

# **TRIBUNALS PROVISIONS AMENDMENT BILL 2002**

## **EXPLANATORY NOTES**

### **General Outline**

#### **Objectives of the Legislation**

The principal policy objectives of the Bill introduce amendments to support reforms to the tribunals within the Tourism, Racing and Fair Trading portfolio:

- clarify and consolidate the role of the chairperson in each tribunal articulating responsibility for adjudicative functions;
- create a central tribunals registry and clarify and consolidate the director as the registrar/secretary across all the tribunals. The director also is given clear responsibility for the financial and administrative functions of the tribunals;
- create the position of presiding case manager to provide a more efficient and effective case management system which includes undertaking procedural directions hearings; and
- undertake other miscellaneous amendments to improve general tribunal efficiency.

The Bill amends the following Acts:

- *Queensland Building Tribunal Act 2000*, regarding the Queensland Building Tribunal;
- *Retirement Villages Act 1999*, regarding the Retirement Villages Tribunal (RVT);
- *Property Agents and Motor Dealers Act 2000*, regarding the Property Agents and Motor Dealers Tribunal (PAMDT);
- *Liquor Act 1992*, regarding the Liquor Appeals Tribunal (LAT);  
and

- *Racing and Betting Act 1980*, regarding the Racing Appeals Authority (RAA)

### **Reasons for Proposed Legislation**

The Department of Tourism, Racing and Fair Trading has undertaken a review of all the tribunals under the portfolio and has developed a three stage reform process to deliver more efficient and effective tribunal services to a range of stakeholders. The first stage of reform has been delivered through administrative changes, which include centralising registry services, accommodation and support for tribunal operations.

The Tribunals Provisions Amendment Bill supports stage two of the reforms by establishing the position of presiding case manager and consolidating the roles of chairpersons and registry services across all five Acts. This will facilitate the provision of central registry services to all tribunals and enable the appointment of a single full-time chairperson across three tribunals.

The third stage will be undertaken over the next twelve months and will involve the development of legislation for a single amalgamated tribunal for consumers and traders.

### **Alternatives to the Bill**

There are no alternatives considered appropriate for achieving these policy objectives.

### **How the Policy Objectives will be Achieved**

The objects of the legislation are primarily achieved through creating a central registry with a director and a presiding case manager; and through ensuring consistent roles and responsibilities for chairpersons which will support the appointment of a single chairperson to three of the tribunals.

### **Estimated Cost of Implementation**

The reforms will impose no additional cost to the Government in implementing the provisions of this Bill. Indeed, it is anticipated that the reforms will deliver efficiencies and savings when compared to current expenditure and case loads.

## **Fundamental legislative principles**

### ***Self incrimination before a public examination***

The provisions relating to public examinations under the *Property Agents and Motor Dealers Act* (PAMDA) remove the ability for a person to remain silent on the basis that the truthful answer to a question put to them by the PAMDT may incriminate them in future proceedings. However, the provisions specify that such an answer will not be admissible in any criminal or civil proceeding against the person, other than a proceeding in which the falsity or misleading nature of the answer is relevant.

### ***The Need***

The need to afford protection to persons answering questions which tend to incriminate is acknowledged. Such a power should only be conferred in circumstances where its absence will demonstrably lead to a greater harm than is done by its use. In this instance the harm the power seeks to avoid is that caused by marketeering offences.

These are serious offences which may involve the loss of considerable sums of money by vulnerable people such as the elderly, retired or people who do not have local market knowledge, such as those from interstate or overseas. Due to the position of power of some marketeers and the vulnerable position of their victims, the mischief wrought by wrongdoers is all the more devastating.

Under Division 6A of Chapter 14 of the PAMDA, the PAMDT has the power to conduct public examinations that investigate the conduct of a marketeer in order to find out whether the marketeer has engaged in misleading or unconscionable conduct, or in making false representations or engaging in misleading conduct in relation to residential property.

A public examination of marketeers suspected of having contravened the marketeering offence provisions is regarded as a vital part of the strategy to deter unconscionable behaviour of marketeers and to discover information, which will be pivotal in prosecutions and in future protection of consumers in this context.

However, the existence of a right to silence in a public examination renders the public examination power ineffective.

The practical operation of the right to silence in the context of public examinations will invariably mean that the public examination will illicit no evidence from potentially serious offenders of the chain of misleading

activities that characterise marketeering activities. The power to compel answers to questions is fundamental to the effectiveness of the public examination power.

If questions put to a witness before a public examination concern matters that are peculiarly within the knowledge of the witness and would be difficult or impossible to establish by any alternative evidentiary means, it is in the interests of the public that the uncooperative witness be obliged to answer questions. The interests of the parties injured or who could be injured in the future by the conduct of the witness or of other persons to whom the information being sought relates, must be weighed against the possible detriment to the witness.

The proposed inquiry power is similar to that conferred on the QBT under Section 73 of the *Queensland Building Tribunal Act*. The *Criminal and Misconduct Act 2001* and the *Australian Securities and Investments Commission Act 1989*, *Trade Practices Act 1974* and the *Fair Trading Act 1989* also have similar provisions.

### *Safeguards*

The proposed power to compel answers is safeguarded by:

- the power to compel answers to questions would be limited to the narrow purposes of Division 8 of Chapter 14 of PAMDA;
- the Bill prohibits use of the information obtained in the course of the public examination from a witness claiming the privilege against self-incrimination in future proceedings other than in a proceeding in which the falsity or misleading nature of the answer is relevant;
- a reference committee will be established to determine whether to authorise the chief executive to make an application to PAMDT for a public examination under Division 8 of Chapter 14 of PAMDA. The reference committee would consist of the Commissioner for Fair Trading and two community representatives, one with demonstrated interest in civil liberties and the other with experience in fair trading issues;
- similar safeguard powers to those under the *Crime and Misconduct Act* have been adopted. That is the reference committee needs to be satisfied that further investigation using powers ordinarily available to inspectors was unlikely to be

effective for deciding whether to commence proceedings against a marketeer, that a public examination may discover whether a marketeer has contravened a relevant marketeer provision and that it is in the public interest for an application to be made by the chief executive.

## **CONSULTATION**

As this legislation is primarily administrative in nature, consultation on its provisions has been limited to relevant Government agencies.

However, during the major review undertaken in 2001, a range of consultations were undertaken with internal and external stakeholders.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides that the Act commences on a day to be fixed by proclamation.

### **PART 2—AMENDMENT TO THE LIQUOR ACT 1992**

*Clause 3* states that this part amends the *Liquor Act 1992*.

*Clause 4* amends the definitions section to:

- provide for a definition of bankruptcy action. This definition supports the amendments to section 18, which provides a consistent set of grounds on which a member of a tribunal may have their appointment terminated. One of the grounds for termination will be that the member is affected by bankruptcy action

- define the presiding case manager under the *Property Agents and Motor Dealers Act 2000* as the presiding case manager appointed under the *Queensland Building Tribunal Act 2000*
- provide that the registrar referred to under the *Liquor Act* will be the director of the central tribunals registry which is fully established under the *Queensland Building Tribunal Act 2000*. This provision supports the consolidation of registry services across all the tribunals.

*Clause 5* allows for the person appointed as chairperson of the Liquor Appeals Tribunal to hold another public office.

*Clause 6* inserts a provision that will formalise a practice of advertising for applications or expressions of interest for all tribunal positions in the future.

*Clause 7* provides the grounds on which the Governor in Council may terminate an appointment and specifies the grounds on which a termination is mandatory. This introduces standard criteria across all the tribunals in line with modern practice.

*Clause 8* inserts a standard provision requiring the chairperson to provide the Minister with an annual report on the operation of the tribunal and for relevant matters to be included in the department's annual report.

*Clause 9* inserts a new division which:

- section 20C establishes the chairperson's role to provide consistency across the tribunals and clearly articulating responsibility for the adjudicative functions, performance of members and the developing of practices and procedures to promote the efficient management of the tribunal;
- section 20D sets an expectation that the chairperson and the registrar (director, central tribunals registry) will work cooperatively. This provision is necessary given the structure where one registry supports five tribunals;
- section 20E outlines the members' roles and responsibilities and requires that a member comply with procedures established by the chairperson; and
- section 20F provides for the chairperson to delegate their powers to another member, or to the registrar in relation to the composition of the tribunal. The ability to delegate to the registrar is important where the chairperson is part time and

requires the registrar to manage most procedural aspects of the tribunal operations. The section also provides for the registrar to sub-delegate to an appropriately qualified member of the registry staff to enable efficient operations across five tribunals.

*Clause 10* provides that:

- the chairperson is responsible for the constitution of the tribunal for a hearing, ensuring independent oversight of this function; and
- in addition to the existing capacity to be constituted by a single member, the tribunal may be constituted by a single legally qualified member applications under section 26A (submission to allow new evidence to be tendered);
- that the presiding case manager established under the *Queensland Building Tribunal Act 2000* may be given prescribed matters to determine (for example directions matters) under this Act.

*Clause 11* provides for the presiding case manager to determine prescribed matters under this Act. The presiding case manager is appointed under the *Queensland Building Tribunal Act 2000*.

*Clause 12* provides for the presiding case manager to exercise the tribunal's powers in a prescribed directions hearing.

*Clause 13* is a miscellaneous amendment that allows for applications for leave to introduce new evidence which had not previously been available to the chief executive while making the original decision, to be heard by a single member as part of a directions conference. These applications will be able to be heard either as part of a directions conference or in the hearing of the appeal before the full tribunal.

*Clause 14* is a miscellaneous amendment that inserts a provision that provides for a person who is required to attend a tribunal to be paid prescribed witness fees and expenses. This will provide consistent provisions across all tribunals for witnesses expenses.

*Clause 15* provides for the tribunal contempt provisions to apply to the presiding case manager.

*Clause 16* recasts the previous section 35A to support the changes in clause 13 above allowing for applications to adduce new evidence to be dealt with either in a directions hearing or as part of the full appeal hearing.

*Clause 17* recasts the existing provisions which enables the tribunal to, on application, suppress sensitive information about a participant in a proceeding.

*Clause 18* is a miscellaneous amendment that amends this section to separate the capacity of the chief executive in relation to publishing information from the register of licences, permits and applications (section 43) from the capacity to publish decisions of the tribunal which will now rest with the director of the central tribunals registry.

*Clause 19* inserts a provision providing for evidentiary proof of the signature of members of the tribunal and officials of the registry.

### **PART 3—AMENDMENT TO THE PROPERTY AGENTS AND MOTOR DELAERS ACT 2000**

*Clause 20* states that this part amends the *Property Agents and Motor Dealers Act 2000*.

*Clause 21* corrects a typographical error.

*Clause 22* inserts a provision that will formalise a practice of advertising for applications or expressions of interest for all tribunal positions in the future.

*Clause 23* provides the grounds on which the Governor in Council may terminate an appointment and specifies the grounds on which a termination is mandatory. This introduces standard criteria across all the tribunals in line with modern practice. It provides an additional ground for possible termination to those in the existing *Property Agents and Motor Dealers Act 2000* relating to the performance of the member.

*Clause 24:*

- section 458 amends the chairperson's role to provide consistency across all tribunals and clearly articulate responsibility for the adjudicative functions, performance of members and the developing of practices and procedures to promote the efficient management of the tribunal;



- section 459 sets an expectation that the chairperson and the registrar (director, central tribunals registry) will work cooperatively. This provision is necessary given the structure where one registry supports five tribunals;
- section 460 outlines the members' roles and responsibilities and requires that a member comply with procedures established by the chairperson; and
- section 461 provides for the chairperson to delegate their powers to another member or to the registrar in relation to the composition of the tribunal. The section also provides for the registrar to sub-delegate to an appropriately qualified member of the registry staff to enable efficient operations across five tribunals.

*Clause 25* provides for the deletion of sections 459 to 465 relating to the registrar's appointment, powers and functions and related provisions under the *Property Agents and Motor Dealers Act 2000*. As the registrar for this Act will be the director, central tribunals registry appointed under the *Queensland Building Tribunal Act 2000*, separate provisions are no longer necessary.

*Clause 26* inserts a standard provision requiring the chairperson to provide the Minister with an annual report on the operation of the tribunal and for relevant matters to be included in the department's annual report.

*Clause 27* is a miscellaneous amendment to remove an anomaly in timeframes between section 497 (3) and section 499. The outcome of changes is that a person against whom a compliant is made must be given 14 days notice of the hearing day. A new subsection (5) is inserted to ensure the tribunal is notified when the chief executive has served the necessary notices on the person against whom the complaint is made.

*Clause 28* deletes section 499 to remove anomaly. See clause 27 above.

*Clause 29* is a miscellaneous amendment to remove an anomaly in timeframes between section 500B (3) and section 500D. The outcome of changes is that a marketeer against whom a compliant is made must be given 14 days notice of the hearing day. A new subsection (5) is inserted to ensure the tribunal is notified when the chief executive has served the necessary notices on the marketeer against whom the complaint is made.

*Clause 30* deletes section 500D to remove anomaly. See clause 29 above.

*Clause 31* provides for the presiding case manager to constitute the tribunal in prescribed matters. It also provides for a legally qualified person (other than the chairperson) to hear nominated matters thus providing additional efficiencies through broader options.

*Clause 32* is a miscellaneous amendment that inserts a provision that provides for a person who is required to attend the tribunal to be paid prescribed witness fees and expenses. This will provide consistent provisions across all tribunals for witnesses expenses.

*Clause 33* recasts the existing provision giving responsibility to the chairperson to select the panel for a hearing. In addition, the section provides that the power of the chairperson to constitute a tribunal does not apply where the matter is to be heard by the presiding case manager. It also provides for the chairperson to assign matters which are before the tribunal to the presiding case manager to conduct, if the matter is one which can appropriately be handled in that way.

*Clause 34* provides for the tribunal contempt provisions to apply to the presiding case manager.

*Clause 35* renumbers Chapter 14, part 5, divisions 6A to 10.

*Clause 36* inserts a new Division 7 after section 528.

Division 7 provides for the establishment of a reference committee and details its functions.

Section 528AA provides for the establishment a reference committee to consist of the commissioner for fair trading and two community representatives, one of which must have a demonstrated interest in civil liberties and the other a person the Minister considers has appropriate and relevant experience in fair trading issues.

Section 528AB details the reference committee's function, which is to decide whether conduct of a marketeer that is being investigated should be the subject of an application to the tribunal for a public examination.

Section 528AC provides that the reference committee may authorise the chief executive to make an application to the tribunal for a public examination if satisfied that:- it is unlikely further investigation of the conduct by an inspector will be effective for deciding whether to start a marketeer proceeding, a public examination may help find out whether the marketeer has contravened section 573A, 573B or 573C and it is in the public interests that an application is made.

*Clause 37* provides for minor amendments to section 528B(1) to provide that the tribunal before the start of a public examination must be satisfied that each person to be examined has received in writing the grounds for the public examination.

*Clause 38* provides for the insertion of a new section 528BA.

The new section 528BA provides that if a person refuses to answer a question put to the person at a public examination and the tribunal requires the question to be answered, the tribunal must advise the person that if the answer might incriminate the person, the person can claim, before giving the answer, that providing the answer might incriminate the person. The tribunal must also advise the person of the effect that making the claim will have on the admissibility of the answer in any proceeding against the person. Unless the person has a reasonable excuse the person must then answer the question.

It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person. This is despite section 519(3) of the Act.

The answer will not be admissible in any criminal or civil proceeding, other than a proceeding in which the falsity or misleading nature of the answer is relevant.

*Clause 39* is a miscellaneous amendment to provide for the form of final decisions of the tribunal. Current provisions could be read to require all decisions, even on directions matters to be in this formal format.

*Clause 40* the current provision of section 536 has been incorporated into the new section 533 above (*Clause 35*).

*Clause 41* provides a minor consequential amendment to include recognition of the registrar's signature for evidentiary purposes.

*Clause 42* amends the definitions section to:

- insert a definition of “commissioner for fair trading”; “public examination”, and “reference committee”;
- provide that the presiding case manager under the *Property Agents and Motor Dealers Act 2000* is the presiding case manager appointed under the *Queensland Building Tribunal Act 2000*; and

- provide that the registrar referred to under the *Property Agents and Motor Dealers Act 2000* will be the Director of the Central Tribunals Registry, which is fully established under the *Queensland Building Tribunal Act 2000*. This provision supports the consolidation of registry services across all the tribunals.

## **PART 4—AMENDMENT TO QUEENSLAND BUILDING TRIBUNAL ACT 2000**

*Clause 43* states that this part amends the *Queensland Building Tribunal Act 2000*.

*Clause 44* amends the objects of the Act to include the object of establishing a central tribunals registry.

*Clause 45* corrects a typographical error as there is no schedule one.

*Clause 46* inserts a provision that will formalise a practice of advertising for applications or expressions of interest for all tribunal positions in the future.

*Clause 47* allows for the person appointed as chairperson of the Queensland Building Tribunal to hold another public office. This provision will facilitate the chairperson being cross appointed to three tribunals.

*Clause 48* provides:

- section 13 amends the chairperson's role to provide consistency across all tribunals and clearly articulate responsibility for the adjudicative functions, performance of members and the developing of practices and procedures to promote the efficient management of the tribunal;
- section 13A sets an expectation that the chairperson and the registrar (director, central tribunals registry) will work cooperatively. This provision is necessary given the structure where one registry supports five tribunals; and
- section 13B outlines the members' roles and responsibilities, and requires that a member comply with procedures established by the chairperson.

*Clause 49* amends the section relating to the chairperson's capacity to delegate their powers to another member or to the registrar in relation to the composition of the tribunal. This amended provision will provide consistency across all the tribunals. The section also provides for the registrar to sub-delegate to an appropriately qualified member of the registry staff to enable efficient operations across five tribunals.

*Clause 50* provides the grounds on which the Governor in Council may terminate an appointment and specifies the grounds on which a termination is mandatory. This introduces standard criteria across all the tribunals in line with modern practice. It provides an additional ground for possible termination to those in the existing *Queensland Building Tribunal Act 2000* relating to the performance of the member.

*Clause 51* establishes the central tribunals registry to provide services and supports to all designated tribunals. The provisions include:

- section 20 establishing the central tribunals registry; providing for the position of director and other staff. This provision facilitates the establishment of a single registry to support five tribunals;
- section 21 sets out the functions and powers of the director, which provide the framework for the director to work across all the tribunals. The detail is based on the existing responsibilities of the registrar under *the Queensland Building Tribunal Act*. The director's functions and powers are subject to the chief executive;
- section 22 provides for the keeping of necessary records across all the tribunals and for such records to be made available, as appropriate, to the public;
- section 23 recasts those powers and responsibilities of the director which are specific to the *Queensland Building Tribunal Act*;
- section 24 provides the capacity to the director to engage consultants to perform services for any central tribunal;
- section 25 provides for the director to delegate powers to an appropriately qualified member of staff;
- section 26 provides for the appointment and qualifications for the director and staff. These appointments are under the *Public Service Act*; and

- section 26A allows the chief executive to appoint an acting director.

Clause 51 also inserts a new Part 3A which establishes the position of presiding case manager. The provisions include:

- section 26B establishes the position of presiding case manager. The intention of this position is to provide more streamlined case management of cases leading up to the final adjudication of a matter by the tribunal.
- section 26C provides for the presiding case manager to hear prescribed matters relating to any of the designated tribunals. It is intended that matters prescribed for the presiding case manager to hear will be directions and procedural matters, which will simplify and speed up matters proceeding through a tribunal. Subsections provide boundaries on the role of the presiding case manager hearing matters and exercising the powers and functions of the relevant tribunals in relation to those matters
- section 26D allows for the presiding case manager to refer matters to mediation under the *Queensland Building Tribunal Act*. Both the director and presiding case manager will have this capacity.
- section 26E provides for the statutory independence of the presiding case manager when constituting a designated tribunal to ensure they are not directed in their decision making on individual matters. Subsection (2) provides that the presiding case manager must comply with any procedural directions given by a chairperson, providing for a clear link on quasi-judicial matters.
- section 26F sets out the terms of appointment and qualifications necessary for the presiding case manager. The person must be a lawyer of not less than 5 years standing and the appointment is to be made by the Governor in Council. The position is a public service position and reports administratively to the director.
- section 26G provides for the presiding case manager to disclose any known conflict of interest and, if necessary, disqualify himself or herself from a matter.
- section 26H ensures that when constituting a tribunal that the presiding case manager has the same protections and immunities as other members of the tribunal/s.

- section 26J provides for the chief executive to appoint an acting presiding case manager where necessary.

*Clause 52* provides for the presiding case manager to determine prescribed matters under the *Queensland Building Tribunal Act 2000*.

*Clause 53* provides for the tribunal contempt provisions to apply to the presiding case manager.

*Clause 54* is a miscellaneous amendment that provides a method for the calculation of interest where damages are being awarded by the tribunal. This provides for consistent interest calculations across the Act.

*Clause 55* is a miscellaneous amendment that broadens the range of undertakings, which may be ordered by the tribunal as part of a stay order. The new provision will allow for a range of undertakings to be made, for example, to continue or refrain from continuing a certain act or omission, not just undertakings relating to costs and damages.

*Clause 56* is a miscellaneous amendment that provides for disciplinary action to be commenced where a person (who is not a licensee) undertakes to carry out building work without the appropriate licence. Under the current provisions action can only be taken where a person actual carries out building work.

*Clause 57* is a miscellaneous amendment that provides for the Building Service Authority, rather than the tribunal, to serve certain documentation on persons subject to a public examination. This brings the service provisions in line with other sections.

*Clause 58* is a miscellaneous amendment that clarifies the confidentiality of evidence said and done in a mediation process. The provision allows that such evidence is only admissible in the tribunal or elsewhere if all parties agree (other than where an offence is alleged to have been committed during the mediation).

*Clause 59* is a miscellaneous amendment that supports clause 54 by providing a new provision that a mediator must not disclose any information learnt in the mediation without reasonable excuse. Subsection 2 defines reasonable excuse.

*Clause 60* is a miscellaneous amendment that provides for a tribunal member to give a decision in default of defence where the claims for not for a liquated amount. The current provisions allow such decisions only where the claim is for a liquated amount.

*Clause 61* removes the provision for the tribunal to be funded by from the General Statutory Fund under the *Queensland Building Service Act 1991*. The tribunal is now funded through consolidated revenue.

*Clause 62* inserts a standard provision requiring the chairperson to provide the Minister with an annual report on the operation of the tribunal and for relevant matters to be included in the department's annual report.

*Clause 63* provides the same evidentiary status to the signature of the presiding case manager as to the registrar or tribunal members.

*Clause 64* is a consequential amendment from changing staff of the tribunal to staff of the registry.

*Clause 65* provides for an amended heading

*Clause 66* provides a new Part with transitional arrangements, by providing:

- the registrar under this Act becomes the director, central tribunals registry
- the staff of the tribunal become the staff of the central tribunals registry
- the provisions relating to the presiding case manager do not apply to matters already lodged with a tribunal unless the chairperson of that tribunal approves the arrangements.

*Clause 67* amends the definitions section to:

- provide for a definition of bankruptcy action. This definition supports the amendments to the section which provides a consistent set of grounds on which a member of a tribunal may have their appointment terminated. One of the grounds for termination will be that the member is affected by bankruptcy action
- defines the designated tribunals to be called 'central tribunals' and their originating Acts; and
- defines the director under this Act as the director, central tribunals registry.



## **PART 5—AMENDMENT TO THE RACING AND BETTING ACT 1980**

*Clause 68* states that this part amends the *Racing and Betting Act 1980*.

*Clause 69* amends the definitions section to provide for a definition of bankruptcy action. This definition supports the amendments to section 115EA, which provides a consistent set of grounds on which a member of a tribunal may have their appointment terminated. One of the grounds for termination will be that the member is affected by bankruptcy action.

*Clause 70* amends the definitions section to provide that the secretary to the Racing Appeals Authority will be the director of the central tribunals registry which is established under the *Queensland Building Tribunal Act 2000*. This provision supports the consolidation of registry services across all the tribunals.

*Clause 71* recasts provisions relating to the constitution of the authority and provides for the presiding case manager to constitute the authority for prescribed matters under the *Racing and Betting Act*. The presiding case manager is appointed under the *Queensland Building Tribunal Act*.

*Clause 72* inserts a new provision outlining persons who would not be qualified to become members of the authority. These provisions ensure that persons actively engaged in the administration of the racing industry would not be considered. The provision also formalises a practice of advertising for applications or expressions of interest for all tribunal positions in the future

*Clause 73* minor amendment to support the amended grounds for termination provided for in clause 72 below.

*Clause 74* provides the grounds on which the Governor in Council may terminate an appointment and specifies the grounds on which a termination is mandatory. This introduces standard criteria across all the tribunals in line with modern practice.

*Clause 75* minor amendment to support the amended grounds for termination provided for in clause 70 above.

*Clause 76:*

- section 115HA establishes the chairperson's role to provide consistency across the tribunals, and clearly articulate responsibility for the adjudicative functions, performance of members and the developing of practices and procedures to promote the efficient management of the authority;

- section 115HB sets an expectation that the chairperson and the secretary (director, central tribunals registry) will work cooperatively. This provision is necessary given the structure where one registry supports five tribunals;
- section 115HC outlines the members' roles and responsibilities, and requires that a member comply with procedures established by the chairperson; and
- section 115HD provides for the chairperson to delegate their powers to another member or to the registrar in relation to the composition of the authority. The ability to delegate to the registrar is important where the chairperson is part time and requires the registrar to manage most procedural aspects of the authority's operations. The section also provides for the registrar to sub-delegate to an appropriately qualified member of the registry staff to enable efficient operations across five tribunals.

*Clause 77* inserts into this Act for the first time standard provisions:

- requiring a member to disclose any potential conflict of interests in a particular matter and, if necessary, disqualify themselves for further proceedings; and
- providing for protection and immunity for members in the performance of their duties.

*Clause 78* this provision clarifies the existing practice of the authority of refunding the application fee to the appellant in certain circumstances. This practice has been developed to enable a substantial up-front fee to be charged to discourage frivolous or vexatious appeals, and for a refund to be given where the appeal is substantiated. The provision allows for more detail on the grounds for refund to be set out in regulation.

*Clause 79* inserts a provision that provides for a person who is required to attend a tribunal to be paid prescribed witness fees and expenses. This will provide consistent provisions across all tribunals for witnesses expenses.

*Clause 80* inserts into this Act for the first time:

- standard tribunal provisions providing for contempt action to be taken if necessary; and

- a standard provision requiring the chairperson to provide the Minister with an annual report on the operation of the authority and for relevant matters to be included in the department's annual report.

*Clause 81* provides the same evidentiary status to the signature of the presiding case manager as to the secretary or authority members.

## **PART 6—AMENDMENT TO THE RETIREMENT VILLAGES ACT 1999**

*Clause 82* states that this part amends the *Retirement Villages Act 1999*.

*Clause 83* corrects a typographical error. There is no schedule one.

*Clause 84* provides for the registrar, not the chief executive, to take applications about a retirement village dispute. The existing Act does not provide for a registrar, but rather required the chief executive to provide the administrative processes supporting the tribunal. This clause and a number of others in this part, establish the dispute resolution processing outside the department, within the tribunal's and registry's responsibilities.

*Clause 85* provides for the registrar, not the chief executive, to refer a dispute to the tribunal.

*Clause 86* provides for the presiding case manager to determine prescribed matters under the *Retirement Villages Act 1999*. The presiding case manager is appointed under the *Queensland Building Tribunal Act 2000*.

*Clause 87* provides that where the chairperson is a member of a panel for a particular matter, the chairperson is the presiding member of that hearing. However where the chairperson is not a member of a particular panel, the legal member appointed to that panel shall be the presiding member.

*Clause 88* clarifies the capacity of the tribunal to issue an attendance notice on either application from a party or on its own initiative.

*Clause 89* provides for the tribunal contempt provisions to apply to the presiding case manager.

*Clause 90* provides for a person who is required to attend a tribunal to be paid prescribed witness fees and expenses. This will provide consistent provisions across all tribunals for witnesses expenses.

*Clause 91* provides for one of the legal members of the tribunal under the *Retirement Villages Act 1999* to be appointed as chairperson. The tribunal does not currently have an ongoing chairperson, but rather a legal member who is chairperson only for a particular hearing. This formal appointment will support moving the tribunal from a departmental responsibility to a more independent status.

*Clause 92* inserts a provision that will formalise a practice of advertising for applications or expressions of interest for all tribunal positions in the future.

*Clause 93* provides the grounds on which the Governor in Council may terminate an appointment and specifies the grounds on which a termination is mandatory. This introduces standard criteria across all the tribunals in line with modern practice.

*Clause 94* inserts a new division that provides for the administration of the tribunal, including:

- section 206A establishes the chairperson's role to provide consistency across the tribunals, and clearly articulate responsibility for the adjudicative functions, performance of members and the developing of practices and procedures to promote the efficient management of the tribunal;
- section 206B sets an expectation that the chairperson and the registrar (director, central tribunals registry) will work cooperatively. This provision is necessary given the structure where one registry supports five tribunals;
- section 206C outlines the members' roles and responsibilities, and requires that a member comply with procedures established by the chairperson; and
- section 206D provides for the chairperson to delegate their powers to another member or to the registrar in relation to the composition of the tribunal. The ability to delegate to the registrar is important where the chairperson is part time and requires the registrar to manage most procedural aspects of the tribunal operations. The section also provides for the registrar to sub-delegate to an appropriately qualified member of the registry staff to enable efficient operations across five tribunals.

*Clause 95* provides for the presiding case manager to determine prescribed under the *Retirement Villages Act 1999*. The presiding case manager is appointed under the *Queensland Building Tribunal Act 2000*.

*Clause 96* states that section 271 is omitted and the matter of annual report dealt with under clause 95.

*Clauses 97 and 98* restate evidentiary provisions relating to appointments to include the registrar and presiding case manager.

*Clause 99* provides a standard provision requiring the chairperson to provide the Minister with an annual report on the operation of the tribunal and for relevant matters to be included in the department's annual report.

*Clause 100* amends the definitions section to:

- provide for a definition of bankruptcy action. This definition supports the consistent set of grounds on which a member of a tribunal may have their appointment terminated. One of the grounds for termination will be that the member is affected by bankruptcy action;
- provide that the presiding case manager under *Retirement Villages Act* is the presiding case manager appointed under the *Queensland Building Tribunal Act*; and
- provide that the registrar referred to under *Retirement Villages Act* will be the director of the central tribunals registry which is fully established under the *Queensland Building Tribunal Act 2000*. This provision supports the consolidation of registry services across all the tribunals.

## **PART 7—GENERAL**

*Clause 101* indicates that the schedule amends the Acts listed in that schedule.

***SCHEDULE 1***

The schedule sets out minor consequential amendments to support the legislative changes detailed in the Bill.

The Acts amended are:

- *Liquor Act*
- *Queensland Building Services Act* to remove the reciprocal provision relating to the funding of the Queensland Building Tribunal
- *Queensland Building Tribunal Act* primarily to change the title of the registrar under this Act to the director, central tribunals registry
- *Retirement Villages Act* primarily to replace the chief executive with the registrar in provisions relating to the administration of the tribunal.