertisement. The use of the term "employ" in this clause covers all situations including whether or not the employment is for profit, there is a contract for service, or the child receives payment or reward of any kind.

A person committing this crime is liable to imprisonment for 10 years.

Subclause (2) makes it a crime for a parent to allow their child to be employed in the circumstances described in subclause (1).

A person committing this crime is liable to imprisonment for 10 years.

Subclause (3) sets out the type of employment circumstances this clause applies to, but is not limited to those described. They include a child engaging, or being in the presence of another person engaging, in a sexual activity, or being required to pose or moving in a way to give prominence to any sexual organs, including the anus and for a female her breasts. It covers any performance in the course of participating in an entertainment or exhibition if the performance can be viewed or communicated in any way.

Subclause (4) provides further assistance in clarifying when a child is employed.

Clause 193: Power of CEO to prohibit or limit employment of child

Subclause (1) states that the term "notice" in this clause has the meaning given by subclause (2).

Subclause (2) provides the CEO with a broad power to prohibit or limit the employment of a child where he or she considers the fact that the child is working, or the extent or type of the work, is likely to jeopardise the child's wellbeing. The clause is intended to protect a child from being employed in situations adverse to the child's safety, health, development or educational opportunities. The clause covers all types of employment whether the child is employed in a family business, the entertainment industry, a non-profit organisation or a business run for profit. For example the clause could be used to place conditions around the hours a child is working in relation to an entertainment production or in a family business.

Subclause (3) explains that any notice given by the CEO to a parent in subclause (2) may be expressed to apply to employment generally, to specific employment, or to employment of a specified kind.

Subclause (4) requires the CEO to give a copy of the notice to the child and the child's employer.

Subclause (5) states that a person employing a child in contravention of a notice is liable to a penalty of \$36,000 and imprisonment for 3 years.

Subclause (6) states that a parent allowing his or her child to be employed in contravention of a notice is liable to a penalty of \$36,000 and imprisonment for 3 years.

Subclause (7) states that it is a defence for a person charged with committing an offence under subclause (5) or (6) to prove that at the time of the alleged offence he or she had not been given a copy of the notice or was unaware of its contents.

Clause 194: False information

A child or a parent of a child must not give misleading or false information to an employer or prospective employer about:

- the child's age;
- whether or not a notice has been issued under clause 193 (2) prohibiting or limiting the child's employment; or
- whether or not the child has been granted an exemption under section 11 (1) of the *School Education Act 1999*. Section 11(1) enables the Minister for Education and Training to exempt a child from compulsory attendance at school.

Penalty \$6,000.

Clause 195: Powers of authorised officers

Subclause (1) defines an “authorised officer” as including an industrial inspector appointed under the *Industrial Relations Act 1979*.

Subclause (2) provides that an authorised officer may enter any place where it is believed a child is employed. Entry must occur at reasonable times and for the purpose of inspecting the place or making inquiries relevant to the child’s employment.

Subclause (3) gives an authorised officer the discretionary power to require any person at a place of employment to answer any question put to them by the authorised officer in relation to the employment of a child at the place. Nothing in this clause limits the powers under subclause (2).

Subclause (4) obliges an authorised officer when asking a question under subclause (3) to which they require an answer to advise the person that he or she is required by the legislation to give an answer.

Subclause (5) makes it an offence for which the penalty is \$6 000 for a person to refuse, or fail to answer a question put to them under subclause (3) or to give false or misleading information.

Subclause (6) states that a person is not excused from answering a question where a question is put to them under subclause (3), on the grounds that the answer may incriminate them or make them liable for a penalty. The answer may be used as evidence only in proceedings in relation to an offence under subclause (5)(b) that is, knowingly giving false or misleading information.

Clause 196: Proceedings against employers may be taken by industrial inspectors

Subclause (1) provides industrial inspectors appointed under the *Industrial Relations Act 1979* with the power to bring a prosecution against a person in relation to subclauses 190(1), 193(5) or 195(5).

Subclause (2) gives the power to an industrial magistrate’s court, established under *Industrial Relations Act 1979* Part III to have the jurisdiction to hear and determine complaints brought by industrial inspectors in relation to subclauses 190(1), 193(5) or 195(5).

Part 8 — Child care services

Part 8 of the Children and Community Development Bill replaces all that part of the *Community Services Act 1972* covering child care services.

Historically, child care services in Western Australia, were provided primarily by individuals and non-profit organisations. However, in recent years, corporations, some listed on the Australian Stock Exchange, have entered the field, injecting a degree of commercialism previously unknown in the provision of child care services.

Part 8 introduces a regulatory regime which reflects this new diversity among child care service providers, while at the same time enshrining certain non-negotiable standards of child care required of all providers.

The framework of Part 8, broadly speaking, comprises the following areas:

- 1 licensing requirements
- 2 assessment of suitability of applicants for a licence
- 3 restrictions on the grant of a licence
- 4 suspension and cancellation of licence
- 5 scope of the jurisdiction of the State Administrative Tribunal to review a decision of the CEO
- 6 exemptions from the application of the Act and regulations
- 7 powers of licensing officers
- 8 regulation making powers

Division 1 — Introductory matters

Clause 197: Terms used in this Part

“applicant” in relation to an application for a licence, is either a public authority, or otherwise, a person.

“application” is an application for a licence.

“child care service”. The meaning of this term is set out in clause 198.

“corporate applicant” is a body corporate other than a public authority.

“criminal record check” is a document issued by the Australian Federal Police or another body or agency approved by the CEO setting out the criminal convictions of a person for offences under the law of Western Australia, the Commonwealth or another State or a Territory.

“equivalent authority” means a licence or permit under the *Community Services Act* or a licence for the provision of a child care service in another State or Territory. The term is used in clauses 206, 208 and 209, and catches an applicant whose licence has been cancelled under the *Community Services Act* or in another State or Territory.

“family day care service” means a child care service provided at a place where the person providing the service lives. The simple requirement that the provider must actually live at the place is intended to close a loophole created by the definition in the *Community Services Act* which referred to “care provided to a child in a private dwelling in a family or domestic environment” and which sometimes resulted in a service being provided in a house not the provider’s house.

“individual applicant” means an applicant for a licence who is an individual.

“licence” is a licence to provide a child care service.

“licensee” is the person who holds a licence. In the case of a contravention of a term or condition of the licence, or the regulations, it is the licensee who is held liable.

“managerial officer” in relation to a corporate applicant means a director or secretary of the body, a member of the committee of the association where the applicant is an incorporated association, a person who holds 50% or more of the issued shares of the body and any other person who, in the opinion of the CEO, exerts control or influence over the body or is in a position to do so.

The term is used in clause 208 in the context of restrictions on the grant of a licence to a corporate applicant. If the managerial officer has been found guilty of a prescribed offence, or a licence issued to a managerial officer has been cancelled in the period 5 years before an application is made, or the managerial officer is not a fit and proper person to be involved in the provision of a child care service, the CEO must not grant a licence to the corporate applicant. The rationale behind this requirement of probity in

the managerial officer, (even if he or she does not have contact with children for whom the service is provided,) is that if that person does not meet the required standards of probity, he or she may not recognise, or may inappropriately tolerate, or may fail to adequately deal with, a situation where a child is at risk of harm.

“nominated supervising officer” a corporate applicant or public authority must, in its application for a licence, nominate a person who will be responsible for the day-to-day supervision of the child care service.

“prescribed offence” is an offence prescribed in the regulations. A prescribed offence is distinct from offences for contravention of the terms or conditions of the licence, Act or the regulations.

“supervising officer” when a licence is granted to an individual, the supervising officer is either the licensee, or a person appointed under the regulations to act in place of the licensee.

When a licence is granted to a corporate applicant or a public authority, the supervising officer is the person specified in the licence document as the person responsible for the day-to-day supervision and control of the service, or a person appointed under the regulations to act in place of the abovementioned person.

In the case of the corporation or public authority, not only will the name of the licensee (the corporation or public authority) be specified on the face of the licence document; the name of the supervising officer will also appear. There was no such provision under the *Community Services Act*.

"suspension notice" is a written notice from the CEO to the licensee, that a licence is suspended.

"usual occupant" in the context of a family day care service, the term covers a person (other than the applicant) who usually lives at the place where the service is provided, as well as extending to any other person likely to be present when the service is being provided. The term is relevant for the purpose of clause 206 which requires the CEO not to grant a licence for a family day care service unless satisfied that a 'usual occupant' is a fit and proper person to associate with children.

Clause 198: Meaning of "child care service"

It is a service for the casual, part-time or day-to-day care of a child under 13 years of age (or an age prescribed) provided for payment or reward, or as a benefit of employment, or as an ancillary service to a commercial or recreational activity. The definition is characterised by an element of 'payment' or 'reward', not found in the *Community Services Act*. The 13 years age limit reflects the fact that outside school hours care has now been brought within the ambit of the Bill.

Expressly excluded from the definition are the following: care of a child by a parent or other relative of the child or a carer; care by a person having contact with the child under a contact order under the *Family Court Act 1997*; care of a child with an approval under clause 103(3); care of a child at the place where the child lives; care of a child enrolled at a school if the child has reach 3 years of age and the care is in the course of the child's participation in an educational programme under the *School Education Act 1999*; care of a child at a hospital while the child is a patient; and care which would, but for it being excluded by the regulations, come within the definition of child care service. For the purposes of the Bill carer has the meaning in clause 3 as a person who provides care for a child under a placement arrangement.

Clause 199: Guiding principles

These principles are specific to Part 8, and are additional to the guiding principles in Part 2, divisions 2 and 3 of the Bill. The emphasis is on protecting the child's physical and emotional wellbeing and stimulating the child's developmental abilities. Participation of parents is to be encouraged and the diverse nature of the community is to be recognised.

Clause 200: Crown bound

This clause expressly binds the Crown in right of the State. Additionally, the clause recognises that there may be circumstances where the legislative power of Parliament would allow State legislation to bind the Crown in right of the Commonwealth or another State.

Division 2 — Licensing requirement

Clause 201: Requirement for licence

A child care service must be licensed. This clause prohibits, and imposes a substantial penalty for, the provision of a child care service other than in accordance with the licence.

Division 3 — Application for and grant of licence

This Division sets out who may apply for a licence and the form in which the application must be made. It also introduces a stringent screening process to ensure the applicant is not only suited to looking after children but also has a specialised ability for doing so.

Clause 202: Who may apply for licence

An applicant is either an individual, a body corporate or, in the case of a public authority that is not a body corporate, the chief executive officer on behalf of the authority. Applications must be made to the CEO.

Clause 203: Application for licence

The application must be on a standard form, accompanied by any prescribed documents and information. An application fee is to be imposed, to cover administrative costs of processing the application.

Clause 204: Further information relevant to application

This clause gives the CEO broad powers to enquire into the suitability of the applicant to provide a child care service. Apart from being required to have a criminal record check (which will be prescribed in the regulations) applicants will be required to know and understand how Part 8 of the Bill and the regulations operate, and to have knowledge of the field of child development. The CEO's powers also extend to requiring the applicant to undergo medical, psychiatric or psychological testing if this is considered necessary.

Clause 204 provides that an application need not be considered until all the CEO's requests for information in support of the application are complied with.

Clause 205: Grant of licence

A licence granted to a person authorises the person to provide a certain type of child care service at a certain place and these specific terms appear on the licence document. Areas that caused confusion and difficulty of interpretation under the *Community Services Act* are clarified by this clause, namely:

- (i) one licence per child care service
- (ii) a licence cannot be granted to two or more persons, however
- (iii) a person may be granted two or more licences.

Clause 206: General restrictions on grant of licence

If there are reasonable grounds for believing that the provision of a child care service would constitute an unacceptable risk to the wellbeing of children, the CEO must not grant the licence. This reversal of onus approach (that is, prohibiting the CEO from granting a licence rather than requiring that a licence be granted) signals a clear intention to prevent any provider who does not meet certain criteria from entering the business of child care services. Additionally the CEO must not grant a licence unless satisfied that:

- (i) the service will be provided in accordance with the regulations and the terms and conditions of the licence;
- (ii) the place is suitable for the purpose;
- (iii) the licence or equivalent authority has not been cancelled in the period of five years before the application is made under the Act;
- (iv) the applicant is of sound financial reputation and stable financial background; and
- (v) in the case of a family day care service, each usual occupant is a fit and proper person to associate with children.

Clause 207: Restrictions on grant of licence: individual applicant

The CEO must not grant a licence to an individual applicant if that person has been found guilty of a prescribed offence, unless there are exceptional reasons for doing so. Additionally, the CEO must not grant a licence to an individual unless the CEO is satisfied that person has the ability to supervise and control the service on a day-to-day basis, and is otherwise a fit and proper person to provide a service.

Clause 208: Restrictions on grant of licence: corporate applicant

The CEO must not grant a licence to a corporate applicant if the nominated supervising officer or a managerial officer has been found guilty of a prescribed offence, unless there are exceptional reasons for doing so. Additionally, the CEO must not grant a licence to a corporate applicant unless satisfied that:

- (i) a licence or equivalent authority issued to the nominated supervising officer or a managerial officer has not been cancelled in the period of five years before the application is made;
- (ii) the nominated supervising officer is not supervising another child care service that is or will be provided at the same time as the child care service to which the application relates;
- (iii) the nominated supervising officer has the ability to supervise and control the service on a day-to-day basis; and
- (iv) the nominated supervising officer and each managerial officer are fit and proper people to be involved in the service.

Clause 209: Restrictions on grant of licence: public authority

The restrictions in this clause are identical to those in clause 208, except that here there is no reference to 'managerial officer'.

Clause 210: Licence document

If the CEO grants a licence, the CEO must issue a licence containing the prescribed details. Practically speaking, the clause is linked to clause 201, the prohibition on providing a service except in accordance with a licence.

Clause 211: Licence not transferable

The prohibition on transferring a licence prevents a person obtaining a licence without undergoing the screening process for suitability to provide a child care service. The prohibition applies, even when an individual who holds a licence decides to incorporate. Changing the name of the licensee from an individual to a body corporate would constitute a transfer.

Division 4 — Licence conditions and amendment

Clause 212: Condition as to supervision and control

The supervising officer for a child care service must be present at the place where, and the times when, the service is being provided. It is noteworthy that the CEO may amend any condition on a licence except the condition as to the supervising officer being present. This requirement may be modified somewhat by regulations which may recognise and provide for circumstances where it is impossible for the supervising officer to avoid being absent from the place where the service is provided.

Clause 213: Other conditions

Some conditions attaching to a licence apply to all licences, but where circumstances make it appropriate, particular conditions applicable to a particular type of child care service may be imposed. The regulations will prescribe which conditions apply to all licences and which to particular licences.

Clause 214: Contravention of conditions

It is indicative of the importance of the licensee observing the conditions on the licence that the penalty for contravention is \$12,000.

Clause 215: Amendment of licence

The CEO may impose new conditions or may change or remove existing conditions either on the CEO's own initiative or on application by the licensee. This power of amendment may be exercised at any time, not necessarily upon the grant of a licence or upon its renewal.

Division 5 — Duration and renewal

Clause 216: Duration of licence

This clause is self-explanatory. The Bill has extended the maximum period for which the licence is effective to three years, as compared with the two year maximum period under the *Community Services Act*.

Clause 217: Application for renewal of licence

The renewal application must be in an approved form, lodged within the prescribed time, accompanied by any document or information prescribed and the prescribed fee. The same scrutiny of the applicant applies for renewal as it does for the original application.

Clause 218: Restrictions on renewal of licence

This clause is framed in the same terms as for the granting of a licence. Rather than the CEO being required to renew a licence if satisfied of certain criteria, the clause prohibits the CEO renewing a licence unless satisfied certain criteria have been met. Specifically, the CEO must not renew a licence if no longer satisfied that the licensee meets the criteria relevant to the granting of a licence. Additionally, if the CEO is satisfied the licensee has persistently or frequently contravened the terms and conditions of the licence, or the regulations, the licence must not be renewed. (Use of the words “persistently and frequently” will tend to excuse an occasional or one-off contravention.) Moreover, if there are reasonable grounds for believing that the continued provision of the service would constitute an unacceptable risk to children, the CEO must not renew the licence .

Clause 219: Renewal of licence

This clause gives the CEO flexibility to alter existing, or to impose new, conditions on a licence as circumstances require. The condition requiring a supervising officer to be present where and when the service is provided is not, however, a condition that can be altered.

Division 6 — Suspension and cancellation

Because they threaten the very livelihood of the licensee, suspension and cancellation of a licence are at the higher end of the scale in terms of sanctions on a licensee.

The processes of suspension and cancellation can generate friction between the regulator and the licensee. Recognising the contentious nature of this aspect of child care regulation, this Division provides a well defined procedure to be followed by both the regulator and the licensee to ensure the maximum procedural fairness to the licensee. Most significantly, it provides access for the licensee to the State Administrative Tribunal which will have power to hear and determine questions of suspension and cancellation of a licence.

Clause 220: Suspension of licence

The clause authorises the CEO to give written notice to the licensee that a licence is suspended. The grounds (of which there must be a reasonable belief as to their existence) are identical to clause 218 (b) and (c) (restrictions on renewal of a licence). The written notice is called a suspension notice. It must contain: a) the day on which the suspension takes effect; b) the reasons for the CEO’s decision to suspend; c) where appropriate, the steps which need to be taken to rectify the contravention or eliminate the unacceptable risk to the wellbeing of children for whom the child care service is

provided; and d) information regarding the right of the licensee to apply for a review of the CEO's decision to the State Administrative Tribunal.

Except where there is an unacceptable risk to the well being of children for whom a child care service is being provided (in which case a suspension takes effect immediately) a suspension on the grounds of contravention of a term or condition of the licence or a regulation must not take effect until the licensee has been given an opportunity to make representations to the CEO regarding that contravention. Accordingly, the CEO must first give the licensee a written notice of proposed suspension under clause 221.

Clause 221: Notice of proposed suspension

Where the ground for suspension is a contravention of the terms and conditions of the licence, or the regulations, the CEO must give written notice to the licensee of the proposed suspension before suspending it. The notice must state the proposal to suspend and the reasons and inform the licensee of his/her entitlement to make representations to the CEO. The licensee must do this within 21 days after the day of which the licensee is given notice. The CEO must take into account the representations in considering whether to proceed with the suspension.

Clause 222: Revocation of suspension

If the CEO is satisfied that the licensee has taken the steps specified in the suspension notice, the CEO must revoke the suspension by written notice. Alternately, if the circumstances of a particular case suggest it is appropriate, the CEO may revoke the suspension by written notice.

Clause 223: Duration of suspension

The suspension of a licence takes effect on and from the day specified in the suspension notice until either the suspension is revoked by the CEO, the licence is cancelled under clause 224, or it expires, or the licence is surrendered.

Clause 224: Cancellation of licence

The following grounds must exist in order for this most severe sanction to be taken:

- (a) the licence was obtained improperly;
- (b) the CEO is no longer satisfied that the licensee fulfils the conditions set out in clause 206 (2), 207, 208 or 209;
- (c) the licensee has persistently or frequently contravened a term or condition of the licence or a provision of the regulations whether or not the licence is or has been suspended on the grounds of that contravention; or

- (d) there are reasonable grounds for believing that the child care service constitutes an unacceptable risk to the well being of children, whether or not the licence has been suspended on the grounds of that risk.

Under the *Community Services Act* the Director General has the power to cancel a licence; the unintended effect of the exercise of this power tended to embroil the Director General in controversy and adverse publicity at the hands of an aggrieved licensee. Under the Bill, an independent body, the State Administrative Tribunal, now makes this ultimate sanction against a licensee. The CEO's role is confined to coming to a decision that grounds for cancellation exist, making an allegation of the existence of the grounds to the Tribunal, and notifying the licensee accordingly. If the Tribunal is satisfied of the existence of the grounds, the Tribunal may cancel the licence.

Division 7 — Review

Clause 225: Review by State Administrative Tribunal

The practice and procedure of the State Administrative Tribunal is contained in the State Administrative Tribunal Bill. Clause 225 merely provides for the parties who, under the Children and Community Development Bill, can apply to the Tribunal, the nature of matters the subject of such applications and the role of the Tribunal in determining the matter.

The clause states that a person aggrieved by a reviewable decision may apply to the Tribunal for a review. A "person aggrieved" is defined as a person upon whose application a reviewable decision is made, or the holder of the licence to which a reviewable decision relates. A "reviewable decision" is defined as a decision of the CEO to refuse to grant or renew a licence; as to the period for which a licence is granted or renewed; to grant or renew a licence subject to particular decision; to amend a licence under clause 215; or to suspend a licence under clause 220.

Division 8 — General

Clause 226: Advertising

It is an offence carrying a maximum penalty of \$6,000 for a person to advertise or hold out that the person provides a child care service unless the person is licensed to provide the service.

Clause 227: Production of licence document for amendment

It is an offence carrying a maximum penalty of \$6,000, not to produce a licence document for amendment within a specified period, if the CEO amends or renews a licence. The requirement is consistent with the intention of the legislation that every

child care service is conducted strictly in accordance with the terms and conditions imposed by the CEO as they appear on the face of the licence document.

Clause 228: Return of licence document if licence no longer in effect

It is an offence carrying a maximum penalty of \$6,000 not to return to the CEO a licence document where the licence has expired or has not been renewed, has been suspended or cancelled, or has been surrendered. The requirement is directed at preventing unauthorised use of a defunct licence.

Clause 229: Power to exempt

This clause closely parallels section 17D of the *Community Services Act*. It recognises the impossibility of regulating child care services on a one-size-fits-all basis in a State as geographically and culturally diverse as Western Australia, and accordingly provides for exemptions for certain child care services from the application of clause 201, the regulations or specified provisions of the regulations.

Exemptions can only be made by the Minister, by order published in the *Gazette*. In exercising the power to exempt, the Minister must have regard to the best interests of the children concerned, their special needs and interests, the views of parents of the children (the term "guardian" which appears in the *Community Services Act* has been deleted in view of the more inclusive definition of "parent" in the Bill), the needs of the locality and the desirability of, or need for, short term, special, innovative, experimental, culturally appropriate and culturally specific child care services.

Clause 230: Evidentiary certificate

This clause is intended to facilitate the prosecution for an offence under Part 8, by providing that a certificate signed by the CEO is evidence of the facts stated in the certificate.

Clause 231: Powers of entry and inspection

The function of ensuring the licensee's compliance with the terms and conditions of a licence and the regulations is conferred on licensing officers appointed under clause 25 of the Bill. Clause 231 sets out the scope of the licensing officers' powers. The offence in relation to a person who fails to comply with the authorised request of a licensing officer in the pursuit of his or her duties is equivalent to the obstruction provision in the *Community Services Act* except that the penalty has been increased from \$2,000 to \$6,000. Clause 231 also empowers a magistrate to issue a warrant to either a licensing officer or a police officer authorising that person to enter and inspect a place believed on reasonable grounds to be a place where an unauthorised child care service is being conducted.

Clause 232: Regulations

In addition to the general regulation making power in clause 247, clause 232 provides for the making of regulations specific to child care services. They are as follows:

- a) This regulation making power recognises that within the meaning of "child care service", there may be a diverse range of types of child care service requiring specific regulations.
- b) Examples of the types of regulations that may be made under this power include specifying the time in which an applicant must produce a licence for amendment; and the procedure to be followed for surrendering a licence.
- c) A regulation under this power may specify the avenues of enquiry the CEO may legally take to determine whether a person is fit and proper to provide a child care service or to be associated with children.
- d) A regulation under this power will state those criteria that are relevant (as opposed to irrelevant) for the CEO to consider in determining whether a person is fit and proper to provide a child care service or to be associated with children.
- e) A regulation under this power will specify the particular documents and information an applicant or licensee must provide in support of an application for, or the provision of, a child care service.
- f) Changes in circumstances may materially affect the eligibility of a licensee to provide a child care service. Under this power a regulation may specify which changes are notifiable to the CEO. A change of supervising officer or managerial officer is always notifiable.
- g) Under the Bill, a supervising officer must be able to supervise and control a child care service on a day-to-day basis. Under this power, regulations may recognise that there may be exceptional times when a supervising officer may have to be absent and regulates the appointment of a person to act in the place of the supervising officer.
- h) The limits of a licensing officer's powers, and the scope of his or her duties are prescribed under this regulation making power.
- i) This power covers matters including child/staff ratios, staff qualifications.
- j) A child care service is required to protect the child from harm and safeguard the child's wellbeing. In order to uphold such principles the CEO may conduct a criminal record check of any staff member.
- k) Under this power, matters such as standards of safety and hygiene to be maintained, may be covered.
- l) The ability to check on the health of a licensee or any member of staff of a child care service as it relates to the health and safety of children, is covered by this power.

- m) Under this regulation making power appropriate standards for the building and physical environment for the provision of a child care service are covered. Typical regulations in this category would cover ventilation and playground layout.
- n) Activities and equipment must be appropriate to the needs and ages of children in the child care service. The regulation making power is linked to guiding principle (v) under clause 199 of the Bill.
- o) This regulation making power requires the maintenance of records. A typical record would be the signing in and signing out of a child at the child care service.
- p) How a child care service may continue to operate in an emergency situation, or where a licence has been suspended or cancelled is covered under this power.
- q) This power recognises that special circumstances may arise making it impossible for a child care service to comply with the regulations. The CEO is given power under this regulation to exempt the child care service for a specified time and under specific conditions.
- r) There may be times when the CEO wishes to notify parents of a particular situation in relation to the child care service, for example, that a licensee has contravened the regulations and has been given a time in which to rectify the contravention. This regulation making power covers such situations.
- s) Provision is made for a regulation covering fees payable, for example, fees for the granting or renewal of a licence.
- t) This regulation requiring verification of a document or information by a statutory declaration may protect against the production of a false document, or false information.
- u) This power addresses all those matters that must be covered in the transition from a repealed *Community Services Act* to the Children and Community Development Bill.
- v) How, and by whom, these regulations are to be reviewed is covered in this power.

Part 9 — Provision of financial or other assistance

This part replaces the *Welfare and Assistance Act 1961*. The *Welfare and Assistance Act* is outdated, many of the types of assistance it refers to having been taken over by other government assistance programmes.

Part 9 of the Bill preserves two areas of assistance offered by the *Welfare and Assistance Act*: financial assistance, and funeral expenses assistance. An additional power under the Bill is the provision of “other” assistance, which may take the form of goods or clothing.

The intention of Part 9 is to be as responsive as possible to people in need, without abandoning appropriate standards of accountability. For example, applications for assistance must be made in accordance with an approved procedure. The CEO may ask for any information considered necessary in order to determine the application. Terms and conditions may be imposed, including provisions for the repayment of money and recovery of outstanding amounts.

Clause 22 of the Bill provides for the CEO in performing functions under the Act, to work in cooperation with public authorities, non-government agencies and service providers.

The CEO must promote the establishment, implementation and regular review of procedures that facilitate interagency cooperation including in relation to the provision of financial or other assistance.

Clause 233: Power to provide financial or other assistance

This clause authorises the CEO, if satisfied that there is a need, to provide a person with financial or other assistance. It can be on terms and conditions the CEO considers appropriate, including provisions as to repayment and recovery of outstanding amounts.

Clause 234: Power to assist with funeral expenses

The CEO may pay funeral expenses if satisfied that it is appropriate. The same power to impose terms and conditions as apply in clause 233 also apply to clause 234.

Clause 235: Application for assistance

An application for assistance under clauses 233 or 234 must be made in the form and by way of procedure approved by the CEO. The CEO can require the applicant to provide any information considered necessary to determine the application.

Clause 236: Recovery of overpayments in certain circumstances

A person who obtains assistance by making a false or misleading statement in an application, or who gives false or misleading information, can be sued in the relevant court for payment of the money as a debt due to the State.

Part 10 — Confidentiality provisions

Part 10 of the Bill is intended to protect an individual's privacy, but at the same time balance the need to share information to ensure the safety and wellbeing of children.

Clause 237: Restriction on publication of certain information or material

Subclause (1) defines the terms "old order" and "publish" for the purposes of this clause.

Subclause (2) makes it an offence, without the appropriate written consent, for a person to publish information or material that may identify a person (the "identified" person) who is or was the subject of:

- an investigation by the Department to determine whether or not he or she is in need of protection; (clause 32(1)(d));
- a protection application or order whether under this Bill or the *Child Welfare Act 1947*.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Subclauses (3) and (4) set out the grounds on which information or material that may identify a person can be published. In all cases written authorisation is required. For a person under 18 years of age subclause (3) requires the authorisation of the CEO. For a person over 18 years of age subclause (4) requires the authorisation of the person concerned or if the person is deceased or cannot be found then the authorisation of the CEO.

Subclause (5) excludes from the provision information or material contained in reports of Court proceedings to which section 35(1) of the *Children's Court Act of Western Australia 1988* applies. Section 35(1) of that Act provides for restrictions on reports of proceedings in the Children's Court.

Clause 238: Production of departmental records

Subclause (1) defines the use of the term "departmental record" for the purposes of this clause.

Subclause (2) states that this section applies if a party to legal proceedings lawfully requires the CEO or another officer to produce a departmental record or an officer or employee of a public authority to produce a departmental record to which they have been given access to the party, for the Court or tribunal concerned.

Subclauses (3) and (4) sets out the procedure for access to a departmental record. It requires the requesting party to describe the record by referring to the person/s it relates to, the period of time and general circumstances of the events and to show the relevance of the record to the legal proceedings. The intention here is to ensure information from a departmental record is only released where it is relevant to proceedings.

Subclause (5) protects a person's right to privacy by making it an offence for a person to disclose, record or use information obtained through the lawful release of a departmental record except for the purposes connected with the relevant proceedings.

Provision is made for a penalty of \$ 12,000

Subclause (6) lists the categories of people who may have access to a "departmental record" once it has been lawfully produced for a Court or tribunal. It requires the Court or tribunal to take all reasonable steps to ensure access is limited only to those people listed.

Subclause (7) makes it an offence for a person who has been given access to a "departmental record" by a Court or tribunal to reproduce or copy the record without the approval of the Court or tribunal.

Penalty of \$6,000

Subclause (8) gives a Court or tribunal the power for the purpose of subclause (7) to approve certain conditions it considers appropriate on the reproduction or copying of the record including for the return or destruction of the record.

Clause 239: Objection to disclosure of certain information during proceedings

Subclause (1) gives a person, who has acquired information through carrying out functions of the Act or the provision of social services in respect of the Act, the right in any legal proceedings to object to disclosing the information. The grounds on which a person can object are listed.

Subclause (2) provides for a Court or tribunal, after considering an objection under subclause (1), to order the disclosure of the information where it is considered essential to the proceedings and there is a compelling reason in the public interest.

Subclause (3) provides for the Court or tribunal to order a person to disclose the information to the Court in private so it can make an informed decision as to whether it should make an order under subclause (2). Provision is also made for the Court or tribunal to nominate who may be present at the private hearing.

Subclause (4) requires the Court or tribunal to ensure as far as practicable that information disclosed under clause 239 is not disclosed elsewhere.

Clause 240: Confidentiality of notifier's identity

Subclause (1) defines the terms "identifying information" and "notifier" for the purposes of this clause.

Subclause (2) provides protection to notifiers. It makes it an offence for a person who through the course of his or her work becomes aware of the identity of a notifier to disclose any identifying information about that person except under the conditions specified in this clause. The intention of this clause is to enable a person to provide information to the department, in good faith, in relation to the wellbeing of a child without fear of recriminations or personal repercussions.

Provision is made for a penalty of \$24,000 and imprisonment for 2 years.

Subclause (3) prohibits a person from disclosing or being asked to disclose identifying information about a notifier in legal proceedings, without the prior leave of the Court or tribunal to do so.

Subclause (4) lists the grounds on which a Court or tribunal must be satisfied before granting permission under subclause (3) for the disclosure of identifying information about a notifier.

Subclause (5) ensures that when there is an application for leave to disclose identifying information, the application must not be heard in public unless determined otherwise by the Court or tribunal and must try to ensure that the identity of the notifier is protected pending the decision on the application.

Clause 241: Confidentiality of information

Subclause (1) identifies the persons to whom this clause applies.

Subclause (2) identifies the circumstances under which a person may record, disclose or make use of information obtained during the course of his or her work. It makes it an offence for information to be recorded or disclosed outside of these circumstances.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Subclause (3) ensures that the circumstances listed in subclause (2) are not used to override the conditions regarding the disclosure of identifying information in clause 240.

Subclause (4) ensures that the circumstances listed in subclause (2) does not stop the disclosure of statistical or other information about a person that is unlikely to lead to their identification.

Subclause (5) enables information that has been disclosed within the conditions of this clause to be further disclosed or recorded as long as the disclosure is consistent with the original reason for disclosure.

Part 11 — Other matters

Clause 242: Obstruction

Makes it an offence for a person to obstruct or hinder a person who is performing or attempting to perform a function under this Act.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Clause 243: Impersonating an officer

Makes it an offence for a person to falsely represent, by words or conduct, that the person is an authorised officer.

Provision is made for a penalty of \$12,000 and imprisonment for one year.

Clause 244: False information

This clause makes it an offence for a person to knowingly provide false or misleading information either orally or in writing in relation to, an application, report or other document prepared for the purposes of this Bill.

Provision is made for a penalty of \$6,000.

Clause 245: Legal Proceedings

Subclause (1) provides that proceedings for an offence (other than an indictable offence) under this Act may be taken in the name of the CEO, by the CEO or a person authorised to do so by the CEO.

Subclause (2) provides that in any proceedings no proof is required of the appointment of the CEO or the authorisation of a person under subsection (1), but an averment in a complaint that the person is appointed or authorised is to be taken as proved unless proved otherwise.

Subclause (3) is intended to ensure that subsection (1) does not limit the ability of a person to make a complaint or conduct the prosecution of an offence if he or she has the authority to do so by law.

Clause 246: Protection from liability for wrongdoing

This clause provides for protection from an action in tort for a person who does anything in good faith in the performance, or purported performance, of a function under this Act. A reference to the doing of anything includes the omission to the doing of anything.

The State of Western Australia is not, however, relieved from liability in relation to the above.

Clause 247: Regulations

Subclause (1) provides for the Governor to make regulations prescribing all matters that are required or permitted, or are necessary or convenient to be prescribed for giving effect to this Act. This is a standard clause that allows regulations to be issued.

Subclause (2) allows for the regulations to create offences and provide for the imposition of a penalty up to \$6,000.

Clause 248: Review of Act

Subclause (1) requires the Minister responsible for the administration of this Act is to carry out a review of the operation and effectiveness of the Act, as soon as practicable after the fifth anniversary of its commencement and at the expiry of each 5 yearly interval after that anniversary.

Subclause (2) requires that a report of the review must be prepared and be laid on the table in each House of Parliament as soon as practicable after its completion but no longer than 12 months after the relevant anniversary or expiry.

This provision is to ensure that this Act is reviewed after a reasonable period of operation and that it is achieving its objectives and not causing any undue hardships to any sector of the community.

Clause 249: Repeal, transitional and savings provisions

This clause provides for repeal, transitional and savings arrangements. It provides for continuity of services.

The following Acts are repealed:

- (a) the *Child Welfare Act 1947*;
- (b) the *Community Services Act 1972*;
- (c) the *Welfare and Assistance Act 1961*.

The following regulations are repealed:

- (a) the *Child Welfare Regulations 1977*;
- (b) the *Community Services (Child Care) Regulations 1988*;
- (c) the *Community Services (Outside School Hours Care) Regulations 2002*;
- (d) the *Community Welfare Organisations Regulations 1980*;
- (e) the *Welfare and Assistance Regulations 1962*.

Schedule 1 contains the specific details for transitional and savings provisions.

Clause 250: Other Acts amended

This clause provides for amendments to other Acts. Schedule 2 contains the specific details of all proposed amendments.

Schedule 1 — Transitional and savings provisions

Division 1 — Introductory matters

Clause 1: Meaning of terms used in this Schedule

Unless the contrary intention appears-

“authorisation” means an approval under section 111 or a licence under section 112 of the *Child Welfare Act*.

“commencement day” means the day on which clause 249 comes into operation.

“existing appeal” means an appeal under the *Children’s Court Act* section 42(1) or 43(4) that has not been finally determined before commencement day.

“existing order” means an order made under the *Child Welfare Act* section 30 that is in force immediately before commencement day.

“existing proceedings” means proceedings under the *Child Welfare Act* section 30 that have not been finally determined before commencement day.

“extended order” means an existing order that applies to a child after the child reaches 18 years of age because of an extension under the *Child Welfare Act* section 49(1).

“repealed Act” means an Act repealed by clause 249.

Clause 2: *Interpretation Act 1984* not affected

Provides that the provisions in this schedule do not affect the application of *Interpretation Act 1984* to and in relation to the repeals effected by clause 249.

Division 2 — Provisions related to repeal of *Child Welfare Act 1947*

Clause 3: Existing orders

This clause provides for an order granted under the *Child Welfare Act 1947* to continue to have effect after the repeal of that Act and for the order, on commencement of the *Children and Community Development Act 2003* to be considered as though it was an order of that Act.

Subclause (1) provides for an existing order that applies to a child until the child reaches 18 years of age, be considered, on and after the commencement of this Bill, to have effect as if it were a protection order (until 18).

Subclause (2) provides for an existing order other than an order referred to in sub clause (1), or an extended order, on or after the commencement of this Act, to be considered to have effect as if it were a protection order (time-limited).

Subclause (3) an order to which subclause (2) applies has effect, if the period until the order is due to expire is less than 2 years, for that period; or, in any other case, for a period of 2 years from commencement day.

Clause 4: Extended orders

On and after commencement day the *Child Welfare Act 1947* continues to apply to an extended order as if that Act had not been repealed.

Clause 5: Existing proceedings

Subclause (1) provides existing proceedings under the *Child Welfare Act 1947* at the time of commencement of this Act are to be dealt with and determined as if the *Child Welfare Act 1947* has not been repealed.

Subclause (2) mirrors the transitional provision regarding existing orders. That is, where at the conclusion of an existing proceedings an order is made committing a child to the care or control of the Department then the order has effect as if it was either a protection order (until 18) or in any other case, a protection order (time-limited).

Subclause (3) clarifies that where an order has effect under subclause (2)(b) (protection order (time limited)) for a period of less than 2 years then the order only applies for the period stated in the order while in all other cases the period is for 2 years from the date of commencement of this Act. For example an order committing a child to the care or control of the Department for 4 years would only have effect for 2 years from the date of commencement of this Act.

Subclause (4) provides that an order made under section 29(3aa) of the *Child Welfare Act 1947* immediately before commencement day of this Act has effect as if the Child Welfare Act had not been repealed. [Section 29(3aa) allows the Court during any adjournment to make an order regarding where a child may reside and make provisions relating to custody and access].

Clause 6: Existing appeals

Subclause (1) Provides that an existing appeal is to be dealt with and determined under the *Children's Court of Western Australia Act 1988* as if that Act had not been amended and the *Child Welfare Act 1947* had not been repealed.

Subclause (2) Provides that if at the conclusion of an existing appeal an order is made committing a child to the care or control of the Department the order has effect as if it was either a protection order (until 18) or in any other case, a protection order (time-limited).

Subclause (3). An order to which clause 6(2)(b) applies (that is, an order having effect as if it were a protection order (time limited)), has effect if a period of less than 2 years is specified in the order, for that period; or, in any other case, for a period of 2 years from the day on which the order was made.

Clause 7: Records under s. 11

Ensures that records kept under section 11 of the *Child Welfare Act 1947* in respect of wards and children placed under the control of the department are taken to be records for the purposes of clause 128.

Clause 8: Operation of orders under s. 13 or 14

This clause provides that any order made under section 13 or 14 of the *Child Welfare Act 1947* in force immediately before commencement of this Act is to cease to have effect on that day. Section 13 provides for the Governor to declare by order any building or place to be a departmental facility and section 14 any building or place to be a subsidised facility.

Clause 9: Children detained under s. 29(3a)

This clause provides that if a child is being kept in hospital under section 29(3a) of the *Child Welfare Act 1947* immediately before the commencement of this Act, the child is on commencement of this Act considered to be held under the authority of section 40(2) of this Act. Section 40(2) allows a hospital to keep a child if it is believed on reasonable grounds that the child is in need of protection.

Subclause (1) provides for a child who is currently being kept in hospital under section 29(3a) of the *Child Welfare Act 1947* to continue to be held in the hospital under section 40(2) of this Act.

Subclause (2) provides that any period of time a child has already been held in hospital under section 29(3a) of the *Child Welfare Act 1947* must be counted towards the time the child is held in the hospital under section 40(2). Section 40(7) provides that a child cannot be held in a hospital for more than 2 working days.

Clause 10: Orders under s. 40A

Provides for any existing order under section 40A of the *Child Welfare Act 1947* to be considered as having the same effect as an order under section 73 of this Act. Section 40A of the *Child Welfare Act 1947* allows the Court to make an order requiring a parent of a child committed to the care and control of the Department to pay maintenance to the Department. Section 73 allows the Court to order a parent to pay maintenance when their child is under a protection order (time limited), a protection order (until 18) or a protection order (enduring parental responsibility).

Clause 11: Applications under s. 47

This clause provides that if an application is made under section 47(2) of the *Child Welfare Act 1947* and not finally determined before commencement of this Act, then the application is to be continued and determined as if the *Child Welfare Act 1947* had not been repealed. Section 47(2) provides for a parent or near relative of a child that has been committed to the care or placed under the control of the Department to apply to the Minister for an order for release of the child. If the Minister declines to make the order the applicant may apply to the Court for the release of the child.

Clause 12: Notices under s. 107A or 107B

Provides that a notice under section 107A(4) or 107B(4) of the *Child Welfare Act 1947* that is in force immediately before commencement of this Act has effect on and after commencement of this Act as though it was a notice under section 193(2) of this Act. Section 107A(4) provides for the Director General, if he or she is of the opinion that the employment is likely to jeopardise the child's welfare, to issue a written notice

prohibiting or limiting a child from engaging in street trading. Section 107B(4) provides the same authority for the Director General to issue a notice in relation to other types of employment. Section 193(2) confers on the CEO power to prohibit or limit the employment of a child if he or she is of the opinion that the fact that the child is employed, or the extent or type of the work is likely to jeopardise the child's wellbeing.

Clause 13: Warrants

Provides for a warrant issued under section 67 of the *Child Welfare Act 1947* that is in force immediately before the commencement of this Act is to have the same effect as if the warrant was issued under this Act.

Clause 14: Authorisations under s. 111 or 112

Subclause (1) provides for an authorisation under section 111 or 112 of the *Child Welfare Act 1947* that is in effect immediately before commencement of this Act to be considered as if it were an approval under section 103(3) of this Act. Section 111 provides that no person other than a near relative shall have the care, charge or custody of a child under the age of 6 years, except on a casual or day time basis, without being licensed by the Department or approved by the Director General. Section 112 allows the Department to issue licences to fit and proper persons to have the care, charge or custody of a child under 6 years of age in relation to section 111. Section 103(3), of this Act gives the CEO the authority to approve persons to care for a young child.

Subclause (2). Despite clause 103(4)(b), an authorisation referred to in subclause (1) has effect under the Act for the remainder of the period for which it would have had effect if the *Child Welfare Act* had not been repealed.

Clause 15: Orders and proceedings under Part VIIIA

Subclause (1) requires that if an application has been made under Part VIIIA of the *Child Welfare Act 1947*, but has not been determined at the time of commencement of this Act then it is to be treated as if made under the equivalent provision of Part 6 of this Act. Part VIIIA and Part 6 provide for the transfer of child protection orders and proceedings.

Subclause (2) provides that if an interim order made under section 120P of the *Child Welfare Act 1947* is in force on commencement of this Act then it is to be considered as if an interim order under the equivalent provision of Part 6 of this Act.

Subclause (3) requires that an appeal under section 120L or 120Q of the *Child Welfare Act 1947* that has not been finally determined at the time of commencement of this Act, is to be treated as if it were an appeal under the equivalent provision of Part 6 of this Act.

Clause 16: Orders under s. 146A

Requires that an order made under section 146A of the *Child Welfare Act 1947* that is in effect on the commencement of this Act is to continue to have effect as if the Child Welfare Act had not been repealed. Section 146A allows a justice to make an order authorising the Director-General, an officer or police officer to enter premises where there are reasonable grounds for suspecting a child is in need of care and protection.

Division 3 — Provisions related to repeal of *Community Services Act 1972*

Clause 17: Status of Ministerial Body

This clause provides that the Community Development Ministerial Body established by section 18 is a continuation of the corporate body established by section 6 of the *Community Services Act 1972*.

Clause 18: Licences and permits under s. 17B

This clause provides that a licence or permit issued under section 17B of the *Community Services Act 1972* and still in force at the commencement of this Act is to be treated as if it were a licence issued under Part 8 of this Act. Section 17B authorises the Director-General to issue licences or permits for the provision of child care services. Part 8 provides for child care services. It should be noted that there is no provision in Part 8 for the issuing of permits.

Clause 19: Existing applications

If an application has been made for a licence or permit under section 17B of the *Community Services Act 1972* but has not been determined before commencement of this Act then it is to be treated as if it were an application for a licence under Part 8 of this Act.

Clause 20: Appeals under s.17C

Stipulates that if an appeal under section 17C of the *Community Services Act 1972* has not been determined before the commencement of this Act the appeal is to continue to be dealt with under the *Community Services Act 1972* as if that Act had not been repealed.

Clause 21: Bodies established under s. 22

Subclause (1) Provides that a board, committee or council established under section 22 of the *Community Services Act 1972* that is in existence immediately before the commencement of this Act continues under section 27. Section 27 authorises the Minister to establish advisory bodies to give advice or assist with the administration of the Act.

Subclause (2) Provides that a person who is a member of a board, committee or council referred to in subclause (1) continues to retain office for the remainder of his or her appointment.

Subclause (3) Provides that an order under section 22(1) of the *Community Services Act 1972* in force before the commencement of this Act has effect on and after commencement day as if it were an instrument made by the Minister under section 27(5) of this Act.

Division 4 — Provisions related to repeal of *Welfare and Assistance Act 1961*

Clause 22: Advances and grants of assistance

Subclause (1) provides that an advance or grant of assistance under the *Welfare and Assistance Act 1961* that is in force before the commencement date has effect as if it were assistance provided under Part 9.

Subclause (2) provides an advance or grant of assistance referred in subclause (1) is subject to the same terms and conditions (if any) as applied to it before commencement day.

Clause 23: Applications for assistance

An application for assistance under the *Welfare and Assistance Act 1961* that has not been determined before the commencement date will be treated as if it were an application under section 233 of this Act.

Division 5 — General

Clause 24: References to repealed Acts

This clause provides that any reference in a written law or other document or instrument that refers to a repealed Act, should be read as if it had been amended to be a reference to this Act unless the context requires otherwise.

Clause 25: Powers in relation to transitional matters

Subclause (1) provides that if this Schedule does not sufficiently provide for dealing with a transitional matter, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.

Subclause (2) provides the regulations made under subclause (1) may provide that specific provisions of this Act do not apply or apply with specific modifications to or in relation to any matter.

Subclause (3) provides that regulations made under subclause (1) must be made within 12 months after the commencement date.

Subclause (4) defines 'specified' as meaning specified or described in the regulations.

Subclause (5). If regulations made under subclause (1) provide that a specified state of affairs exists or does not exist, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement day, the regulations have effect according to their terms.

Subclause (6) provides that regulations referred to in subclause (4) do not prejudice the rights existing or impose liabilities in respect of anything done before the day of publication of those regulations, on any person.

Schedule 2 — Consequential Amendments to other Acts.

This schedule details consequential amendments to other Acts

Clause 1: *Aboriginal Affairs Planning Authority Act 1972* amended

- (1) Clause 1 amends the *Aboriginal Affairs Planning Authority Act 1972*.
- (2) Replaces the Department's previous name 'Department for Community Services' with 'Department' as defined in the Children and Community Development Act.
- (3) Repeals section 35(4) which concerns the provision of a certificate by the Director General of the Department, established under the *Community Services Act 1972*, being conclusive evidence of a person entitled to succeed to an estate .
- (4) This subclause removes reference from section 35(5) to the Director-General.
- (5) Removes from section 48 provision for officers of the Department to address a Court or jury on behalf of a person of Aboriginal descent. The clause now states that the person must be authorised generally or specifically by the Minister for these purposes.

Clause 2: *Adoption Act 1994* amended

- (1) Stipulates that amendments in this clause are to the *Adoption Act 1994*.
- (2) Amends the terminology used in section 4 by deleting the definition of "Department" and replacing it with "the department of the Public Service principally assisting the Minister in the administration of this Act". Deletes the definition of "Director General" and replaces it with the following definition "'CEO' means the chief executive officer of the Department."
- (3) (a) Amends the terminology used in section 27(6) to describe a child who is under a protection order consistent with the *Children and Community Development Act 2003*.
(b) Replaces reference to provisions in the *Child Welfare Act 1947* relating to wardship with the relevant part of the *Children and Community Development Act 2003*.
(c) Deletes the wording that refers to a child's status as a 'ward'.
- (4) Repeals section 28 and inserts a new provision to define a child in need of protection if certain conditions outlined apply.
- (5) Provides that if the Family Court finds a child in need of protection under the previous provision, it can make certain protection orders.
- (6) Inserts a new subclause in section 36 which provides the Family Court with the same powers as the Children's Court in relation to child protection orders in the event of an order under subsection 2(c).
- (7) Amends the *Adoption Act* Part 5 Division 1 powering from 'Director General' to 'CEO'.
- (8) List of sections in the *Adoption Act 1994* where 'Director General' changes to 'CEO'.
- (9) List of sections in the *Adoption Act 1994* where 'Director General's' changes to 'CEO's'.

Clause 3: *Bail Act 1982* amended

- (1) Clause 3 amends the *Bail Act 1982*.
- (2) Amends the definition of "authorised community services officer" by deleting the reference to Departmental facility.
- (3) This section removes a reference to section 28(2) of the *Child Welfare Act 1947*.

Clause 4: *Children's Court of Western Australia Act 1988* amended

- (1) Clause 4 amends the *Children's Court of Western Australia Act 1988*.
- (2) Deletes the definition of "CEO" (Justice) in the *Children's Court of Western Australia Act 1988* and adds "Department" and "CEO" as defined in the *Children and Community Development Act 2003*.
- (3) Replaces "*Community Services Act 1972*" with "*Children and Community Development Act 2003*".
- (4) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*".
- (5) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*".
- (6) Amends the wording "CEO (Justice)" to "CEO" and changes "Director General" to "CEO" according to the definition in *Children and Community Development Act 2003*.
- (7) This subclause replaces section 33 with terms consistent with those used in this Bill.
- (8) This subclause deletes subclause (c) of section 36(1).
- (9) This inserts the *Children and Community Development Act 2003*.
- (10) Changes "CEO (Justice)" to "CEO".
- (11) Replaces the provisions which may be the subject of an application for leave to appeal and makes other title and numbering changes.
- (12) Replaces "Director General" with "CEO" as defined in the *Children and Community Development Act 2003*.
- (13) Replaces the provisions which may be the subject of an appeal to the Full Court and makes other title and numbering changes.

Clause 5: *Constitution Acts Amendment Act 1899* amended

- (1) Clause 5 amends the *Constitution Act Amendment Act 1899*.
- (2) Amends "Any board, committee or council" established under the *Community Services Act 1972* to "Any advisory body established or continued under the *Children and Community Development Act 2003* constituted."

Clause 6: *Coroners Act 1996* amended

- (1) Clause 6 amends the *Coroners Act 1996*.

- (2) Amends the definition of "person held in care" which refers to the Department assisting the Minister to administer the *Child Welfare Act 1947* by replacing it with "CEO" as defined in the "*Children and Community Development Act 2003*".

Clause 7: *Disability Services Act 1993* amended

- (1) Clause 7 amends the *Disability Services Act 1993*.
- (2) Replaces the terms "Director General" and an "officer" by replacing them with "CEO" and "officer" as defined in the *Children and Community Services Act 2003*.
- (3) This section 52 (3) is repealed, as no longer necessary.

Clause 8: *Electoral Act 1907* amended

- (1) Clause 8 amends the *Electoral Act 1907*.
- (2) Deletes reference to "*Child Welfare Act 1947*" in section 18(c).

Clause 9: *Evidence Act 1906* amended

- (1) Clause 9 amends the *Evidence Act 1906*.
- (2) In section 106A, the definition of 'defendant' is amended by removing a 'police officer' as an applicant and changing 'officer' as defined in *the Community Services Act 1972* to an officer defined in the *Children and Community Development Act 2003*.
- (3) Part 4 of the second schedule which refers to an offence under the *Child Welfare Act 1947* is repealed and replaced with the following two offences under the *Children and Community Development Act 2003*.
 - s.107 Failing to protect child from significant harm
 - s.108 Leaving child unsupervised in vehicle
- (4) This replaces clause 2 of Schedule 7 Part A to ensure that an application under Part 4 or 5 of this Bill comes within the provisions of the Schedule.

Clause 10: *Family Court Act 1997* amended

- (1) Clause 10 amends the *Family Court Act 1997*.
- (2)(a) Inserts the definition of CEO as defined in the *Children and Community Development Act 2003*.
- (2)(b) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*" in the definition of "child welfare law".

- (2)(c) Deletes the definition of "Department" and "Director General".
- (3) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*" in section 36(2).
- (4)(a) Replaces the term "care and protection" with "protection".
- (4)(b) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*" in section 36(6).
- (5) Section 36(7) is repealed, as no longer relevant.
- (6)(a) Replaces the term "care and protection" with "protection."
- (6)(b) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*" in section 36(6).
- (7) List of sections in the *Family Court 1997* where 'Director General' changes to 'CEO'.

Clause 11: *Guardianship and Administration Act 1990* amended

- (1) Clause 11 amends the *Guardianship and Administration Act 1990*.
- (2) Section 64(3) deletes reference to the Director General and powers previously held under the Community Services Act 1972 in relation to making of an administration order.

Clause 12: *Health Act 1911* amended

- (1) Clause 12 amends the *Health Act 1911*.
- (2) Section 308 is repealed as clauses 29(2) and 126 enable the CEO to consent to medical examinations.
- (3) Amends the definitions used in the provision by removing the term "industrial school".
- (4) The term "industrial school" is removed.
- (5) This subclause removes reference to section 308.

Clause 13: *Hire-Purchase Act 1959* amended

- (1) Clause 13 amends the *Hire-Purchase Act 1959*.
- (2) Replaces "Director-General" with "CEO" as defined in the *Children and Community Development Act 2003*.
- (3) Replaces "Director-General" with "CEO" and *Community Services Act 1972* with *Children and Community Development Act 2003*.

Clause 14: *Human Reproductive Technology Act 1991* amended

- (1) Clause 14 amends the *Human Reproductive Technology Act 1991*.
- (2) Replaces "Director-General" with "CEO" as defined in the *Children and Community Development Act 2003*.
- (3) Replaces *Community Services Act 1972* with *Children and Community Development Act 2003*.

Clause 15: *Industrial Relations Act 1979* amended

- (1) Clause 15 amends the *Industrial Relations Act 1979*.
- (2) Replaces "section 107C(2) of the *Child Welfare Act 1947*" with "section 196(2) of the *Children and Community Development Act 2003*".
- (3) Replaces "section 107C(2) of the *Child Welfare Act 1947*" with "section 196(2) of the *Children and Community Development Act 2003*".

Clause 16: *Juries Act 1957* amended

- (1) Clause 16 amends the *Juries Act 1957*.
- (2) Inserting a new item 1(ea) "*Magistrate of the Children's Court*".
- (3) Replacing "Special Magistrate or member of the Children's Court under the *Child Welfare Act 1947*" with "Member of the Children's Court" in 2(c) and in 2(k) replacing "Officer or employee in the Department for Community Services of the Public Service of the State" with "Officer as defined in section 3 of the *Children and Community Development Act 2003*".

Clause 17: *Legal Aid Commission Act 1976* amended

- (1) Clause 17 amends the *Legal Aid Commission Act 1976*.
- (2) Replaces "where, under the *Child Welfare Act 1947*, the person is –
 - i) a child under the guardianship of the Director-General; or
 - ii) a child placed under the control of the Department"with "where the person is a child for whom the CEO has parental responsibility under the *Children and Community Development Act 2003*".
- (3) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*".

Clause 18: *Legal Representation of Infants Act 1977* amended

- (1) Amends *Legal Representation of Infants Act 1977*.
- (2) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*".
- (3) Replaces "Director-General" with "CEO" as defined in the *Children and Community Development Act 2003*.

Clause 19: *Parks and Reserves Act 1895* amended

- (1) Amends the *Parks and Reserves Act 1895*.
- (2) Replaces definition of "parent" with "'parent" has the meaning given to that term in section 3 of the *Children and Community Development Act 2003*".

Clause 20: *Prostitution Act 2000* amended

- (1) Amends the *Prostitution Act 2000*.
- (2) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*".
- (3) Replaces "*Child Welfare Act 1947*" with "*Children and Community Development Act 2003*" and replaces "s.108(1)" with "s. 192(1) or (2)".

Clause 21: *Protective Custody Act 2000* amended

- (1) Amends the *Protective Custody Act 2000*.
- (2) Replaces "section 138B of the *Child Welfare Act 1947*" with "the operation of section 40 of the *Children and Community Development Act 2003*."

Clause 22: *Rates and Charges (Rebates and Deferments) Act 1992* amended

- (1) Amends the *Rates and Charges (Rebates and Deferments) Act 1992*.
- (2) Replaces "by the Director-General of the Department established under section 4 of the *Community Services Act 1972*" with "by the CEO as defined in section 3 of the *Children and Community Development Act 2003*".
- (3) Replaces "Director-General of the Department established under section 4 of the *Community Services Act 1972*" with "CEO as defined in section 3 of the *Children and Community Development Act 2003*".
- (4) Replaces "Director-General" with "CEO".
- (5) Replaces "Director-General" with "CEO".

Clause 23: *Restraining Orders Act 1997* amended

- (1) Amends *Restraining Orders Act 1997*.
- (2) Replaces "the Director-General as defined in the *Child Welfare Act 1947*" with "the CEO as defined in section 3 of the *Children and Community Development Act 2003*" and replaces "an officer of the Department defined in the *Child Welfare Act 1947*, who is authorised under section 29 of that Act" with " a person who is an authorised officer for the purpose of section 36 of that Act"
- (3) Replaces "an application under the *Child Welfare Act 1947* to declare a child in need of care and protection" with "protection proceedings under the *Children and Community Development Act 2003*".

Clause 24: *School Education Act 1999* amended

- (1) Amends the *School Education Act 1999*.
- (2) Replaces "If a child is a ward for the purposes of the "*Child Welfare Act 1947*" with "If the CEO as defined in section 3 of the *Children and Community Development Act 2003* has parental responsibility for a child under the Act".

Clause 25: *Spent Convictions Act 1988* amended

- (1) Amends the *Spent Convictions Act 1988*
- (2) Replaces "or permit to provide a child care service under the *Community Services Act 1972*" with "to provide a child care service under Part 8 of the *Children and Community Development Act 2003*"

Clause 26: *Tobacco Control Act 1990* amended

- (1) Amends the *Tobacco Act 1990*
- (2) Defines a chief executive officer as in section 3 of the *Children and Community Development Act 2003* and allows for a nominee of that chief executive officer.

Clause 27: *Young Offenders Act 1994* amended

- (1) Amends the *Young Offenders Act 1994*
- (2) Amends the definition of "exempt responsible adult" by substituting the terminology of this Act.