

# **Community Services Bill 2007**

## **Explanatory Notes**

### **Title of the Bill**

Community Services Bill 2007

### **General Outline**

#### Objective of the Bill

The primary objective of the *Community Services Bill 2007* (the Bill) is to help build sustainable communities by facilitating access by Queenslanders to community services.

### **Achievement of the policy objectives**

Most Queenslanders will use community services in one form or another at some stage in their lives. The Department of Communities currently provides funding to approximately 860 community organisations under the *Family Services Act 1987* (FSA). Funded organisations provide a range of services from neighbourhood centres, community safety services and support for seniors, young people and homeless people, through to services in areas such as youth justice and domestic and family violence prevention.

The FSA is jointly administered by the Minister for Child Safety and the Minister for Communities, Minister for Disability Services Queensland, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Seniors and Youth. No significant changes have been made to the funding sections of the Act since it took effect 20 years ago. The FSA is dated in style and content and does not reflect the contemporary relationship that exists between the Department of Communities and community organisations. The FSA also lacks transparency, in that it does not identify who makes what decisions, nor does it clearly state how the department can ensure strong performance by funded community organisations and quality outcomes for clients.

Community organisations play a vital role in helping to maintain the wellbeing of Queensland communities. It is essential that the systems and processes for

giving organisations assistance are based on clear, comprehensive and up-to-date legislation.

The Bill provides a contemporary legal basis for the Department of Communities to give assistance to community organisations. The object and guiding principles clarify how the department and community organisations can work together to provide quality services for Queenslanders.

The Bill is designed to enable it to provide for contracting a range of non-government organisations in the future, whether or not these are currently funded by the Department of Communities.

Greater transparency and certainty about how funding and other assistance can be given to community organisations by the department is provided by the Bill:

- establishing a process for community organisations to become eligible for assistance; and
- clearly identifying the types of assistance that can be provided to community organisations, and when and how this assistance may occur.

The Bill also ensures there is clarity and certainty about meeting community expectations about the quality, safety and accountability of service delivery by:

- establishing a monitoring and enforcement framework which can be triggered by non-compliance with the Bill or the prescribed requirements under Regulation;
- progressively stronger options for dealing with serious concerns about a funded organisation's service delivery;
- providing for standards for the provision of community services to be made by the Minister for improving the quality of community services.

An up-to-date process for internal and external reviews of significant decisions made by the department is set out in the Bill, to ensure fair processes are in place to protect the rights of parties to significant decisions, and improve the quality, clarity and accountability of decision-making by the department. The Bill maintains the current authorisation for the department to conduct criminal history checks of people it engages, and includes safeguards for the confidentiality and use of screening information.

The Bill has been developed by the department as a key initiative of the *Strengthening Non-Government Organisations Strategy*. The Strategy is a partnership between the Queensland Government and the non-government community services sector to strengthen the quality of community services delivery. The Bill has been designed to be consistent with other contemporary human services legislation, such as the *Housing Act 2003* and the *Disability Services Act 2006*. The department intends to use the proposed new legislation as the basis for giving assistance to community organisations.

### **Assessment of administrative cost to government**

Implementation costs of the Bill will include providing resources for:

- communication and awareness raising with key stakeholders;
- updating existing documents and policies, and developing new documents, policies, procedures, notices and forms to support the new legislation;
- training departmental staff to enable them to undertake roles and responsibilities relevant to the new legislation;
- appointing and training authorised officers to carry out monitoring, compliance and investigation functions; and
- developing protocols for internal reviews of decisions.

All costs will be met from within the existing budget for the Department of Communities.

### **Consistency with Fundamental Legislative Principles**

Aspects of the Bill which raise possible fundamental legislative principles issues are outlined below.

#### Capacity to make administrative standards (Part 2)

The Bill enables the Minister to make standards for the provision of community services. The standards will contain matters to which the chief executive may have regard in deciding an application for approved service provider status.

In deciding an application for approved service provider status, the chief executive may have regard to how the community services provider meets, or intends to meet standards for the provision of community services.

Not setting standards in a regulation will maintain flexibility, and facilitate ongoing consistency with changing national conventions for standards. Additionally, the standards will use particular community sector terminology that does not lend itself to reproduction in a regulation. The standards will be available on the internet to ensure transparency and accountability.

It should be noted that the standards do not take effect until the Minister publishes a gazette notice. The gazette notice is subordinate legislation which may be subject to a disallowance resolution of the Parliament. The Parliament has previously accepted this approach.

#### Power to appoint an interim manager (Part 8)

Under the performance management provisions of the Bill, it is proposed to empower the chief executive to appoint an interim manager for the assistance provided by the department to a community services organisation. The interim manager's function is to ensure departmental funds or assets are used in a proper and efficient manner consistent with the terms of the service agreement.

It could be argued that the exercise of these powers affects the rights and liberties of employees and officers of the service provider, in addition to third parties such as creditors.

The principal objective of the legislative scheme is to ensure the provision of sustainable, quality, safe, responsive and accountable services acquired through the provision of public funds. Consistent with other contemporary community services legislation, such as the *Disability Services Act 2006*, the chief executive is only empowered to appoint an interim manager after considering other remedies. The chief executive must be satisfied that the appointment of an interim manager is reasonably necessary to ensure the proper and efficient use of funds, having regard to an extensive list of considerations (clause 70). These include:

- the type of community services provided;
- the likely consequences if community services are not provided or not provided in a way that complies with the service agreement with the service provider or the prescribed requirements; and
- the likely consequences of the appointment for the service provider and anyone else likely to be affected by the appointment.

The proposed powers will enable the department to intervene where ongoing breaches by providers threaten the safety of vulnerable clients or

give rise to serious concerns about the proper use of assistance provided by the department.

A number of safeguards against inappropriate use of the power to appoint an interim manager are provided in the Bill. These include imposing a limit on the period for which an interim manager may be appointed, and enabling the Commercial and Consumer Tribunal to conduct external merits-based reviews of decisions to appoint interim managers. An interim manager cannot be appointed in circumstances where the assistance provided was “one-off”.

#### Criminal history screening (Part 10)

The current criminal history screening provisions of the FSA enable the chief executive to obtain a prospective or current employee’s full criminal history, regardless of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

The power to access a person’s criminal history may be regarded as adversely affecting an individual’s privacy.

The current provisions enable the chief executive to have a more complete picture of an applicant’s criminal history, including information about ‘old’ convictions which may indicate a pattern of behaviour that could compromise the applicant’s ability to undertake departmental duties safely and competently. This approach is considered necessary to protect the safety of vulnerable clients and to ensure an adequate level of probity for the employment of departmental employees. For example, departmental employees may work in youth justice or childcare licensing settings, or manage the performance of service providers.

While the Bill makes provision for an applicant’s criminal history to be taken into account by the chief executive, the possession of a criminal history does not necessarily make an applicant ineligible for employment. The Bill also ensures natural justice is observed by providing the applicant with an opportunity to make a submission to the chief executive on the assessment of the applicant’s suitability.

#### Power to require information or documents (clause 61)

The Bill establishes a power for authorised officers to require information or documents from a person for information gathering and enforcement purposes. Failure to comply with the request without a reasonable excuse is an offence. The Bill also allows a court to order a person to give the chief executive information or documents within a stated time and in a stated manner if the court convicts a person for an offence against this provision.

These powers can be exercised in relation to third parties, and for this reason, may be considered to have insufficient regard to the rights and liberties of individuals.

This power will enable the department to obtain information in order to ascertain whether a breach of the Act has occurred. The power can only be exercised in relation to the use of assistance provided under the Act to a funded service provider, and the power may only be used for monitoring or enforcing compliance with the Act, or ensuring the proper and efficient delivery of community services.

The Bill also provides that a person who has a reasonable excuse for not complying with a requirement to provide information or documents does not commit an offence against the Act. Under clause 61(6) of the Bill an individual has a reasonable excuse for failing to comply with a requirement to provide information or documents if complying with the requirement might tend to incriminate them.

The ability to undertake investigations with the support of corroborating evidence from third parties will assist the department to make informed decisions about whether sufficient grounds exist to justify taking compliance action. Without a power to obtain corroborating evidence from third parties, the department's capacity to monitor and enforce compliance with the legislation would be severely impeded.

Requirement for executive officers to ensure corporation complies with Act  
(clause 123)

The Bill includes an offence provision imposing a positive obligation on executive officers to ensure their corporation complies with the provisions of the Bill. This is modelled on section 91 of the *Housing Act 2003* and sections 205 and 206 of the *Disability Services Act 2006*.

The provision is proposed to act as a general deterrent and sanction for corporations in a worst case scenario. Otherwise, the department has no mechanism to safeguard a person in circumstances where the corporation (and not the individual) has committed an offence. The section is not imposing any additional obligations on executive officers. Given the vulnerable nature of many service users and the use of public funds, it is important to emphasise this responsibility. Reasonable defences are included to protect executive officers and prevent the misapplication of the provision.

## **Consultation**

Extensive consultation on the *Strengthening Non-Government Organisations (NGOs) Strategy* initiatives, which are supported by the proposed legislation, occurred through statewide information and engagement sessions held from August to October 2005.

Targeted regional forums were held across the State in April 2006 with key representative organisations and local governments funded by the department. Participants included a diverse cross-section of community organisations from remote, regional and metropolitan locations, and Indigenous-managed organisations.

Consultation was also undertaken online via the Queensland Government's 'ConsultQld' website, and advertised in the local press and on the National Indigenous Radio Network. The approximately 860 community organisations currently receiving funding from the department were also advised by mail of the consultation.

The purpose of consultation was to seek feedback about whether the proposed legislation would achieve its intended outcomes and provide a clear guide for the community services sector.

Consultation was also undertaken with the Strengthening NGOs Reference Group, which includes representatives of the peak organisations and non-government organisations, such as the Queensland Council of Social Service (QCOSS).

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Division 1                Introduction**

#### **Short Title**

Clause 1 provides that the short title of the Bill is the *Community Services Act 2007*.

## **Commencement**

Clause 2 provides that the Bill commences on a day to be fixed by proclamation. This delayed commencement is to allow sufficient time for complimentary administrative arrangements to be made and for promotion and awareness raising of the Bill.

## **Division 2            Objects and principles**

### **Main object of Act**

Clause 3 provides for the main object of the Bill.

### **How main object is mainly achieved**

Clause 4 provides for the way in which the main object of the Bill is to be mainly achieved.

### **Guiding principles**

Clause 5 provides that the Act is to be administered in a way that has sufficient regard to the guiding principles.

The clause includes an editor's note to clarify the meaning of the terms 'Aboriginal tradition' and 'Island custom' which are referred to in the principles, and are defined in the *Acts Interpretation Act 1954*. It is unusual to set out provisions from the Acts Interpretation Act. However, these terms are considered essential to the administration of the Act, and it is imperative that they be read by the community services sector to take their full meaning.

## **Division 3            Interpretation**

This division sets out three key definitions that are central to the operation of the Bill. It also refers to other definitions contained in a schedule.

### **Definitions**

Clause 6 provides that schedule 4 defines particular words used in the Bill.



**Meaning of service provider**

Clause 7 provides for the meaning of a 'service provider'. It clarifies that a corporation providing services for profit may still be a service provider.

**Meaning of approved service provider**

Clause 8 provides for the meaning of an 'approved service provider'.

**Meaning of funded service provider**

Clause 9 provides for the meaning of a 'funded service provider'. It clarifies that a funded service provider may put funds or resources from other sources into community services (including the community service being assisted).

**Part 2                      Standards for the provision of  
community services**

This part enables the Minister to make standards for the provision of community services for improving the quality of community services provided by funded service providers.

**Minister may make standards for the provision of community services**

Clause 10 provides that the standards must detail the way in which community services are to be provided by funded service providers and that the standards must include indicators to measure whether funded service providers are meeting the standards. This clause also provides that the making of the notice of the standards is a statutory instrument within the meaning of the *Statutory Instruments Act 1992*.

**When standard takes effect**

Clause 11 provides that the Minister must notify the making of a standard and when the standard takes effect.

## **Notice and availability of standards**

Clause 12 provides that the chief executive must keep a copy of the standards available for public inspection free of charge and that the service standards must be published on the department's web site.

## **Part 3                      Approved service providers**

The intention of this part is to streamline administrative processes.

The process is designed to ensure that assistance is provided to those agencies that have the organisational capacity and infrastructure to provide accountable, sustainable and viable community services.

The funding framework in the Bill has two main elements:

- (i) a pre-approval process before the service provider is eligible to receive assistance;
- (ii) a strengthened contractual framework.

Service providers will need to be given an approved service provider status under this part before they may apply for or receive funding or other assistance from the department. However, being eligible for funding does not guarantee funding.

Provisions are also included to ensure flexibility in urgent situations (clause 25) and for one-off funding (clause 26).

## **Division 1                      Preliminary**

### **Explanation**

Clause 13 explains that this part establishes how the chief executive may approve service providers that are corporations as eligible to receive assistance from the department.

### **No entitlement to assistance**

Clause 14 provides that the Minister is not required to approve assistance for an approved service provider. This provision makes it clear that

agencies who are approved service providers (under this part) are eligible for assistance, but not guaranteed assistance.

## **Division 2            Approval process**

### **Application for approval**

Clause 15 provides for the application process for becoming an approved service provider.

The service provider must be incorporated, and the application must be in a form approved by the chief executive. The chief executive may require the service provider to provide other relevant information. For example, a new organisation, without a record of financial management, may be asked to provide information about how it proposes to manage its finances.

### **Decision on application**

Clause 16 requires the chief executive to decide the application within 90 days after the application and other required information is received. The chief executive must then give notice of the decision to the service provider.

The chief executive may approve only if the approval is consistent with the object and guiding principles of the Bill (clause 5).

For example, if an incorporated association provides community services but has in its rules a clause inconsistent with the guiding principles, the chief executive should decide to reject the application.

In deciding the application, the chief executive may have regard to following criteria:

- the business, strategic or operational plan of the service provider;
- financial records of the service provider;
- how the service provider conducts or intends to conduct its operations;
- whether the service provider meets or will be able to meet the standards or other standards that are applicable to the provision of community services;
- appropriate corporate governance;

- whether the service provider is receiving funding from another source; and
- whether the service provider has demonstrated compliance with the requirements of another Act.

The last two criteria in this list allow cross-recognition. If, for example, a service provider is already a ‘funded non-government service provider’ under the *Disability Services Act 2006*, and can demonstrate compliance with that Act, the chief executive may deem the service provider to be suitable in relation to all overlapping criteria.

Also, to ensure the application process is flexible, other criteria can be placed in a regulation. This will allow the procedure to be easily amended should changes to practice emerge over time.

### **Approval remains in force unless cancelled**

Clause 17 provides that the status of an approved service provider remains in force until it is cancelled.

## **Division 3            Cancellation of approval**

### **Application for cancellation of approval**

Clause 18 provides that a corporation may apply to the chief executive to cancel its approval as an approved service provider. The application must be in a form approved by the chief executive, and the chief executive may require the applicant to provide other relevant information.

### **Decision on application**

Clause 19 establishes when the chief executive must and may only grant an application to cancel the approval for an approved service provider.

Before cancelling the approval, the chief executive may require the service provider to take certain action – for example, returning unspent funds.

### **Cancellation of approval without application**

Clause 20 provides that the chief executive may cancel the approval of an approved service provider without an application. The chief executive may only cancel an approval if:

- there is no current service agreement with the service provider; and
- it is not likely any action will be required to enforce compliance under the Bill and it is not likely further assistance will be provided by the department.

The clause requires the following process before the chief executive can cancel an approval:

- a notice must be given to the service provider:
  - stating the intention to cancel; and
  - stating the reasons for the proposed cancellation; and
  - inviting the service provider to give a written response within a stated time of at least 45 days; and
- the chief executive must consider any written response received within the stated time.

The chief executive must give the service provider immediate notice of the decision.

This process does not have to be followed if the service provider agrees to waive the process.

### **Cancellation of approval if approved service provider no longer exists**

Clause 21 provides that the chief executive must cancel the approval of an approved service provider if it no longer exists. For example, a service provider may 'no longer exist' if it amalgamates with another entity or if it is otherwise no longer recognised at law as a legal entity.

## **Division 4            Notice of changes by approved service provider**

### **Approved service provider must give notice of change**

Clause 22 provides that an approved service provider must give notice to the chief executive of certain occurrences, within 30 days of becoming aware of the occurrence. They include:

- a change in the service provider's address;

- certain formal steps that may lead to the service provider ceasing to exist as a legal entity; and
- certain formal steps that amount to the service provider ceasing to exist as a legal entity.

Other occurrences can be prescribed in a regulation.

## **Part 4 Assistance to service providers**

Assistance from the Department of Communities is a two step process: firstly, the Minister approves funding (clause 24) and secondly, if funding is approved, the chief executive enters into a written agreement with the service provider (clause 27).

### **Purpose of giving assistance**

Clause 23 provides that the purpose of giving assistance to service providers is to enable them to provide community services in ways that best achieve the object of the Bill.

### **When assistance may be given**

Clause 24 provides that to achieve the object of the Bill, the Minister may approve assistance to a service provider for community services. A non-exclusive list of types of assistance is outlined.

### **Assistance to service providers**

Clause 25 provides that the Minister may approve assistance only if the service provider is an approved service provider under the pre-approval process in Part 3.

However, the clause allows for ‘provisional service provider status’ in urgent or emergency situations where it is not practicable to first go through the pre-approval process. In these cases, assistance can be granted for a maximum of six months without the service provider having an ‘approved service provider’ status. In other words, after the assistance commences, the service provider must take action to become an approved service provider as soon as practicable; otherwise, funding will cease six months after it is given.

**Who may receive approval for one-off funding**

Clause 26 provides that the Minister may approve one-off funding for a service provider. The only condition is that the service provider must be incorporated.

**No assistance without agreement**

Clause 27 provides that, once the Minister approves the assistance, the chief executive must enter into a written agreement with the service provider. The chief executive can only provide the assistance once a service agreement is signed by both parties.

The exception is in urgent cases where it is not practicable to first enter into an agreement. In this case, assistance can be given if the service provider agrees in writing to enter into a service agreement within a stated time and enters into a service agreement within that time. If this does not happen, the assistance must cease.

**What service agreement must contain**

Clause 28 provides a transparent legal basis for service agreements. A service agreement must state each of a number of things considered relevant by the chief executive.

In addition, the agreement may include other matters the chief executive considers necessary.

**Part 5 Prescribed requirements****Prescribed requirements**

Clause 29 provides that a regulation may prescribe requirements about how a funded service provider conducts its operations or provides community services.

**Funded service provider must not contravene prescribed requirements**

Clause 30 requires funded service providers to comply with a prescribed requirement. The following may be consequences of contravening a standard:

- a compliance notice could be issued requiring the service provider to fix the contravention (clause 32); or
- the extent of compliance or contravention could be a relevant factor when deciding whether further funding is provided; or
- non-compliance with certain types of prescribed requirements could lead to the appointment of an interim manager (clause 69); or
- non-compliance may be a matter that the chief executive considers when deciding whether to cancel the approval of an approved service provider.

## **Part 6                      Compliance notices and suspending or stopping assistance**

### **Division 1                Compliance notices**

#### **Cooperative approach**

Clause 31 clarifies that the powers which may be exercised under Part 6 in relation to issuing compliance notices and suspending or stopping assistance do not limit or prevent the department adopting a cooperative approach to resolving concerns about service delivery.

#### **Compliance notice**

Clause 32 introduces and lists when the chief executive can issue a compliance notice. A compliance notice is an important tool in ensuring compliance with the Bill – the purpose of the notice is to identify and notify the funded service provider that part of its operations or the way it is providing services is not complying with the Bill. The notice then gives the service provider an opportunity to fix the non-compliance.

The chief executive can issue a compliance notice to a funded service provider if the chief executive reasonably believes the service provider is:

- contravening a provision of the Bill; or
- has contravened a provision of the Bill and it is likely this will continue or be repeated.



This includes contravening or having contravened a prescribed requirement (see clause 30).

A compliance notice can be issued even if the service provider's funding has been suspended. The compliance notice must state:

- that the chief executive believes the person is contravening a provision of the Bill, or they have contravened a provision of the Bill, and it is likely it will continue;
- which relevant provision is being contravened;
- how the relevant provision is being contravened;
- the grounds for issuing the notice;
- that the service provider must fix the contravention;
- the reasonable time within which the contravention must be fixed; and
- that it is an offence not to comply with the notice unless the service provider has a reasonable excuse.

The compliance notice may state:

- the steps the chief executive considers necessary to fix the contravention or avoid further contravention; and
- that the service provider must report to the chief executive after taking the steps.

If the service provider fails to comply with the notice, the chief executive also has a range of other sanctions he/she may use, including:

- suspending or stopping assistance to the service provider despite anything in the service agreement;
- pursuing a remedy available under the service agreement; and
- exercising any other relevant power under the Bill.

### **Report by authorised officer**

Clause 33 enables the chief executive to seek a written report from an authorised officer before deciding to issue a compliance notice to a funded service provider. The report can detail whether a funded service provider is contravening a provision of the Bill, or has contravened a provision and the contravention is likely to continue or recur.

## **Division 2                    Suspending or stopping assistance for breach of agreement**

### **Show cause notice**

Clause 34 enables the chief executive to issue a show cause notice to a funded service provider if the:

- service agreement with the service provider includes such a process for a breach of the agreement; and
- chief executive reasonably suspects the funded service provider has breached the service agreement; and
- chief executive intends to take action to suspend or stop assistance to the service provider.

A show cause notice issued to the funded service provider must state:

- the actions the chief executive proposes to take under the agreement (for example, suspending assistance);
- the basis for taking the proposed action;
- an outline of the facts and circumstances that form the basis for taking the proposed action; and
- an invitation for the service provider to show, within a specified period of time (of at least 21 days) why the proposed action should not be taken.

### **Representations about show cause notice**

Clause 35 clarifies that the funded service provider may make written statements about the show cause notice, within the show cause period, to the chief executive. The chief executive is required to consider all written statements from the funded service provider.

### **Ending show cause process without further action**

Clause 36 requires the chief executive to cease any further action under the show cause notice if the chief executive no longer believes there are grounds to take the proposed action, after consideration of all representations from the funded service provider. The clause also requires the chief executive to notify the funded service provider that no further action will be taken in relation to the show cause notice.

## **Suspending or stopping assistance**

Clause 37 provides that, after the chief executive considers any written statements from the service provider, where there are still grounds to take action and that such action is warranted, the chief executive may:

- suspend the assistance for a longer period of time, if the proposed action specified in the show cause notice was to suspend assistance; or
- stop the assistance or suspend it for a period, if the proposed action specified in the show cause notice was to stop the assistance.

Note that the chief executive may take action specified in the show cause notice if the funded service provider does not make an acceptable representation in response to the show cause notice.

## **Division 3            Recovery of funding**

### **Recovery of amount from corporation**

Clause 38 provides for the recovery of unspent funds (funds that have not been spent by a corporation after funding has been ceased), and improperly used funds (funds that have been used for a purpose other than that specified in the service agreement), as a debt owing to the State.

## **Part 7                    Monitoring and enforcement**

### **Division 1            Preliminary**

#### **Purpose of pt 7**

Clause 39 clarifies that the purpose of Part 7 is to provide the department with appropriate monitoring and enforcement powers to ensure compliance with the Bill and the proper and efficient delivery of community services by funded service providers.

## **Matters to be considered by chief executive or authorised officer before exercising a power**

Clause 40 clarifies that, prior to exercising a monitoring or enforcement power, the chief executive or authorised person must consider whether it is more appropriate to seek the cooperation of the funded service provider. However, the decision to exercise such a power cannot be challenged because the chief executive or authorised officer did not seek the cooperation of the funded provider.

## **Division 2 Authorised officers**

### **Powers generally**

Clause 41 provides that an authorised officer has the powers provided under this Bill. In exercising these powers, an authorised officer is subject to the directions of the chief executive.

### **Appointment**

Clause 42 provides that the chief executive may appoint a public service employee (defined in the *Public Service Act 1996*) as an authorised officer. For the purposes of investigating a particular matter, the chief executive may appoint another person (such as a person outside the department) to investigate a very sensitive or controversial matter and to ensure any perceptions of conflicts of interest are reduced.

Note that it is not intended that any investigations under the Bill would compromise other investigations of criminal matters.

### **Qualifications for appointment**

Clause 43 stipulates that the chief executive can only appoint a person as an authorised officer if the chief executive is satisfied that the person has the necessary experience or expertise and any competencies specified in a regulation.

### **Appointment conditions and limit on powers**

Clause 44 clarifies that the conditions of appointment of an authorised officer can be stated in their instrument of appointment or a written notice signed by the chief executive or in a regulation.

**Issue of identity card**

Clause 45 provides that the chief executive must issue an identity card to each authorised officer. It also states what the identity card must include: a photo of the authorised officer, their signature, identification that they are an authorised officer appointed under the Bill, and an expiry date.

**Production or display of identity card**

Clause 46 provides a general obligation on an authorised officer to produce their identity card before exercising a power or to have the identity card clearly visible to the other person when exercising their power. The only exception is when an authorised officer is entering a public place when it is open to the public (clause 50(1)(b)) or when entering a place to ask for the occupier's consent to enter (clause 50(2)).

**When authorised officer ceases to hold office**

Clause 47 specifies when an authorised officer ceases to hold office. An authorised officer ceases to hold office when either their term, or another condition of appointment, ends or they resign.

**Resignation**

Clause 48 states that an authorised officer may resign by a signed written notice given to the chief executive.

**Return of identity card**

Clause 49 provides that if a person ceases to be an authorised officer, they must return their identity card within 21 days after ceasing to be an authorised officer unless they have a reasonable excuse. It is an offence not to comply – maximum penalty is 10 penalty units (currently \$750).

**Division 3 Powers of authorised officers****Power to enter places**

Clause 50 specifies in what circumstances an authorised officer can enter a place, which includes premises or vacant land. An authorised officer can enter a place if:

- the occupier consents to entry;
- it is a public place and the entry is made when it is open to the public;
- it is not a home, and the entry is made when the place is open for business or otherwise open for entry; or
- the entry is authorised by a warrant.

### **Entry with consent**

Clause 51 sets out what the authorised officer must do if they intend to seek consent of the occupier of a place before they enter. If consent is provided, the authorised officer can ask the person to sign an acknowledgment of the consent; the clause lists what the acknowledgment must contain. A copy of the acknowledgment must be provided to the occupier.

If a dispute arises about whether consent was provided, a signed acknowledgment properly made under this clause is evidence that the occupier consented to the entry.

### **Application for warrant**

Clause 52 provides for how an authorised officer can apply to a magistrate to enter a place. A sworn written application stating the grounds for the warrant must be provided. If there is insufficient information, a magistrate can refuse to consider the application until all relevant information is provided.

### **Issue of warrant**

Clause 53 provides the circumstances when a warrant can be issued by a magistrate. A warrant can only be issued if a magistrate is satisfied there are reasonable grounds for suspecting:

- it is necessary to enter the place to protect a person receiving community services from a funded service provider at the place from risk of harm because of abuse, neglect or exploitation; or
- to follow up on a compliance notice issued to the provider (clause 32), but only if the magistrate is satisfied that non-compliance with the notice may severely affect the provision of community services.

If a warrant is issued, the clause specifies the particulars to be included.

**Application by electronic communication and duplicate warrant**

Clause 54 provides for an application for a warrant to be made electronically if an authorised officer reasonably considers it necessary because of urgent circumstances or another special circumstance, such as the authorised officer's remote location. The clause sets out the process for the application and the issuing of a warrant in these special circumstances.

**Defect in relation to a warrant**

Clause 55 clarifies that a defect in a warrant does not invalidate a warrant unless it affects the substance of a warrant in a material way.

**Warrants – procedure before entry**

Clause 56 sets out what an authorised officer must do if they enter a place with a warrant, making a reasonable attempt to:

- identify themselves to an occupier of the place;
- give the occupier a copy of the warrant;
- advise that the authorised officer is permitted by the warrant to enter the place; and
- provide an opportunity to allow the authorised officer's immediate entry without using force.

The authorised officer does not have to follow the above procedure if they believe on reasonable grounds that immediate entry is required to ensure effective execution of the warrant is not frustrated.

**General powers after entering a place**

Clause 57 lists what monitoring and compliance powers an authorised officer may have upon lawful entry to a place. These powers include:

- searching the place;
- inspecting, measuring, testing, photographing or filming any part of the place or anything at the place;
- taking a thing or sample for analysis or testing;
- copying a document or taking a document to another place to copy it – if the authorised officer takes the document away to copy, they must copy it as soon as practicable and return it;

- taking into or onto the place any person, equipment and materials the officer reasonably requires for the exercise of a power;
- conferring alone with a person;
- requiring a person at the place to provide assistance in the exercise of the authorised officer's powers – when making this requirement, the authorised officer must warn the person that it is an offence not to comply unless they have a reasonable excuse (see clause 58); and
- requiring a person at the place to answer questions to help the authorised officer determine whether or not the Bill has been complied with – when making this requirement, the authorised officer must warn the person that it is an offence not to comply unless they have a reasonable excuse (see clause 59).

### **Failure to help authorised officer**

Clause 58 provides that a person required under the Bill to give reasonable help by the authorised officer must comply unless they have a reasonable excuse – maximum penalty units is 40 penalty units (currently \$3,000). The clause confirms that it is a reasonable excuse for a person not to comply with a requirement if that might tend to incriminate the person.

### **Failure to answer questions**

Clause 59 provides that person required (under the Bill) to answer questions must comply unless they have a reasonable excuse – maximum penalty units is 40 penalty units (currently \$3,000). The clause confirms that it is a reasonable excuse for a person to not answer any questions if that might tend to incriminate the person.

## **Division 4            Power to require information**

### **Notice under s 61 may relate to use of assistance**

Clause 60 clarifies when a notice under clause 61 may be given.

### **Power to require information or documents**

Clause 61 subclause (1) gives the chief executive or an authorised officer the ability to require information or documents from a person by giving a notice to that effect. The notice may require the person to give information



that is within the person's knowledge about a specified matter within a stated reasonable timeframe and in a stated manner. The information may be sought either orally or in writing. A notice may also require the person to give to the chief executive or authorised officer, a document that is in the person's possession or control within a reasonable timeframe and in a stated manner.

Note that the powers under this part are limited by clauses 39 and 40 of the Bill.

Subclause (2) allows the chief executive or authorised officer to keep a document provided pursuant to subclause (1) so that a copy can be made of it.

Subclause (3) gives both the chief executive and authorised officer the ability to require the person, who has possession or control of the document, to certify the copy of a document as a true copy.

Subclause (4) places an onus on the chief executive or authorised officer to return the document to the person as soon as practicable after copying it.

Subclause (5) requires a person from whom a request is made in subclause (1) to comply with the requirement unless the person has a reasonable excuse. Failing to comply with a requirement to produce information or documents is an offence to which a maximum penalty of 50 penalty units (currently \$3,750) may apply.

The clause confirms that it is a reasonable excuse under subclause (6) for a person not to comply with a requirement made under subclause (1) or (3), if complying may incriminate the person.

Subclause (7) provides that if a court convicts a person of an offence against subclause (5), the court may also order the person to give to the chief executive or a stated authorised officer, within a stated time and in a stated way, information or a document to which the requirement related.

## **Division 5            Other matters**

### **Notice of damage**

Clause 62 specifies what the authorised officer must do if they (or a person acting under their direction) damages property. The clause does not apply to damage the authorised officer believes is trivial.

The authorised officer (unless it is impracticable) must immediately give notice of the details of the damage to the person who appears to be the owner (or in possession/control) of the property. If it is impracticable to give immediate notice to the person, they must leave the notice in a conspicuous position and in a reasonably secure way.

### **Compensation**

Clause 63 allows a person to claim compensation if they incur loss or expense because they complied with a requirement under clause 50 or clauses 57 to 59.

### **False or misleading statements**

Clause 64 makes it an offence for a person to state anything to an authorised officer that the person knows is false or misleading – maximum penalty is 40 penalty units (currently \$3,000).

### **False or misleading documents**

Clause 65 makes it an offence for a person to provide a document to an authorised officer that the person knows is false or misleading in a material particular – maximum penalty is 40 penalty units (currently \$3,000).

However, it is not an offence if the person, when giving the document:

- tells the authorised officer (to the best of their ability) how it is false or misleading; and
- if they have or can reasonably obtain the correct information – gives the correct information.

### **Obstructing an authorised officer**

Clause 66 makes it an offence to obstruct an authorised officer, in the exercise of a power under the Bill, unless the person has a reasonable excuse – maximum penalty is 40 penalty units (currently \$3,000).

If the person has obstructed the authorised officer and the officer decides to proceed with the exercise of the power, the officer must warn the person it is an offence not to comply and that the person's conduct is considered to be an obstruction.

**Impersonation of an authorised officer**

Clause 67 makes it an offence to pretend to be an authorised officer – maximum penalty is 40 penalty units (currently \$3,000).

**Part 8 Interim manager****Division 1 Preliminary****Main purpose of pt 8**

Clause 68 clarifies that the main purpose of appointing an interim manager is to ensure the proper and efficient delivery of services provided under a service agreement with a funded service provider.

Before appointment, the chief executive is required to consider any alternative action that may be more appropriate, including not taking any action.

**Division 2 Appointment****Appointment**

Clause 69 allows the chief executive to appoint a person as an interim manager for a funded service provider receiving assistance from the department, other than ‘one-off’ funding. An interim manager is appointed to administer the services that are provided using departmental assistance.

**Basis for appointment**

Clause 70 provides the only grounds for when the chief executive can appoint an interim manager – that is, only if satisfied that the appointment is reasonably necessary to ensure the proper and efficient use of funds under the service agreement with the service provider.

The clause sets out a number of factors which the chief executive may consider in deciding whether the appointment is reasonably necessary.

The chief executive may consider, inter alia, whether the service provider is receiving assistance from another source (such as another government

agency). The inclusion of this matter reflects that the appointment of an interim manager may occur as a coordinated response across assisting agencies.

### **Suitability of proposed appointee**

Clause 71 provides that an interim manager may only be appointed if the chief executive is satisfied that the proposed appointee is suitable for the appointment. The clause sets out the matters the chief executive must consider before making the appointment.

### **Terms of appointment**

Clause 72 specifies the matters the appointment of an interim manager must include.

### **Notice to funded service provider about appointment**

Clause 73 specifies that a copy of the terms of appointment must be given to the service provider immediately after appointment of an interim manager.

### **Informing persons using community services about appointment**

Clause 74 provides that the chief executive may direct an interim manager to inform users of a community service, before exercising any powers, that he or she has been appointed as interim manager to the funded service.

For example, people using the community services provided by the service provider may be informed by:

- written notice of the appointment;
- posting a notice of the appointment at a place at the service provider's premises where it is likely to be seen by users of the service; or
- another way that is considered appropriate.

### **Initial period of appointment**

Clause 75 specifies that the initial period of appointment for an interim manager must not be longer than 3 months.

### **Variation of appointment**

Clause 76 allows the chief executive to extend or vary the appointment of an interim manager.

However, any one period of extension cannot be more than 3 months and total period of an appointment (with extensions) cannot be more than 6 months.

If the appointment is varied, notice of the variation must be given by the chief executive to the service provider.

### **Ending of appointment**

Clause 77 provides that the chief executive can end the interim manager's appointment at any time before the end of the appointment period, if the chief executive is satisfied that the appointment is no longer necessary.

If the chief executive ends the appointment of the interim manager, the chief executive must give notice of the fact to the funded service provider. Persons using the community service may also be informed of the end of the appointment in a way the chief executive considers appropriate.

## **Division 3            Function and powers**

### **Application of div 3**

Clause 78 identifies that the functions and powers in this division apply to a person appointed as interim manager of a funded service provider.

### **Interim manager's function**

Clause 79 specifies that the functions of the interim manager under the terms of the appointment are to:

- ensure the proper and efficient use of assistance under the service agreement with the funded service provider; and
- provide community services that the funded service provider has agreed to provide under the service agreement.

**Interim manager's powers**

Clause 80 provides that so far as is necessary to carry out his or her functions, an interim manager may:

- enter the premises of the service provider;
- use the facilities or things in the premises that (it appears) are intended for use, or are ordinarily used, to provide community services;
- ask for and accept payments owing to the service provider; and
- do anything in relation to a service agreement, on behalf of the service provider, that the service provider is permitted or required to do.

It is intended that these powers be co-operative in nature to enable the interim manager to work with the service provider to keep the service operational and functional for the consumers. The powers are not meant to be investigative in nature.

**Direction by chief executive**

Clause 81 specifies that the interim manager is subject to the chief executive's direction in performing his or her functions or exercising his or her powers.

**Other powers**

Clause 82 provides that the interim manager has any powers of the funded service provider that are necessary or convenient to carry out the manager's functions. For example, the interim manager may authorise the carrying out of repairs.

**Limitation on powers under instrument of appointment**

Clause 83 states that the powers conferred in this part can be limited in the instrument of appointment.

**Production of instrument of appointment for inspection**

Clause 84 provides that an interim manager must comply with a request from a person to produce the interim manager's instrument of appointment if exercising or proposing to exercise a power in relation to that person.

**Obstruction**

Clause 85 makes it an offence for a person to obstruct an interim manager in the exercise of their powers unless the person has a reasonable excuse – maximum penalty is 40 penalty units (currently \$3,000).

If a person has been obstructive, and the interim manager proceeds, the interim manager must warn the person it is an offence to obstruct (unless there is a reasonable exercise) and that person's conduct is considered to be an obstruction.

**Division 4            Other matters****Access to information or documents**

Clause 86 enables an interim manager to access information or documents by asking an executive officer of a funded service provider to provide the information or documents the interim manager reasonably needs to carry out his/her functions.

In addition, the chief executive may disclose (or give access to) information to an interim manager that the chief executive considers appropriate for the purposes of the interim manager's appointment.

**Confidentiality**

Clause 87 specifies how an interim manager must use, and deal with, confidential information obtained during the course of his/her appointment.

A person who is, or was, an interim manager in relation to a funded service provider, must not disclose the information to anyone else or give access to the information to anyone else other than in the following circumstances:

- for the purpose of exercising a function or power in terms of their appointment;
- for the purposes of complying with a request by the chief executive to provide relevant records or reports (under clause 90);
- with the consent of the service provider or other person to whom the information relates;
- pursuant to a legal requirement to produce documents or give evidence in a court or tribunal;
- as expressly permitted or required by another Act; or

- to protect a person receiving community services from the service provider from abuse, neglect or exploitation.

It is an offence to disclose confidential information other than in these circumstances – maximum penalty is 40 penalty units (currently \$3,000).

‘Confidential information’ is defined in schedule 4 as including information about a person’s affairs, but not including:

- information already publicly disclosed (regardless of the size of the audience to whom it was disclosed), unless further disclosure is prohibited by law; or
- information that will not identify the relevant person.

## **Remuneration**

Clause 88 states that an interim manager is entitled to be paid the reasonable amount of remuneration agreed with the chief executive.

## **Funded service provider liable for remuneration and other costs**

Clause 89 provides that a funded service provider is liable for remuneration and other administrative costs of the interim manager. This is a liquidated amount that (if not paid) can be recovered by the department.

In practice, the service provider would be consulted before determining the estimated administrative costs of an interim manager.

## **Accounts and reports**

Clause 90 requires the interim manager to provide to the chief executive the following records and reports about the funded service provider:

- records of all amounts received or paid in the course of the appointment; and
- other reports about the administration as required by the chief executive.

Any records or reports have to be provided to the chief executive as soon as practicable. Also, a copy of each record or report must be given to the service provider.



## **Compensation**

Clause 91 allows a person to claim compensation from the chief executive if the person incurs loss or damage because of the exercise (or purported exercise) of an interim manager's powers. The court with relevant jurisdiction hears and determines the claim. A court may order compensation to be paid only if it is satisfied that it is just to make the order in that particular case.

## **Part 9                      Reviews and appeals**

### **Division 1                      Reviewable decisions**

#### **Reviewable decisions**

Clause 92 states that the decisions of the chief executive that can be reviewed (called reviewable decisions), and who can apply for a review (called an interested person), are listed in Schedule 1 of the Bill.

The five reviewable decisions (and the interested person) are:

<b>Interested person</b>	<b>Reviewable decision</b>
Applicant for approval as an approved service provider	Refusal of an application to become an approved service provider (clause 16)
Approved service provider	Refusal of an organisation's application to cancel its status as an approved service provider (clause 19)
Approved service provider	Cancellation of an organisation's status as an approved service provider (clause 20)
Funded service provider – whose assistance has been suspended or stopped	Suspending or stopping assistance for not complying with a compliance notice (clause 32)
Funded service provider – for whom an interim manager has been appointed	Appointment of an interim manager (clause 69)

Reviewable decisions are subject to a two-tiered review process: firstly, internal review (clause 94) and secondly, external review by the Commercial and Consumer Tribunal (clause 97).

### **Chief executive must give notice after making reviewable decision**

Clause 93 provides that immediately after making a reviewable decision, the chief executive must give a written notice to the interested person stating:

- the reasons for decision;
- that within 28 days after receiving the notice, the person may apply to the chief executive for a review of the decision;
- how the person may apply for the review; and
- if the person applies for the review, and the matter is not resolved, the person may appeal to the Commercial and Consumer Tribunal.

A notice does not have to be provided if the chief executive cannot locate the interested person after making reasonable enquiries.

## **Division 2            Review of decision**

### **Application for review**

Clause 94 sets out how an interested person can apply to the chief executive to review a reviewable decision.

### **Stay of operation of original decision**

Clause 95 states that, as a general rule, an application to the chief executive to review a decision does not stay the original decision made by the chief executive.

However, before a decision takes effect, the chief executive has discretion to stay the operation of the original decision. In such cases, the chief executive provides a written notice to the interested person staying the operation of the decision for a stated period. As a further option, the interested person can apply to the Commercial and Consumer Tribunal for a stay of the decision.

The chief executive or the Tribunal may stay the decision to secure the effectiveness of the review and any later appeal to the Tribunal. The stay can be granted on conditions the chief executive or Tribunal considers appropriate and has effect for the period stated by the chief executive or Tribunal.

### **Review decision**

Clause 96 clarifies that for a review by the chief executive of the original decision, the chief executive must ensure the application is not dealt with by the person who made the original decision or a person in a less senior office than the person who made the original decision. The only exception to this is if the chief executive personally made the original decision.

Within 28 days after receiving the review application, the chief executive (or an authorised delegate) must review the original decision and make a decision to either:

- confirm the original decision;
- amend the original decision; or
- substitute another decision.

Immediately after deciding the application, the chief executive must give the interested person written notice of:

- the review of the decision;
- the reasons for the new decision;
- that within 28 days after receiving the notice, the person may apply for an external review of the decision to the Commercial and Consumer Tribunal; and
- how they may apply for external review.

If the chief executive does not decide the application within the required 28 days after receiving the review application, the chief executive is deemed to have made a review decision confirming the original decision.

## **Division 3            Appeal against review decision**

### **Appeal against review decision**

Clause 97 provides the interested person with a right of external review of the decision made by the chief executive. Within 28 days after receiving a decision notice for a review decision, the interested person may appeal against the decision to the tribunal.

### **Appeal is by way of rehearing**

Clause 98 specifies how the Commercial and Consumer Tribunal reviews the decision of the chief executive. The tribunal reviews the matter based on the evidence that was before the chief executive.

## **Part 10                Screening of persons engaged by the department**

Currently under the *Family Services Act 1987*, all employees of the department and volunteers are required to undergo criminal history checks prior to their employment or engagement. The Bill maintains the relevant authorisations and safeguards for the protection of confidentiality and restrictions in relation to this information.

‘Criminal history’, for the purpose of criminal history screening and reporting, is defined in schedule 4.

## **Division 1            Preliminary**

### **Main purpose of pt 10**

Clause 99 provides that the main purpose of this part is to enable the chief executive to obtain the criminal history of, and related information about, persons engaged or to be engaged by the department.

## **Persons engaged by the department**

Clause 100 provides for what is meant by the term ‘engaged by the department’. This is important as it defines the scope of who has to undergo a mandatory criminal history check. A public service employee of the department, a person contracted by the department working in the administration of an Act administered by the Minister, and volunteers or students on work experience working in the department will be subject to criminal history screening.

## **This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986**

Clause 101 provides that this part applies despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*. A person’s criminal history therefore includes convictions that Act would otherwise exclude.

## **Chief executive to advise of duties of disclosure etc.**

Clause 102 provides that before a person is engaged by the department, the chief executive must tell the person that:

- the person must disclose their criminal history and, if subsequently engaged, any changes to their history (clauses 104 and 105);
- the chief executive may obtain from the Police Commissioner:
  - a report about the person’s criminal history;
  - a description of the circumstances of a charge or conviction; and
  - information about an investigation relating to the possible commission of a ‘serious offence’ (clause 108); and
- guidelines on how criminal history information is taken into account are available (clause 112).

## **Division 2            Interpretation**

### **What is a serious offence**

Clause 103 defines ‘serious offence’. A serious offence is defined as:

- an offence referred to in schedule 2, which is a list of relevant current Queensland offences, including counselling, procuring, attempting or conspiring to commit those offences;
- an offence referred to in schedule 3, which is a list of relevant Queensland offences that have expired or been repealed;
- an equivalent offence in another jurisdiction (State, Territory, Commonwealth or foreign jurisdiction); or
- a class 1 or 2 offence as defined in the *Child Protection (Offender Reporting) Act 2004*, that is not otherwise a serious offence under this section.

The link to the *Child Protection (Offender Reporting) Act 2004* captures offences for which there is mandatory registration on the Australian National Child Offender Registry (ANCOR), ensuring consistency across these regimes, particularly in relation to Commonwealth offences for which it may be argued that there are no equivalent Queensland offences.

Subsection (2) clarifies that it is immaterial if an offence in schedule 2 or 3 has been amended from time to time or that the provision was previously numbered with a different number.

The chief executive can obtain information about an investigation relating to the possible commission of a serious offence by a person engaged or seeking to be engaged by the department – see clause 108.

## **Division 3            Disclosure of criminal history**

### **Persons seeking to be engaged by the department must disclose criminal history**

Clause 104 provides for a duty of disclosure before a person is engaged by the department. Before engagement, the person must disclose whether they have a criminal history. If they have a criminal history, the person's complete criminal history must be disclosed.

Note that it is an offence to provide a false or misleading disclosure – see clause 107.

**Persons engaged by the department must disclose changes in criminal history**

Clause 105 imposes a duty of disclosure if there is a change in a person's criminal history after being engaged by the department. A change in a criminal history includes a person acquiring a criminal history. The person must immediately disclose to the chief executive the details of the change.

It is an offence to provide a false or misleading disclosure. It is also an offence not to disclose a change in criminal history unless the person has a reasonable excuse (see clause 107).

**Requirements for disclosure**

Clause 106 provides for how a disclosure must be made in order to comply with the disclosure requirements in clauses 104 and 105. The disclosure must be in a form approved by the chief executive and must include the following particulars:

- the existence of a conviction or charge;
- when the offence was committed or alleged to have been committed;
- the details of the offence or alleged offence; and
- for a conviction – whether or not a conviction was recorded, and the sentence imposed.

**False or misleading disclosure or failure to disclose**

Clause 107 makes it an offence to either:

- give a disclosure that is false or misleading in a material particular; or
- not disclose a change in criminal history, without a reasonable excuse.

It is not an offence to give a false or misleading disclosure if the person indicates, when providing the information, the way in which it is false or misleading and provides, if reasonably possible, the correct information.

The maximum penalty is 100 penalty units (currently \$7,500) or 2 years. This offence is the same as that in the *Family Services Act 1987* (section 21).

## **Division 4            Chief executive may obtain information**

### **Chief executive may obtain report from commissioner of the police service**

Clause 108 provides that where a person is engaged by the department or seeks to be engaged by the department and has given the chief executive a disclosure, the chief executive may ask the Police Commissioner to give certain information.

In particular, the chief executive may ask for the following information:

- a written report about the person's criminal history;
- a description of the circumstances of a conviction or charge; and
- information about an investigation relating to the possible commission of a 'serious offence'. 'Serious offence' is defined in clause 103.

The Police Commissioner must comply with the request except in certain circumstances. For example, information about an investigation cannot be provided if the Police Commissioner believes the release of the information would hinder the investigation, lead to the identification of an informant or may affect the safety of a police officer. Similarly, information must not be released if the Police Commissioner believes it is unlikely to lead to a reasonable suspicion that the person committed a serious offence.

Before making decisions based on the information about the person's suitability for employment, the chief executive must give the person the chance to respond – see clause 111.

### **Prosecuting authority to notify chief executive about committal, conviction etc.**

Clause 109 requires a prosecuting authority (the Police Commissioner or the Director of Public Prosecutions) to notify the chief executive where the authority is aware that a person charged with an indictable offence is engaged by the department.

The clause sets out the particulars that must be provided where:

- the person is committed for trial;
- the person is convicted of the offence;



- if the person has appealed the conviction, the appeal has been decided or otherwise ended; or
- the prosecution process ends without the person being convicted of an indictable offence (for example, where the person is acquitted, or where the person is convicted of a summary offence only).

Given the serious nature of indictable offences, it is important for the chief executive to know about this information without relying on the individual's obligation to disclose.

Before making decisions based on the information about the person's suitability for employment, the chief executive must give the person the chance to respond – see clause 111.

## **Division 5            Controls on use of information**

### **Use of information obtained under this part**

Clause 110 provides that criminal history (and any investigative) information received by the chief executive under this part cannot be used for any other purpose other than assessing whether or not the person should be, or should continue to be, engaged by the department. The clause recognises the sensitivity of the information that is being obtained and limits its use.

It also provides that in making an assessment on the information, the chief executive must have regard to:

- when the offence was committed or alleged to have been committed;
- the nature of the offence and its relevance to the person's duties or proposed duties; and
- anything else considered relevant by the chief executive.

There are penalties for the improper disclosure of the information – see clause 128.

### **Person to be advised of information obtained**

Clause 111 provides that before any information obtained under this part is used to assess whether a person should be, or continue to be, engaged by the department, the chief executive must disclose the information to the person and allow the person a reasonable opportunity to comment.

**Guidelines for dealing with information**

Clause 112 provides that the chief executive must make guidelines for dealing with information obtained under this part. The purpose of the guidelines is to ensure that natural justice is afforded to the person about whom the information relates, and that only relevant information is used when determining whether or not to engage, or continue to engage, the person. These guidelines must be provided to the person on request.

**Part 11                      Legal Proceedings****Division 1                      Application****Application of pt 11**

Clause 113 provides that this part applies to a legal proceeding under this Bill.

**Division 2                      Evidence****Appointments and authority**

Clause 114 provides that for the purposes of any legal proceedings, the following are presumed:

- the chief executive's appointment;
- an authorised officer's appointment; and
- the authority of the chief executive or an authorised officer to do anything under this Bill.

However, a party to a proceeding may, by reasonable notice, request proof of any of these.

**Signatures**

Clause 115 provides that a signature purporting to be that of the chief executive or an authorised officer is evidence of the signature it purports to be.

## **Evidentiary provisions**

Clause 116 provides for a number of evidentiary matters. A certificate signed by the chief executive and stating any of the following is evidence of the matter:

- that a stated document is:
  - an appointment, approval or decision;
  - a notice or requirement; or
  - a record or extract from a record;made, given, issued or kept under the Bill;
- that a stated document is another document kept under this Bill;
- that a stated document is a copy of a thing mentioned above;
- that on a stated day or during a stated period, the appointment of an authorised officer was or was not in force for a stated person;
- that on a stated day, a stated person was given a stated notice under the Bill; and
- that on a stated day, a stated requirement was made of a stated person.

Also, a statement in a complaint starting a proceeding that the matter of complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

## **Division 3            Proceedings**

### **Proceeding for offences**

Clause 117 provides that a proceeding for an offence against the Bill must be taken in a summary way in accordance with the *Justices Act 1886*.

### **When proceeding may start**

Clause 118 specifies the time limits within which a proceeding for an offence against the Bill must commence. The proceeding must commence within the later of the following periods:

- one year after the commission of the offence; or

- six months after the offence comes to the complainant's knowledge, but within two years after the offence is committed.

### **Allegations of false or misleading information or document**

Clause 119 makes it clear that in any proceeding for an offence against the Bill involving false or misleading information or a false or misleading document, it is enough for the charge to state that the information or document was 'false or misleading', without specifying which.

### **Forfeiture on conviction**

Clause 120 provides that if a person is convicted of an offence against the Bill, a court may order forfeiture to the State (and may make any appropriate order to enforce the forfeiture) of:

- anything used to commit the offence; or
- anything else the subject of the offence.

The court can make this order regardless of whether or not the thing has been seized, and if the thing has been seized, regardless of whether or not the thing has been returned to its owner.

The clause also makes it clear that this section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **Dealing with forfeited thing**

Clause 121 provides for the consequences of a forfeiture ordered by the court. The thing becomes the State's property and the State can deal with it as it considers appropriate, including destroying the thing.

### **Responsibility for acts or omissions of representative**

Clause 122 applies in a proceeding for an offence against the Bill where something relevant to the offence has been done or omitted to be done by a representative of a person or corporation.

A representative is defined to mean:

- for a corporation – an executive officer, employee or agent of the corporation; or
- for an individual – an employee or agent of the individual.

If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show that:

- the act was done or omitted to be done by the representative of the person within the scope of the representative's actual or apparent authority; and
- the representative had the state of mind.

'State of mind' is defined to include the person's:

- knowledge, intention, opinion, belief or purpose; and
- reasons for the intention, opinion, belief or purpose.

Also, an act done or omitted to be done for a person (including a corporation) by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person, unless the person can prove that the person could not, by exercising reasonable diligence, have prevented the act or omission.

### **Executive officers must ensure corporation complies with Act**

Clause 123 states the general rule that the executive officers of a corporation (defined in schedule 4 as anyone who is concerned or takes part in the management of the corporation) must ensure the corporation complies with the Bill. If a corporation commits an offence against the Bill, the executive officers of the corporation also commit an offence – the offence of failing to ensure the corporation complies with the provision. The maximum penalty is the penalty for the contravention of the provision by an individual.

Evidence that the corporation has been convicted of an offence against a provision in the Bill is evidence that each of the executive officers committed the offence of failing to ensure corporation complies with the Bill.

However, it is a defence for an executive officer to prove:

- if the officer was in a position to influence the conduct of the corporation in relation to the offence – that the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- that the officer was not in a position to influence the conduct of the corporation in relation to the offence.

## **Part 12                      Miscellaneous**

### **Advisory committees**

Clause 124 allows the Minister to establish advisory committees to obtain the views of government, individuals, community organisations and other non-government entities about community services.

### **Dissolution**

Clause 125 gives the Minister a specific legislative power to dissolve a Ministerial advisory committee.

### **Other matters**

Clause 126 allows the Minister to decide matters about a Ministerial advisory committee that are not provided for in the Bill, including, for example, the way a committee must conduct meetings or report to the Minister.

### **Confidentiality of information about criminal history and related information**

Clause 127 protects the confidentiality of police information (criminal history and investigative information) acquired by the chief executive, a public service employee or a selection panel member under the criminal history screening process outlined in Part 10 of the Bill.

It is an offence for a person to disclose the police information or give access to a document – maximum penalty is 100 penalty units (currently \$7,500) or 2 years imprisonment. The offence applies to past and present employees of the department (including the chief executive) and members of a selection panel.

However, it is not an offence to disclose or give access to the information:

- with the consent of the adult person to whom the information relates;
- if the disclosure is to the chief executive, a public service employee or a selection panel member for the purpose of assessing the person's suitability to be, or continue to be, engaged by the department; or
- if the disclosure is otherwise required under an Act.

## **Duty of confidentiality**

Clause 128 outlines a general duty of confidentiality under the Bill (see also clauses 87 and 127, and the guiding principles – for example, subparagraphs 5(f)(iv) and (v)).

The clause provides that anyone who is or has been a departmental employee or chief executive or authorised officer, and in that capacity has or has had access to confidential information about an individual, must treat the information as confidential.

‘Confidential information’ is defined in schedule 4 as including information about a person’s affairs, but not including:

- information already publicly disclosed (regardless of the size of the audience to whom it was disclosed), unless further disclosure is prohibited by law; or
- information that will not identify the relevant person.

The person is not to record, disclose or give anyone access to the information other than in clearly defined circumstances:

- for a purpose of the Bill;
- with the individual’s consent;
- pursuant to a subpoena or summons or similar, or when the person is compelled to give the information as evidence before a court or tribunal;
- as expressly (not by mere implication) permitted or required under another Act; or
- to protect a service user from abuse, neglect or exploitation (note that the recording, disclosure, or giving of access must be necessary to protect the service user; the clause does not permit recording, disclosure, or giving of access that is merely ‘in connection with’ or ‘at the same time as’ the protection).

The maximum penalty for an unlawful disclosure is 40 penalty units (currently \$3,000).

## **Power to require information or documents**

Clause 129 enables the chief executive to require, within a reasonable time, information or documents relating to a matter to which the chief executive may have had regard in deciding whether or not to approve the provider as an approved service provider. In other words, the provision gives the chief

executive the ongoing ability to monitor the suitability of a service provider to be an approved service provider, ensuring that assistance is provided to those agencies that have the organisational capacity and infrastructure to provide accountable, sustainable and viable community services.

The chief executive may also request information or documents to be provided from the service provider that relate to its provision of community services.

If a service provider receives such a notice from the chief executive, it must comply with the request. If the service provider fails to comply, provisions of a service agreement or the provisions of parts 6, 7 and 8 may apply.

A requirement to produce a document can be complied with by producing a certified copy of the document.

Service providers, and people acting on their behalf, are protected from liability for disclosing information under this provision – see clause 130.

### **Protection from liability for giving information**

Clause 130 applies where a funded non-government service provider gives information or documents to the chief executive under the Bill. A funded service provider (or a person on behalf of the service provider) may give the information despite any other law that would otherwise prohibit or restrict the giving of information.

If the person, acting honestly and on reasonable grounds, gives the information they are protected from any civil, criminal, administrative proceeding or any breach of professional etiquette/ethics or standards as a result of giving the information. The clause makes it clear that in a proceeding for defamation, the person has a defence of absolute privilege for publishing information and if the person would otherwise be required to maintain confidentiality about the information, the person does not contravene that requirement, and is not liable for any disciplinary action, by disclosing the information (or document) under the Bill.

### **Chief executive may share information about service provider**

Clause 131 clarifies that the chief executive is able to discuss matters with other relevant entities. For example, the chief executive may collaborate with other relevant entities to make long term plans for service delivery in particular geographic areas, or to ensure any actions taken under parts 6, 7 or 8 are co-ordinated with, or not duplicating actions taken by another entity.



**Delegation by Minister or chief executive**

Clause 132 allows the Minister or chief executive to delegate the Minister's or chief executive's powers under the Bill to an appropriately qualified person who is a public service employee (see *Public Service Act 1996* for definition of 'public service employee').

**Protecting officials from liability**

Clause 133 protects an official involved in the administration, monitoring or enforcement of the Bill from any civil liability. An official is not civilly liable for an act done or omission made honestly and without negligence under the Bill. An official means:

- the Minister;
- the chief executive;
- an authorised officer;
- a public service employee;
- an interim manager; or
- a person acting under the direction of an official.

**Approval of forms**

Clause 134 provides that the chief executive may approve forms for use under the Bill.

**Regulation-making power**

Clause 135 provides that the Governor-in-Council may make regulations under the Bill. A regulation may prescribe fees payable under the Bill and impose a penalty of not more than 20 penalty units (currently \$1,500).

**Part 13                      Savings and transitional provisions****Definitions for pt 13**

Clause 136 defines 'commencement' for part 13.

**Certain service providers taken to be approved under part 3 and to be funded service providers**

Clause 137 clarifies which service providers are deemed to be approved service providers and funded service providers on the commencement of the Bill.

**When grants under the Family Services Act continue**

Clause 138 clarifies the status of grants received by service providers who are providing community services with funding received from the department by way of a grant under the *Family Services Act 1987* at the commencement of the new Act.

The clause:

- provides for the continuation of funding received by the service provider (other than one-off funding);
- clarifies that any conditions to which the funding was subject under the *Family Services Act 1987* continue to apply;
- deems an agreement signed by the service provider in relation to the grant to be a service agreement under the new Act, and specifies that the agreement is taken to include a show cause process consistent with clause 28(1); and
- in cases where the service provider has not signed an agreement in relation to the grant prior to the commencement – specifies that funding must cease one year after commencement unless the Minister approves assistance under the new Act and a service agreement (under the new Act) has been signed by the service provider.

**Other matters**

Clause 139 provides that where a show cause process or a process for the recovery of misused funds is started before commencement, the process will continue after commencement under the provisions of the *Family Services Act 1987*.

## **Part 14                      Amendment of Child Protection Act 1999**

### **Child Protection Act 1999**

Clause 140 states that this part consequentially amends the *Child Protection Act 1999*.

Clause 141 inserts a new provision to enable information acquired in the administration of the *Child Protection Act 1999* to be made available to the officers of the department (juvenile justice) for the purposes of the *Juvenile Justice Act 1992*.

The clause enables information to be provided under an arrangement made between the chief executive of the department administering the *Child Protection Act 1999* and the chief executive of the department administering the *Juvenile Justice Act 1992*. However, information about the identity of a *notifier* (section 186, *Child Protection Act 1999*), may not be disclosed to officers of the department (juvenile justice).

The clause clarifies that the arrangement to enable information to be provided is not limited by, and does not limit, chapter 5A of the *Child Protection Act 1999*. The clause also clarifies that section 188 does not apply to information made available under such an arrangement.

## **Part 15                      Amendment of Commercial and Consumer Tribunal Act 2003**

### **Commercial and Consumer Tribunal Act 2003**

Clause 142 states that this part consequentially amends the *Commercial and Consumer Tribunal Act 2003*.

Clause 143 amends the definition of ‘empowering Act’ in Schedule 2 of the *Commercial and Consumer Tribunal Act 2003* by adding ‘*Community Services Act 2007*’. This will place matters under the Bill within the jurisdiction of the Commercial and Consumer Tribunal, allowing the Tribunal to hear appeals pursuant to part 9.

## **Part 16                      Amendment of Juvenile Justice Act 1992**

### **Juvenile Justice Act 1992**

Clause 144 states that this part consequentially amends the *Juvenile Justice Act 1992*.

Clause 145 makes a minor amendment to section 108(3) to change a reference from ‘judge’ to ‘magistrate’.

Clause 146 makes a minor amendment to section 121(4) to change a reference from ‘appeal’ to ‘review’.

Clause 147 inserts a provision to enable information acquired in the administration of the *Juvenile Justice Act 1992* to be made available to officers of the department (child safety) for the purposes of the *Child Protection Act 1999*.

The clause enables information to be provided under an arrangement made between the chief executive of the department administering the *Juvenile Justice Act 1992* and the chief executive of the department administering the *Child Protection Act 1999*.

However, the clause prohibits the release of information about the identity of a detention centre employee who makes a report to the chief executive under section 268 of the *Juvenile Justice Act 1992*.

## **Part 17                      Amendment of Young Offenders (Interstate Transfer) Act 1987**

Clause 148 states that this part amends the *Young Offenders (Interstate Transfer) Act 1987*.

Clause 149 makes a minor amendment to omit the definition of “department” and change the definition of “permanent head” in section 3 of the *Young Offenders (Interstate Transfer) Act 1987*.

## **Schedule 1      Reviewable decisions**

Schedule 1 lists the reviewable decisions made by the chief executive under the Bill – see clause 92.

## **Schedule 2      Current serious offences**

Schedule 2 lists the current serious offences for the purposes of criminal history screening of persons engaged by the department – see clause 103.

## **Schedule 3      Repealed or expired serious offences**

Schedule 3 lists the repealed or expired serious offences for the purposes of criminal history screening of persons engaged by the department – see clause 103.

## **Schedule 4      Dictionary**

Schedule 4 defines terms used in the Bill - see clause 6.