

COMMERCIAL AND CONSUMER TRIBUNAL BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the *Commercial and Consumer Tribunal Bill 2003* (the Bill) is to:

- establish a tribunal to deal with the matters it is empowered to deal with under an empowering Act; and
- have the tribunal deal with matters in a way that is just, fair, informal, cost efficient and speedy.

To achieve these objectives, the Bill establishes the Commercial and Consumer Tribunal (the CCT). The CCT amalgamates the following tribunals:

- Queensland Building Tribunal (QBT);
- Retirement Villages Tribunal (RVT);
- Property Agents and Motor Dealers Tribunal (PAMDT); and
- Liquor Appeals Tribunal (LAT).

The CCT will also deal with matters from a number of new and emerging jurisdictions, such as architects, engineers, plumber and drainers, building certifiers and residential services accreditation. The focus of the CCT will be on resolving disputes, reviewing decisions of agencies and conducting disciplinary proceedings. The CCT prescribes the processes for how the CCT, its members and registry will operate. Other Acts, known as empowering Acts, will prescribe the types of matters to be dealt with, and orders to be made, by the CCT.

The objectives of the Bill are further met by basing the CCT on the key principles of natural justice, fairness, accessibility, independence and transparency, with a commitment to speedy processes, informality (through

self-representation) and early dispute resolution methods such as mediation.

Reasons for the Legislation

The Department of Tourism, Racing and Fair Trading (DTRFT) has reviewed the operations of tribunals in its portfolio with a view to achieving cost savings, efficiency gains and service delivery improvements for clients. As a result of the review, in 2001 the Government approved the following three-phase reform:

- Phase 1: shared tribunal accommodation and registry services;
- Phase 2: the development of legislation that would see the consolidation of the roles of Chairperson of three tribunals into one; creation of the role of presiding case manager, a quasi-judicial role designed to handle directions-type hearings; and other administrative improvements to tribunal processes; and
- Phase 3: the establishment of an amalgamated tribunal to broadly consider matters relating to consumers and commercial interests.

Phase 1 has been finalised. Phase 2 was finalised with the passing by the Legislative Assembly of the *Tribunals Provisions Amendment Act 2002* (the 2002 Act) in September 2002. The Bill represents the finalisation of Phase 3.

How objectives are to be met by the proposed legislation

The objectives will be met through the proposed legislation, which is based on a number of key principles that will underpin the operation of the CCT, namely:

- Natural justice – provisions are made in the Bill which contribute to a process of natural justice for the CCT. For example, parties are given a chance to lodge a defence; to extend time limits for compliance with procedures; and to seek to have sensitive information about themselves suppressed, in the event that publication of that information be likely to cause them harm or disadvantage;
- Fairness – provisions are made in the Bill that parties will, depending on the nature of the matter, have an opportunity to “have their say” and to call witnesses and make submissions;

- Speediness – provisions are made in the Bill for expedited hearings and hearings on papers only, both of which contribute to speedy processes;
- Transparency – provisions are made in the Bill that the CCT is not subject to direction or control, except as specifically provided in the Bill. Also, provisions are made that the CCT’s decisions must be published, unless there are compelling reasons for not doing so;
- Emphasis on self-representation – provisions are made in the Bill for parties to represent themselves, thus ensuring the CCT maintains informality. However, in light of the fact that some matters involve complex or financially-involved issues, provision is also made for the tribunal to consider applications for legal and non-legal representation;
- Emphasis on alternative dispute resolution – provisions are made in the Bill for the tribunal to use mediation as a means to resolve disputes. Current tribunals already make regular use of mediation, and this is expected to continue under the CCT. Successful mediation saves time and money for the parties as well as the expense to government, and therefore the community, of conducting a hearing before a member. Detailed provisions on how mediation is to be conducted are also provided for, including provisions establishing the confidentiality of a mediation conference;
- Retention of member expertise – provisions are made in the Bill to retain member expertise through the ability of the Chairperson to establish sitting lists, on which members can build up a knowledge base before possibility cross-sitting on lists and expanding their range of expertise. In addition, provision is made for the CCT to use the advice of experts to inform the tribunal on technical matters, helping to achieve a more fully-informed decision; and
- More single-member hearings – although it is anticipated that more single-member hearings will be conducted by the CCT, provisions are made in the Bill for the Chairperson to use their discretion to select one, two or three members to constitute the CCT for a matter, with particular regard to the complexity of and public interest in a matter. Such provisions support the notion that the more complex or contentious a matter is, the more likely it is that a panel of members may hear the matter.

Alternatives to the proposed legislation

The Bill is essential in meeting the decision of the Government to reform and amalgamate tribunals.

Estimated administrative cost

It is not anticipated there will be additional cost to government as a result of the Bill. The aim of the review was to achieve cost-savings in the operation of portfolio tribunals. However, it should be noted that users will not be charged full cost-recovery through application and other fees, as this would make accessibility to the CCT practically impossible. Accessibility goes toward achieving the objective of a fair tribunal.

Consistency with Fundamental Legislative Principles

While the Bill has been drafted taking into consideration fundamental legislative principles, it has on occasion been necessary to depart from the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992*. Those instances, and the justification for their inclusion in the Bill, are detailed below:

- Termination of membership: the transitional provisions in the Bill provide that a member of a former tribunal is not entitled to seek remuneration or compensation for the portion of their appointment that is terminated by commencement of this Bill. While this may be perceived as infringing upon the rights of an individual, the provisions simply make it clear beyond any doubt that on commencement of the CCT effectively terminates the appointments of all members, except for the current Chairperson of the QBT/PAMDT/RVT and the one other full-time QBT member, who are both being carried across to the CCT. There is no right to compensation as a result. Those members affected by these provisions are still entitled to apply for appointment to the CCT when expressions of interest are called.

Consultation

Government

Interdepartmental consultation has occurred. An Interdepartmental Steering Committee, comprising central agency representatives as well as

representation from other agencies with an interest in the Bill, has overseen the development of the Bill.

Community

Tribunal stakeholders attended a series of face-to-face meetings with Departmental officers and the Chairperson of the QBT/PAMDT/RVT in late 2002. At these meetings, an overview of the reform process was presented, the Chairperson spoke of her vision for the amalgamated tribunal and stakeholders had an opportunity to ask questions and raise issues. Separate meetings, conducted along similar lines, were held with LAT stakeholders and consumer representatives.

Legal practitioners have also been reached through the Chairperson speaking at a number of meetings and symposiums for legal practitioners on the issue of the tribunal amalgamation.

The Bill was released for targeted public consultation in March 2003 to a range of commercial and consumer groups representing the broad focus areas of the tribunal.

Results of Consultation

There is general support for the provisions of the Bill from both government and commercial and consumer stakeholders. Specific issues raised by stakeholders during consultation include:

- Appeals from tribunal decisions: the provisions of the Bill allow for appeals from tribunal decisions only on a question of law, to the District Court, and only by leave of that Court. For some jurisdictions, particularly the QBT, this represents a narrowing of current appeal rights, while for others it is no change. It is necessary to narrow appeal rights to give some certainty about tribunal processes to tribunal users. Judicial review will still be available on appropriate decisions; and
- Single-member hearings: the Bill provides that the Chairperson will have discretion to select up to three members to constitute the tribunal; however, it is expected that in many cases, a single, legally-qualified member sitting alone would constitute the tribunal. For some jurisdictions which are used to a three-member tribunal, this will be a significant change. However, the Chairperson will retain discretion to convene multi-member panels and will be guided by the provisions of the Bill which set

out criteria for selecting members, for example, with regard to the complexity of and public interest a matter. Concerns by stakeholders over a possible loss of expertise through single-member hearings are allayed by giving the tribunal the ability to call upon expert advisors to assist in matters of a technical nature.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of Bill as the *Commercial and Consumer Tribunal Act 2003*.

Clause 2 provides that the Bill commences on 1 July 2003.

Clause 3 provides that the Bill binds the State and, where the jurisdiction exists, other States and the Commonwealth.

Clause 4 provides that the objects of the Bill are to establish a tribunal to deal with matters that an empowering Act gives it jurisdiction to hear and to have that tribunal deal with matters in a way that is just, fair, informal, cost-efficient and speedy.

4(2) sets out how the objects are to be achieved by listing key principles for the tribunal's operations. These principles firstly are defined in terms of being just, and then more particular principles of accessibility, informality, speediness of processes and responsiveness to the needs of users of the tribunal. These key principles emphasise the role of the tribunal as an informal and accessible forum in which matters can be heard and dealt with. 4(2)(b) further lists the ways in which the Bill achieves fairness, namely by establishing a dispute resolution system that is response to user needs and has a range of procedures at its disposal.

Clause 5 refers to the dictionary in the schedule to the Bill for definitions of terms used in the Bill.

PART 2—THE TRIBUNAL

Clause 6 formally establishes the CCT.

6(2) provides that in constituting the tribunal for a particular matter, the Chairperson will use their discretion to select 1, 2 or 3 members to sit

6(3) provides that in considering how many members to select, the Chairperson must have regard to the complexity of and public interest of a matter, as well as the speed with which the matter could be resolved. This clause provides the Chairperson with a guide to selecting members to constitute the tribunal. Matters that have potential to affect the interests of a broad section of the community may benefit from the selection of more than one member, who would bring their respective knowledge and expertise to the consideration of the matter.

Clause 7 provides that the CCT will have a seal which is to be judicially noted.

Clause 8 provides that the broad jurisdiction of the tribunal is given to it by an empowering Act. Empowering Acts are listed in schedule 2 of the Bill. This Bill will contain generic procedures and processes while empowering Acts will give the tribunal its jurisdiction and range of orders to be made.

8(2) also clearly sets out that the tribunal will not be subject to external control or direction in exercising that jurisdiction. This will encourage confidence in the independence and transparency of the tribunal

Clause 9 gives the tribunal broad powers to carry out its functions. The tribunal may do all things necessary or convenient to be for, or in relation to, exercising its jurisdiction, while 9(2) provides that an empowering Act and other provisions of this Bill may also confer powers on the tribunal.

9(2) provides that in addition to powers under the Bill, the tribunal also has powers under an empowering Act.

Clause 10 provides that nominations for membership of the tribunal must be called for by advertisement in a newspaper circulating throughout the State. This ensures that the widest possible pool of potential members is reached.

Clause 11 provides that a member must either be a lawyer of five years or more standing, or, for non-legally qualified members, must have knowledge of or experience in the business or industry relevant to an empowering Act. This provision makes clear that the particular knowledge

of industry and community representatives is valued in the tribunal's decision-making processes.

11(1) provides that the Chairperson must be appointed on a full or part time basis, while 11(2) provides that other appointments may be made on a full or part-time basis.

11(5) provides that appointments will be made for a maximum of five years. This is to ensure that members do not become complacent in a longer-term appointment and remain focussed on providing high-quality decision-making for the tribunal.

11(6) provides that member appointments are made under this Bill and not under the *Public Service Act 1996*.

11(7) clarifies that the Chairperson may hold another office in addition to their appointment as Chairperson so long as their appointment to the other office has been made by the Governor-in-Council.

Clause 12 provides that remuneration for a member is set by the Governor-in-Council and is as per the terms of their instrument of appointment.

12(2) makes clear, however, that if a member's appointment is terminated under the following clause then the member is not entitled to compensation for the balance of their appointment lost through termination.

Clause 13 sets out the circumstances under which a member's appointment may be terminated. In addition to circumstances such as incapacity, conviction of an indictable offence, misconduct and taking advantage of the laws of bankruptcy, the clause provides that members who perform their duties carelessly, incompetently or inefficiently may also have their appointment terminated. This clause continues the grounds for termination of a member's appointment implemented by the 2002.

Clause 14 makes express provision for a member's resignation.

Clause 15 generally empowers the Chairperson to direct the business of the tribunal, including the professional development and training of members and the implementation of policies, procedures and practice directions, as well as other duties that might be prescribed under an empowering Act.

15(2) makes clear that a member must comply with a direction given by the Chairperson.

15(3) obliges a member to perform the functions of their office under this Bill or an empowering Act, while 15(4) takes this obligation further by providing that the member must also comply with procedures and policies implemented by the Chairperson. This provision reinforces the Chairperson's role in directing the overall business of the tribunal.

Clause 16 allows the Chairperson to delegate their powers to another member.

16(2) allows the Chairperson to delegate some powers to the director of the registry. 16(3) then allows the director to sub-delegate those powers to another appropriately qualified officer of the staff of the registry. This clause enables the Chairperson to focus on their quasi-judicial responsibilities in the conduct of a hearing, leaving the director to focus on the overall business of the tribunal. Given that the director is managing business across a number of jurisdictions, with the prospect to manage business for other jurisdictions in future, it is important that the director have the ability to subdelegate their delegated powers from the Chairperson to ensure the efficient operation of the Tribunal. An expectation that a single person can personally oversee the scheduling of hearings over a number of jurisdictions is unrealistic.

16(4) defines "appropriately qualified" for the purposes of the director subdelegating their powers to another officer of the staff of the registry. The term here means includes an officer who has qualifications, experience or standing appropriate to exercise the subdelegated powers. By defining the parameters of who is "appropriately qualified", the Bill seeks to ensure that the director's subdelegation of powers from the Chairperson is not undertaken lightly and is exercised in due recognition of the gravity of power being subdelegated.

Clause 17 sets an expectation that that the Chairperson and the director will work cooperatively together, a necessary provision given the range of jurisdictions the tribunal will be working in and that the director may on occasion perform a delegate duty of the Chairperson.

Clause 18 allows the Governor-in-Council to appoint an acting Chairperson and other members.

Clause 19 provides for conflict of interest requirements of members.

19(1) provides that if a member is aware they have a conflict of interest, they must notify the Chairperson.

19(2) then allows the member to disqualify themselves from the proceeding after disclosing the conflict of interest. However, 19(3)

provides that the member may continue to deal with the matter if both the Chairperson and the parties agree. If the Chairperson has the conflict of interest, under this Clause, they declare it to the parties.

PART 3—THE REGISTRY

Clause 20 establishes the registry of the tribunal, the position of director of the registry (formerly known as the registrar) and that the registry consists of the director and other staff.

20(3) provides that the registry may perform registry services for other tribunals.

Clause 21 provides for the employment requirements for appointment as the director. In recognition of the significance and range of duties performed by the director, this clause provides that a person is eligible for appointment as the director only if the person has particular knowledge and experience of public administration and something else of substantial relevance to the functions of the director.

21(2) establishes that the director and staff of the registry are appointed and employed under the *Public Service Act 1996*.

21(3) provides that the director may act in another office in addition to that of director of the registry.

Clause 22 establishes that the director is subject to the direction of the chief executive in relation to carrying out the director's duties and that the director is responsible for managing the registry and the administrative affairs of the tribunal.

22(2) lists a number of specific duties the director has, including:

- 22(2)(a) – ensuring that there is a register of applications made;
- 22(2)(b) – ensuring that such a register is available to be searched upon payment of the relevant fee;
- 22(2)(g) – publishing the decisions of the tribunal; and
- 22(2)(h) – keeping account of money paid into and out of the tribunal's trust account.

22(3) makes clear, however, that this is not an exhaustive list of duties.

Clause 23 allows the director to delegate powers to another appropriately qualified member of the registry's staff.

Clause 24 requires the director to keep and make available to the public records of the tribunal, in particular, details of tribunal proceedings.

24(3) provides that the director must not make records public if ordered not to do so by the tribunal. This ensures that in the case where there is sensitive or personal information that forms part of a proceeding, such information will not be made publicly available thereby causing harm to the person or persons to which the information relates.

Clause 25 allows the chief executive to appoint an acting director, if the need arises.

25(3) clarifies that an acting director would need to have the same qualifications and experience as the director would.

PART 4—PRESIDING CASE MANAGER

Clause 26 establishes the role of presiding case manager. The presiding case manager will consider a range of directions-type matters. This position was first established under the 2002 Act.

26(1) provides that more than one presiding case manager can be appointed by the Governor-in-Council.

26(2) provides that the minimum requirements for the role is to be a lawyer of five years or more standing, recognising the position's quasi-judicial decision-making role.

Clause 27 allows for an acting presiding case manager to be appointed, if needed.

Clause 28 sets out how the presiding case manager is to conduct their duties and what types of matters the presiding case manager is to deal with. These provisions were established in the 2002 Act and are being carried over to the Bill. The provisions include:

- 28(1) – the presiding case manager constitutes the tribunal when dealing with a prescribed matter;
- 28(2) – clarifying that the presiding case manager has the same powers as the tribunal for the matter;

- 28(3) – allows the presiding case manager to hear prescribed matters. It is intended that prescribed matters will be directions and procedural matters and that the presiding case manager hearing such matters will speed up tribunal processes generally;
- 28(4) – clarifies that when the presiding case manager deals with a prescribed matter, they do so with the same powers as the tribunal;
- 28(5) – provides that the Chairperson or a legally-qualified member must deal with a prescribed matter if the Chairperson does not select the presiding case manager to deal with the matter;
- 28(6) – allows the presiding case manager to refer matters to tribunal members if and when it is considered the matter is more appropriately dealt with by a member; and
- 28(7) – defines “legally-qualified member”.

Clause 29 establishes that while the presiding case manager has independence in the conduct of their duties, they must also comply with any procedural directions given by the Chairperson.

Clause 30 requires the presiding case manager to disclose any known conflict of interest and, if necessary, disqualify themselves from a matter.

PART 5—OPERATION OF TRIBUNAL

Division 1—Starting Proceedings

Clause 31 describes how a proceeding is started in the tribunal. This process is essentially the same for all matters from different jurisdictions and begins with the filing of an application form and payment of a prescribed fee. The approved form prompts an unrepresented applicant to provide the necessary information for proceedings. The application must be served on all respondents, which are the persons against whom a claim is made or an outcome or order sought. This clause also provides that an applicant may be an “entity”. By providing for an entity, this clause will allow unincorporated bodies to lodge applications as a representative or class action.

31(6) clarifies that for a public examination, the person who is to be the subject of the examination is the person that must be served.

Clause 32 sets out the requirements for an unincorporated body in making an application. 32(1) firstly clarifies that an unincorporated body may only make application if permitted to do so under an empowering Act.

32(2) establishes the role of the prescribed officer in the unincorporated body. The prescribed officer will be the person responsible for conducting the business of the unincorporated body at the tribunal, ensuring the body complies with tribunal processes and representing the body at hearings or conferences such as a mediation conference. The prescribed officer may, for example, be the president, secretary, treasurer or other similar office holder in the unincorporated body.

32(3) obliges the unincorporated body to keep the director informed of any changes to the prescribed officer, while 32(4) gives the tribunal the power to require evidence of the unincorporated body that the prescribed officer continues to hold that office.

Clause 33 requires a respondent to file in the tribunal and serve on the applicant any defence or counterclaim in response to the application. This provision only applies to certain proceedings as set out in 32(1). The defence or counterclaim must be filed and served within 14 days, but provision is made for the tribunal to extend this period. This allows for a longer period to draft a defence where the application relates to complex matters or where the respondent is for some reason unable to file within the 14 days. As with applications, the defence and counterclaim must be in the approved form.

33(6) allows the tribunal to require service on others whom it considers are affected by the defence or counterclaim and who should be joined as parties.

33(8) allows the tribunal to deal with a matter in the absence of the respondent where no defence or counterclaim is filed (such as a decision by default).

Clause 34 allows the tribunal, on its own initiative or on application, to amend pleadings. In this context, pleadings are the application, defence and any counterclaim.

Division 2—Business Names

Clause 35 allows a proceeding to be started against a registered business name or an unregistered business.

Clause 36 allows a proceeding to be started against a person in relation to a registered business name and for orders to be enforced against the person in the proceeding.

Clause 37 allows a proceeding to be started against a person carrying on business under an unregistered name and for orders to be enforced against the person in the proceeding.

Clause 38 requires the respondent where a proceeding is started under clause 35 or 36 to file any defence or counterclaim in the name of a person and not in the business name, and for service with the defence a statement showing the names and addresses of all persons carrying on the business.

38(4) provides that non-compliance with the requirement to serve the statement showing names and addresses can lead to the tribunal setting a defence aside.

Clause 39 requires the applicant where a proceeding is started under this Division to take all reasonable steps to find out the names of persons carrying on business under the unregistered business name.

39(3) provides that the proceeding must be continued as against named respondents, although the tribunal may allow further procedural steps to be taken. The tribunal must be satisfied that named respondents are aware of the proceedings before allowing continuation as against those named respondents.

Division 3—Transfer of Proceedings

Clause 40 sets out that if a matter brought before a court is one that could be heard by the tribunal, the court must order that the matter be started again in the tribunal. This provision is designed to ensure the tribunal hears the matters it is designed to hear in an informal, speedy and cost-effective fashion rather than having those matters go to the courts.

40(2) allows the tribunal to order a matter be started in a court if the tribunal considers it does not have jurisdiction to hear the matter. 40(3) states that this power applies even if there has been a transfer under this

section already. However, if the tribunals makes an order under 40(2) then a court must not make an order to transfer the proceeding.

Division 4—Service

Clause 41 provides that service of documents may be done by:

- serving it to the address of the licensee, if the document is for a licensee under an empowering Act; or
- a way directed by the tribunal; or
- as stated in the Bill.

41(2) clarifies that none of these service requirements limit the service provisions under the *Acts Interpretation Act 1954*.

Clause 42 provides that for proceedings started under Division 2 of this Part, service of the application may be affected by leaving it at the respondent's place of business with a person who appears to be in control at that place.

Clause 43 provides that a solicitor may accept service for a party to a proceeding. If a solicitor accepts service, the solicitor must annotate the served documents, and service is then taken to have been effected.

Clause 44 allows the tribunal to decide that, where a document has not been served but has come into the possession of a party some other way, service has been effected.

Division 5—Case Management

Clause 45 requires the tribunal to fix a time and place for whatever proceedings the tribunal considers necessary to resolve matters to which an application and any counterclaim relate.

Clause 46 provides that the proceedings of the tribunal are to be open to the public unless the tribunal orders otherwise. This is a new provision and gives confidence to the community that the tribunal is an open and transparent forum in which decisions are made fairly.

46(2) provides the circumstances in which proceedings might be closed to the public and includes matters of public interest and if there is a

provision in an empowering Act that prescribes a proceeding should not be open to the public.

46(3) provides that a closed hearing can be ordered on application or on the tribunal's own initiative.

46(4) provides that the tribunal may make orders about what persons may attend a closed hearing.

Clause 47 sets out the general way that the tribunal is to conduct all proceedings. Procedures are subject to this Bill and the rules of natural justice and at the discretion of the tribunal. Proceedings are to be as informal and expeditious as this Bill and the subject matter of proceedings allow. The tribunal is not bound by evidentiary rules applying to courts and may inform itself as it deems appropriate.

47(5) allows the tribunal to use electronic means to conduct proceedings, if appropriate.

Clause 48 allows the tribunal to decide all or part of a proceeding on the papers if parties agree and the Tribunal considers it appropriate to do so.

Clause 49 allows the Chairperson to issue practice directions. This clause reinforces the Chairperson's general powers under 15 to conduct the business of the tribunal.

49(2) makes clear that members and parties to a proceeding must comply with these practice directions.

Clause 50 gives the tribunal broad powers to make whatever orders and directions it deems necessary to bring a proceeding to a swift and fair resolution.

50(3) explicitly provides that the tribunal may set time limits for the completion of anything in relation to a proceeding and may require parties to provide documents or other evidence.

50(4) requires compliance with orders and directions but allows parties to apply for extensions of time to comply with an order or direction.

50(5) allows the tribunal to vary or revoke an order or direction at any time on its own initiative as well as on the application of a party.

50(6) limits the tribunal's discretion under 50(5) so that the Tribunal may not vary or revoke an order where to do so would adversely affect a party in a way that could not be remedied by financial compensation.

Clause 51 limits the tribunal's power to order disclosure of documents, providing that privileged documents, credit documents and additional

copies of documents do not have to be disclosed. 51(2) removes doubt that an expert report is not privileged.

Clause 52 allows the tribunal to extend time limits and waive compliance with procedural requirements in certain circumstances.

52(1) allows time limit extension for the commencement of a proceeding under this Bill or an empowering Act.

52(2) allows the Tribunal where it is relevant to the conduct of a proceeding to extend time limits for any procedural requirement contained within this Bill, or in an empowering Act, or waive compliance with the doing of anything under this Bill.

52(3) removes doubt that time limit extension and compliance waiver under this section applies even if time has already expired.

52(4) limits the 52(3) discretion regarding extensions of time for filing a defence to an application made within the initial 14 day period allowed. 52(5) limits the tribunal's discretion under this section so that the tribunal may not extend time or waive compliance where to do so would adversely affect a party (or potential party) in a way that could not be remedied by financial compensation.

Clause 53 provides the tribunal with a broad power to include parties where the tribunal forms the view, based on an application or on its own initiative, that a person ought to be included as a party to a proceeding.

Clause 54 allows the tribunal to consolidate several proceedings into the one proceeding where they involve the same question or will affect each other.

Clause 55 further allows the tribunal to direct that several proceedings be heard together or in any sequence the tribunal directs.

Clause 56 allows the tribunal to make any directions it considers necessary in consequence of a decision to consolidate or sequence proceedings.

Clause 57 allows the tribunal to vary any order to consolidate or sequence proceedings.

Clause 58 allows the tribunal to deal with proceedings brought vexatiously by summarily dismissing the proceeding and ordering costs to be paid including compensation for inconvenience and embarrassment to the party against whom the proceeding is brought.

Clause 59 allows the tribunal to hear a matter in the absence of a respondent, provided that reasonable steps have been taken to locate the whereabouts of the respondent.

Clause 60 allows the tribunal to deal with a proceeding that is being conducted by a party so as to cause disadvantage to another party including by causing delays. Proceedings may be dismissed as against the party causing disadvantage and order payment of any costs incurred unnecessarily.

60(3) specifically empowers the tribunal to refuse to continue the proceeding until an order regarding payment of costs is complied with.

Clause 61 regulates withdrawal by the applicant in a proceeding as parties may disadvantage themselves by withdrawal, particularly unrepresented parties.

61(1) allows an applicant to withdraw without leave before service of any defence or counterclaim.

61(2) requires an applicant to obtain the leave of the tribunal to withdraw following service of a defence or counterclaim.

61(3) requires the tribunal's leave for withdrawal by an applicant where there is more than one applicant in a proceeding.

61(4) requires the tribunal's leave for an applicant to withdraw against one respondent without withdrawing against others in a proceeding with more than one respondent.

Clause 62 requires the Tribunal's leave for withdrawal by a respondent of all or part of a defence or counterclaim.

Clause 63 requires the Tribunal's leave if, after withdrawal, an applicant seeks to make a further application relying upon the same facts or grounds.

Clause 64 allows the Tribunal to award costs against a withdrawing applicant.

Clause 65 requires a notice of withdrawal to be served on the other parties where withdrawal is affected without leave. Where withdrawal requires leave, the order giving leave effects the withdrawal.

Clause 66 allows the tribunal to hear a proceeding regardless of any related criminal activity or disciplinary action, subject to the provisions of an empowering Act. For example, parties may seek to have a dispute resolved at the tribunal but one of the parties has engaged in criminal activity related to the dispute. In such cases it is appropriate that the tribunal seek to resolve the dispute but also that the party engaged in

criminal activity or disciplinary action is pursued separately for those actions.

66(2) clarifies that the tribunal may make an order to resolve a proceeding even if a person has been charged with a criminal offence or has a disciplinary action pending.

Division 6—Security for Costs

Clause 67 allows a respondent (defined as a party against whom a claim is made) in a proceeding at any time to seek an order that another party provide security for costs. Failure to comply with an order to provide such security may lead to the tribunal dismissing the proceeding as against the respondent. This type of procedure is most commonly used in building disputes and does not automatically apply in all cases.

67(1) allows the tribunal to stay other proceedings started by a particular applicant until an order for costs is complied with.

67(4) lists a number of criteria that the tribunal may consider in deciding whether or not to make an order under 67(1). These criteria give the tribunal a guide in considering a costs order and therefore help ensure an order for security for costs is not going disadvantage one party over another.

Clause 68 allows the tribunal to determine the form, timing and conditions of security for costs.

68(2) allows the director to make such a determination where the tribunal has not otherwise made provision.

68(3) requires the party the subject of an order to provide security for costs to serve on the applicant for security details of compliance with an order.

Clause 69 regulates the application and discharge of security for costs.

69(2) allows the tribunal to apply the security in satisfaction of an award of costs where costs are awarded against the party supplying security.

69(3) requires the discharge of security where costs are not awarded against the party supplying security, where the tribunal orders discharge, where the party entitled to the benefit of the security consents to discharge, and where there is a balance left after application in satisfaction of costs.

Division 7—Costs generally

Clause 70 establishes beyond doubt that the purpose of this division is that parties pay their own costs unless the interest of justice require otherwise. This provision is in keeping with the objective of the Bill to establish an informal and cost-effective tribunal.

Clause 71 establishes that, notwithstanding 70, the tribunal may award costs on the application of a party or on its own initiative.

71(3) allows the Tribunal to make an order for costs during a proceeding but provide that costs not be assessed until after the proceeding ends.

71(4) provides a non-exclusive list of discretionary factors the Tribunal may take into account in awarding costs, including the outcome of the proceeding, conduct of parties, relative strengths of claims and any contravention of a relevant Act. If a department is a party, its adherence to the principles of natural justice is also a relevant factor.

71(5) removes doubt that legal representation and being the beneficiary of an order do not of themselves entitle a party to an award of costs.

71(6) removes doubt that provisions elsewhere in the Bill to award costs are additional to this section.

71(8) allows the tribunal to direct that costs may be assessed by the presiding case manager or another person appointed by the tribunal, for example, a cost assessor.

Clause 72 allows the Tribunal to order a stay of proceedings as against a party until costs from another proceeding awarded against that party are paid.

Division 8—Representation

Clause 73 states the general philosophy of the tribunal is that parties should represent themselves. This provision helps the tribunal to maintain informality. For parties, the general philosophy expressed in this clause helps them to avoid legal costs.

Clause 74 establishes that a party must represent themselves at mediation unless the mediator, in the interests of justice, allows a party to be represented at the mediation.

Clause 75 is similar to clause 74 in that a person must represent themselves at a pre-hearing conference, unless the tribunal considers it appropriate to allow representation.

Clause 76 then sets out provisions for representation for parties at proceedings.

76(1) provides that a State agency, unincorporated body or corporation may only be represented by a person who is not a lawyer.

76(2) provides for circumstances where legal representation might be appropriate. Parties are entitled to be represented by a lawyer for public examinations and disciplinary proceedings. Continuing a provision from the QBT Act, the Building Services Authority is entitled to be represented by a lawyer in debt recovery proceedings. Otherwise, the tribunal may direct that legal representation is appropriate if the parties agree and after having regard to the circumstances. A non-exhaustive list of criteria is then set out for the tribunal to consider and includes issues such as whether or not parties can afford representation, the complexity of the issues and ability of parties to represent themselves.

76(3) provides for representation by someone who is not a lawyer. This provision makes it clear that non-legal representation is an exceptional circumstance and that the tribunal would consider very carefully any application for non-legal representation. Nonetheless the provision is flexible enough to allow for non-legal representation where appropriate. For example, in a retirement villages dispute an elderly resident may feel more comfortable with having a friend or associate represent them during the proceedings.

Division 9—Other provisions about proceedings

Clause 77 gives the tribunal a general power to summons witnesses and produce documents or things and regulates the application of this power.

77(1) allows the tribunal to summons a witness on the application of a party or on its own initiative to attend at a time and place notified in the summons, to be examined on oath and to produce documents of things stated in the summons.

77(2) regulates payment of witness fees to those prescribed by regulation or, if there is no prescription, to reasonable fees decided by the tribunal.

77(3) gives the tribunal the discretion to decide who pays the witness fees and in what proportions.

Clause 78 creates offences for witnesses disobeying directions of the tribunal. All the offences in this section have maximum penalties of 80 penalty units.

78(1) creates the offence of failing, without reasonable excuse, to attend in response to a summons and to remain as required by the tribunal.

78(2) creates the offence of failing to take an oath as required by the tribunal.

78(3) creates the offence of failing, without reasonable excuse, to answer questions or produce documents or things required by the tribunal. Reasonable excuses in this context would include answers or documents protected by legal professional privilege.

78(4) clarifies that it is a reasonable excuse for the offence in 78(3) that an answer or a document or thing required by the tribunal might tend to incriminate the person.

78(5) allows the tribunal to excuse a person from attending at the time and place notified in a summons for any reason at all.

Clause 79 allows the tribunal to issue a warrant for the arrest of a person summonsed to attend who fails to attend and to adjourn proceedings until the person is produced.

Clause 80 sets out offences for persons who give false or misleading information to the tribunal and prescribes penalties accordingly.

80(1) provides that a person must not state anything they know to be false or misleading.

80(2) provides that a person must not produce a document containing information they know to be false or misleading.

80(3) clarifies that 80(2) does not apply if a person tells the tribunal that the document is false and misleading and gives the correct information, or can reasonably obtain the correct information.

80(4) clarifies that it is sufficient to commence an offence against a person under this section to state that a statement or document was 'false or misleading' without specifying if it was false or if it was misleading.

Clause 81 allows the tribunal to take evidence on oath and to administer oaths.

Clause 82 allows the tribunal to refer technical matters to an expert for investigation and report.

82(2) provides that the expert must provide a written report and provide the parties with copies of the report.

82(3) requires the report to be given in the reasonable time stated by the tribunal.

82(4) clarifies that the tribunal is not bound by the findings of the report while 82(5) provides that parties to the proceeding are responsible for the costs of the report and in proportions determined by the tribunal.

82(6) provides that a State agency may, for the purposes of this section, be an expert and provide a report. This continues a similar provision in the QBT Act and an example based on that similar provision is included for this section.

Clause 83 allows a member of the tribunal, and persons authorised by the tribunal, to enter and inspect a building or land relevant to the proceedings. In most instances, this will be the building or land where the building work the subject of the proceedings are located. There may be some instances, however, where other buildings or land are relevant, such as adjoining premises where access is required to inspect building work the subject of proceedings.

83(2) creates the offence, punishable by up to 200 penalty units, of obstructing a member or person authorised to enter under this section.

Clause 84 sets out the procedure to be followed in effecting entry under section 83. It is intended that coercion to effect entry be reduced to the absolute minimum. To this end, before entry the authorised person or member must make a reasonable attempt to give the owner or occupier notice so that a mutually convenient time can be arranged. Identification and authority documents must be produced to assure an owner or occupier that the person is the authorised person. A copy of these documents must also be given to the owner or occupier to keep.

Clause 85 allows the tribunal to inspect, copy or photograph a document or thing produced to the tribunal, if it is relevant to the proceeding before the tribunal.

85(2) allows the tribunal to retain possession of the document or thing while it is necessary for the proceeding while 85(3) requires the tribunal to permit a person otherwise entitled to possession of the document or thing to inspect, copy or photograph it at a reasonable time and place decided by the tribunal.

Clause 86 lists matters that are contempts of the tribunal. These include obstructing, interrupting, or disturbing proceedings, disobeying lawful orders or directions, obstructing a person authorised to enter buildings or land, and anything else that would be contempt of a court if the tribunal were a court.

86(2) allows the Tribunal to order that a person in contempt of the Tribunal be excluded from the place where the proceeding is conducted.

86(3) allows the staff of the registry to use reasonable force to effect exclusion if so ordered by the tribunal. Staff can also use reasonable assistance under this subsection, allowing for the assistance of security staff if needed.

Clause 87 sets up procedures for the punishment of contempt.

87(1) provides that this section does not limit the tribunal's power to exclude a person under the previous section.

87(2) requires the Chairperson of the tribunal to provide written certification of the contempt to the Supreme Court.

87(3) limits the evidentiary requirement of 87(2) to the Chairperson's being satisfied that there is evidence.

87(4) allows the Chairperson to issue a warrant for the arrest of the person to be brought before the court.

87(5) brings certification under this section into line with provisions of the *Bail Act 1980* regarding charges for offences.

87(6), (7) and (8) require the court to inquire into the alleged contempt, and, if satisfied that the person has committed the contempt, require the court to deal with the matter as if the contempt had related to proceedings in that court.

87(9) applies the *Uniform Civil Procedure Rules 1999* to the court's procedures and powers under this section.

87(10) is an evidentiary aid for the court regarding the Chairperson's certificate under this section.

Clause 88 prevents a person being charged for an offence and dealt with for a contempt regarding the same conduct.

Clause 89 establishes that immunities for members, mediators, experts, representatives, witnesses and documents at or before the tribunal are the same as those applicable to or for the District Court.

Clause 90 allows the tribunal, during a proceeding, to suppress sensitive information about a person on application by that person. The sensitive information is then expressly removed as part of the public record available about that particular matter. This clause gives the tribunal discretion to remove from the public record details of a person that may, if publicly available, harm the person in some way.

90(2) allows the tribunal a similar power but in relation to an application for suppression after the proceeding is over.

90(3) requires the tribunal to clarify with the director, before making an order to suppress, the extent of the sensitive information on the register and the amount of time it would take to remove the information.

However, 90(4) provides that the tribunal is not limited by this information by the director, nor is it limited by the definition of “sensitive information” provided in 90(5).

Division 10—Tribunal decisions and enforcement

Clause 91 requires decisions of the Tribunal that finally decide matters the subject of the proceeding to be in writing, to state the reasons for the decision, and allows them to be published. 91(3) qualifies this by providing that the results of a disciplinary proceeding must be published notwithstanding the provisions of this section.

Clause 92 defines the date of effect of decisions of the tribunal. Where parties are present, it takes effect immediately. Where only one party is absent, it takes effect when service is effected on that party. Where two or more are absent, it takes effect on the day the last party is served.

Clause 93 sets up a procedure for a party to have the tribunal’s decision enforced by a court if it is not complied with. The person is required to lodge with a court a certified copy of the decision, and an affidavit regarding the non-compliance. No fee is to be charged for this registration. Upon registration, the decision has the same effect as a decision of the court and may be enforced accordingly.

Division 11—Further action in relation to a proceeding

Clause 94 allows the tribunal to correct mistakes in decisions and prescribes procedural requirements for correction of mistakes. Corrections can be made on the application of a party or on the initiative of the tribunal, and must be on the basis of evidence before the tribunal when the decision was made. If a party applies for a correction, the application must be made within 14 days of the date of the decision (94(3)) and must refer to the basis of the mistake as defined in 94(1). Any tribunal member may make a correction.

Clause 95 makes available the opportunity for relief from an order of the tribunal where a person did not attend (and was not represented) when the order was made and had a reasonable excuse for absence. An application for a review of the order on this basis must be made within 14 days of service of the order. The tribunal has power to confirm, vary or revoke the order on the basis of this provision.

Clause 96 makes similar provision for the tribunal to vary an order on the application of a party where it is ambiguous or where there are practical difficulties with implementation. To prevent injustice, all parties must be given an opportunity to be heard on an application under this provision.

Clause 97, to avoid jurisdictional overlap, prevents the Tribunal from re-opening an order under clauses 93, 95 and 96 when an appeal has already been filed in the District Court under clause 100.

Clause 98 provides that a question of law is to be decided according to the presiding member's opinion.

Clause 99 allows the Tribunal on its own initiative or on the application of a party to ask the District Court for its opinion on a question of law arising in the proceeding. Proceedings in relation to the question stated are stayed until the court makes its decision.

Clause 100 provides that appeals from decisions of the tribunal may be made to the District Court and only by leave of the District Court and only on a question of law. Appealable decisions under this provision do not include interlocutory or procedural orders or directions, but only final decisions in proceedings. This provision narrows the scope of appealable decisions in order to give the tribunal more certainty about its decision-making.

100(2), (3) and (4) list the procedures to follow in lodging the appeal.

100(7) clarifies that the appellant under this section must pay the costs of the appeal, including the costs of any transcripts.

PART 6—PROCEEDINGS BEFORE TRIBUNAL

Division 1—Review proceedings

Clause 101 empowers the tribunal to review decisions made under empowering Acts. Such decisions are referred to as reviewable decisions.

Clause 102 sets out the procedure for filing and serving an application for a review of a reviewable decision.

Clause 103 allows the tribunal to stay the effect of a decision by a department pending the hearing of a review application in the tribunal, subject to the provisions of an empowering Act.

103(3) allows the tribunal to require, in relation to the order, undertakings to be made, including undertakings in relation to costs, as well as making provision for lifting the order if stated conditions are met.

Clause 104 describes the orders the tribunal can make in relation to a proceeding that reviews the decision of a department.

104(1) provides that the orders that can be made are to: confirm the decision; set aside the decision and substitute another decision; or set aside the decision and return the matter to the chief executive with directions the tribunal deems appropriate. These are generic orders that apply to all review proceedings considered by the tribunal.

104(2) clarifies that the tribunal has, in making the order, the same powers as the person who originally made the decision and provides an example.

104(3) clarifies that if a substituted decision is made, the substituted decision is taken to be the decision of the person who originally made the decision.

Division 2—Disciplinary Proceedings

Clause 105 empowers the tribunal to conduct a disciplinary proceeding upon application by a department.

Clause 106 provides for the process for a State agency to follow in starting a disciplinary proceeding, including the grounds for the charge and the nature of the matter being referred to the tribunal.

106(3) requires the chief executive of a department to give the person the subject of the proceeding at least 14 days notice of the date of the hearing.

Clause 107 sets out the disciplinary actions the Tribunal may take if a department is able to establish grounds.

107(1) gives the tribunal broad powers to make orders as provided in an empowering Act or as provided by the following subsections (2), (3) and (4).

107(2), (3) and (4) list the orders the Tribunal may make against a person when grounds for disciplinary action have been established. These orders include penalties for amounts whose maxima are set as penalty unit equivalents (200 for an individual and 1,000 for a corporation), as well as orders to complete or pay compensation and licence limitations or cancellation. These subsections are illustrative of the types of orders the tribunal can make and are not exhaustive.

107(6) shows how the penalties are to be enforced.

Clause 108 allows the Tribunal, on application by a State agency, to issue an order prohibiting the carrying out of work or other actions. The work or action may be under way, or may not yet have commenced. This provision is akin to an injunctive power. The person the subject of a stop order may show cause why the order should not continue in force and the order may be rescinded if the Tribunal is not satisfied that it should remain. Breach of a stop order is an offence carrying a maximum penalty of 500 penalty units.

108(6) provides that the tribunal's ability to issue a stop order may be limited or excluded by an empowering Act.

Clause 109 allows the tribunal to suspend a licence without notice to the licensee. This provision mirrors the department's power under an empowering to suspend a licence with immediate effect, but properly allows greater discretion in terms of the grounds and duration of suspension. If a suspension is made without notice, the tribunal must give

the suspended person reasonable opportunity to show cause why the suspension order should be rescinded. If the tribunal orders the surrender of the licence, failure to comply is an offence carrying a maximum penalty of 80 penalty units

109(6) provides that the tribunal's ability to issue a stop order may be limited or excluded by an empowering Act.

Division 3—Public Examinations

Clause 110 empowers the tribunal to conduct a public examination of a person upon application by a department. A public examination is a form of disciplinary proceeding and is undertaken for more serious matters.

Clause 111 outlines the procedure before a public examination starts. The tribunal must firstly be satisfied that each person to be examined has received in writing the grounds for the public examination. If the tribunal is satisfied then 111(2) provides that the tribunal must then fix a time and place for the examination.

111(3) provides that notice may be given to an executive officer if a corporation is the subject of the examination.

111(4) specifies that each person that is the subject of the examination must receive a notice including details of the time and place of the examination and the ability of the party to make written and oral submissions at the examination.

Clause 112 removes self-incrimination privileges in relation to answering questions asked at a public examination and applies if a person refuses to answer a question at a public examination. Public examinations are reserved for the most serious of cases and as such the need for the person being examined to answer questions is essential to the outcome of the examination. The existence of a right to silence in a public examination renders the public examination power almost irrelevant. 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, will likely in most cases outweigh any possible detriment to the witness.

112(2) requires the Tribunal to advise the person that if the answer may tend to incriminate the person, the person may make a claim that the answer may be incriminating, and the effect of making such a claim under this section.

112(3) creates the offence of refusing to answer a question in these circumstances, unless the person has a reasonable excuse, such as legal professional privilege. The offence carries a maximum penalty of 500 penalty units.

112(4) makes it clear that self-incrimination is not a reasonable excuse in terms of the offence created by 112(3).

112(5) restricts the admissibility of the answer in proceedings against the person to proceedings in which the truth or falsity of the answer itself are relevant, such as proceedings for the offence of perjury. The clause notes that public examinations and proceedings for the review of a decision by the department are not proceedings against the person, and so the answer may be admitted in evidence in such proceedings. This will allow the person to start review proceedings against the department if it takes any administrative action, such as licence suspension, on the basis of the answer.

Division 4—Other matters

Clause 113 establishes that the tribunal may hear and decide matters referred to the tribunal under an empowering Act. The effect of this provision is to clarify that the tribunal may conduct other types of proceedings in addition to those listed in this part, if an empowering Act gives the tribunal to power to do so.

PART 7—WAYS TRIBUNAL MAY RESOLVE PROCEEDINGS

Division 1—Hearing of proceedings

Clause 114 establishes that the tribunal may conduct a hearing to decide matters within its jurisdiction.

114(1), (2) and (3) set out how a hearing is generally to be conducted and includes matters relating to allowing the parties to call or give evidence, examine and cross-examine witnesses and to make submissions. As well, the tribunal is given the power to proceed in a hearing in a party's absence should that party fail to attend as notified by the tribunal.

114(4) clarifies that this clause is subject to the particular requirements of 124 in relation to expedited hearings.

Division 2—Decision by default

Clause 115 empowers the Tribunal to make default decisions for debts for liquidated amounts where an application has been made and the respondent has not filed a defence or counterclaim. Decisions by default generally relate to building disputes that are currently dealt with by the QBT.

115(2) requires a request for default decision to be filed in the approved form and limits the amount to the amount originally claimed, plus the application fee, and legal costs and interest as prescribed by regulation.

115(3) and (4) allow the registrar to give a decision by default.

115(5) requires proof of service before a default decision can be given.

Clause 116 allows the Tribunal to set aside a default decision. This will allow a proceeding to continue where, for example, the respondent has a reasonable excuse for not filing a defence and counterclaim.

Division 3—Mediation

Clause 117 allows the Tribunal to appoint a mediator for a dispute and review proceedings. The mediator attempts to secure a negotiated settlement of the matters in dispute and may make no orders or decisions on behalf of the Tribunal. The director may exercise the Tribunal's power to appoint a mediator.

In recognition of the fact that mediation is a requirement in some empowering Act prior to lodging an application with the tribunal, 117(2) provides that the tribunal must have regard to any other mediation processes attempted before making a decision to refer a proceeding to mediation. However, this provision does not limit the tribunal's ability to refer matters to mediation.

117(5) allows the parties to nominate a particular mediator and for that mediator to be appointed at the discretion of the Tribunal. If a nominated mediator is appointed, however, the parties are responsible for the costs of that mediator over and above the costs normally paid to a mediator appointed by the Tribunal on its own account. Mediators appointed other than under these provisions are paid by the Tribunal as a service to parties.

117(8) allows a mediator, including a mediator nominated by the parties, to be appointed only if the mediator has suitable qualifications and experience.

Clause 118 gives discretion to the Tribunal to allow a mediation to be conducted by electronic means where appropriate. Otherwise, 118(2) allows the mediator to conduct the mediation at their discretion.

Clause 119 forbids the admission of anything said or done in the course of a mediation conference in any other proceeding of the Tribunal.

119(2) requires the mediator to report to the Tribunal the issues each party considers are the issues in dispute, and the orders each party seeks.

119(4) requires the mediator to report to the Tribunal the terms of any settlement reached between the parties in the course of mediation.

119(5) provides discretion for the Tribunal to make orders giving effect to the settlement. This discretion is provided as a safeguard against unsophisticated parties gravely disadvantaging themselves in mediation.

119(6) requires the Tribunal to keep the terms of a settlement confidential, unless requested otherwise by parties, or on its own initiative.

Clause 120 makes clear that a mediator is to maintain secrecy about information disclosed at mediation conferences. However, a mediator may divulge information in the circumstances provided in 120(2), which include if the parties agree; for statistical purposes; for an inquiry about an offence happening during the mediation; for a proceeding of fraud alleged to have occurred, or been connected with, the mediation; or if there is a requirement imposed under an empowering Act.

Clause 121 debars a member of the Tribunal who has been appointed as mediator for a proceeding from doing anything else in the proceeding other than presiding at a pre-hearing conference.

Clause 122 limits the maximum time allowed for a mediation conference where a proceeding is listed for an expedited hearing to two and a half hours. This allows for same day hearing of certain disputes as set out below.

Division 4—Expedited hearings

Clause 123 provides that the tribunal may conduct an expedited hearing if an empowering Act provides that an expedited hearing may be conducted.

Clause 124 sets out procedures for an expedited hearing.

124(1) requires the filing and exchange of all relevant documents as directed by the tribunal prior to a hearing.

124(2) sets out special procedures for expedited hearings. These are that cross-examination is allowed only at the discretion of the tribunal; that the parties themselves must arrange the attendance of any witnesses supporting their cases; and that the time for the hearing may be limited at the direction of the tribunal and allocated equally between the parties.

Division 5—Summary decision

Clause 125 allows the tribunal to give summary decision for an applicant in a proceeding where the respondent has no defence other than a dispute about the amount of the claim, and the tribunal decides there is no need for a hearing about that part of the proceeding where decision is sought.

125(3) allows the tribunal to direct that the amount of a claim be calculated in a way it specifies, and to provide that that amount, when calculated, and costs, be given as decision.

125(4) allows, with the leave of the tribunal, any number of applications for summary decision in a proceeding.

Clause 126 allows the tribunal to give summary decision for a respondent in a proceeding where the application has no merit or the respondent has an adequate defence.

Clause 127 provides that all matters in a proceeding not dealt with by summary decision continue.

Clause 128 requires evidence in any application for summary decision to be given by affidavit, and sets out standard affidavit requirements for summary decision.

Clause 129 requires service of affidavits and supporting documentation on the other party at least four business days before a matter can be dealt with by summary decision.

Clause 130 provides that the tribunal may order the attendance of parties, witnesses and other relevant persons and the production of documents in deciding an application for summary decision.

Clause 131 provides that the tribunal may order a stay of enforcement of a summary decision, such as where other issues remain unresolved.

Clause 132 allows the tribunal to set aside or vary a summary decision.

Division 6—Pre-hearing conferences

Clause 133 establishes the basis of a pre-hearing conference.

133(1) makes it clear that the tribunal may direct any number of pre-hearing conferences.

133(2) provides a wide range of matters able to be dealt with at a pre-hearing conference. In particular, it removes doubt that the tribunal may make interim orders about a proceeding at a pre-hearing conference.

133(4) requires pre-hearing conferences to be in private unless the tribunal specifically directs otherwise.

133(5) makes it clear that all other procedures to be followed at a pre-hearing conference are at the discretion of the tribunal.

Clause 134 allows the Tribunal to require the attendance of a party personally or by a representative who has authority to settle proceedings on behalf of the party at a pre-hearing conference.

Clause 135 prohibits the admission of anything said or done at a pre-hearing conference in other proceedings other than where parties agree, where the evidence is a direction given at the pre-hearing conference, or where the evidence relates to an offence or contempt.

Clause 136 requires a member who has presided at a pre-hearing conference to disqualify him or herself from hearing the proceeding where a party objects or otherwise at the member's discretion.

Clause 137 allows the tribunal to make adverse directions against a party not attending a pre-hearing conference.

Division 7—Settlement offers

Clause 138 allows a party to make an offer to settle a proceeding as against any other party at any stage of a proceeding and to make as many offers as the party wishes. Offers for payment must, however, specify timing and terms of payment.

138(5) provides that payment offers may include terms that payment is made into the tribunal's trust account.

Clause 139 provides that all offers are made without prejudice to the proceeding, and that the tribunal is not to be told of any offer until after its final decision.

Clause 140 requires offers to be open to be accepted until just before the tribunal's decision is delivered, or for them to state a shorter period for acceptance.

Clause 141 provides that the tribunal may make a range of adverse orders against a party whose offer is accepted but who does not comply with its terms.

Clause 142 provides for the consequences of a party rejecting an offer to settle.

142(1) establishes that this section applies where an offer has been made to settle but has been rejected and the final decision of the tribunal in relation to the matter is in fact not more favourable than the settlement offer which was rejected.

142(2) requires the tribunal to award costs against the party that rejected the settlement offer mentioned in 142(1).

142(3) limits the application of this section in proceedings involving more than two parties to settlement offers resolving all matters at issue.

142(4) limits the way the Tribunal calculates whether an offer was or was not more favourable than its decision in a proceeding to costs incurred up to the time the offer was made.

PART 8—MISCELLANEOUS

Clause 143 declares the tribunal to be part of the administering department for the purposes of the *Financial Administration and Audit Act 1977*.

143(2) establishes that the chief executive may enter into agreement with a State agency which refers matters to the tribunal under an empowering Act in order to recover the costs of conducting a proceeding for that matter.

Clause 144 requires the tribunal to maintain a trust account for the purposes of holding funds for proceedings. Interest on the account is used to offset the costs of keeping the trust account.

Clause 145 requires an annual report to be prepared by the Chairperson for each fiscal year and forwarded to the Minister for tabling in the Legislative Assembly.

Clause 146 allows offences under this Bill to be dealt with as summary offences.

Clause 147 limits the time for summary offence proceedings.

Clause 148 requires all penalties for offences under this Bill to be paid to the department that is bringing the action under the relevant empowering Act.

Clause 149 prohibits contracting out. This provision has effect on all contracts, even those entered into before this Bill comes into effect.

Clause 150 provides that an executive officer commits an offence if the company commits an offence, namely the offence of failing to ensure the company complies with the Bill. The overall aim of this section is to make directors and other executive officers of a company personally responsible

for the acts of the company, thereby preventing them from escaping personal liability by hiding behind a company structure.

150(1) imposes a duty on executive officers to ensure that their company complies with this Bill.

150(2) provides that an offence by a company is taken to have been committed by the company's executive officers, with penalties to apply as for commission of the relevant offence by an individual.

150(3) allows evidence that a company commits an offence under the Bill to be used as evidence that each and every executive officer committed the offence.

150(4) provides a defence for executive officers in regard to this section, namely that the executive officer exercised reasonable diligence, or was not in a position to influence the relevant conduct of the company.

Clause 151 allows the tribunal to accept the purported signature of the director, presiding case manager or of a member as being the actual signature.

Clause 152 allows the tribunal to accept certificates from the director or presiding case manager as evidence of the things certified.

Clause 153 indemnifies officials for acts and omissions made in good faith under this Bill. For this provision, officials include persons authorised by the tribunal to enter and inspect property.

Clause 154 allows the Chairperson to approve forms.

Clause 155 establishes a regulation-making power.

PART 9—TRANSITIONAL PROVISIONS

Clause 156 lists definitions that apply to this part.

Clause 157 clarifies beyond doubt that the QBT, RVT, PAMDT and RVT are abolished on commencement of this Bill.

Clause 158 provides that a proceeding started in a former tribunal must be continued under this Bill if it is not finalised at the commencement of this Bill.

158(2) provides that a former member may continue hearing the proceeding and that only for that purpose do they constitute the tribunal. This ensures continuity of proceedings.

158(3) clarifies that the former member is entitled to remuneration as determined by the Governor-in-Council for completing the hearing.

158(4) clarifies that these provisions also apply to a mediation.

Clause 159 provides that the tribunal has jurisdiction to hear a matter that arose before the commencement of this Bill.

159(2) provides that this is the case, even if a former tribunal might not have had jurisdiction to hear the matter.

Clause 160 clarifies that orders, directions or decisions of a former tribunal carry over as orders, directions and decisions of this tribunal.

Clause 161 clarifies that records of a former tribunal are also records of this tribunal.

Clause 162 provides that the Chairperson of the QBT (who is also the Chairperson of the PAMDT and the RVT) immediately before the commencement of this section, will carry over to be the Chairperson of this tribunal until 30 June 2005. This ensures that the appointment of the Chairperson, who was appointed in June 2002 to lead the tribunals through the amalgamation process, will be carried over as Chairperson of this amalgamated tribunal.

Clause 163 provides that the presiding case manager appointed under the QBT Act will carry over to be the presiding case manager under this Bill for the remainder of their term of appointment under the QBT Act.

Clause 164 provides that the one other full-time member of the QBT will carry over to be a full-time member of this tribunal up until 30 June 2005 on conditions as set by the Governor-in-Council and subject to the provisions of this Act.

164(2) clarifies that this full-time member is not entitled to seek compensation simply because their appointment is shortened under the provisions of this section.

Clause 165 establishes beyond doubt the abolition of a number of positions, and appointments to those positions, on commencement of this Bill.

165(1) provides that the person who, immediately before the commencement of this section, held appointment as Deputy Chairperson of the QBT, goes out of office on the commencement.

165(2) and (3) provide that the person who, immediately before the commencement of this section, held appointment as the Chairperson and Deputy Chairperson respectively of the LAT, go out of office on the commencement.

165(4) and (5) provide that the person who, immediately before commencement of this section, held an appointment as either the chairperson of the PAMDT or RVT, goes out of office on the commencement.

165(6) establishes beyond doubt that former members are not entitled to compensation because their appointment ends by virtue of the abolition of a former tribunal.

Clause 166 provides that the director of the central tribunals registry appointed under the QBT Act at the commencement of this Bill will continue on to be director of the registry established under this Bill.

Clause 167 provides that the staff of the registry under the QBT Act at the commencement of this Bill will continue on to be staff of the registry established under this Bill.

PART 10—REPEAL AND CONSEQUENTIAL AMENDMENTS

Clause 168 provides that the *Queensland Building Tribunal Act 2002* (the QBT Act) is repealed on commencement of this Bill.

Clause 169 provides that Schedule 1 amends a number of Acts.

SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

ARCHITECTS ACT 2002

Clauses 1-6 omit provisions from this Act which are now to be covered by generic provisions in this Bill.

Clauses 7 and 8 omit two definitions and substitutes new definitions.

DOMESTIC BUILDING CONTRACTS ACT 2000

Clause 1 omits a definition of “tribunal” and substitutes a new definition.

JUDICIAL REVIEW ACT 1991

Clause 1 omits reference to the QBT Act from the list of Acts that provide for non or limited judicial review of decisions and substitutes the *Queensland Building Authority Act 1991*. This Act will now contain the relevant provisions not subject to judicial review. Under the QBT Act, there is limited exemption from the operation of the *Judicial Review Act 1991* for the tribunal’s exercise of powers in minor domestic building disputes. The Bill, through this consequential amendment, proposes to continue that exemption. Appeal on a question of law, as described in clause 100, would remain in tact, however.

LIQUOR ACT 1992

Clause 1 omits reference to the Liquor Appeals Tribunal and substitutes a generic reference to the tribunal.

Clause 2 omits references to positions and terms that will be made outdated by effect of this Bill.

Clause 3 omits a number of definitions that will be made outdated by effect of this Bill and substitutes new definitions.

Clause 4 omits the current Part 2 and substitutes a remodelled Part 2. This new Part 2 clarifies the types of matters that are to be dealt with by this Bill.

Clauses 5 and 6 omit references to terms that will be made outdated by effect of this Bill.

Clause 7 amends the Liquor Act to clarify that liquor appeals are to be conducted as reviews of reviewable decisions as provided by clause 100 of this Bill.

Clause 8 establishes the jurisdiction of the tribunal to review decisions referred by the Liquor Act.

Clause 9 omits a number of sections that will now be covered by generic provisions in this Bill.

Clause 10 renumbers a division of the Liquor Act.

Clause 11 clarifies which parties are entitled to appeal to the tribunal to have decisions reviewed as reviewable decisions.

Clauses 12 to 16 omit a number of sections that will now be covered by generic provisions in this Bill.

Clause 17 omits a number of sections that will now be covered by generic provisions in this Bill and substitutes a new provision that clarifies that this Bill applies to the extent that Part 2 of the Liquor Act does not provide for an appeal to the tribunal.

Clauses 18 and 19 make amendments to the provision of the Liquor Act which allows Police and Local Government to provide appropriate comment or objection in relation to an application made under the Liquor Act within a reasonable time. Currently if these agencies do not lodge their information by either the closing date for objections or within 14 days of being notified by the chief executive the LAT will not consider their comments as a valid objection. However, the chief executive is able to review their submission regardless of the date of receipt.

Council and police are central to the examination of issues of amenity, health and social impact and the inability of the tribunal to review their information hinders consideration of the application on its merits. The amendment is to enable the chief executive to state a time period (or later extend the period) if Council or police have problems in delivering on time. For example, if the full Council or planning committee is to consider the matter these meetings may be at monthly or 6 week intervals

PEST MANAGEMENT ACT 2001

Clause 1 omits reference to the QBT Act and substitutes references to this Bill.

PLUMBING AND DRAINAGE ACT 2002

Clauses 1 to *6* omit references to the QBT and substitute references to the CCT.

Clauses 7 and *8* substitute new definitions.

Clauses 9 to *28* omit references to terms that will be made outdated by effect of this Bill.

PROFESSIONAL ENGINEERS ACT 2002

Clauses 1-6 omit provisions from this Act which are now to be covered by generic provisions in this Bill.

Clauses 7 and *8* omit two definitions and substitutes new definitions.

PROPERTY AGENTS AND MOTOR DEALERS ACT 2000

Clause 1 renames the heading of a chapter of the Act.

Clauses 2 to *5* omit parts from this Act which will be made outdated by the effect of this Bill.

Clause 6 substitutes a new reference.

Clauses 7 to *10* omit a number of sections that will now be covered by generic provisions in this Bill.

Clause 11 omits a number of sections and substitutes a new provision that clarifies that the tribunal may hear disciplinary proceedings referred to it under this Act.

Clause 12 rewords a provision to establish that the tribunal may conduct a marketeer proceeding upon application by the chief executive under this Act.

Clauses 13 and 14 omit provisions which will now be covered by generic provisions in this Bill.

Clause 15 omits a number of provisions that will be made obsolete by effect of this Bill and substitutes a provision from the Act that establishes that the tribunal may extend the time in which a party can file a claim or seek a review of a decision.

Clauses 16 to 19 omit provisions which will now be covered by generic provisions in this Bill.

Clauses 20 to 23 omit references in definitions that will be made outdated by effect of this Bill and substitute new references in their place.

QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991

Clauses 1 and 2 omit references that will be made outdated by effect of this Bill and substitute new references in their place.

Clause 3 transfers a provision from the QBT Act into this Act.

Clauses 4 to 11 omit references that will be made outdated by effect of this Bill and substitute new references in their place.

Clause 12 transfers provisions from the QBT Act into this Act. These transferred provisions are building-specific provisions. Amendments have been made where necessary to avoid confusion. For example, the term “tribunal work” is now used in place of the previous term “building work”. The provisions of clause 12 give jurisdiction to the tribunal to hear and determine matters and make order previously made by the QBT.

Clauses 13 to 15 omit references that will be made outdated by effect of this Bill and substitute new references in their place.

Clause 16 transfers a number of definitions from the QBT into this Act. Amendments have been made where necessary, for example, references to “tribunal” have been changed from references to the QBT to the CCT.

RACING ACT 2002

Clauses 1 to 3 omit references that will be made outdated by effect of this Bill and substitute new references in their place.

RESIDENTIAL SERVICES (ACCREDITATION) ACT 2002

Clause 1 omits a number of references to the QBT in this Act and substitutes references to the CCT.

Clause 2 omits reference to the QBT Act and substitutes a reference to this Bill.

Clause 3 omits a provision which will now be covered by a generic provision in this Bill.

Clause 4 omits a reference that will be made outdated by effect of this Bill and substitutes a new reference.

Clause 5 omits a number of provisions that will now be covered by generic provisions in this Bill.

Clause 6 omits reference to the QBT and substitutes reference to the CCT.

RETIREMENT VILLAGES ACT 1999

Clauses 1 to 4 omit a number of references that will be made outdated by effect of this Bill and substitute new references in their place.

Clause 5 omits a provision which will now be covered by a generic provision in this Bill.

Clauses 6 and 7 omit a number of references that will be made outdated by effect of this Bill and substitute new references in their place.

Clause 8 omits a provision which will now be covered by a generic provision in this Bill.

Clause 9 omits references in a number of sections to provisions that will be made outdated by effect of this Bill and substitutes new references in their place.

Clauses 10 and 11 omit provisions of the Act that will now be covered by generic provisions in the Bill

Clause 12 omits a reference that will be made outdated by effect of this Bill and substitutes new references in their place.

Clauses 13 to 19 omit provisions of this Act which will now be covered by generic provisions of this Bill.

Clauses 20 to 22 omit a number of references that will be made outdated by effect of this Bill and substitute new references.

Clauses 23 and 24 omit provisions of this Act which will now be covered by generic provisions of this Bill.

Clause 25 substitutes reference to “a tribunal” with “the tribunal”, namely, the CCT.

Clause 26 omits provision which will be made outdated by effect of this Bill.

Clause 27 and 28 omit a number of definitions used in this Act which will be made outdated by effect of this Bill.

Clause 29 inserts a number of new definitions for use in this Act.

SCHEDULE 2—DICTIONARY

Schedule 2 contains a number of definitions for words and phrases used in the Bill.

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