Queensland Civil and Administrative Tribunal Bill 2009

Explanatory Notes

Short Title

The short title of the Bill is the Queensland Civil and Administrative Tribunal Bill 2009.

Policy Objectives

The objectives of the Bill are to:

1. establish an independent tribunal to deal with matters for which it has jurisdiction
2. ensure the tribunal deals with matters in a way that is accessible, fair, just, economical, informal and quick
3. promote the quality and consistency of the tribunal's decisions
4. enhance the quality and consistency of original decision making
5. enhance the openness and accountability of public administration.

Reasons for the Bill

On 12 March 2008, the Queensland Government announced its intention to create a new civil and administrative tribunal following a review by the Department of Justice and Attorney-General. The review arose out of long standing concerns about the proliferation of tribunals in Queensland over past decades and the consequent confusion for users and the cost to government. The new tribunal is to be a single recognisable gateway to increase the community's access to justice and increase the efficiency and quality of decision making through a larger administrative structure.

On 12 March 2008, the Queensland Government also announced that it would appoint an independent panel of experts to advise the Government on the creation of the new tribunal ('the panel'). The appointed panel comprised retired Court of Appeal judge, the Honourable Glen Williams

AO QC (Chair), Peter Applegarth SC and Julie-Anne Schafer (Chairperson of the Commercial and Consumer Tribunal). Peter Applegarth SC retired from the panel upon his appointment to the Supreme Court.

The terms of reference for the panel required the panel to provide advice in three stages to implement a tribunal that is:

- independent
- efficient
- expert
- accessible
- Flexible
- able to adapt to future pressures.

The stage one report made recommendations about the scope of the new tribunal's jurisdiction, which existing tribunals should be abolished and their jurisdiction transferred to the new tribunal and the current jurisdiction of the courts which should be transferred to the new tribunal. The stage one report recommended that the tribunal be called the Queensland Civil and Administrative Tribunal (QCAT) and that it be led by a president who is a Supreme Court judge.

The stage two report provided detailed advice to the Government on the legislation needed to implement a tribunal that will achieve the objectives set out in the terms of reference. This Bill implements the recommendations of the panel in the stage two report.

The stage three report, to address final implementation and operational matters, will be provided to Government in May 2009.

Achievement of the Objectives

To achieve its objectives, the Bill will establish QCAT to hear and determine a broad range of matters. The Bill creates the tribunal, contains the membership and tribunal staff provisions and sets out the tribunal's generic functions and powers.

Jurisdiction is conferred on QCAT through provisions in the Bill (for minor civil disputes) and through amendments to legislation ('enabling Acts'). The amendments to enabling Acts to provide QCAT with jurisdiction are set out in the cognate Bill, the Queensland Civil and Administrative

Tribunal (Jurisdiction Provisions) Amendment Provisions Bill 2009 ('the Jurisdiction Provisions Bill').

The existing jurisdictions of 18 tribunals, almost all the administrative review jurisdiction of the courts, the administrative review jurisdiction of the Gaming Commission and the Treasurer for certain matters and the minor debt claims jurisdiction of the Magistrates Court will be transferred to QCAT. This Bill and the Jurisdiction Provisions Bill will abolish the following 18 tribunals:

Anti-Discrimination Tribunal

Appeal Tribunal (levee banks) under the *Local Government Act 1993*

Children Services Tribunal

Commercial and Consumer Tribunal

Fisheries Tribunal

Guardianship and Administration Tribunal

Independent Assessor under the *Prostitution Act 1999*

Health Practitioners Tribunal

Legal Practice Tribunal

Misconduct Tribunal

Nursing Tribunal

Panel of Referees under the *Fire and Rescue Service Act 1990*

Racing Appeals Tribunal

Retail Shop Leases Tribunal

Small Claims Tribunal

Surveyors Disciplinary Committee

Teachers Disciplinary Committee

Veterinary Tribunal

The focus of QCAT will be on resolving disputes, reviewing decisions of government agencies and statutory bodies and conducting disciplinary proceedings for a range of professions, vocations and occupations. The amalgamation of jurisdictions currently exercised by 23 different bodies will promote a consistent approach to decision making in like jurisdictions

and establish a single recognisable entry point for tribunal users. QCAT will also be positioned to incorporate new and emerging jurisdictions in the future, creating greater efficiencies for government and for users in the longer term.

The independence of QCAT will be achieved by providing for the appointment of a Supreme Court judge as president of the tribunal and by providing that the tribunal is not subject to direction or control by the executive.

The Bill will achieve its objective of dealing with matters in a way that is accessible, fair, just, economical, informal and quick by:

- requiring QCAT to comply with the rules of natural justice
- requiring proceedings to be conducted in a manner that is responsive, informal, cost effective to parties and as expeditious as is consistent with achieving justice. This includes the ability to inform itself as it sees fit, to determine its own procedure and to determine matters on the papers where appropriate.
- requiring QCAT to be accessible and responsive to the diverse needs of users. For example, the Bill includes a variety of measures to ensure the needs of vulnerable people involved in QCAT proceedings are met
- requiring QCAT to act fairly and according to the substantial merits of the case without regard to technicalities and legal forms. QCAT will not be bound by the rules of evidence except to the extent it chooses for the rules to apply in particular cases
- providing an opportunity for the early and cost effective resolution of disputes through a range of alternative dispute resolution processes. QCAT will offer mediation and compulsory conferencing services in appropriate cases
- allowing representation of parties in specified matters and in other matters, only with the leave of the tribunal
- providing that parties bear their own costs in proceedings unless the tribunal considers the interests of justice require it to order otherwise.

The Bill will achieve its objective of a tribunal that carries out its functions in a manner that promotes the quality and consistency of the tribunal's decisions by:

- providing flexibility in how the tribunal will be constituted for particular matters. The president will have the power to decide the number of members and to select the members who will sit in particular matters, having regard to the nature, importance and complexity of the matter and the need for any of the members to have special knowledge or experience. This will enable multi-member panels to sit where the nature of the matter requires a range of expertise and for single members to sit where particular expertise is not required.
- ensuring the tribunal has access to independent expert advice on technical matters
- enabling members to sit in a range of different matters where appropriate, bringing knowledge and expertise from one jurisdiction to another. This is likely to be of particular benefit in disciplinary matters, in the human rights jurisdictions and in the administrative review jurisdiction
- requiring the tribunal to provide reasons for its decisions
- providing for appeals from decisions of the tribunal.

The Bill will achieve its objectives of enhancing the quality and consistency of original decision making in government agencies and statutory authorities and enhancing the openness and accountability of public administration through:

- the normative effect of decisions in its review jurisdiction
- provisions enabling the tribunal to make recommendations to agencies about agencies' policies and procedures relevant to a review decision and
- provisions enabling the president to advise the Attorney-General on how the QCAT Act or an enabling Act could be made more effective.

Alternative Ways of Achieving Policy Objectives

In November 2007, the Department of Justice and Attorney-General released a discussion paper on the reform of civil and administrative justice for public consultation. The discussion paper sought comment on a range of options for reform. Options other than establishing a single amalgamated tribunal canvassed in the discussion paper were:

- retention of the multiple specialist tribunals with internal process reform
- co-location of registries and hearing rooms of existing tribunals
- establishing an administrative review division of the court
- amalgamation of some tribunals with a similar jurisdiction.

Consultation confirmed that the establishment of a generic civil and administrative tribunal would achieve the most benefits including:

- greater visibility and increased access for the community through a single point of entry
- enhanced independence for jurisdictions where the relevant tribunal is currently associated with the agency that makes the decisions reviewed by the tribunal
- enhanced opportunities for the sharing of resources
- a more efficient registry system and enhanced career paths for registry staff
- cost efficiencies through improved management of listings to meet workflow demands
- cost efficiencies and improved decision making through the multi-skilling of tribunal members in a number of different jurisdictions
- long term efficiencies through the capacity to incorporate new jurisdictions at less cost than establishing new separate specialist tribunals.

Consultation confirmed that co-location and process reform on its own would not fully realise these benefits as any improvements would depend on the development and maintenance of cooperative arrangements between disparate tribunals.

Establishment of an administrative review division of the court was not supported. Stakeholders were generally of the view that administrative review was more appropriately conducted by a tribunal rather than the courts, that the particular expertise of the court was not needed for this type of jurisdiction and that a tribunal would be more flexible and better able to deliver informal, quick and economical administrative justice.

Whilst there was some support for the amalgamation of some tribunals with similar jurisdiction, this option would not realise the larger benefits of a single tribunal approach, in terms of greater registry efficiencies and the sharing of resources.

Estimated Cost for Government Implementation

The State Government will incur an additional cost in the implementation and support of QCAT. One off funding has been provided to support the establishment of the tribunal. This funding has been focussed on the development of legislation, and the implementation of technology, business processes, communication and structural arrangements.

QCAT will include a number of elements which are in addition to those currently being supported within the existing tribunals. These elements include: the appointment of a Supreme Court judge as president and a District Court judge as deputy president; the provision of reasons for decisions in all jurisdictions; an appropriate mix of full time and sessional members; and centralised accommodation arrangements.

The additional support costs associated with these elements will be funded through the realignment of existing resources.

Consistency with Fundamental Legislative Principles

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

Subordinate legislation should contain only matter appropriate to that level of legislation – *Legislative Standards Act 1992*, section 4(5)(c)

The Bill, in clause 6, contemplates that subordinate legislation may confer review jurisdiction on the tribunal. Currently, there is a range of subordinate legislation which confers administrative review jurisdiction on a variety of bodies. The legislative scheme for QCAT replicates the current situation but replaces the existing review body with QCAT. However, subordinate legislation conferring review jurisdiction on QCAT cannot alter the provisions of the Bill by providing for different tribunal functions, powers or procedures.

Legislation should be consistent with the principles of natural justice - *Legislative Standards Act 1992*, section 4(3)(b)

Clause 22 (Effect of review of reviewable decision)

Clause 22(5) of the Bill potentially breaches the principle of natural justice that a decision should not be made that will deprive a person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to be heard by the decision-maker.

Clause 22 empowers QCAT to stay the operation of an administrative decision which is the subject of an application for review. This provision enables the tribunal, in appropriate circumstances, to prevent the implementation of a decision until the tribunal has made its decision on the review application. This power would most often be utilised in circumstances where the implementation of the decision would place the applicant at a disadvantage either financially or in the proceeding before the tribunal and will usually occur in circumstances of urgency. Before making a stay order, the tribunal must consider the interests of any person that may be affected by the making of the stay order, the submissions of the decision-maker and the public interest. Subclause (5) clarifies that the requirement to consider the interests of a person that may be affected by the stay order does not require the tribunal to give the person an opportunity to make submissions. There may be multiple persons whose interests may be affected, minimally or more substantially, by the making of the stay order. These persons would not necessarily be parties to the review proceeding. They may also not be readily contactable. Given that stay orders will generally be sought in circumstances of urgency it would not be practicable or appropriate for the tribunal to adjourn a stay hearing in order to notify and receive submissions from non-parties, although this option is clearly open to the tribunal if it considers that the potential negative impact of a stay order on a person's interests was substantial. A blanket requirement for the tribunal to notify all persons who may potentially be affected and obtain submissions from them would generally defeat the purpose of a stay. The clause requires the tribunal to consider the submissions of the decision-maker which would include information about any significant negative impacts a stay would have on the interests of particular individuals and on the public interest.

Clause 32 (Proceeding on the papers) and clause 139 (Deciding whether to reopen)

Clause 32(2) enables QCAT to conduct all or part of a proceeding entirely on the basis of documents without the parties, their representatives or witnesses appearing at a hearing. This provision enables the tribunal, where it considers it appropriate, to have a written hearing, instead of an oral hearing. This power is potentially inconsistent with the principle of natural justice that a person whose interests, rights or legitimate expectations may be affected by a decision has a right to be heard before the decision is made.

Clause 139(3)(b) enables the tribunal to make a decision about an application to re-open a proceeding on the basis of the documents filed without a hearing. Clause 138 is a beneficial provision enabling a party, in limited circumstances, to apply to the tribunal to re-open a matter which has been finally decided by the tribunal. The grounds for a re-opening are:

- the party did not appear at the hearing and had a reasonable excuse for not attending
- the party would suffer substantial injustice if the proceeding were not re-opened because significant new evidence has arisen that was not reasonably available at the hearing.

The purpose of this provision is to ensure fairness to a party absent from the hearing through no fault of their own and, in relation to the second ground, to avoid unnecessary costs to the parties and the tribunal involved in an appeal where the ground could be more effectively or conveniently dealt with by a re-opening of the matter. In most cases, it would not be necessary to have a hearing on these issues. The evidence should be able to be sufficiently identified in the submissions which the tribunal is required to consider.

However, in all cases, including when QCAT re-opens a matter, QCAT is bound to comply with the rules of natural justice. If, in a particular case, those rules would require parties to be given the opportunity to present their cases orally and to examine and cross-examine witnesses, the tribunal would be bound to conduct an oral hearing. A decision to conduct a hearing on the papers does not excuse the tribunal from its obligation under the rules of procedural fairness to ensure adequate notice of an application and reasonable time for a party to make written submissions is given. Given the wide variety of jurisdiction conferred on QCAT and the nature of a re-opening application, it is essential for QCAT to be able to operate

flexibly to ensure the objectives of the Bill are met. If QCAT is required to conduct an oral hearing in every matter, including in those where no further information is needed other than what has been provided in submissions and other filed documents, the objective to provide quick and cost-effective justice would not be met.

Clause 43 (Representation)

Clause 43 restricts the rights of parties in proceedings before QCAT to be represented in those proceedings. This restriction potentially breaches the principles of natural justice that a person should be afforded procedural fairness. Clause 43 states that the general approach is that parties represent themselves unless the interests of justice require otherwise. This provision generally reflects the current situation in most Queensland tribunals. It also must be considered in the context of the objective of the Bill to have the tribunal carry out its functions in a way that is accessible, fair, just, economical, informal and quick. A provision generally allowing representation may act as a barrier for many people in that it will tend to make proceedings more expensive. Legal representation may increase the length, formality and technicality of proceedings. The majority of matters before QCAT will be minor civil disputes which are currently dealt with by the Small Claims Tribunal or the Magistrates Court using the simplified procedures for minor debt claims. Representation in these jurisdictions is at the discretion of the Tribunal or not permitted. This is because these jurisdictions are meant to provide people, many of whom could not afford representation, with cheap and expeditious access to justice which may otherwise be beyond their means.

QCAT will be required under the Bill to comply with the rules of natural justice. In some cases, for example those that involve complex questions of fact and law or where another party is represented, the principles of natural justice may require the parties be allowed to be represented. However, the right to representation is not, in all cases, a necessary incident of natural justice.

The provision does recognise that there are certain types of matters and parties where natural justice would generally require an entitlement to representation. Consequently, the Bill provides that a party may be represented if the party is a child, a person with impaired capacity or a party to a disciplinary proceeding. A party may be represented if the enabling Act or the QCAT rules allow the party to be represented. A party may also be represented if the tribunal gives leave for the representation. When exercising its discretion to refuse or grant leave, the tribunal will be

bound by the rules of natural justice. The power to make rules about representation will also enable the tribunal to determine what other general categories of matters or person should be entitled to representation in accordance with the principles of natural justice or in the interests of justice. The approach in clause 43 is considered to be most appropriate as it provides the tribunal with flexibility in the conduct of a diverse range of matters while ensuring parties are afforded procedural fairness.

Clause 59 (Injunctions)

Clause 59 empowers the tribunal to grant injunctive relief. Subclause (2) enables an interim injunction to be granted without notice to a person whose interests may be affected by the order and without giving the person an opportunity to be heard. This potentially breaches the principle of natural justice that requires a person whose interests may be affected by a decision to be given an opportunity to be heard. It is expected that the power to grant an interim injunction without notice to other persons affected would be used only in circumstances similar to those in which a court would hear an application for an interim injunction *ex parte*, that is, where the situation is urgent and the delay caused by hearing the application *inter partes* or by giving notice to a particular party would cause irreparable damage, destroying another party's rights or defeating the jurisdiction of the tribunal.

The clause contains the following safeguards:

- the tribunal may require an undertaking as to costs or damages from the party seeking the injunction
- the tribunal may provide for the lifting of the injunction if certain conditions are met
- an injunction may only be granted by a judicial member.

Clause 66 (Non-publication orders) and clause 90 (Public hearing)

Clause 66 empowers the tribunal to make orders prohibiting the publication of the following information or material in certain circumstances, except to the persons or in the way that the tribunal may specify in its order:

- the contents of documents or other things produced to the tribunal
- evidence given before the tribunal
- information that may enable a person who has appeared before the tribunal or is affected by a tribunal proceeding to be identified.

This power is associated with the tribunal's power in clause 90 to order that a hearing or part of a hearing be held in private and to direct who may be present at a private hearing. These powers could potentially be exercised in relation to a party to the proceeding, another particular individual or the public at large, potentially breaching the right to a public hearing and the right to be given access to all material before the tribunal.

The circumstances in which the tribunal can make these orders are restricted to circumstances where the tribunal considers the order is necessary to avoid interfering with the proper administration of justice, endangering the physical or mental health or safety of a person, offending public decency or morality or the publication of confidential information the publication of which would be contrary to the public interest or for another reason in the interests of justice. These circumstances generally reflect the circumstances outlined in Article 14.1 of the International Convention on Civil and Political Rights.

It is expected that these provisions will not be used frequently, but are included because current legislation establishing some tribunals that will be abolished have similar provisions designed to protect the parties, witnesses or other persons, the interests of justice and the public interest. For example:

- Section 46 of the *Commercial and Consumer Tribunal Act 2003* enables the tribunal to order that a proceeding or part of a proceeding be closed to the public if it is in the public interest
- Section 644 of the *Legal Profession Act 2007* enables the Legal Practice Tribunal to close a hearing or part of a hearing if it is desirable to do so in the public interest. Section 650 of this Act also enables the tribunal to make an order prohibiting the publication of information stated in the order, although this provision will be retained in the *Legal Profession Act 2007* and will displace the QCAT Bill provision.
- Section 222 of the *Health Practitioners (Professional Standards) Act 1999* empowers the Health Practitioners Tribunal to close a hearing or part of a hearing if it is in the public interest to do so. Section 223 enables the Tribunal to suppress the name of the registrant to whom the disciplinary proceeding relates.
- Section 105 of the *Nursing Act 1992* empowers the Nursing Tribunal to order that a hearing or part of a hearing not be open to the public.

Under section 112, the chairperson of the tribunal may order a person to leave a closed hearing.

- Section 137 of the *Education (Queensland College of Teachers) Act 2005* enables the Teachers Disciplinary Committee to close all or part of a hearing to the public. Under section 162, the Committee may make an order prohibiting the publication of the name of the teacher, the complainant or a witness, evidence given before the committee, or the contents of a document produced to the committee.
- Section 33 of the *Small Claims Tribunals Act 1973* requires proceedings to be in private unless the proceeding is about a tenancy application. However, these proceedings must be held in private if the tenancy application is made because of injury and the tribunal is required to have regard to domestic violence issues or the tribunal orders it to be held in private.
- Both the *Children Services Tribunal Act 2000* and the *Guardianship and Administration Act 2000* require or enable the respective tribunals to hear proceedings in private, restrict who may be present (including a party) and to make orders prohibiting publication of evidence, the identity of parties or witnesses or the giving of material to a party. The QCAT Jurisdiction Provisions Bill retains these specialist provisions in the *Child Protection Act 1999*, the *Adoption of Children Act 1964* and the *Guardianship and Administration Act 2000* as these particular provisions are designed specifically for those jurisdictions and for the particular needs of vulnerable children and adults involved in or the subject of these proceedings. However, vulnerable children or adults may be parties, witnesses or otherwise involved in other types of proceedings before QCAT (for example, discrimination, disciplinary or tenancy matters) and may need the protections provided by clauses 63 and 87.
- Section 191 of the *Anti-Discrimination Act 1991* empowers the Anti-Discrimination Tribunal to make an order prohibiting the disclosure of the identity of a person who has been involved in a proceeding to protect the work security, privacy or any human right of the person. Section 192 empowers the Tribunal to order that oral or documentary evidence not be published. Section 203 empowers the Tribunal to direct that a hearing or part of a hearing be conducted in private.

- Section 69 of the *Retail Shop Leases Act 1994* requires hearings before a Retail Shop Leases Tribunal to be held in private.

Similar generic tribunals in other jurisdictions have these powers (see *Administrative Appeals Tribunal Act 1975* (Cth), section 35; *Victorian Civil and Administrative Tribunal Act 1998* (Victoria), section 101; *State Administrative Tribunal Act 2004* (WA), sections 61 and 62; *ACT Civil and Administrative Tribunal Act 2008* (ACT), section 39). It is notable that the *ACT Civil and Administrative Tribunal Act 2008* was certified as compatible with the *Human Rights Act 2004* (ACT). Section 39 of *ACT Civil and Administrative Tribunal Act 2008* reflects the language of section 21 of the *Human Rights Act 2004* which in turn reflects the language of Article 14.1 of the International Covenant on Civil and Political Rights.

It is considered that this potential breach of the principles of natural justice is justified in that these powers will be used infrequently and only where the tribunal considers it necessary in circumstances where the safety or health of a person is at risk or where the public interest or the interests of justice require it. The word 'necessary' imposes a high standard on the tribunal. It is not sufficient for the non-publication to be *desirable* to avoid the harm or *desirable* for another reason in the interests of justice. The tribunal must balance these considerations with the principle that it is generally desirable for proceedings to be held in public and for evidence given before the tribunal and the contents of documents lodged with it be made available to all the parties and to the public.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is subject to appropriate review - *Legislative Standards Act 1992*, section 4(3)(a)

Clause 35 (Acceptance or rejection of application or referral)

Clause 35 empowers the principal registrar to reject an application or referral or place conditions on the acceptance of the application or referral on certain grounds. A rejection or acceptance on conditions must be referred, on the request of the applicant, to the tribunal to review the decision. Also, the principal registrar may refer the application or referral to the tribunal, if he or she thinks there is a ground to reject the application or the referral. The decision by the tribunal on review is not subject to appeal under chapter 2 part 8 of the Bill. It is considered appropriate for appeals from this decision to be truncated because the decision of the principal registrar has already been subject to review by the tribunal. In the interests of finality it was considered that restricting appeal rights in this

instance was justified. Judicial review under the *Judicial Review Act 1991* would be available if the decision involved jurisdictional error. While it is not expected that large numbers of applications will be rejected, it is possible that appeals from these decisions will impose an unnecessary impost on tribunal time and resources.

Clause 139 (Deciding whether to re-open)

Clause 139(5) provides that a decision of the tribunal on an application to re-open a finalised proceeding is final and cannot be challenged in any way, under the *Judicial Review Act 1991* or otherwise. Chapter 2, part 7, division 7 of the Bill enables a party, in limited circumstances, to apply to the tribunal to re-open a matter which has been finally decided by the tribunal. If a matter is re-opened, it is heard afresh by the tribunal. The grounds for a re-opening are:

- the party did not appear at the hearing and had a reasonable excuse for not attending
- the party would suffer substantial injustice if the proceeding were not re-opened because significant new evidence has arisen that was not reasonably available at the hearing.

The purpose of this provision is to ensure fairness to a party absent from the hearing through no fault of their own and to avoid unnecessary costs to the parties and the tribunal involved in an appeal from the original decision where the ground could be more effectively or conveniently dealt with by a re-opening of the matter. These provisions are beneficial provisions designed to provide a cheaper alternative to an appeal in appropriate cases. The breach of this principle is considered justified because:

- the re-opening provision provides an option for a party that is in addition to the party's right to appeal the original decision of the tribunal
- the parties' usual appeal rights from the original decision of the tribunal are not affected
- allowing an appeal or a review of the tribunal's decision on whether or not a matter should be re-opened will unnecessarily lengthen proceedings, duplicate the normal appeal process and result in additional costs to the party and to the tribunal contrary to the objects of the Bill.

Clause 156 (Application of Judicial Review Act 1991)

Clause 156 excludes the application of parts 3 to 5 of the *Judicial Review Act 1991* to decisions or conduct of the tribunal other than on the grounds of jurisdiction error. Restriction of judicial review under the *Judicial Review Act 1991* to jurisdictional grounds is warranted on the following bases:

- The QCAT Bill provides substantial opportunities to appeal decisions of QCAT. For some jurisdictions, the appeal provisions in the Bill significantly expand current appeal rights. The Bill provides for a first step internal appeal to the QCAT appeal tribunal which will normally be constituted by judicial members. Appeals to the appeal tribunal may be made on questions of law and otherwise with leave of the appeal tribunal. An appeal from the decision of the appeal tribunal may then be made on a question of law to the Court of Appeal with leave of the Court.
- In practice, a judicial review application is likely to be dismissed by the Supreme Court on the basis of the availability of the QCAT appeal processes. Section 13 of the *Judicial Review Act 1991* provides that an application (under part 3 or part 5) must be dismissed where the court is satisfied, having regard to the interests of justice, that it should do so where provision is made by a law, under which the applicant is entitled to seek a review of the matter by another court or a tribunal, authority, or person.
- Judicial review is currently restricted or not available in relation to decisions and conduct of some of the entities whose jurisdiction is being transferred to QCAT: the Small Claims Tribunal, the Retail Shop Leases Tribunal, the Magistrates Court (minor debt claims and administrative appeals), the District Court (administrative appeals), the Supreme Court (administrative appeals), the Commissioner of State Revenue (reviews of certain decisions under revenue legislation) and the Minister responsible for gaming legislation (reviews of certain decisions under gaming legislation).
- Judicial review will be available on the ground of jurisdictional error, which is a broad ground of review.

Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons - *Legislative Standards Act 1992*, section 4(3)(c)

Clause 182 (Delegation)

Clause 182 enables the President to delegate his or her functions under this Act or an enabling Act (other than adjudicative functions) to a member, an adjudicator or the principal registrar. The administrative functions of the President include choosing member/s or an adjudicator to constitute the tribunal for a particular matter and to choose the members to constitute the appeal tribunal for a particular appeal under clauses 165 and 166 of the Bill. The power to delegate is qualified by requiring a delegation to be made only to a person the President is satisfied is appropriately qualified to perform the function. It is necessary for the President to be able to delegate this function as it is anticipated that QCAT will deal with approximately 38 000 applications per year. The President will be a Supreme Court judge responsible for the efficient administration of the tribunal and as such it is expected that any such delegation for the constitution of the tribunal at first instance would not be made to a member less senior than the heads of divisions or lists which will be established to organise the work of the tribunal. It is anticipated that the President would issue guidelines, consistent with clause 167, setting out the President's expectations about the constitution of the tribunal for particular types of matters. In relation to the function of the President under clause 166, again it can be anticipated that the President would not delegate the function of selecting judicial members to sit on the appeal tribunal other than to a judicial member.

Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992*, section 4(2)(a)

Clause 184 (Criminal history checks – members) and clause 199 (Criminal history checks – adjudicators)

These provisions enable the Minister to obtain information from the Police Commissioner about the criminal history of a member or adjudicator or a person who is being considered for appointment as a member or an adjudicator. 'Criminal history' is defined in schedule 3 to include convictions that have become spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986* and charges. In relation to prospective members or adjudicators, the request for information from the Police Commissioner may only be made with the consent of the relevant person.

These provisions are required primarily for the child protection jurisdiction of QCAT and mirror the criminal history screening provisions currently set out in section 17 of the *Children Services Tribunal Act 2000*. This section was originally justified on the basis that tribunal members, in reviewing decisions about vulnerable children in the child protection system, are likely to have direct or indirect contact with and access to personal details about children and young people. This power is consistent with the blue card provisions of the *Commission for Children and Young People and Child Guardian Act 2000*, although, unlike that Act, investigative information cannot be accessed. Because QCAT members and adjudicators could be expected to sit on a range of matters and may not be confined to sitting only on matters in a particular jurisdiction, it is necessary for all members and adjudicators to be subject to the same screening regime.

The provisions also include the following safeguards:

- the person to which the police information relates must be given the information and a reasonable opportunity to make representations to the Minister about the information before the Minister uses the information
- the Minister must ensure the report containing the information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested from the Police Commissioner.

Clause 233 (Confidentiality generally)

Clause 233 prohibits persons performing functions under the Act from disclosing personal information obtained through performing those functions. Subclause (3) sets out a number of circumstances where such disclosure is lawful. These exceptions to the prohibition are standard exceptions in similar legislation and are aimed at facilitating performance of functions under the Act or an enabling Act, enabling access to de-identified information for the purpose of research, facilitating the investigation and prosecution of suspected offences and protecting others from harm or injury.

Legislation should not confer immunity form proceeding or prosecution without adequate justification - *Legislative Standards Act 1992*, section 4(3)(h)

Clause 237 (Immunity of participants)

Clause 237 provides that the same protections and immunity that apply to a Supreme Court judge or Supreme Court proceedings apply to: members

and adjudicators; the principal registrar when performing quasi-judicial functions; mediators; a person taking evidence on behalf of the tribunal; assessors; parties appearing before the tribunal and their representatives; witnesses and documents produced for a hearing. It is appropriate that a person acting judicially or as part of a judicial process should be free of personal attack on the basis of illegal or negligent action when performing their roles. The immunity will ensure that these persons can act with appropriate confidence in carrying out their roles in the community interest. Such roles would be difficult to carry out if the office holders or others involved in the proceeding were subject to allegations and litigation taken against them personally for their actions in the office or proceeding. Given the nature of their roles, decisions are subject to supervision of appeal courts or to action by the tribunal for misbehaviour by parties or their representatives or may be subject to the offence provisions in relation to witnesses. This provision provides a similar level of protection currently provided to tribunals whose jurisdiction will become part of the jurisdiction of QCAT, for example, the Anti-Discrimination Tribunal, the Childrens Services Tribunal, the Commercial and Consumer Tribunal, the Guardianship and Administration Tribunal, the Legal Practice Tribunal, the Teachers Disciplinary Committee and the Veterinary Tribunal.

Clause 238 (Protection from civil liability)

Clause 238 confers immunity from civil liability on certain persons involved in the administration of the Act for acts or omissions done or made under this Act or an enabling Act. The immunity is limited to acts or omissions done or made honestly and without negligence. Also, any potential liability instead attaches to the State.

Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992*, section 4(2)(a)

Clause 255 (QCAT may deal with proceeding) and clause 267 (Proceeding not yet started)

Clauses 255 and 267 are transitional provisions enabling QCAT to deal with a proceeding for a matter that could, prior to commencement of this Act, have been started, but had not yet been started, before a tribunal that will be abolished by the QCAT legislation or before a court or another entity that will continue in operation. The clauses provide that these proceeding may be started in QCAT and that QCAT must deal with the matter under this Act and only has the functions and powers under this Act or an enabling Act. This may represent a change to procedural

requirements and powers from those of the former tribunal or the court or other entity, potentially impacting on the rights of parties. While there will be changes to procedures and powers, many of these changes will be beneficial. For example, the QCAT Act appeal provisions will apply to matters that were formerly part of the Small Claims Tribunal and the Magistrates Court's minor debt claims jurisdictions where appeal rights were severely restricted or non-existent. Generally, the powers of QCAT and the final orders it can make under enabling Acts have not been altered to any significant extent. It would also not be practicable to continue the effect of the Acts establishing the former tribunals or conferring jurisdiction on former tribunals or other entities for the time period in which a person may start a proceeding, particularly in proceedings that will form part of QCAT's original jurisdiction, such as proceedings for breach of contract and debt claims where the limitation period is six years.

Subclause 255(6) states that this section does not apply to section 23A of the *Small Claims Tribunals Act 1973*. The *Small Claims Tribunals Act 1973* will be repealed by this Act. Section 23A enables a party who has obtained an order from a Small Claims Tribunal for the payment of money which has not been satisfied to apply ex parte to the Tribunal for an order for an oral examination. Parties in the Small Claims Tribunal may also seek to enforce a Small Claims Tribunal order by filing a copy of the order in the Magistrates Court. Enforcement options in the Magistrates Court include an oral examination. QCAT will not have a similar power to order oral examinations. All enforcement of QCAT orders will be done by filing a copy of the order in the relevant court upon which the normal court enforcement options, including oral examinations, would apply. While section 23A of the *Small Claims Tribunals Act 1973* currently provides parties with an additional forum in which to seek an oral examination, the removal of this power will not prevent a party who has obtained an order of the Small Claims Tribunal prior to commencement from seeking an order for oral examination in the Magistrates Court.

Bills should have sufficient regard to the institution of Parliament - *Legislative Standards Act 1992*, section 4(2)(b)

Clause 102 (Costs against party in interests of justice)

Clause 102(1) enables the tribunal to award costs against a party if the tribunal considers the order is in the interests of justice. Subclause (2) provides, however, that the only costs the tribunal may award in a minor civil dispute are the costs stated in the rules. Minor civil disputes are disputes that are currently dealt with by a Small Claims Tribunal or by the

Magistrates Court under the *Uniform Civil Procedure Rules 1999* as a minor debt claim. The power to award costs in these matters is restricted to ensure these jurisdictions are low cost jurisdictions for the parties. The intention of incorporating small claims and minor debt claims as QCAT's minor civil dispute jurisdiction is to provide a single entry point for resolving these disputes while ensuring they remain low cost jurisdictions. It is intended that the current restrictions on the costs that may be awarded in a small claim under the *Small Claims Tribunals Act 1973* and in a minor debt claim under the *Uniform Civil Procedure Rules 1999* will be reflected in the tribunal rules. As with the *Uniform Civil Procedure Rules 1999* and, in relation to other practices and procedures for minor civil disputes, it is considered appropriate for these detailed matters to be set out in the rules.

Clause 195 (Functions of adjudicators)

Clause 195 sets out the functions of adjudicators to hear and decide certain matters, including minor civil disputes. Clause 195(b) enables the QCAT Rules to state the types of non-contentious matters that an adjudicator may hear. Clause 195(d) enables the president to decide that an adjudicator may hear and decide another matter having regard to the nature and complexity of the matter and any special circumstances relating to the matter. This provision potentially breaches the fundamental legislative principle that legislative power should only be delegated in appropriate cases and to appropriate persons. Clause 195 was included in the Bill to provide guidance about the types of matters adjudicators (as opposed to members) would hear and decide. It is not meant to be an exclusive list. It is appropriate for the rules to set out the non-contentious matters which an adjudicator may decide because the list of these matters may be lengthy and would not be practicable for inclusion in the primary legislation. The rules are subordinate legislation and will be subject to disallowance by the Parliament. It is also appropriate for the president to decide which other less complex matters an adjudicator would be competent to decide. This is consistent with the president's function under clause 165 to choose the member/s or adjudicator to constitute the tribunal for a particular matter. These provisions aid in ensuring flexibility and responsiveness in the organisation of the tribunal's business and in achieving the objectives of the Bill set out in clause 3.

Clause 224 (Rule-making power)

Clause 224 sets out the rule-making power for the QCAT Rules. Subclause (3) states that the rules may provide that a person is disqualified from representing a party in circumstances where the person has been found

guilty of a type of professional misconduct stated in the rules in a disciplinary proceeding of a type stated in the rules. The disciplinary proceeding must have occurred under a Queensland Act, a law of the Commonwealth or another State or the rules of a professional association or other body. Clause 43(4) provides that a party may not be represented by a person who, under the rules made under clause 224(3) is disqualified to be a representative of a party. Given the number of potentially relevant disciplinary proceedings and types of professional misconduct, it is considered impracticable to include this list in the Bill. For example, for the legal profession alone, there would be in excess of seven types of disciplinary proceedings in Australia.

Clause 225 Rules are exempt from automatic expiry

Clause 225 exempts the QCAT rules from the provisions part 7 of the *Statutory Instruments Act 1992* providing for the staged expiry of subordinate legislation. The purpose of part 7 of the *Statutory Instruments Act 1992* is to ensure regular review of subordinate legislation with the aim of reducing the regulatory burden, ensuring subordinate legislation remains relevant and ensuring subordinate legislation is of the highest standard. The QCAT rules, similarly to the *Uniform Civil Procedure Rules 1999* which is also exempt from automatic expiry under section 118B of the *Supreme Court Act 1991*, will be regularly reviewed by the QCAT rules committee to ensure efficient procedures and best practice in the tribunal. It is also considered inappropriate for rules of a tribunal headed by a judicial officer to be subject to these provisions.

Clause 226 (Practice directions)

Clause 226 enables the President to make practice directions about the practice and procedure of the tribunal that is not inconsistent with this Act, an enabling Act or the rules. This power is similar to the power of the heads of jurisdiction for the courts to make practice directions under section 118D of the *Supreme Court Act 1991*. This is not considered an inappropriate delegation of legislative power because practice directions will only deal with detailed procedural requirements to ensure effective case management and efficiency in the conduct of tribunal business. It would be impracticable to include every aspect of tribunal practice and procedure in the Act, enabling Acts and the Rules.

Clause 275 (Inconsistencies and other difficulties)

Clause 275 enables QCAT to make orders about transitional matters where the transitional provisions in the QCAT Bill or in an enabling Act are

inconsistent with the performance by QCAT of its functions under an enabling Act prior to its amendments by the Jurisdiction Provisions Bill. This provision potentially enables QCAT to make orders that modify a provision in an Act. These powers are necessary because in a scheme this large involving potentially thousands of matters at commencement, it is impossible to identify and address every kind of anomaly that may be created by requiring QCAT to follow the QCAT Bill practices and procedures in performing the functions and exercising the powers under the former Act. Subclause (3) requires QCAT, when exercising a power under this section to ensure that the order or direction does not cause prejudice or detriment to a party and causes the least inconvenience. Further, subclause (6) requires QCAT to be constituted by a judicial member when exercising powers under this section. The drafting of a transitional provision to deal with an identified anomaly may be lengthy, complex and unnecessarily bind QCAT to something that is not in the best interests of the parties to the proceeding. QCAT as constituted for the proceeding would be in a better position to identify the anomaly and address it in a way that suits all parties in a particular proceeding to greatest practicable extent.

Clause 278 (Transitional regulation-making power)

Clause 278 authorises the making of a transitional regulation for matters for which the transitional scheme in the Bill does not sufficiently provide. The power includes a power to continue a repealed provision and a power to confer additional jurisdiction on QCAT and may constitute a Henry VIII clause. This is considered justified in view of the complexity of the transitional arrangements, the diversity of jurisdictions being transferred to the new tribunal and the number of instruments (over 200) being amended by the Jurisdiction Provisions Bill. It is in the public interest that there are no gaps in the legislative scheme that would adversely affect the rights and interests of users of the existing tribunals and courts and the new tribunal. This section and any regulation made under it will expire two years after commencement.

Consultation

In March 2008, the independent expert panel in its development of the stage one report sought comment from a broad range of stakeholders on which jurisdictions should be included in the jurisdiction of the new tribunal and which should remain separate. The panel also sought comment on the structure of the tribunal and the general processes and procedures for the tribunal. Stakeholders consulted are listed in appendix 4 to the panel's

stage one report. The panel's recommendations about the proposed jurisdiction of QCAT, the structure and general processes and procedures for the tribunal were informed by stakeholder submissions.

The panel in its stage two report further refined its recommendations about the structure of the legislation required to implement QCAT and the specific provisions required in the bills. This report was released publicly in December 2008.

The Government accepted the recommendations of the panel's stage one and stage two reports and authorised the preparation of a draft Bill in accordance with those recommendations to facilitate further consultation.

An exposure draft of the Bill was released for targeted public consultation in February 2009 together with an exposure draft of the Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009. Stakeholders and potential users of the tribunal were invited to provide comment, including heads of tribunals, tribunal members, registry staff, the courts and representatives of applicants and respondents in tribunals to be amalgamated. Relevant statutory authorities and Government departments responsible for administering the affected legislation were also consulted. Briefings were also provided to key stakeholders to receive verbal feedback and to facilitate more informed written feedback.

Community

Community stakeholders were generally supportive of the provisions of the QCAT Bill and the amendments contained in the Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009. Comments from stakeholders with particular interests in specific jurisdictions indicated general satisfaction with the way in which the bills were drafted to take into account the specific needs of the jurisdictions. Current presidents of tribunals to be amalgamated were generally supportive of the bills. A number of recommendations were made to improve technical aspects of the QCAT Bill that have been taken into account in finalising the bills.

Government

Because the Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009 amends legislation administered in every portfolio of government ongoing consultation with all government agencies occurred in the development and drafting of the bills.

Notes on Provisions

Chapter 1 Preliminary

Clause 1 states the short title of the Act.

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

Clause 3 sets out the objects of the Act. The Act will establish an independent tribunal to deal with matters for which it has jurisdiction in a way that is accessible, fair, just, economical, informal and quick. A number of provisions in the Act dealing with the procedure of the tribunal support this objective. Other objects of the Act are to promote quality and consistency in tribunal decision making, to enhance the quality and consistency of decision making in government entities and to enhance the openness and accountability of public administration.

Clause 4 sets out what the tribunal must do to achieve the objects in clause 3. These include requiring the tribunal to:

- facilitate access to its services throughout Queensland
- encourage early resolution of disputes
- minimise costs to the parties by conducting its proceedings informally and as quickly as is consistent with achieving justice
- ensure like cases are treated alike
- be responsive to the diverse needs of users
- maintain specialist knowledge, expertise and experience of members and adjudicators and ensure the appropriate use of that knowledge, expertise and experience
- maintain a cohesive organisational structure.

Clause 5 provides that the Act binds all persons, including the State, and as far as the legislative power of the Queensland Parliament permits, the Commonwealth and the other States.

Clause 6 sets out how this Act and the Acts that confer jurisdiction on the tribunal ('enabling Acts') interact. Subsection (1) states that this Act

provides for the jurisdiction, functions, practices and procedures of the tribunal. 'Function' is defined in the schedule 3 Dictionary to include powers.

Subsection (2) defines an enabling Act as another Act which confers original, review or appeal jurisdiction on the tribunal or subordinate legislation which confers review jurisdiction on the tribunal.

Subsections (3) to (6) provide that an enabling Act that is an Act may not only confer jurisdiction but may also set out the tribunal's functions (which includes powers) for that jurisdiction which may add to or differ from the functions stated in this Act. This means that primary legislation may alter or override the provisions of this Act but subordinate legislation may only confer jurisdiction. Subordinate legislation cannot modify the functions and powers of the tribunal set out in this Act. This is consistent with the fundamental legislative principle that subordinate legislation should not amend an Act.

Subsection (7) sets out the types of provisions which may be included in an enabling Act that is an Act that may add to or differ from the provisions in this Act. An enabling Act may set out different requirements for starting proceedings in the tribunal or appeals from decisions of the tribunal or to the tribunal for the relevant jurisdiction. For example, an enabling Act may provide for a different timeframe to the timeframe in this Act in which a person may apply for a review of a decision. An enabling Act may also set out different powers, practices and procedures for the jurisdiction conferred by the enabling Act. For example, an enabling Act may provide for different or additional persons to be parties or different ways in which persons may be notified. Enabling Acts may require hearings for that jurisdiction to be held in private or that parties may be represented without leave of the tribunal which are different to the provisions in this Act. An enabling Act may also set out a different way in which a decision of the tribunal for the jurisdiction may be enforced.

Clause 7 provides that if a provision in an enabling Act that is an Act provides for the tribunals functions and powers in the jurisdiction it confers or for a matter mentioned in clause 6(7), the provision prevails over the relevant provisions of this Act to the extent of any inconsistency and that this Act must be read as if the modifying provision was part of this Act. The approach in clauses 6 and 7 ensures that where functions, powers and procedures that are different to the generic provisions in this Act are required to ensure the effectiveness of a particular jurisdiction, those provisions will operate rather than the provisions of this Act. Subsection

(5) provides that an enabling Act may expressly state how the provisions of this Act apply in relation to a modifying provision in the enabling Act. For example, an enabling Act may modify the provision in the QCAT Act about information notices but only to the extent that the period in which a person may apply for review of a decision is shortened or lengthened.

Clause 8 states the definitions of particular words used in this Act are in the dictionary in schedule 3.

Chapter 2 Jurisdiction and procedure

Part 1 Jurisdiction of tribunal

Division 1 Preliminary

Clause 9 describes the general jurisdiction of the tribunal. It provides that the tribunal has jurisdiction to deal with matters it is empowered to deal with under the QCAT Act or an enabling Act. The tribunal has three types of jurisdiction:

- Original jurisdiction is the jurisdiction of the tribunal to decide matters at first instance. For example, under the QCAT Act and under a number of enabling Acts, such as the *Queensland Building Services Authority Act 1991*and the *Retail Shop Leases Act 1994*, the tribunal will have jurisdiction to hear and determine civil disputes between parties. Other examples of the tribunal's original jurisdiction are the jurisdictions conferred under the *Anti-Discrimination Act 1991* and under the *Guardianship and Administration Act 2000* and disciplinary jurisdictions under the *Legal Profession Act 2007* and the *Health Practitioners (Professional Standards) Act 1999*.
- Review jurisdiction is the jurisdiction of the tribunal to review administrative decisions made by government agencies and statutory bodies. Currently, appeals from administrative decisions are heard by a range of bodies including the courts, the Children Services Tribunal, the Gaming Commission, the Treasurer, the Independent Assessor

under the *Prostitution Act 1999*, the Panel of Referees under the *Fire and Rescue Services Act 1990* and the Fisheries Tribunal.

- Appeal jurisdiction is the jurisdiction of the tribunal to hear and decide appeals from its own decisions and, under certain enabling Acts, appeals directly from decisions of statutory officers.

Division 2 Original jurisdiction

Clause 10 states that the tribunal's original jurisdiction is the jurisdiction conferred by section 11 and jurisdiction conferred by an enabling Act. Examples of original jurisdiction conferred by enabling Acts are:

- jurisdiction to hear and decide applications by regulatory bodies for disciplinary orders against members of particular professions, vocations or occupations
- jurisdiction to hear and decide building disputes under the *Queensland Building Services Authority Act 1991*
- jurisdiction to hear and decide disputes in retirement villages under the *Retirement Villages Act 1999*
- jurisdiction to hear and decide complex body corporate disputes under the *Body Corporate and Community Management Act 1997*
- jurisdiction to hear and decide disputes between residential park owners and home owners under the *Manufactured Homes (Residential Parks) Act 2003*
- jurisdiction to hear and decide complaints under the *Anti-Discrimination Act 1991* referred to the tribunal by the Anti-Discrimination Commissioner
- jurisdiction to hear and decide a range of matters under the *Guardianship and Administration Act 2000*.

Subsection (2) clarifies that the tribunal's original jurisdiction includes jurisdiction conferred by an enabling Act to review a decision made at first instance by the tribunal. For example, under the *Guardianship and Administration Act 2000*, the tribunal has jurisdiction to appoint guardians and administrators for adults with impaired capacity. The Act requires the tribunal to review those appointments periodically at least every five years or at any time on its own initiative or on application by a stated person.

This review is not part of the tribunal's review jurisdiction because it is not a review of an administrative decision by a government agency, but a review of the ongoing appropriateness of the appointment. Similarly, a number of Acts conferring jurisdiction on the tribunal to hear and decide disciplinary matters for members of various professions or vocations also confer jurisdiction to review disciplinary orders of the tribunal involving suspension or requiring certain conditions to be met in order to ensure that it was appropriate for the suspension to be lifted or that the conditions have been met.

Clause 11 establishes the tribunal's jurisdiction to hear and decide a minor civil dispute. Minor civil disputes are those disputes that are currently dealt with in Small Claims Tribunals (paragraphs (b) to (f) below) and in the Magistrates Court through the minor debt claims simplified procedure under the *Uniform Civil Procedures Rules 1999* (paragraph (a) below).

'Minor civil dispute' is defined in the Dictionary in schedule 3 to be:

a) a claim to recover a debt or liquidated demand of money of up to the prescribed amount. This jurisdiction is the current minor debt claim jurisdiction.

b) a claim arising out of a contract between a consumer and trader, or a contract between two or more traders, that is

   i) for payment of money of a value not more than the prescribed amount

   ii) for relief from payment of money of a value not more than the prescribed amount

   iii) for performance of work of a value of not more than the prescribed amount to rectify a defect in goods supplied or services provided

   iv) for return of goods of a value not more than the prescribed amount

   v) for a combination of any two or more claims in paragraphs (i) to (vi) where the total value is not more than the prescribed amount.

c) a claim for repair of a defect in a motor vehicle not more than the prescribed amount for damage to property caused by, or arising out of the use of a vehicle

d) a claim for repair of a defect in a motor vehicle under the *Property Agents and Motor Dealers Act 2000*, section 248 or 324

e) a tenancy matter

f) a claim that is the subject of a dispute under the *Dividing Fences Act 1953* and is for an amount not more than the prescribed amount.

'Prescribed amount' is defined as an amount prescribed by regulation and, if not prescribed, $7500, which is the current monetary limit for small claims and minor debt claims.

Clause 12 provides that the tribunal may exercise its jurisdiction for a minor civil dispute when a person described in subsection (3) applies to the tribunal to deal with the dispute. Subsection (2) enables the applicant to agree to limit the applicant's claim in order to bring the claim within the tribunal's minor civil dispute jurisdiction. Subsection (3) sets out the categories of persons who may bring an application in the minor civil dispute jurisdiction. This provision replicates the categories of persons who currently may make applications under the *Small Claims Tribunals Act 1973* or under the minor debt claim simplified procedures in the *Uniform Civil Procedure Rules 1999*.

Clause 13 sets out the orders the tribunal may make to resolve a minor civil dispute. Subsection (1) replicates section 10(2) of the *Small Claims Tribunals Act 1973* and section 515 of the *Uniform Civil Procedure Rules 1999* by requiring the tribunal, in deciding a minor civil dispute, to make the orders it considers fair and equitable to the parties, including an order dismissing the application. Subsection (2) replicates the orders a Small Claims Tribunal currently can make under section 20 of the *Small Claims Tribunals Act 1973*. Subsection (3) limits the orders the tribunal can make to orders which have a value of no more than the prescribed amount. Subsection (4) clarifies that subsection (3) does not apply to a claim for repair of a motor vehicle defect under the *Property Agents and Motor Dealers Act 2000* or to a tenancy matter. These provisions reflect section 21 of the *Small Claims Tribunals Act 1973*.

Clause 14 empowers the tribunal to order that the amount to be paid under its decision on a minor civil dispute for the payment of a debt or liquidated amount include interest up until the date of the decision at the rate the tribunal considers appropriate. The section does not apply if interest is payable as of right because of an agreement or otherwise. The section also does not authorise the ordering of interest on interest.

Clause 15 sets out that the tribunal may exercise original jurisdiction conferred by an enabling Act when a person applies to the tribunal or refers a matter to the tribunal.

Clause 16 provides that the tribunal, in exercising its original jurisdiction, may perform the functions conferred on it by this Act or the relevant enabling Act.

Division 3 Review jurisdiction

Clause 17 states that the tribunal's review jurisdiction is the jurisdiction conferred by an enabling Act to review a decision made by an entity under that enabling Act. Subsection (2) provides that, for this Act, the defined term for the decision is 'reviewable decision' and the defined term for the entity that made the decision is 'decision-maker'.

Clause 18 states that the tribunal may exercise its review jurisdiction if a person has applied to the tribunal. Subsection (2) clarifies that a person may apply to the tribunal to exercise its review jurisdiction and the tribunal may deal with the application even if the reviewable decision is the subject of a complaint, preliminary inquiry or investigation by the Ombudsman.

Clause 19 provides that the tribunal must decide the review in accordance with this Act and the enabling Act under which the decision is made and may perform the functions conferred on the tribunal by this Act or the enabling Act. The tribunal has all the functions of the decision-maker. This means that the tribunal stands in the shoes of the original decision-maker and can perform all the functions and exercise all the powers of the decision-maker. It also means that if the enabling Act sets out principles, criteria, or guidelines for the making of the decision by the decision-maker, the tribunal is also bound to take into account those same principles, criteria or guidelines when making its decision on review. The tribunal must exercise its powers and any statutory discretion given to the original decision-maker within the confines of the statute that confers power on it.

Clause 20 further outlines the approach the tribunal should take in reviewing a reviewable decision. Subsection (1) provides that the purpose of a review is to produce the correct and preferable decision. This provision recognises that there may be a number of ways of deciding a matter that that would be correct according to law and that the tribunal must, using its own judgement, make the decision that is not only correct, but is also the preferred decision based on the merits of the case.

Subsection (2) provides that a review of a reviewable decision is by way of a fresh hearing on the merits. The tribunal is not restricted to considering

the material or evidence that was before the original decision-maker but may consider fresh material or evidence relevant to performing its review function. While the tribunal may have regard to the findings of fact and the exercise of discretion by the decision-maker, it is free to substitute its own findings of fact and determine for itself the proper exercise of any discretionary power.

Clause 21 sets out the duties of a decision-maker in relation to a review of a decision made by the decision-maker. Subsection (1) requires the decision-maker to use his or her best endeavours to assist the tribunal in performing its review function. It is not the role of the decision-maker to act like a party in an adversary system. This provision reflects the purpose of the review which is to ensure the correct and preferable decision is made and reinforces the non-adversarial nature of review proceedings.

Subsection (2) requires the decision-maker to provide to the tribunal within 28 days after the decision-maker is notified of the review application a written statement of reasons for the decision and any other documents or things in the decision-maker's possession or control that are relevant to the review of the decision.

Subsection (3) enables the tribunal to require the decision-maker to provide further documents or things if the tribunal considers there are additional relevant documents or things in the decision-maker's possession or control.

Subsection (4) empowers the tribunal to require the decision-maker to give an additional statement of reasons if the tribunal considers the statement of reasons given under subsection (2) is inadequate.

Subsection (6) provides that a requirement to give information or a document applies despite any confidentiality provisions in an Act restricting or prohibiting the disclosure of the information. This clarifies that a person is not in breach of any confidentiality provision of an Act by giving the information to the tribunal. This is necessary to ensure that the tribunal has all relevant material available to the decision-maker so that the tribunal can properly exercise its review function to stand in the shoes of the decision-maker and make the correct and preferable decision.

Clause 22 sets out how the making of a review application affects the operation of the decision being reviewed. Subsection (1) provides that the commencement of a review proceeding does not affect the operation of the reviewable decision or prevent its implementation. Subsection (2) states that subsection (1) does not apply if an enabling Act that is an Act (that is, not subordinate legislation) provides otherwise or the tribunal makes an

order staying the operation of the reviewable decision. Subsection (3) establishes the tribunal's power to make an order staying the operation of a reviewable decision. The tribunal may make a stay order on the application of a party or on its own initiative. Subsection (4) sets out the matters the tribunal must have regard to when considering whether or not to make a stay order. These are the interests of any person whose interests may be affected by making or not making a stay order, any submissions made to the tribunal by the decision-maker and the public interest. Subsection (5) clarifies that the tribunal need not give a person whose interests are affected an opportunity to make submissions if it is not practicable to do so because of the urgency of the case or for another reason. Subsection (6) enables the tribunal, when making a stay order, to require the party seeking the stay to give an undertaking as to costs or damages and to provide that the stay order will cease to have effect if certain conditions are met. Subsections (7) and (8) deal with how the amount of any damages under subsection (6) would be determined.

Clause 23 enables the tribunal, at any stage in a review proceeding, to invite the decision-maker to reconsider the decision. This is most likely to occur in circumstances where significant new information has been given to the tribunal which was not available to the original decision-maker and the information is such that it may significantly alter the basis on which the reviewable decision was made or where the decision-maker made an error that could be more efficiently corrected through re-consideration by the decision maker. In re-considering the decision, the decision-maker may confirm, amend or set aside the decision and substitute a new decision. If the decision-maker confirms the decision, the review proceeding continues. If the decision-maker amends or substitutes the decision, the decision as amended or substituted is taken to be the reviewable decision for the review proceeding which continues unless the applicant withdraws the application for review.

Clause 24 sets out the types of orders the tribunal may make in deciding a review proceeding and the effect of the tribunal's decision. It provides that the tribunal may confirm or amend the decision, set aside the decision and substitute its own decision or set aside the decision and return the matter for reconsideration by the decision-maker in accordance with any directions given by the tribunal. A decision of the tribunal to confirm or amend the decision or substitute its own decision is taken to be the decision of the decision-maker. However, the decision made by the tribunal cannot again be the subject of a review application. It is also not taken to be a decision of the decision-maker for an appeal under the Act. Subsection (3)

also enables the tribunal to make written recommendations about the agency's policies, practices and procedures that apply to the reviewable decision. This provision supports the objectives of the Act in clause 3 subsections (d) and (e) to enhance the quality and consistency of decisions made by decision-makers and the openness and accountability of public administration. This is a recommendatory power only and does not empower the tribunal to require changes to government or departmental policy.

Division 4 Appeal jurisdiction

Clause 25 states that the tribunal's appeal jurisdiction is the jurisdiction conferred under section 26 and jurisdiction conferred by an enabling Act to hear and decide an appeal against a decision of an entity under that Act. The Jurisdiction Provisions Bill provides for appeals directly to the appeal tribunal of QCAT in relation to certain decisions under the *Body Corporate and Community Management Act 1997*. Decisions that may be appealed under the *Body Corporate and Community Management Act 1997* are decisions of an independent arbiter about body corporate disputes.

Clause 26 provides that the tribunal has jurisdiction to hear and decide an appeal against a decision of the tribunal in the circumstances set out in section 142.

Clause 27 states that the tribunal may exercise its appeal jurisdiction when a person has appealed to the tribunal.

Part 2 Practices and procedures

Clause 28 sets out the general requirements for tribunal practices and procedures. Generally, the tribunal is to operate in a more pro-active, inquisitorial manner than what is expected of a traditional court. The primary object is to provide the parties with substantive justice as expeditiously and economically as possible, without the tribunal being bound by formal rules of evidence or procedure.

Subsection (1) provides that the tribunal's procedure in conducting a proceeding is at the discretion of the tribunal. This provision is subject to

any requirements in this Act, an enabling Act or the tribunal rules. Subsection (2) requires the tribunal, in all proceedings, to act fairly and according to the substantial merits of the case. Importantly, paragraph (a) of subsection (3) requires the tribunal to comply with the rules of natural justice. Paragraphs (b) to (d) of subsection (3) state that the tribunal is not bound by the rules of evidence or any practices and procedures applicable to courts, that it may inform itself in any way it considers appropriate and that it must act with as little formality and technicality and with as much speed as the requirements of the legislation and a proper consideration of the matter permits. These statements support the object of the Act to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick and the requirement for the tribunal to act fairly and according to the substantial merits of the case. Paragraph (e) of subsection (3) requires the tribunal to ensure as far as is practicable that all relevant material is disclosed to the tribunal. Subsection (4) clarifies that the tribunal may admit documents into evidence despite non-compliance with any time limit or other requirement under the Act, an enabling Act or the rules relating to the document or its service on other persons.

Clause 29 places obligations on the tribunal to take all reasonable steps to ensure parties understand its procedures and what is happening in proceedings including any decision, order or direction of the tribunal. The tribunal must also take all reasonable steps to ensure that it understands the context of actions taken and views expressed by parties and witnesses, having regard to the party's or witness's age, disability and cultural, religious and socio-economic background and to ensure that the tribunal's procedures are responsive to the needs of parties and witnesses. As with clause 28, this provision supports the object of the Act to provide tribunal services that are accessible, fair and informal.

Clause 30 requires the principal registrar to give reasonable assistance to parties and potential parties to help them understand the tribunal's procedures. While this provision requires the tribunal registry to help parties to understand what they need to do for a proceeding, for example, the forms that may need to be completed, what other documents may need to be filed, requirements for service and relevant timeframes for the taking of certain steps, it does not require registry staff to provide legal advice. Parties and potential parties who require legal advice will be referred. What constitutes reasonable assistance to parties and potential parties will depend on the circumstances of the party or potential party and the nature of their matter before the tribunal.

Clause 31 allows the tribunal to decide a proceeding regardless of any concurrent criminal or disciplinary proceedings related to the issue in dispute before the tribunal.

Clause 32 enables the tribunal, where it considers it appropriate, to conduct all or part of a proceeding by remote conferencing or on the papers. Remote conferencing is where the tribunal conducts a proceeding via teleconferencing, video conferencing or some other form of instantaneous communication. The use of remote conferencing will mostly occur where distance, ill health or some other reason makes it impracticable for a party to attend in person or impracticable for the tribunal members to travel to a particular location. Remote conferencing may not be appropriate in some circumstances, for example where a party or witness has impaired capacity such that the use of remote conferencing would affect their ability to fully participate in the proceeding.

Subsection (3) clarifies that if the tribunal decides to conduct a proceeding by remote conferencing or on the papers, members of the public should have the same access to the matters disclosed in the proceeding as they would have if the proceeding had been conducted directly before the tribunal with parties and witnesses in attendance. Subsection (4) provides that provisions of the Act applying to hearings apply to a proceeding conducted by remote conferencing or on the papers with any necessary changes. For example, a non-publication order may still be made by the tribunal under clause 66 prohibiting the publication of the contents of a document given to it for the proceeding.

Part 3 Starting proceeding

Clause 33 sets out how an application may be made to the tribunal. Subsection (3) requires an application for review of a decision to be filed in the registry within 28 days after the applicant was notified of the decision or, if the applicant has requested the decision maker to provide a written statement of reasons or applied to the tribunal for an order that the decision maker provide a statement of reasons, 28 days after the statement is given to the applicant or after the day the statement was required to be given to the applicant.

Clause 34 sets out how a referral may be made to the tribunal. The referral must be made within the period provided for under an enabling Act and in a way complying with the rules.

Clause 35 enables the principal registrar of the tribunal to accept an application or referral, to accept an application or referral on conditions stated in the rules, reject the application or referral or refer the application or referral to the tribunal for a decision if the principal registrar thinks there is a ground for rejecting it. Subsection (3) sets out the grounds for rejecting an application or referral. The grounds are:

(a) the person making the application or referral is not authorised to do so

(b) the application or referral is made outside of the time allowed

(c) the application or referral does not otherwise comply with this Act, the enabling Act or the rules.

Subsection (4) enables the applicant to request the decision of the principal registrar to place conditions on the acceptance of the application or referral or to reject an application or referral be referred to the tribunal for review. Subsections (6), (7) and (8) set out the decisions the tribunal can make on a referral of the question of whether or not an application or referral should be accepted on conditions or rejected.

Clause 36 states that a proceeding starts in the tribunal when the principal registrar accepts an application or referral, with or without conditions.

Clause 37 requires the applicant, within the period stated in the rules, to give a copy of the application or referral to the other parties, to each other person who is entitled under an enabling Act or the rules to receive notice of the proceeding and to any other person directed by the tribunal. Under subsection (3), the applicant is not required to give a copy of the application or referral to another person if the principal registrar gives the copy to the person or the tribunal makes an order that it is not required to be given to the person or the rules exempt the applicant from this requirement. Subsection (4) sets out the circumstances in which the tribunal may make an order exempting an applicant from giving a copy of the application or referral to another person. The tribunal's power under subsection (4) can only be exercised by a legally qualified member or an adjudicator (all adjudicators are required to be legally qualified). Schedule 2, item 7 states that the rules may provide for the way in which a notice or a document must or may be given, including substituted service.

Clause 38 requires the applicant to pay the prescribed fee for the application or referral. The tribunal can not take any action on the application or referral until the fee is paid, although this does not prevent the tribunal directing the principal registrar to accept or reject an application or referral under section 35.

Part 4 Parties to a proceeding

Clause 39 sets out the parties to proceedings in the tribunal's original jurisdiction.

Clause 40 sets out the parties to proceedings in the tribunal's review jurisdiction.

Clause 41 states that the Attorney-General may intervene in a tribunal proceeding and that the tribunal may give leave for another person to intervene.

Clause 42 enables the tribunal to join a person as a party in certain circumstances.

Clause 43 states that the general approach to the representation of parties in tribunal proceedings is that parties represent themselves unless the interests of justice require otherwise. The purpose of this general approach is to avoid unnecessary costs to parties and an overly legalistic and formal approach to the conduct of proceedings, while ensuring representation is allowed in cases where the interests of justice and the rules of natural justice would require it.

Subsection (2) provides that a party may appear in person without representation but that a party may be represented by another person if:

- the party is a child or a person with impaired capacity
- the proceeding relates to the taking of disciplinary action against a person
- an enabling Act that is an Act or the rules state that a person may be represented
- the tribunal has given leave for the party to be represented.

Subsection (3) sets out a non-exhaustive list of the circumstances the tribunal may consider as factors supporting the granting of leave to be represented. Subsection (4) states that a party can not be represented by a person who is disqualified under the rules from acting as a representative or by a person, who is not an Australian lawyer (that is a lawyer with a current practicing certificate) or a government legal officer, unless the tribunal is satisfied that the person is an appropriate person to represent the party. This is intended to be a protective power, ensuring that vulnerable parties are not being represented by a person who may not have the capacity or the intention to appropriately and adequately represent the party. Subsection (5) requires a person who is not an Australian lawyer or a government legal officer who is seeking to a represent a party to give a certificate to the tribunal showing that the person has authority to represent the party if the party is a corporation or the tribunal has asked for the certificate. Subsection (6) enables the tribunal to appoint a person to represent an unrepresented party.

It should be noted that item 6 of schedule 2 of the Act provides that tribunal rules may be made about how a party that is not an individual may appear before the tribunal. The rules may also set out categories of person who may be represented in proceedings.

Clause 44 enables a party or witness to be assisted by an interpreter or another person who can help the party or witness to understand the proceeding. For example, a person who has specialist knowledge and skill may assist by facilitating communication if a party or witness has a disability that impacts on their ability to communicate or understand the proceeding.

Clause 45 places a general obligation on parties to conduct proceedings in an expeditious way.

Part 5 Preliminary dealings with proceedings

Division 1 Early end to proceeding

Clause 46 allows an applicant to withdraw an application or referral with the permission of the tribunal. If an applicant withdraws, the applicant cannot make a further application or referral about the same subject matter without the tribunal's leave.

Clause 47 confers a discretionary power on the tribunal to dismiss or strike out all or part of a proceeding where the proceeding is frivolous, vexatious, misconceived, lacking in substance or otherwise an abuse of process. The power applies to all proceedings before the tribunal, both in its original and review jurisdiction and is similar in nature to summary judgements in the courts. While the provision would enable the tribunal to dismiss an application for review, it does not empower the tribunal to set aside the decision under review or order a stay of that decision. If the tribunal makes an order dismissing or striking out a proceeding or part of a proceeding, it may also make an order that the party who brought the dismissed or struck out proceeding compensate another party for any reasonable costs, expenses or loss and any inconvenience or embarrassment caused by the proceeding. Whether the tribunal does so will depend on the circumstances of each particular case.

Clause 48 confers a discretionary power on the tribunal to dismiss or strike out a proceeding or order that a party be removed from the proceeding if a party unnecessarily disadvantages another party. Subsection (1) sets out examples of the circumstances in which the power may be exercised. Again, this power applies to all proceedings before the tribunal. Under this section, it is the way in which a party is conducting the proceeding that is the focus, whereas, under clause 47, it is the substance or merits of the proceeding. The tribunal may also order the party causing the disadvantage to pay another party any reasonable costs incurred.

Clause 49 prevents a proceeding or a party of a proceeding which has been dismissed or struck out under sections 47 or 48, from being started again without the leave of the president or deputy president. The president or deputy president may give leave if he or she considers it in the interests of justice.

Division 2 Decision by default

Clause 50 enables an applicant to apply to the tribunal for an order in his or her favour where the applicant has made an application to recover a debt or liquidated amount and the respondent to the application has not lodged a response within the period stated in the relevant enabling Act or the tribunal rules. Decisions by default will generally relate to minor civil disputes and building disputes. Subsection (2) requires the application for a decision by default to be made in accordance with the tribunal rules and limits the amount to the amount originally claimed, plus the application fee, legal costs and interest. Subsection (3) enables the principal registrar to give a decision by default and, under subsection (4), the decision of the principal registrar is taken to be a decision of the tribunal. Subsection (5) requires the applicant to prove that the respondent had been given a copy of the application before a default decision can be made.

Clause 51 allows the tribunal to set aside a default decision. This will allow a proceeding to continue where, for example, the respondent had a reasonable excuse for not filing a response to the application within the required time.

Division 3 Transfer

Clause 52 empowers the tribunal to order that a matter be transferred to another tribunal, a court or another entity if the matter could more appropriately be dealt with by that body. It also enables the tribunal to transfer a matter if the tribunal considers it does not have jurisdiction to decide the matter. This provision does not confer any additional jurisdiction on the courts or other tribunals or entities and cannot be utilised if the tribunal has exclusive jurisdiction for the matter. An example of when it may be more appropriate for a court to hear a matter and for the tribunal to make a transfer order is where a related cause of action is on foot in the court, the issues in dispute in the court and the tribunal matters are intertwined and the tribunal did not have the jurisdiction to make all the orders being sought in the the matter. The tribunal's power under this section may only be exercised by a judicial member.

Clause 53 empowers a court to order the transfer of a matter to the tribunal if the tribunal has jurisdiction to decide the matter.

Division 4 Consolidation or sequence directions

Clause 54 empowers the tribunal to direct that two or more proceedings about the same or related facts and circumstances be consolidated into one proceeding. Only a legally qualified member or an adjudicator may give this direction. Evidence given in a proceeding prior to consolidation may also be given in relation to all applications or referrals consolidated into the one proceeding. While the exercise of this power is at the discretion of the tribunal, an example of when the discretion may be exercised is where two or more applications arise out of the same or related facts and consolidation would be in the interests of justice and in the interests of a prompt, efficient and cost effective resolution of the disputes.

Clause 55 empowers the tribunal to direct that two or more proceedings about the same or related facts and circumstances remain as separate proceedings but that they be heard and determined together or in a particular sequence. Again, only a legally qualified member or an adjudicator may give this direction.

Clause 56 empowers the tribunal to vary a direction given under sections 54 or 55.

Part 6 Other provisions about a proceeding

Division 1 Procedural powers

Clause 57 sets out the general powers of the tribunal to take evidence on oath, act in the absence of a party who has had reasonable notice, adjourn proceedings, require a person to give evidence on oath and administer an oath. The tribunal may also allow a witness to tender a written statement verified by oath.

Clause 58 empowers the tribunal to make interim orders it considers appropriate in the interests of justice. Examples of the circumstances in which interim orders may be made are to protect the position of a party during the proceeding or to ensure the effectiveness of the tribunal's

proceedings. In making an interim order, the tribunal may also require an undertaking as to costs or damages or provide for the lifting of the order if certain conditions are met.

Clause 59 empowers the tribunal, constituted by a judicial member, to grant permanent or interim injunctions in a proceeding if it is just and convenient to do so. The tribunal may grant an interim injunction, without giving a person whose interests may be affected by the interim injunction an opportunity to be heard. As with *ex parte* applications in a court, this power would be used only in exceptional circumstances where the situation is urgent and the delay caused by proceeding with notice to all persons affected would cause irreparable damage. A number of enabling Acts confer power on the tribunal to grant injunctive or similar relief. Subsection (5) clarifies that the power under subsection (1) does not limit any power of the tribunal under an enabling Act to make an order in the nature of an injunction. In making an order, the tribunal may also require an undertaking as to costs or damages or provide for the lifting of the order if certain conditions are met.

Clause 60 empowers the tribunal, constituted by a judicial member, to provide declaratory relief in a proceeding. Subsection (4) clarifies that the tribunal's power to make a declaration is in addition to and does not limit any power of the tribunal under an enabling Act to make a declaration.

Clause 61 empowers the tribunal to extend or shorten time limits and to waive compliance with procedural requirements under this Act, an enabling Act or the rules. This provides the tribunal with flexibility to respond to the particular circumstances of each case. However, the tribunal cannot extend or shorten a time limit or waive compliance with a procedural requirement unless any prejudice or detriment caused by doing so can be remedied by an appropriate order for costs or damages.

Clause 62 enables the tribunal to give directions in a proceeding that are necessary for the expeditious and fair conduct of the proceeding. The tribunal may hold a directions hearing for the purpose of giving directions. Without limiting its power to give directions, the tribunal may direct that a party produce a document or other thing or provide information to the tribunal or another party to the proceeding. The party must comply with the direction unless there is a valid claim to privilege from disclosure.

Clause 63 enables the tribunal to order a third party (a non-party to a proceeding) to produce a document or other thing which is in the possession or control of the third party to the tribunal or a party to the

proceeding. The third party must comply with the direction unless there is a valid claim to privilege from disclosure. The tribunal may also, if it considers it appropriate, order a party to the proceeding to pay the costs of the third party in producing the document or thing.

Clause 64 empowers the tribunal to order that an application or referral or a document filed in the tribunal in response to an application or referral be amended.

Clause 65 empowers the tribunal to inspect a document or thing produced to the tribunal in a proceeding, to keep the document or thing for a reasonable period and to make copies or take extracts or photographs. Subsection (4) requires the tribunal to permit the person otherwise entitled to possession of the document or thing to inspect, make a copy of or take extracts from the document, or inspect or take photographs of the thing at a reasonable time and place. A copy of a document certified by the principal registrar as a true copy is admissible in evidence before any court, tribunal or person acting judicially as if it were the original document.

Clause 66 empowers the tribunal to make orders prohibiting the publication of the following information or material in certain circumstances, except to the persons or in the way that the tribunal may specify in its order:

- the contents of documents or other things produced to the tribunal
- evidence given before the tribunal
- information that may enable a person who has appeared before the tribunal or is affected by a tribunal proceeding to be identified.

Subsection (2) sets out the circumstances in which the tribunal may make a non-publication order. These include where the tribunal considers it necessary to avoid:

- interfering with the proper administration of justice
- endangering the physical or mental health or safety of a person
- offending public decency or morality

- the publication of confidential information
- the publication of information where this would be contrary to the public interest.

The tribunal will deal with a wide variety of matters, including matters involving sensitive personal circumstances and issues, such as professional disciplinary matters which may involve allegations about the professional's impaired health or allegations of abuse of clients in vulnerable situations. Under this section, the tribunal will have the power to make orders protecting the information about, and the identity of, people who may be further harmed by the public release of the information or by the release of the information to a particular person. Proceedings before the tribunal may also involve the disclosure of other information which may be confidential or where public release or release to particular persons would be contrary to the public interest. Under a number of enabling Acts, the tribunal may make orders similar to a non-publication order. The definition of 'non-publication order' in the Dictionary includes these other similar orders within the definition. The enabling Acts under which these orders can be made are the *Adoption of Children Act 1964*, *Child Protection Act 1999*, *Guardianship and Administration Act 2000* and *Legal Profession Act 2007* as amended by the Jurisdiction Provisions Bill.

Division 2 Compulsory conferences

Clause 67 enables the tribunal or the principal registrar to direct parties to attend a compulsory conference. The parties must be given written notice of the conference.

Clause 68 empowers the tribunal, the principal registrar or the person conducting the compulsory conference to direct a party to attend the conference in person or be represented by a person who has authority to settle the proceeding for the party.

Clause 69 states that the purposes of a compulsory conference are:

- to identify and clarify the issues in dispute
- to promote settlement
- to identify the questions of fact and law to be decided by the tribunal

- to give directions about the conduct of the proceeding if it does not settle at the conference
- to give orders and make directions to resolve the dispute.

Clause 70 provides that a compulsory conference can only be heard by a member, an adjudicator or the principal registrar as chosen by the president. Compulsory conferences are to be held in private unless the person presiding at the conference directs that it be held in public. Procedure for the compulsory conference is decided by the person presiding at the conference but must comply with this Act, the relevant enabling Act and the rules. Sections 28, 29 and 32(1), which are about the way the tribunal generally conducts proceedings, apply to compulsory conferences.

Clause 71 enables a person presiding at a compulsory conference who is a legally qualified member, adjudicator or principal registrar to give directions or orders under sections 62, 63 or 64 at the conference. Any direction or order given at the conference is taken to be a direction or order in the proceeding.

Clause 72 enables the compulsory conference to proceed in the absence of a party. If the parties present at the conference agree, the person presiding at the conference, provided he or she is a member or an adjudicator, may decide the proceeding adversely to the absent party or remove the absent party from the proceeding. The person presiding may also make appropriate costs orders. However, the conference cannot proceed or a decision or order made unless the person presiding at the conference is satisfied that the absent party has been given notice of the conference. If a decision or order is made, this Act applies to it as if it were a decision of the tribunal in the proceeding. If the absent party was removed from the proceeding, he or she may apply to the tribunal to be reinstated as a party. The tribunal may reinstate the party if it is satisfied the party had a reasonable excuse for not attending the conference.

Clause 73 requires a member or adjudicator who presided at a compulsory conference to advise the parties of their right to object to that member or adjudicator constituting the tribunal for the proceeding. A party may object by filing an objection in the registry. If a party objects the person presiding at the conference cannot constitute the tribunal for the proceeding. The person presiding may also disqualify him or herself from constituting the tribunal.

Clause 74 provides that anything said or done at a compulsory conference is not admissible at any stage in the proceeding except:

- where all parties agree that the evidence may be admitted
- evidence of an order made or direction given at a conference and the reasons for the order or direction
- evidence relevant to an offence relating to the giving of false or misleading information, contempt or relating to an order made as a result of a party failing to appear at a compulsory conference.

Division 3 Mediation

Clause 75 enables the tribunal or the principal registrar to refer a matter to mediation by a mediator appointed by the tribunal or the principal registrar. The referral may occur with or without the consent of the parties. If the matter is referred to a mediator under the *Dispute Resolution Centres Act 1990*, it is sufficient if the tribunal or the principal registrar appoints the director of a stated dispute resolution centre as mediator. Under the *Dispute Resolution Centres Act 1990*, the director may then appoint the mediator to run the mediation.

Clause 76 empowers the tribunal, the principal registrar or the person conducting the mediation to direct a party to attend the mediation in person or be represented by a person who has authority to settle the proceeding for the party.

Clause 77 states that the purpose of mediation is to promote the settlement of the dispute.

Clause 78 provides that the mediation must be held in private unless directed otherwise by the tribunal or the principal registrar. Procedure for the mediation is decided by the mediator, but must be in compliance with the tribunal rules.

Clause 79 sets out who may be a mediator: a member, an adjudicator, the principal registrar, a mediator under the *Dispute Resolution Centres Act 1990* or a person approved by the principal registrar as a mediator for the tribunal. The principal registrar may only approve a person if the principal registrar is satisfied the person is a suitable person to conduct mediation having regard to their qualifications and experience.

Clause 80 requires a mediator to disclose any conflict of interest to the president. A mediator who has an interest which may conflict with the proper performance of the mediator's function must not take part in the mediation unless all the parties and the president agree.

Clause 81 prohibits a member or adjudicator who is conducting the mediation from constituting the tribunal for the proceeding unless all the parties agree.

Clause 82 requires a mediator, other than the principal registrar, to notify the principal registrar of the outcome of the mediation to ensure the tribunal can take appropriate action. It is not necessary for a principal registrar who is the mediator to be notified of the outcome of the mediation because they will be able to ensure the tribunal takes appropriate action.

Clause 83 provides that anything said or done at a mediation is not admissible at any stage in the proceeding except:

- where all parties agree that the evidence may be admitted
- evidence relevant to an offence relating to the giving of false or misleading information or contempt.

Division 4 Settlement and accepted offers to settle

Clause 84 provides that if settlement is reached at a compulsory conference, the person presiding at the conference may record the terms of settlement in writing and make orders to give effect to the settlement. This Act applies to the orders as if the compulsory conference were a proceeding of the tribunal and the orders were orders of the tribunal.

Clause 85 provides that if the parties reach settlement at mediation and the mediator is a member, adjudicator or the principal registrar, the mediator may record the terms of the settlement in writing and make the orders necessary to give effect to the settlement. This Act applies to the orders as if the mediation were a proceeding of the tribunal and the orders were orders of the tribunal. If the mediator is not a member, adjudicator or the principal registrar, the mediator may record the terms of settlement in writing and have the parties sign it and file the signed written terms in the registry. The tribunal may then make the orders necessary to give effect to the settlement.

Clause 86 provides the process for where agreement is reached outside of a compulsory conference or mediation. The parties may record the terms of the settlement in writing and file the signed written terms in the registry. A seven day cooling off period is provided and if no party notifies the tribunal of the party's intention to withdraw from the settlement within that seven day period, the tribunal constituted by a legally qualified member or an adjudicator may make orders necessary to give effect to the settlement.

Clause 87 states that an order made under this division to give effect to the terms of a settlement may only be made if the person making the order is satisfied the tribunal could make a decision in those terms.

Clause 88 provides that an order giving effect to a settlement has the same effect as an order of the tribunal in deciding a proceeding. The parties may jointly apply to the tribunal for an amendment of the order if the order does not reflect the intention of the parties.

Clause 89 sets out the consequences if an accepted offer to settle is not complied with by the party who made the offer. The party who accepted the offer may apply to the tribunal for:

- an order giving effect to the terms of the offer; or
- if the party who made the offer was the applicant, an order dismissing the proceeding or an order in the terms sought by the party; or
- if the party who accepted the offer is the applicant, an order in the terms sought by the applicant.

Division 5 Hearings

Clause 90 states that a tribunal hearing must be in public unless an enabling Act that is an Act provides otherwise. Subordinate legislation cannot provide otherwise, in accordance with clause 6. The tribunal may also direct that a hearing or part of a hearing be held in private in the circumstances listed in subsection (2). The test is the same test for the making of non-publication orders under clause 66. The tribunal may direct a private hearing if it considers it necessary to avoid interfering with the proper administration of justice, to avoid endangering the physical or mental health or safety of a person, to avoid offending public decency or morality, to avoid the publication of confidential information or other information the publication of which would be contrary to the public

interest or for another reason in the interests of justice. The tribunal may also make directions about who may be present at a private hearing.

Clause 91 requires the tribunal to ask parties and witnesses if they need a support person to be present for a private hearing. If the party or witness does need a support person, the tribunal must allow the support person to attend the hearing with the party or the witness. However, if the support person is to be a witness at the hearing, the tribunal may direct the times the support person can attend the hearing. The support person cannot be a party and must not act as a representative of the party or witness or address the tribunal.

Clause 92 requires the principal registrar to give notice, as stated in the rules, of the time and place of the hearing to the persons stated in paragraphs (a) to (c).

Clause 93 empowers the tribunal to hear and decide a matter where a person, including a party, fails to attend at a hearing and the tribunal is satisfied the person has been given notice of the hearing.

Clause 94 empowers the tribunal to conduct an expedited hearing for a minor civil dispute or for another matter as provided for in an enabling Act. The tribunal rules will provide for the way in which expedited hearings will be conducted. This provision reflects sections 123 and 124 of the *Commercial and Consumer Tribunal Act 2003* which enables that tribunal to conduct expedited hearings for matters prescribed under an enabling Act. It is intended that the procedures for expedited hearings, including those currently set out in section 124 of that Act, will be set out in the tribunal rules.

Clause 95 requires the tribunal to give parties a reasonable opportunity to call or give evidence, to examine, cross-examine or re-examine witnesses and to make submissions to the tribunal. However, subsections (2) and (3) empower the tribunal to place restrictions around the giving of evidence and cross-examination of witnesses. These provisions support the object of the Act to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick and ensures the tribunal is able to control the conduct of hearings. Subsection (2) empowers the tribunal to refuse to allow a party to a proceeding to call evidence or cross-examine a witness if the tribunal is satisfied that there already is sufficient evidence about the matter before the tribunal and, in relation to cross-examination, the evidence has been sufficiently tested by cross-examination. It also provides that cross-examination and re-examination in an expedited

hearing is at the discretion of the tribunal subject to the rules. Subsection (3) enables the tribunal to place time limits on the giving of evidence and on the examination, cross-examination and re-examination of witnesses.

Subsection (4) enables the tribunal to require evidence to be given on oath or affidavit. Subsection (5) enables a member or adjudicator to administer an oath. Subsection (6) provides that a child cannot be compelled to take an oath.

Clause 96 empowers the tribunal to authorise a person to take evidence on behalf of the tribunal. The authorisation may only be given by a legally qualified member or an adjudicator. The provision clarifies that a person may be authorised to take evidence outside of Queensland.

Clause 97 empowers the tribunal to issue a written notice requiring a person to attend at a hearing or produce a document or other thing to the tribunal. A witness required to attend to give evidence or produce a document or thing is entitled to be paid the fees and allowances prescribed in a regulation. These fees and allowances must by paid by the party who applied for the notice to attend to be issued and, if the tribunal issued the notice on its own initiative, by all of the parties in the proportion decided by the tribunal.

Clause 98 sets out the tribunal's powers in relation to witnesses. Subsection (1) enables the tribunal to call any person to give evidence on its own initiative, to examine a witness on oath or require a witness to give evidence by affidavit, examine or cross-examine a witness and to compel a witness to answer questions. However, the tribunal cannot compel a witness to answer a question if the witness has a reasonable excuse for refusing to answer. A reasonable excuse includes the situation where answering the question might tend to incriminate the person.

Clause 99 sets out provisions that apply to special witnesses. These provisions are similar to those in the *Evidence Act 1977*. A special witness is a child or another person the tribunal considers would be likely, if the usual procedures applied for the giving of evidence, to:

- be disadvantaged as a witness because the person has a mental, intellectual or physical impairment or because of the person's age, education, level of understanding, cultural background, relationship to a party, the subject matter of the evidence or another matter the tribunal considers relevant.

- suffer severe emotional trauma
- be so intimidated as to be disadvantaged as a witness.

The types of orders the tribunal may make to assist the giving of evidence by a special witness include orders that only certain persons may be present while the special witness is giving evidence, that only certain persons may ask questions of the witness, that there be a time limit on questioning, that a particular person be obscured from the view of the witness or be excluded from the hearing while the special witness is giving evidence, that the evidence of the special witness be taken elsewhere than in the hearing room and in the presence of only stated persons or that the evidence of the special witness be recorded and heard at the hearing instead of the witness giving direct testimony at the hearing.

Division 6 Costs

Clause 100 provides that, subject to this Act or an enabling Act, the general rule is that each party must bear their own costs for the proceeding.

Clause 101 states that the tribunal must not award costs against a child. However, this prohibition does not prevent the tribunal from ordering costs against a child's representative under section 103.

Clause 102 enables the tribunal to award costs against a party if the tribunal considers the order is in the interests of justice. Subsection (2) provides, however, that the only costs the tribunal may award in a minor civil dispute are the costs stated in the rules. It is intended that the current restrictions on the costs that may be awarded in a small claim under the *Small Claims Tribunals Act 1973* and in a minor debt claim under the *Uniform Civil Procedure Rules 1999* will be reflected in the tribunal rules. This will ensure that the minor civil disputes jurisdiction remains a low cost jurisdiction. Subsection (3) sets out the matters the tribunal may have regard to when deciding whether to award costs. These matters include whether a party has acted in a way that has unnecessarily disadvantaged another party, the nature and complexity of the dispute, the relative strengths of each party's claims, in a review proceeding – whether the applicant was afforded natural justice by the decision-maker and whether the applicant genuinely attempted to help the decision-maker make the decision, the financial circumstances of the parties and anything else the tribunal considers relevant.

Clause 103 empowers the tribunal to award costs against a representative of a party if the tribunal considers the representative, rather than the party, is responsible for unnecessarily disadvantaging another party. Before making the order, the tribunal is required to give the representative a reasonable opportunity to be heard. This is to address behaviour of a representative of a party who has not acted on instructions of the party and in such as way as to prevent the tribunal from achieving its objective to deal with matters in a way that is accessible, fair, just, economical, informal and quick.

Clause 104 empowers the tribunal to award costs against the State, if the Attorney-General has intervened, or against another intervening party, for the costs reasonably incurred by a party as a result of the intervention.

Clause 105 provides that the rules may authorise the tribunal to award costs in other circumstances. The example given of what the rules may provide for is the payment of costs where an offer to settle the dispute was not accepted.

Clause 106 provides that costs may be awarded at any stage in a proceeding or after the proceeding has ended.

Clause 107 states how the amount of a costs order may be determined. If possible, the tribunal should fix the costs. If this is not possible having regard to the nature of the proceeding, the tribunal may order that costs be assessed under the QCAT rules which may provide that a particular scale under the *Uniform Civil Procedure Rules 1999* must be used in assessing costs for particular matters.

Clause 108 enables the tribunal, where it has made a costs order before a proceeding is finalised, to make an order staying the proceeding or any other proceeding started by the party against whom the costs order has been made, until the order has been satisfied.

Clause 109 empowers the tribunal to require a party to give security for another party's costs and stay the proceeding until the security is given. If the security is not given in the time stated in the order, the tribunal may make an order dismissing the proceeding, or part of the proceeding against the party who obtained the order for security for costs. Subsection (4) sets out the matters the tribunal may have regard to when deciding whether to order a party to give security for costs.

Division 7 Assessors

Clause 110 enables the president to appoint assessors who are persons with relevant knowledge, expertise and experience, to assist the tribunal in proceedings. Assessors are appointed under this Act, not the *Public Service Act 2008*.

Clause 111 describes the role of assessors. An assessor may be asked by the tribunal to give expert evidence in a proceeding; to help the tribunal in a proceeding by, for example, sitting with the tribunal to provide cultural or technical advice; to provide a report to the tribunal about the assessor's decision on a question of fact, for example a question about a technical matter; or to give other written advice to the tribunal. If an assessor gives the tribunal a written report, the tribunal is required to give a copy to each of the parties and any other person to whom a copy is required to be given under an enabling Act or the rules and must also give each party an opportunity to make submissions about the report. After considering any submissions, the tribunal may adopt or reject the assessor's decision or findings.

Clause 112 empowers the tribunal to make an order requiring a party (other than a child) to pay the costs or part of the costs of an assessor, but only in circumstances where the tribunal has, before engaging the assessor, advised the party of the likely costs of the assessor and the likely amount of the party's contribution and has given the party an opportunity to be heard in relation to the engagement of an assessor.

Clause 113 requires an assessor to disclose any potential conflict of interest to the president and to not take part in the proceeding unless all parties and the president agree otherwise.

Part 7 Decisions and enforcement

Division 1 Making decision

Clause 114 clarifies that the tribunal's power to make a decision in a proceeding includes a power to impose conditions on the decision and to make ancillary orders or directions.

Clause 115 sets out who makes the tribunal's decision in a matter when the tribunal is constituted by more than one member and their views differ.

Clause 116 sets out which member of the tribunal decides questions of law that may arise in proceedings. If the presiding member is a legally qualified member, then the presiding member decides the question of law. If the presiding member is not a legally qualified member, but the tribunal includes a legally qualified member, then that member decides the question of law. If the presiding member is not a legally qualified member and the tribunal includes two legally qualified members, then the question is decided by the legally qualified member nominated by the president. If the tribunal does not include a legally qualified member, the question of law is decided by a legally qualified member nominated by the president and the tribunal is taken to be reconstituted to include the legally qualified member for the purpose of deciding the question of law.

Clause 117 enables the presiding member to refer a question of law to the president whether or not the question of law has been decided by the tribunal under section 116. The president's decision on the referred question of law is the tribunal's decision on the question.

Clause 118 enables the president and the appeal tribunal, with the president's consent, to refer a question of law before the tribunal or appeal tribunal to the Court of Appeal. The Court of Appeal may decide the question of law and if it does so, the Court of Appeal's decision is that of the tribunal or the appeal tribunal. The tribunal or the appeal tribunal must not make a decision on the matter until the Court of Appeal gives its decision on the referred question of law and the tribunal or the appeal tribunal must not proceed or make a decision on the matter that is inconsistent with the Court of Appeal's decision.

Clause 119 requires the tribunal to give its decision within a reasonable time. In most matters, particularly minor civil disputes, it is anticipated that

decisions will be given orally at the end of the hearing. However, where a matter is more complex, the tribunal may need to reserve its decision. This provision ensures that reserved decisions are given as soon as is reasonably possible. Schedule 2, item 15 enables rules to be made about the period for which a tribunal may reserve its decision in particular proceedings.

Division 2 Giving decision etc.

Clause 120 requires the tribunal, when giving a written decision (which includes a direction or order) or a notice to a person and the tribunal is aware that the person is blind or illiterate, a child or a person with impaired capacity, to do everything reasonably practicable to communicate the information in the decision or notice in a way which the person can understand.

Clause 121 requires the tribunal to give its final decision in writing to the persons listed in subsection (1). Subsection (3) provides that the tribunal meets this requirement in relation to a person by ordering a party to be given a copy of the decision to the person. Subsection (2) provides that the tribunal must also give written notice to the parties of their appeal rights under part 8 of this Act and, if the written final decision did not include the reasons for the decision, a notice that the party may request written reasons from the tribunal under section 122. Subsection (4) requires the tribunal to give reasons for its final decision either orally or in writing.

Clause 122 enables a party to request written reasons for a decision of the tribunal within 14 days after the decision takes effect. The tribunal must comply with the request within 45 days or the extended period decided by the president.

Clause 123 provides that, where a decision or reasons are given orally, a written transcript or audio recording of the decision or the reasons for the decision is sufficient to meet the requirements to give decisions and reasons in writing.

Clause 124 requires the tribunal to ensure, when giving its decision or reasons either orally or in writing, that the decisions or reasons not include something that would contravene a non-publication order, if one has been made in relation to the proceeding. For example, if the tribunal has made an order prohibiting the publication of the names of the parties, the decision and reasons should contain de-identified references to the parties.

Clause 125 requires the tribunal to publish its final decisions, with or without reasons. However, the publication must be done in a way that does not contravene any non-publication order that the tribunal may have made in relation to the proceeding.

Division 3 Effect of decision and its validity

Clause 126 provides that a decision of the tribunal is binding on all the parties. Subsection (2), however, clarifies that the tribunal's decision in a minor civil dispute does not prevent a court or another tribunal making a decision about an issue decided by the tribunal if it is relevant to another matter before the court or the other tribunal. The purpose of this subsection is to replicate section 18(2) of the *Small Claims Tribunals Act 1973* to ensure that an issue estoppel or the principle of res judicator is not raised to prevent the court or the other tribunal from deciding the same issue as part of another matter. The effect of subsection (2) is that, in relation to decisions of the tribunal about minor civil disputes, subsection (1) does not prevent an issue that was before the tribunal being considered by another court or tribunal as part of a different or broader cause of action. For example, the tribunal may determine a claim for payment of money for damage to property caused by or arising out of the use of a motor vehicle in its minor civil disputes jurisdiction. While this decision is binding as between the parties, subsection (2) would operate to ensure that a court hearing a personal injury matter arising out of the same factual circumstances could determine the facts for itself in relation to that cause of action.

Clause 127 provides that a decision of the tribunal takes effect when it is made or at the later time or date stated in the decision.

Clause 128 provides that a failure of the tribunal to comply with a requirement in division 2 does not effect the validity of the decision or notice. It also provides that a decision is not invalid because of a vacancy in the office of a member or adjudicator or a defect in, or related to, the appointment of a member, acting member, adjudicator, acting adjudicator or the principal registrar or, in relation to a person appointed as acting president or acting deputy president, the fact that the acting period had not yet arisen or had ceased.

Division 4 Enforcing final decision

Clause 129 defines the term 'final decision' for the purpose of division 4 to include an interim decision under section 58, an injunction under section 59 and a monetary decision other than a monetary decision that is part of the tribunal's final decision for the matter. The latter category of decisions will mostly be costs orders made at earlier stages in a proceeding.

Clause 130 provides that section 10(4) of the *Limitations of Actions Act 1974* applies to the tribunal's final decision as if the decision was a judgment. Section 10(4) of the *Limitations of Actions Act 1974* provides that an action shall not be brought upon a judgement after the expiration of 12 years from the date on which the judgment became enforceable.

Clause 131 provides that a final decision which is a monetary decision may be enforced by a person filing a copy of the decision and an affidavit about the amount not paid in a court of competent jurisdiction. On filing these documents, the final decision of the tribunal is taken to be an order of the relevant court and may be enforced as an order of the court. No fee may be charged for filing the tribunal decision.

Clause 132 provides that a final decision which is a non-monetary decision may be enforced by a person filing a copy of the decision and an affidavit about the non-compliance with the decision in the Supreme Court. On filing these documents, the final decision of the tribunal is taken to be an order of the Supreme Court and may be enforced as an order of the Court. No fee may be charged for filing the tribunal decision. The Supreme Court may transfer the proceeding for enforcement to a lower court if the order is the type of order that can be made and enforced in the lower court. If the proceeding is transferred to a lower court, the order is taken to be an order of that court and may be enforced accordingly and the proceeding for enforcement is taken to have started in the lower court at the time it was started in the Supreme Court.

Division 5 Renewal of final decision

Clause 133 enables a party to a proceeding to apply to the tribunal to renew the proceeding in order to change a final decision if there are problems with interpreting or implementing the decision. The application must be in a

form which substantially complies with the rules and made within the period stated in the rules. It must also set out the reasons for the application. A copy of the application must be given to the other parties, any other person to whom notice of the original application or referral in the proceeding was required to be given and any other person as directed by the tribunal. However, an application for renewal cannot be made if the final decision is the subject of an appeal or an application for leave to appeal, whether or not the appeal or an application for leave has been decided.

Clause 134 provides that on an application under section 133, the tribunal may make the same final decision it made originally or another decision it could have made when the matter was originally decided. If the tribunal changes the final decision, subsection (3) provides that this decision becomes the final decision in the proceeding. Subsection (4) provides that the final decision cannot be renewed again under this division.

Division 6 Correcting mistakes

Clause 135 enables the tribunal to correct a decision if the decision contains a clerical mistake, an error arising from an accidental slip or omission, a substantive miscalculation of figures or mistake in the description of something mentioned in the decision or a defect of form. This is commonly called the 'slip rule'. The time for making an application to the tribunal for a correction will be set out in the tribunal rules. An application for a correction cannot be made if the decision is the subject of an appeal or an application for leave to appeal, whether or not the appeal or an application for leave has been decided.

Division 7 Reopening

Clause 136 provides that division 7 applies to a proceeding (other than an appeal) that has been decided by the tribunal.

Clause 137 defines certain terms for the purpose of division 7. In particular, it sets out the grounds on which a proceeding may be reopened. There are two grounds:

- where the party applying for the reopening did not appear at the hearing and had a reasonable excuse
- where significant new evidence has arisen since the hearing that was not reasonably available when the hearing was held and the party applying for the re-opening would suffer considerable injustice if the proceeding was not re-opened.

Hearing is defined to include a compulsory conference in which the proceeding was decided because the party was absent and the person presiding at the conference was satisfied the party had been notified of the time and place of the conference.

Clause 138 enables a party to a proceeding to apply to the tribunal for a proceeding that has been finalised to be reopened. The application must set out the re-opening ground on which the reopening is sought, be made in the way and in the period stated in the rules and the prescribed fee must be paid. Subsections (3) and (4) set out the service requirements. An application for a reopening cannot be made if the relevant decision is the subject of an appeal or an application for leave to appeal, whether or not the appeal or an application for leave has been decided.

Clause 139 sets out how the tribunal is to decide an application for re-opening. Subsection (2) requires the tribunal to give each party an opportunity to make written submissions about the application for reopening. Subsection (3) requires the tribunal to consider the written submissions and enables it to decide the application for re-opening on the papers without the need for a hearing. Subsection (4) states that the tribunal may grant the application if it considers that a reopening ground exists and the matter could be more effectively or conveniently dealt with by a reopening rather than an appeal, if an appeal could be made under part 8 of this Act. Subsection (5) provides that a decision of the tribunal about whether or not to grant an application to reopen a proceeding is final and cannot be reviewed in any way, including under the *Judicial Review Act 1991*.

Clause 140 provides that if the tribunal grants an application for reopening, the tribunal must decide which issues in the proceeding will be heard and decided again, although this does not prevent the tribunal which is rehearing the proceeding from hearing and deciding other related issues. The issues that are to be heard and decided again are then heard afresh. The tribunal may confirm or amend the tribunal's previous final decision or set aside that decision and substitute a new decision. The new hearing is taken

to be part of the original proceeding and the decision of the tribunal on the reopened proceeding is the tribunal's final decision for the proceeding. The proceeding can only be reopened once.

Clause 141 provides that if a party has made an application for a reopening, an appeal or an application for leave to appeal cannot be made until the application for reopening is finalised.

Part 8 Appeals etc.

Division 1 Appeals to appeal tribunal

Clause 142 enables a party to appeal against a decision of the tribunal to the appeal tribunal but only if the tribunal which made the decision was not constituted by, or did not include a judicial member. Appeals from the tribunal constituted by a judicial member are made directly to the Court of Appeal under division 2. A party cannot appeal to the appeal tribunal against a decision of the tribunal under section 35 to reject or accept an application or referral or a decision of the tribunal about the amount of costs awarded against a party. A decision about the amount of costs may only be appealed to the Court of Appeal under division 2.

An appeal to the appeal tribunal may be made on a question of law and, with the leave of the appeal tribunal, on a question of fact or mixed question of fact and law. Also, leave must be obtained to appeal a decision for a minor civil dispute, an interim or other interlocutory order of the tribunal and a decision to award costs.

Clause 143 sets out the procedure for appealing a decision of the tribunal, making an application for leave to appeal and for appealing a decision of another entity under an enabling Act to the appeal tribunal. The appeal or application for leave to appeal must comply with the rules, state the reasons for the appeal or application and be accompanied by the prescribed fee.

An application for leave to appeal must be made within 28 days after the person was given the written reasons for the decision being appealed against or, if a party had applied for the decision to be corrected under section 135 or for a reopening under section 138, the day that application was finalised by the tribunal.

An appeal must be filed within 21 days after leave to appeal is granted or, if leave was not required, within 28 days after the person was given the written reasons for the decision being appealed against.

Clause 144 enables the president to transfer an appeal to the Court of Appeal if the president is of the view that the appeal could be more effectively or appropriately dealt with by the Court and it would be appropriate for the appeal to be transferred. However, the president may only transfer an appeal with the leave of the Court of Appeal. If the appeal is transferred, it is taken to have commenced in the Court of Appeal at the time it was started in the tribunal. The president may make orders or give directions to facilitate the transfer and these orders are taken to be orders of the tribunal.

Clause 145 enables the appeal tribunal or a judicial member to stay the operation of the decision being appealed against until the appeal is decided.

Clause 146 states that, on an appeal on a question of law, the appeal tribunal may:

- confirm or amend the decision
- set it aside and substitute its own decision
- set it aside and return it to the tribunal or other entity who made the decision for reconsideration by the tribunal or the other entity in accordance with the directions of the appeal tribunal
- make any other order it considers appropriate.

Clause 147 states that an appeal on a question of fact or mixed question of fact and law must be done by way of rehearing. The appeal tribunal may admit fresh evidence. On an appeal on a question of fact or mixed question of fact and law, the appeal tribunal may confirm or amend the decision or set it aside and substitute its own decision.

Clause 148 requires the appeal tribunal to give its final decision and reasons for the decision in writing to each party, each other person to whom notice of the decision must be given under an enabling Act or the rules and any other person the appeal tribunal directs.

Division 2 Appeals to the Court of Appeal

Clause 149 sets out the decisions of the tribunal at first instance which may be appealed to the Court of Appeal. Subsection (1) provides that a party may appeal a decision of the tribunal about the amount of costs awarded by the tribunal, whether or not a judicial member constituted the tribunal. Subsection (2) provides that a party may appeal a decision of the tribunal at first instance to the Court of Appeal where the tribunal was constituted by or included a judicial member. Subsection (3) provides that an appeal under subsection (1) from a decision about the amount of costs may be made only on a question of law and with the leave of the Court of Appeal and an appeal under subsection (2) on a question of fact or mixed question of fact or law may only be made with the leave of the Court. Subsection (4) states that a party cannot appeal a decision of the tribunal under section 35 about the acceptance or rejection of an application or referral.

Clause 150 sets out the decisions of the appeal tribunal which may be appealed to the Court of Appeal. Subsection (1) provides that a party may appeal a refusal by the appeal tribunal of an application for leave to appeal. Subsection (2) provides that a party may appeal a final decision and a cost amount decision of the appeal tribunal to the Court of Appeal. Subsection (3) provides that appeals under subsections (1) and (2) may only be made on a question of law with the leave of the Court of Appeal.

Clause 151 sets out how appeals and applications for leave to appeal may be made to the Court of Appeal. Subsection (2) provides that the appeal or application for leave must be made under the *Uniform Civil Procedure Rules 1999* and within 28 days after the person is given written reasons for the decision or, if a party had applied for the decision to be corrected under section 135 or for a reopening under section 138, the day that application was finalised by the tribunal, unless ordered otherwise by the Court of Appeal.

Clause 152 enables the tribunal, the appeal tribunal or the Court of Appeal to stay the operation of the decision being appealed until the appeal is finally decided. Subsection (5) provides that if the tribunal or appeal tribunal orders a stay of the decision, the Court of Appeal may amend or revoke the order. The reference to tribunal in this section includes a reference to the appeal tribunal. This is provided for in clause 165 relating to the constitution of the tribunal.

Clause 153 provides that, on an appeal on a question of law, the Court of Appeal may confirm or amend the decision, set aside the decision and substitute its own decision or set it aside and return the matter to the tribunal for reconsideration as directed by the Court and make any other order it considers appropriate. Subsection (3) requires the Court of Appeal, if it returns the matter to the tribunal for reconsideration, to give directions about whether or not the tribunal must be constituted by the same persons who constituted the tribunal to make the decision appealed against.

Clause 154 provides that an appeal to the Court of Appeal on a question of fact or mixed question of fact and law must be decided by way of rehearing and the Court of Appeal may admit fresh evidence. In deciding the appeal, the Court of Appeal may confirm or amend the decision or substitute its own decision.

Division 3 Miscellaneous

Clause 155 requires the principal registrar to give the Court of Appeal all documents and other things that were before the tribunal in relation to a proceeding to which an appeal or a referral of a question of law relates and all other documents and things required under the *Uniform Civil Procedure Rules 1999* to be given to the Court. The Court of Appeal must return these documents and other things to the tribunal after finalisation of the proceeding in the Court.

Clause 156 partially ousts the operation of the *Judicial Review Act 1991* by providing that parts 3, 4 and 5 of the *Judicial Review Act 1991* do not apply to a decision or conduct of the tribunal other than where the decision or conduct is affected by jurisdictional error.

Chapter 3 Reasons to be given for reviewable decision

The purpose of chapter 3 is to promote consistency in the giving of information notices about and reasons for reviewable decisions across agencies which administer enabling Acts that confer review jurisdiction on QCAT.

Clause 157 requires the decision-maker to give a written notice of the decision to each person who, under the relevant enabling Act, is entitled to apply to the tribunal for review of the decision. Subsection (2) requires the notice to state the decision, the reasons for the decision, that the person has a right to apply to the tribunal for review of the decision, how and the period within which the person may apply and any right the person may have to apply for a stay of the decision under section 22 of this Act. Subsections (3) and (4) state it is sufficient compliance to give the person a written notice as required under an enabling Act provided it sets out the matters in subsection (2) and that a failure to comply with this section does not affect the validity of the decision.

Clause 158 enables a person who is entitled to apply to the tribunal for review of a decision but has not been given written reasons for the decision to request the statement of reasons from the decision-maker. The request must be made in writing and within 14 days after the person:

- was notified of the decision, or
- under an enabling Act was taken to have been notified of the decision, or
- if neither of the above apply, the day the person became aware of the decision.

Subsection (4) requires the decision-maker to give the person the statement of reasons with 28 days after the request was made. Subsection (5) clarifies that a person is entitled to receive a statement of reasons whether or not the enabling Act under which the decision was made requires the person to be given a statement of reasons.

Clause 159 applies if the decision-maker does not give a written statement of reasons in accordance with section 158. Subsection (2) enables the person to apply to the tribunal for an order that the statement of reasons be given. If the tribunal is satisfied the applicant is entitled to a statement of reasons, the tribunal may order the decision-maker to give the statement of reasons to the applicant within a period of not more than 28 days.

Clause 160 enables a person, who has been given a statement of reasons, to apply to the tribunal for an order requiring the decision-maker to give the applicant further and better particulars of the statement of reasons.

Chapter 4 Establishment and administration

Part 1 Establishment of tribunal

Clause 161 establishes the Queensland Civil and Administrative Tribunal.

Clause 162 establishes the independence of the tribunal by providing that, in exercising its jurisdiction, the tribunal must act independently and is not subject to direction or control by any entity including the executive government.

Clause 163 provides that the tribunal may be constituted at any place in Queensland, that more than one tribunal may sit at any time and if more than one tribunal is sitting, each tribunal may exercise the jurisdiction and powers of the tribunal.

Clause 164 provides that the tribunal is a court of record and must have a seal. The seal must be kept under the direction of the principal registrar.

Part 2 Constitution of tribunal

Clause 165 states that the president must decide the members or the adjudicator to constitute the tribunal for a particular matter. In choosing members to constitute the tribunal, the president may choose one, two or three members. The persons chosen to constitute the tribunal may exercise all the jurisdiction and powers of the tribunal in relation to the particular matter. Subsection (3) clarifies that, for an appeal or an application for leave to appeal, a reference in this Act to the tribunal includes a reference to the appeal tribunal. Subsection (4) provides that subsection (3) does not limit any other reference in the Act to the tribunal being taken to include a reference to the appeal tribunal if the context requires or permits it.

Clause 166 provides that, for an appeal or application for leave to appeal to the appeal tribunal under chapter 2, part 8, division 1, the appeal tribunal may be constituted by one, two or three judicial members. However, if

considered appropriate for a particular appeal or application for leave to appeal, the president may choose other suitably qualified members to sit on the appeal tribunal. It is likely that this would only occur in relation to appeals involving non-complex legal issues or appeals relating to questions of fact that involve highly technical matters where the inclusion of a member who is not a judicial member with expertise in the particular subject matter would be of benefit.

Clause 167 provides guidelines to the president for choosing which members or adjudicators should constitute the tribunal for a particular matter. In selecting the members or adjudicator, the president must consider the nature, importance and complexity of the matter, the need for the tribunal to have specialist knowledge or expertise relating to the matter, any relevant provision of this Act, an enabling Act or the rules and any other matter the president considers relevant.

Subsections (2), (3) and (4) proscribe who the president may choose to constitute the tribunal for a review proceeding. The person must not currently be an officer or employee of the entity which made the reviewable decision or have been a member when the reviewable decision was made. The president must not choose a person to constitute the appeal tribunal if the person constituted the tribunal that made the decision being appealed. Also, the president is required to ensure that the tribunal is constituted in a way that complies with any requirements in an enabling Act. Some enabling Acts set out the particular qualifications, expertise or experience required of a member hearing a matter in the jurisdiction conferred by the enabling Act, which the president must comply with in selecting the members to sit on the matter. For example, under the *Legal Profession Act 2007*, the tribunal is required to be constituted by a judicial member who is a Supreme Court judge.

Clause 168 empowers the president to reconstitute the tribunal for a matter. Examples where reconstitution may be required are set out in the provision. If the tribunal is reconstituted it must continue to hear and decide the matter and may have regard to any decisions and records of proceedings of the previously constituted tribunal.

Clause 169 requires a member or adjudicator selected to constitute the tribunal for a particular matter, or to carry out any other function for a matter, to disclose any potential conflict of interest to the president, and to not take part in the proceeding unless all the parties agree.

Clause 170 sets out who is the presiding member of the tribunal as constituted for a matter.

Part 3 Members of tribunal

Division 1 General

Clause 171 provides that the members of the tribunal are the president, deputy president, senior members, ordinary members and supplementary members. Subsection (2) provides that every magistrate is an ordinary member of QCAT for the purpose of exercising its minor civil disputes jurisdiction. The other members are to be appointed under this Act. It also provides that members of the tribunal, other than the supplementary members, are to be appointed by the Governor in Council and that supplementary members are to be appointed by the Minister. An appointment of a member of the tribunal must be made in writing. Subsection (7) provides that divisions 3 and 4 of this part do not apply to a magistrate who is a member under subsection (2). Division 3 deals with the appointment of senior and ordinary members. Division 4 deals with the appointment of supplementary members. Subsection (8) provides for a similar arrangement to that for supplementary members in section 192 to apply to magistrates who are ordinary members under subsection (2).

Division 2 The president and deputy president

Clause 172 sets out the president's functions, which include managing the business of the tribunal, giving practice directions, managing the members and adjudicators, adjudicating in the tribunal, advising the Minister on the appointment, suspension and removal of members and adjudicators and leading the development of a positive culture throughout the tribunal.

The functions of the president also include providing advice to the Minister on how the tribunal could improve its operation to achieve the objects of this Act and how this Act or an enabling Act could work more effectively in terms of the exercise of the tribunal's jurisdiction and achieving the

objects of this Act. Advice about an enabling Act is related to how the Act affects the operation of QCAT and is not intended to allow the president to provide advice to the Minister on enabling Acts generally.

Clause 173 enables the president to direct all members or adjudicators, a class of members or adjudicators, or a particular member or adjudicator in writing to participate in particular professional development or a particular continuing education or training activity. These directions must be complied with unless the person has a reasonable excuse. That a person has disobeyed the direction without reasonable excuse can be taken into account in proceedings for suspension or removal of member or adjudicator.

Clause 174 sets out the functions conferred on the deputy president, which include assisting the president in managing the business of the tribunal and the members and adjudicators. The deputy president is subject to the direction of the president.

Clause 175 requires the president of the tribunal to be a Supreme Court judge who is recommended for appointment by the Minister after consultation with the Chief Justice of Queensland. The term of the appointment is fixed and should be for no less than three years and no more than five years. The president may be appointed for a further period if the further term of office does not immediately follow a prior term of appointment or where the total combined period of the appointments does not exceed five years. For example, if the president was initially appointed for a term of three years, the same person may be re-appointed consecutively provided it is only for a further term of two years.

The appointment of a Supreme Court judge as president of the tribunal will not affect his or her rights and privileges as a judge, including tenure of office or status as a judge or the payment of the judge's salary or allowances as a judge. The service of a Supreme Court Judge in the office of president of the tribunal is taken for all purposes to be service as a Supreme Court judge.

Nothing in this Act prevents the president from doing anything in their capacity as a Supreme Court judge. This means that the president is not prevented from sitting as a Supreme Court judge during his or her tenure of office as president.

Clause 176 requires the deputy president of the tribunal to be a District Court judge who is recommended for appointment by the Minister after consultation with the Chief Judge of the District Court of Queensland. As

with the president, the term of the appointment is fixed and should be for no less than three years and no more than five years. The deputy president may be appointed for a further period if the further term of office does not immediately follow a prior term of appointment or where the total combined period of the appointments does not exceed five years.

The appointment of a District Court judge as president of the tribunal will not affect his or her rights and privileges as a judge, including tenure of office or status as a judge or the payment of the judge's salary or allowances as a judge. The service of a District Court Judge in the office of president of the tribunal is taken for all purposes to be service as a District Court judge.

Nothing in this Act prevents the president from doing anything in their capacity as a District Court judge. This means that the president is not prevented from sitting as a District Court judge during his or her tenure of office as president.

Clause 177 provides that the president and deputy president hold office on the conditions stated in this division of the Act and the conditions stated in the respective instruments of appointment.

Clause 178 provides that the office of president or deputy president becomes vacant if the president ceases to be a Supreme Court judge or the deputy president ceases to be a District Court judge or where the president or deputy president resigns under section 179.

Clause 179 sets out how the president or deputy president may resign.

Clause 180 sets out the circumstances in which the Minister may appoint the deputy president or a Supreme Court judge to act as president. The Minister may only appoint an acting president for a period of not more than six months. An acting appointment may be made during a vacancy in the office or where the president is absent or for another reason is unable to perform the functions of the president. The acting president may be further appointed by the Minister to act as president provided the total acting period is not more than six months. If the further acting period required means that the total acting period is longer than six months, the appointment must be made by the Governor in Council. If the deputy president is appointed as acting president, the deputy president is entitled to the remuneration and allowances payable to a Supreme Court judge. However, the acting deputy president cannot be appointed to act as president if a senior member is acting as deputy president. If the Minister appoints another Supreme Court judge to act as president, the Minister

must first consult with the Chief Justice. The section also sets out the conditions which attach to an appointment to act as the president. The Governor in Council may cancel an acting appointment at any time.

Clause 181 sets out the circumstances in which the Minister may appoint a senior member who is a lawyer of at least eight years standing or a District Court judge to act as deputy president. The Minister may only appoint an acting president for a period of not more than six months. An acting appointment may be made during a vacancy in the office or where the deputy president is absent or for another reason is unable to perform the functions of the deputy president. The acting president may be further appointed by the Minister to act as president provided the total acting period is not more than six months. If the further acting period required means that the total acting period is longer than six months, the appointment must be made by the Governor in Council. If a senior member is appointed as acting president, the member is entitled to the remuneration but not the allowances payable to a District Court judge. If the Minister appoints another District Court judge to act as president, the Minister must first consult with the Chief Judge. The section also sets out the conditions which attach to an appointment to act as the deputy president. The Governor in Council may cancel an acting appointment at any time.

Clause 182 enables the president and the deputy president to delegate a function, other than an adjudicative function, to another member, an adjudicator or principal registrar. The power to delegate is restricted by requiring the president or deputy president to be satisfied that the person to whom the power is to be delegated in appropriately qualified to perform the particular function.

Division 3 Senior members and ordinary members

Clause 183 enables the appointment of as many senior and ordinary members as are required for the proper functioning of the tribunal. A recommendation for appointment of a senior or ordinary member must be made by the Minister after consultation with the president. The section sets out the eligibility requirements and selection process for the appointment of senior and ordinary members, including the requirement that the Minister must advertise for applications from appropriately qualified

persons and consider certain matters when recommending persons for appointment.

It also provides that the term of office must not be longer than 5 years but no less than 3 years. A senior or ordinary member can be reappointed whether or not a vacancy in the office has been advertised. Senior or ordinary members may be appointed on a full-time, part-time or sessional basis. Whether the member is appointed as a full-time, part-time or sessional member will be stated in the instrument of appointment. A full-time member will work the standard full-time hours and be paid the salary and allowances stated in the instrument of appointment. A part-time member will work the number of hours per week and be paid the salary and allowances stated in the instrument of appointment. A sessional member is engaged to work on a sessional basis with fluctuating hours. The hourly or sessional rate will be set out in the instrument of appointment.

Clause 184 enables the Minister to obtain a report on the criminal history of a senior or ordinary member or a person who is being considered for appointment as a senior or ordinary member. Criminal history is defined in the dictionary to include charges and convictions. Before using the information to decide a nomination for appointment or whether a person should continue to be a senior member or ordinary member, the Minister must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Minister about the information. The Minister must ensure a report on a person's criminal history is destroyed as soon as practicable after it is no longer needed.

Clause 185 requires a senior member or ordinary member to immediately disclose a change in the member's criminal history to the Minister, unless the member has a reasonable excuse. A change in criminal history also includes acquiring a criminal history. Criminal history includes charges and convictions. A maximum penalty of 100 penalty units applies. If the change is a conviction for an offence, this clause sets out certain information about the conviction which must be disclosed by the member.

Clause 186 sets out the remuneration and other conditions of the offices of senior member and ordinary member. A senior or ordinary member appointed on a full-time basis is prohibited from practicing in any profession or engaging in other paid employment without the consent of the president.

Clause 187 provides that a senior member or ordinary member may resign from office by giving the Minister a signed letter of resignation addressed to the Governor.

Clause 188 sets out the basis upon which a member may be removed from office by the Governor in Council. The Minister may only recommend to Governor in Council the removal of a member who has been suspended under section 189 if the member has been given the opportunity to make written and oral submissions to the person conducting the investigation in relation to the suspension and to the president or deputy president. The Minister must consult the president before making a recommendation for removal to Governor in Council.

Clause 189 empowers the president, with the Minister's approval, to suspend a member from office if the president believes there may be grounds for removal from office. A senior or ordinary member appointed on a full-time or part-time basis is entitled to continue to be paid the usual remuneration and allowances during any period of suspension.

Clause 190 requires the president to appoint a person to investigate the conduct of a member suspended under section 189 or the circumstances that led to the suspension. The investigator must give a report on the investigation to the Minister, the president and the member. The report may recommend removal from office on a ground mentioned in section 188. The Minister may use the report to decide whether or not to recommend the member's removal to Governor in Council under section 188. If the Minister decides not to make the recommendation, the president must immediately cancel the member's suspension.

Clause 191 provides for the appointment and reappointment of an acting senior and ordinary member by the Minister for a period of six months or less if there is a vacancy in the office or a member is absent or for any reason cannot perform the member's functions. A person may also be re-appointed, if the re-appointment does not immediately follow the person's previous appointment or if the total period of appointment or reappointment does not exceed six months. The Minister may only appoint a person to act as a senior member or ordinary member if the person was eligible for appointment as a senior member or ordinary member under section 183. Before appointing an acting senior member or ordinary member, the Minister must first consult with the president. The Minister may cancel an acting appointment at any time.

Division 4 Supplementary members

Clause 192 enables the Minister to appoint a Supreme Court judge, a District Court judge or a magistrate to be a supplementary member of the tribunal if the president considers it necessary for the functioning of the tribunal. Appointments are made on an individual basis. The bench as a whole are not appointed as supplementary members. Supplementary members who are judges may be needed to sit on the appeal tribunal, which will usually be constituted by judicial members, or to sit as the tribunal to hear and decide matters required under this Act or an enabling Act to be decided by a judicial member. Supplementary members who are magistrates may be needed to sit on QCAT matters that are not minor civil disputes in rural or remote areas. (Under clause 171, magistrates are ordinary members of QCAT for the purpose of exercising QCAT's minor civil dispute jurisdiction.) Before appointing a supplementary member, the Minister must first consult with the relevant head of jurisdiction. It is intended that the president will enter into arrangements with the heads of jurisdiction about the amount of time each judge and magistrate appointed as a supplementary member will devote to tribunal work, the places the supplementary member will sit and the types of matters the supplementary member will hear and decide. This will ensure cooperation in the appropriate allocation of tribunal work to supplementary members.

Clause 193 sets out the circumstances where the office of a supplementary member becomes vacant, that is where the supplementary member ceases to be a Supreme Court judge, District Court judge or a magistrate or resignation occurs under section 194.

Clause 194 states that a supplementary member may resign by giving the Minister a signed letter of resignation which is accepted by the Minister.

Part 4 Adjudicators

Clause 195 provides for the matters an adjudicator may hear and decide. These matters include minor civil disputes, non-contentious matters stated in the rules, matters stated in this Act or an enabling Act and another matter the president considers can be appropriately heard and decided by an

adjudicator taking into account the nature, importance and complexity of the matter and any special circumstances relating to the matter.

Clause 196 clarifies that an adjudicator, when sitting as the tribunal, is not subject to direction or control except as provided for in this Act.

Clause 197 enables an adjudicator constituting the tribunal for a matter to refer the matter to the president if the adjudicator considers it would be more appropriate for the matter to be decided by the tribunal constituted by tribunal members.

Clause 198 enables the appointment of as many adjudicators as is necessary for the proper functioning of the tribunal. Adjudicators are appointed by Governor in Council on the recommendation of the Minister after consultation with the president. Adjudicators are appointed under this Act, not the *Public Service Act 2008*. Subsection (5) requires the Minister to advertise for applications for the position of adjudicator. Subsection (6) sets out the eligibility requirements for appointment. As with members, an adjudicator may be appointed for a minimum term of three years and a maximum term of five years. However, an adjudicator may be re-appointed without the requirement to advertise. An adjudicator may be appointed on a full-time or part-time basis.

Clause 199 enables the Minister to obtain a report on the criminal history of an adjudicator or a person who is being considered for appointment as an adjudicator. Criminal history is defined in the dictionary to include charges and convictions. Before using the information to decide a nomination for appointment or whether a person should continue to be an adjudicator, the Minister must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Minister about the information. The Minister must ensure a report on a person's criminal history is destroyed as soon as practicable after it is no longer needed.

Clause 200 requires an adjudicator to immediately disclose a change in the adjudicator's criminal history to the Minister, unless the adjudicator has a reasonable excuse. A change in criminal history also includes acquiring a criminal history. Criminal history includes charges and convictions. A maximum penalty of 100 penalty units applies if the adjudicator contravenes section 200. If the change is a conviction for an offence, this clause sets out certain information about the conviction which must be disclosed by the adjudicator.

Clause 201 sets out the remuneration and other conditions of the office of adjudicator. An adjudicator is prohibited from practicing in any profession or engaging in other paid employment without the consent of the president.

Clause 202 provides that an adjudicator may resign from office by giving the Minister a signed letter of resignation addressed to the Governor.

Clause 203 sets out the basis upon which an adjudicator may be removed from office by the Governor in Council. The Minister may only recommend to Governor in Council the removal of an adjudicator who has been suspended under section 204 if the member has been given the opportunity to make written and oral submissions to the person conducting the investigation in relation to the suspension and to the president or deputy president. The Minister must consult the president before making a recommendation for removal to Governor in Council.

Clause 204 empowers the president, with the Minister's approval, to suspend an adjudicator from office if the president believes there may be grounds for removal from office. An adjudicator is entitled to continue to be paid the usual remuneration and allowances during any period of suspension.

Clause 205 requires the president to appoint a person to investigate the conduct of an adjudicator suspended under section 204 or the circumstances that led to the suspension. The investigator must give a report on the investigation to the Minister, the president and the adjudicator. The report may recommend removal from office on a ground mentioned in section 203. The Minister may use the report to decide whether or not to recommend the member's removal to Governor in Council under section 203. If the Minister decides not to make the recommendation, the president must immediately cancel the adjudicator's suspension.

Clause 206 provides for the appointment and re-appointment of an acting adjudicator by the Minister for a period of six months or less if there is a vacancy in the office or an adjudicator is absent or for any reason cannot perform the adjudicator's functions. A person may also be re-appointed, if the re-appointment does not immediately follow the person's previous appointment or if the total period of the appointment and reappointment does not exceed six months. The Minister may only appoint a person to act as adjudicator if the person was eligible for appointment as an adjudicator under section 198. Before appointing an acting adjudicator, the Minister

must first consult with the president. The Minister may cancel an acting appointment at any time.

Part 5 The Queensland Civil and Administrative Tribunal Registry

Clause 207 establishes the Queensland Civil and Administrative Tribunal Registry and provides that the registry consists of the principal registrar, registrars and other administrative staff.

Clause 208 provides for the appointment of registry officers and staff. Officers and staff are appointed under the *Public Service Act 2008*. The principal registrar may only be appointed after consultation with the president.

Clause 209 sets out the chief executive's functions which include managing the administrative support services for the tribunal and appointing the principal registrar, registrars and administrative staff to help the president manage the tribunal's business. The chief executive is a reference to the chief executive of the department responsible for administering the Act.

Clause 210 provides that the principal registrar has the functions conferred under this Act or an enabling Act that is an Act. In carrying out functions under this Act or an enabling Act, the principal registrar is subject to the direction of the president.

Clause 211 provides that a registrar may perform the functions of the principal registrar subject to the direction of the president and the principal registrar.

Clause 212 requires the principal registrar when performing a function under this Act in relation to a particular proceeding, for example, when conducting a compulsory conference or a directions hearing, to disclose any potential conflict of interest to the president and to not take part in the proceeding, unless all parties agree.

Chapter 5 General

Part 1 Offences and contempt

Clause 213 makes it an offence to contravene a decision of the tribunal. The definition of 'decision' in the dictionary includes an order or direction of the tribunal as well as the tribunal's final decision in a proceeding. The offence does not apply to the extent that the decision is a monetary decision.

Clause 214 sets out the offences for witnesses. Subsection (1) makes it an offence for a person who has been given a notice to attend to fail to do so or to fail to continue attending until excused. Subsection (2) makes it an offence for a witness to fail to take an oath when required, to fail, without reasonable excuse, to answer a question and to fail, without reasonable excuse, to produce a document or thing required to produce under section 97. Subsection (3) clarifies that it is a reasonable excuse not to answer a question or produce a document or thing if doing so might tend to incriminate the person.

Clause 215 empowers the tribunal to issue a warrant directed to a police officer to bring a person who has failed to attend at a hearing in accordance with a notice given to the person under section 97 to give evidence at a stated time and place. The police officer may then use the relevant powers in the *Police Powers and Responsibilities Act 2000* to execute the warrant.

Clause 216 makes it an offence to knowingly make a false or misleading statement to an official or to give an official a document containing information the person knows is false or misleading. However, it is not an offence if the person, when giving the document tells the official how it is false or misleading and gives the official the correct information if this is reasonably able to be obtained by the person. 'Official' is defined in the dictionary to mean a member, an adjudicator, a mediator, an assessor, the chief executive, the principal registrar or a registrar. However, the meaning of 'official' in this section also includes a staff member of the registry, but does not include a mediator.

Clause 217 creates the offence of improperly influencing, or attempting to improperly influence, a person in participating in a tribunal proceeding to act other than in the course of the person's duty in the proceeding. A person

in this context can include a member, an adjudicator, a party a witness or anyone else participating in a proceeding.

Clause 218 sets out the circumstances in which a person is in contempt of the tribunal. It also provides that a child cannot be in contempt if the thing done by the child that would otherwise constitute contempt was done in the course of or relating to a review of a reviewable decision about the child. This would most often apply in relation to reviews of decisions about children in care under the *Child Protection Act 1999* and re-enacts the current position under the *Children Services Tribunal Act 2000*.

Clause 219 empowers the tribunal, constituted by a judicial member, to punish contempt. The provision utilises the same approach to punishment of contempt currently provided under the *Legal Profession Act 2007* for the Legal Practice Tribunal. Subsection (1) states that the tribunal has all the protection, powers, jurisdiction and authority the Supreme Court has in relation to contempt. Subsection (2) provides that the provisions of the *Uniform Civil Procedure Rules 1999* relating to contempt apply with any necessary changes, including changes prescribed under the QCAT rules.

Subsection (5) provides that the tribunal's jurisdiction and powers to punish for contempt may only be exercised by a judicial member. Subsection (6) provides that if the contempt is committed in the face of the tribunal which is not constituted by a judicial member, the presiding member may certify the contempt in writing to the president. Subsection (8) clarifies that the tribunal may punish an act or omission as contempt even though the act or omission is an offence and a penalty is prescribed for it.

Clause 220 empowers the tribunal to make an order excluding a disruptive person from the place where the tribunal is sitting when it appropriate to deal with disruptive behaviour without having to deal with this through the contempt provisions. A disruptive person would include a person who insults a member or staff of the registry or obstructs or assaults a person attending a proceeding, unreasonably interrupts a proceeding or creates a disturbance at the hearing. Subsection (2) provides that if the tribunal orders a person's exclusion, the order is taken to be an authorising law for the purpose of section 16 of the *Police Powers and Responsibilities Act 2000* which provides for a police officer to help a public official perform the official's functions under an authorising law. Subsection (3) states that if the tribunal makes an exclusion order under subsection (1), it is lawful for the tribunal's staff and any person helping the staff to remove the disruptive person.

Clause 221 provides that a person cannot be punished twice for conduct that is both contempt of the tribunal and contempt of the court and for conduct that is both contempt of the tribunal and an offence.

Clause 222 provides that if the tribunal has made a non-publication order and a court is hearing a prosecution for an offence relating to the contravention of the order or an appeal about a prosecution for an offence relating to the contravention of the order, the court may also make an order prohibiting or restricting publication or disclosure.

Part 2 Rules committee, rules and practice directions

Clause 223 establishes the rules committee for the tribunal. The rules committee consists of the president, the deputy president, a full-time senior member or ordinary member, a member who is not a lawyer and other members and adjudicators the president considers appropriate. The president is the chairperson of the committee. The functions of the committee include developing and reviewing the rules, approving forms, and other functions conferred on the committee under this Act or an enabling Act. The chairperson has a deliberative vote and the casting vote.

Clause 224 provides that the Governor in Council may make rules under this Act for the practices and procedures of the tribunal or its registry, including for jurisdiction conferred on the tribunal under an enabling Act. Governor in Council may also make rules for a matter listed in schedule 2 of this Act. Rules may only be made with the consent of the rules committee. Subsection (3) provides that the rules may also provide that a person or persons are disqualified from being a representative of a party if the person has been the subject of a stated disciplinary proceeding under a law of Queensland, the Commonwealth or another State or under the rules of a professional or occupations association and has been found guilty of a stated type of professional misconduct or a breach of a state professional or occupational standard. The purpose of this subsection is to enable the rules to prohibit persons who have been found to have engaged in professional misconduct in specified professions or occupations such that they would not be suitable persons to act as a representative of parties in tribunal proceedings.

Clause 225 provides that the rules are exempt from the provisions of the *Statutory Instruments Act 1992* which provide for the automatic expiry of subordinate legislation. The purpose of part 7 of the *Statutory Instruments Act 1992* is to ensure subordinate legislation is reviewed at least every ten years. It is not necessary for these provisions to apply to the tribunal rules because the rules will be reviewed and amended regularly to ensure best practice in the tribunal.

Clause 226 empowers the president to issue practice directions about the tribunal's practices and procedures not provided for, or sufficiently provided for in this Act, an enabling Act or the rules. A practice direction is not subordinate legislation.

Part 3 Miscellaneous provisions

Division 1 Operation of tribunal

Clause 227 enables the tribunal to enter into an arrangement with the ombudsman for the purpose of avoiding duplication of functions in relation to matters that fall within the jurisdiction of both the tribunal and the ombudsman. The arrangement may facilitate the referral of appropriate matters from the tribunal to the ombudsman and from the ombudsman to the tribunal, may set out how to deal with an administrative action that is the subject of a complaint, preliminary inquiry or investigation under the *Ombudsman Act 2001* and of an application or referral under this Act, and may set out cooperative arrangements for the performance of the respective functions of the tribunal and the ombudsman.

Clause 228 provides for the taking of the oath of office by members and adjudicators of the tribunal.

Clause 229 requires the principal registrar to keep a register of proceedings which must be made available for inspection by the public during office hours. A party may inspect the part of the register relating to the party's proceeding free of charge. Another person may inspect the register or obtain a copy of a part of the register on payment of the prescribed fee. However, this section does not allow a person to access a part of the register which contains anything the publication or disclosure of which is

subject to a non-publication order made by the tribunal in relation to the particular proceeding.

Clause 230 requires the principal registrar to keep a record of all documents filed in a proceeding. A party may inspect the record relating to the party's proceeding free of charge. Another person may inspect the register or obtain a copy of a part of the register on payment of the prescribed fee. However, this section does not allow a person to access a part of a record which contains anything the publication or disclosure of which is subject to a non-publication order made by the tribunal in relation to the particular proceeding.

Clause 231 requires the tribunal to maintain a trust account for the purpose of receiving and holding amounts paid into the tribunal for a proceeding. The tribunal may pay amounts from the trust account in accordance with orders of the tribunal. Interest on the trust account is to be applied to the cost of keeping the account and the cost of administering the tribunal.

Clause 232 requires the tribunal to prepare an annual report for each financial year containing the information listed in subsection (1). The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

Division 2 Confidentiality

Clause 233 makes it an offence for a prescribed person to disclose personal information acquired as a result of involvement in administering this Act. A prescribed person is defined as a staff member of the registry and an official which is defined in the dictionary to be a member, an adjudicator, a mediator, an assessor, the chief executive, the principal registrar or a registrar. Subsection (3) provides that it is not an offence to disclose the information in the circumstances set out in that subsection. Subsection (4) states that it is not an offence if the disclosure occurred at a public hearing or in a decision or reasons for a decision of the tribunal.

Clause 234 provides that a court cannot compel a prescribed person, other than for the purpose of administering this Act or an enabling Act, to produce a document or disclose information to the court that has come into the person's possession or knowledge because of the person's role in administering this Act and is, contains or is part of a protected item. 'Prescribed person' is defined as an official, a staff member of the registry

or a person acting under the authority or direction of the tribunal or chief executive. A 'protected item' is defined as information, evidence or a document or other thing obtained by the tribunal in a private proceeding or something which is the subject of a non-publication order, if production or disclosure to the court would contravene that order.

Division 3 Evidentiary provisions

Clause 235 provides that the appointment of an official and the authority of an official to do anything under this Act must be presumed unless a party requires proof of it by notice given at least 14 days before a court starts to hear the relevant proceeding.

Clause 236 provides that a signature purporting to be the signature of an official is evidence of that fact. It also provides that a certificate signed by the principal registrar stating that a document is a decision or copy of a decision or that a document is a record or document or copy or extract kept under this Act is evidence of the matter.

Division 4 Protection from liability

Clause 237 applies the same protections and immunities that apply to a Supreme Court judge or to a Supreme Court proceeding to: members and adjudicators; the principal registrar when performing quasi-judicial functions; mediators; a person taking evidence on behalf of the tribunal; assessors; parties appearing before the tribunal and their representatives; witnesses and documents produced for a hearing.

Clause 238 provides that certain persons involved in the administration of the Act are not civilly liable for acts or omissions done or made under this Act or an enabling Act. The immunity is limited to acts or omissions done or made honestly and without negligence. Any potential liability instead attaches to the State.

Division 5 Other provisions

Clause 239 reflects the current section 149 of the *Commercial and Consumer Tribunal Act 2003* and prohibits contracting out of the provisions of this Act. The prohibition does not apply to an agreement that a dispute be referred to arbitration. This section does not prevent a contract or agreement containing provisions that impose a higher level of obligation on an entity than are imposed under this Act.

Clause 240 requires the Minister to review this Act within three years of commencement and at five yearly intervals thereafter.

Clause 241 provides that the rules committee may approve forms for use under this Act.

Clause 242 empowers Governor in Council to make regulations, including a regulation to prescribe fees and to provide for the form of an oath.

Chapter 6 Repeal provision

Clause 243 repeals the *Children Services Tribunal Act 2000*, the *Commercial and Consumer Tribunal Act 2003*, the *Misconduct Tribunals Act 1997* and the *Small Claims Tribunals Act 1973*. The jurisdiction of these tribunals will be included in the jurisdiction of QCAT through amendments by the Jurisdiction Provisions Bill to various enabling Acts and by establishing the minor civil disputes jurisdiction in this Bill.

Chapter 7 Transitional provisions

A table summarising the transitional scheme for a proceeding before a former tribunal or continuing entity is set out at the end of the clause notes for this chapter. This table has been included to assist in understanding the clause notes.

Part 1 Preliminary

Clause 244 inserts various definitions for chapter 7. In particular, 'commencement' for this chapter is defined as meaning commencement of this section.

Clause 245 provides a definition of 'pending proceeding'. A pending proceeding is an existing proceeding in a court or a former tribunal if at the commencement the court or former tribunal has not started to hear the proceeding or has not started to consider evidence for the purpose of making its final decision in the proceeding (that is evidence on material questions of fact).

Clause 246 states that, subject to sections 255(7) and 267(7), this chapter does not limit the *Acts Interpretation Act 1954*, section 20. This means the specific transitional provisions in the Bill will supplement the transitional and savings provisions in section 20 of the *Acts Interpretation Act 1954*.

Part 2 Transitional provisions about former tribunals

Division 1 Abolition and related matters

Clause 247 provides for each former tribunal to be abolished at the commencement and all members of each former tribunal stop being members. A list of former tribunals is provided in schedule 1.

Clause 248 provides that QCAT is the successor in law of each former tribunal.

Clause 249 provides for the assets and liabilities of each former tribunal immediately before the commencement to become the assets and liabilities of QCAT upon the commencement. This clause also provides that QCAT will be bound by any contracts, undertakings or other arrangements that the former tribunal may be a party to in force immediately before the commencement. Further any property that was held on trust, or subject to a condition, by a former tribunal immediately before the commencement of

this provision will continue to be held on trust or subject to the same condition by QCAT.

Clause 250 is a transitional provision for proceedings that immediately before the commencement could have been started by or against a former tribunal. If there was an existing right to start proceedings by or against a former tribunal prior to the commencement and the proceedings have not been commenced, then the proceeding may be started by or against QCAT. However the proceeding must be started within the time period specified under the law prior to commencement (the prescribed period).

Clause 251 provides that if immediately before the commencement a former tribunal was a party to a proceeding that had not ended, upon the commencement QCAT becomes a party to the proceeding in place of the former tribunal.

Clause 252 provides that a final decision of a former tribunal in a proceeding made before the commencement is taken to be a final decision of QCAT and that this Act and any relevant enabling Act applies to the decision as if it were a final decision of QCAT. This means for example that QCAT could review decisions of former tribunals in its original jurisdiction if it is empowered to do so. For example, the *Health Practitioners (Professional Standards) Act 1999* provides that the Health Practitioners Tribunal may review certain of its own decisions, such as a decision to impose conditions on a registrant's registration. It also means that decisions of former tribunals may be enforced as if they are decisions of QCAT.

However clause 252(2) does not empower QCAT to deal with the final decision of the former tribunal in a way that is inconsistent with the former Act under which the decision was made.

If, under a former Act, a person had applied to a former tribunal to deal with a final decision of the former tribunal and the application had not been heard at the commencement, clause 246(3) states that the application is taken to be an application made to QCAT under this Act and in hearing the application QCAT only has the functions of the former tribunal.

Clause 253 provides that all records of a former tribunal are records of QCAT under this Act.

Clause 254 deals with references to former tribunal, former president, former member, former registrar and former registry in a document. If it is appropriate, all such references will be taken to be references to QCAT and

QCAT's president, members, principal registrar, and registry upon commencement. A reference to a referee under the repealed *Small Claims Tribunals Act 1973* is also taken to be a reference to QCAT as constituted under this Act.

Division 2 Proceeding not yet started before former tribunal

Clause 255 is a transitional provision for proceedings that immediately before the commencement could have been started in a former tribunal. If a person had an existing right to apply to a former tribunal prior to the commencement and they have not yet done so then they may make an application to QCAT. However the person must apply within the time period specified under the law prior to commencement (the prescribed period).

QCAT will deal with the matter procedurally under this Act and will have the functions under this Act and the enabling Act as amended by the Jurisdiction Provisions Bill.

Clause 255(5) clarifies that if prior to the commencement of this provision the matter for which a person could have applied to a former tribunal was an appeal, the decision that could have been appealed against is a reviewable decision for applying subsections (3) and (4) to the proceeding. This provision is relevant where an enabling Act prior to amendment by the Jurisdiction Provisions Bill may have referred to the process of applying for a review of an administrative decision as an 'appeal'. Under this Act this is known as a review of a reviewable decision and all enabling Acts will be amended by the Jurisdiction Provisions Bill to now refer to this process as a review or an external review.

An examination under the *Small Claims Tribunals Act 1973*, section 23A is excluded from this provision.

Division 3 Proceeding started before former tribunal

Clause 256 is a transitional provision for a proceeding in a former tribunal that has started but the former tribunal has not yet begun to hear the proceeding, or if it has, it has not started to consider evidence for the purpose of making its final decision in the proceedings (that is evidence on material questions of fact).

This provision provides that at commencement this proceeding will be taken to be a proceeding before QCAT and QCAT will have the jurisdiction to deal with the matter the subject of the proceeding.

Part 4 of chapter 7 applies to how QCAT is to conduct the proceeding.

Clause 257 is a transitional provision for a proceeding in a former tribunal that has started and at commencement the former tribunal had also started to consider evidence for the purpose of making its final decision in the proceeding.

At commencement QCAT will have the jurisdiction to deal with the matter the subject of the proceeding and the proceeding will be taken to be a proceeding before QCAT. Unless the persons who constituted the former tribunal to hear the matter before commencement are unable to continue to hear the matter, they will continue to hear the matter and will be taken to be a member of QCAT for the duration of the proceeding.

Part 4 of chapter 7 also applies to how QCAT is to conduct the proceeding.

The appeal rights for a decision of QCAT in these proceedings, are those under the former Act (that is the law in force before commencement) not the appeal rights under the QCAT Act (Chapter 2, Part 8). This is because the former tribunal has already started to hear this matter.

Division 4 Appeal against decision of former tribunal

Clause 258 is a transitional provision for appeals from decisions of former tribunals. It clarifies that if a person had a right under a former Act to appeal to a court against a decision of a former tribunal within a particular

period, that at commencement the person may appeal to the court and the court must hear and decide the appeal under the former Act.

Clause 259 clarifies that upon commencement a court must continue to hear and decide an appeal that has been started, but not finally dealt with, against a decision of a former tribunal. The appeal is heard and decided under the former Act.

Clause 260 clarifies that for an appeal under section 258 or 259 the court's decision must be dealt with as it would have been dealt with under the former Act. Where the court decides to remit the matter to the former tribunal for reconsideration, with or without directions, the court must remit the matter to QCAT and QCAT must deal with the matter according to the former Act. QCAT will be restricted to the functions of the former tribunal and can only make a decision the former tribunal could have made in relation to the matter under the former Act.

Division 5 Other matters

Clause 261 relates to a request by the president of the Children Services Tribunal under section 128 of the repealed *Children Services Tribunal Act 2000*. If a request has been made by the former President of the Children Services Tribunal to the chief executive of a government entity in which a reviewable decision was made to notify the President of the steps taken to give effect to the Children Services Tribunal's decision or the steps taken to give effect to the recommendations and if no steps have been taken the reason for this, then the request is taken to have been made by the President of QCAT under new section 99ZI of the *Child Protection Act 1999* if the stated time for a response has not ended upon commencement.

If however a response had been received, but at commencement the President of the Children Services Tribunal had not dealt with the response, QCAT may deal with the response.

Clause 262 relates to the annual reports for former tribunals. This clause clarifies that the requirement to prepare annual reports for the former tribunals listed in this clause must be fulfilled as soon as practicable, after the start of the financial year in which QCAT commences, but not later than the following 30 September. The President of QCAT must give a copy of each report to the Minister who must table the reports in the Legislative Assembly within 14 sitting days of their receipt.

Clause 263 relates to the transition of sessional members of certain former tribunals. These members will become ordinary members of QCAT upon commencement. They will hold this appointment for 2 years from commencement subject to the conditions decided by Governor in Council and this Act. This clause relates to sessional members of tribunals listed in Schedule 1 with the exception of the tribunals listed in clause 263(3). A definition of 'sessional member' is provided.

Clause 264 is a transitional provision for offences in Acts prior to commencement in relation to former tribunals. It clarifies if a provision creating an offence is amended or repealed, a proceeding for the offence may be continued or started and the former provisions that are necessary and convenient to be used for the proceeding continue to apply.

Clause 265 clarifies that the confidentiality requirements for former tribunals listed in clause 265(3) continue to apply, a breach of which may be prosecuted.

Clause 266 clarifies that penalties recovered under the repealed *Commercial and Consumer Tribunal Act 2003* section 148 will continue to be payable to the State agency who brought the proceedings for the relevant offence.

Part 3 Transitional provisions about continuing entities

Clause 267 is a transitional provision for continuing entities. A continuing entity is a court, a Minister administering an enabling Act or the Queensland Gaming Commission under the *Gaming Machine Act 1991*.

If a person had an existing right to start a proceeding (make an application) to a continuing entity, and was within time to do so, but at the commencement of this provision had not yet done so, clause 267(2) gives QCAT the jurisdiction to deal with the matter under this Act. The person may apply within the prescribed period in the way they could have prior to the commencement of this provision to QCAT. QCAT will deal with the matter procedurally under this Act and will have the functions under this Act and the enabling Act as amended by the Jurisdiction Provisions Bill.

Clause 267(6) clarifies that if prior to the commencement of this provision the matter for which a person could have applied to a continuing entity was an appeal, the decision that could have been appealed against is a reviewable decision for applying subsections (4) and (5) to the proceeding. This provision is relevant where an enabling Act prior to amendment by the Jurisdiction Provisions Bill may have referred to the process of applying for a review of an administrative decision as an appeal. Under this Act this is known as a review of a reviewable decision and all enabling Acts will be amended by the Jurisdiction Provisions Bill to now refer to this process as a review or an external review.

Clause 268 is a transitional provision for a proceeding before a continuing entity that has started, regardless of whether or not the entity has started to hear the matter the subject of the proceeding. The continuing entity must hear, or continue to hear, and decide the matter. The continuing entity must hear the matter in the way provided for under the enabling Act as if the Jurisdiction Provisions Bill had not been enacted.

While a final decision of the continuing entity will take effect as if it is a final decision of QCAT under this Act, the appeals provisions in Chapter 2, part 8 will not apply. If under an enabling Act prior to commencement of the Jurisdiction Provisions Bill a person could apply to a court for an appeal of a decision of the continuing entity, then that person may appeal to a court against the final decision of the entity in the same way as provided under the former Act.

There is discretion for a court to transfer the proceeding to QCAT, with appropriate orders and directions, and QCAT will conduct the proceeding in accordance with part 4.

Part 4 Conducting proceeding from former tribunal or continuing entity

Part 4 provides for how proceedings are to be conducted in QCAT if they are either:

- existing tribunal proceedings of former tribunals that have started at commencement, and after commencement are taken to be QCAT proceedings, and
- existing court proceedings that are pending proceedings (have not begun to be heard) that are transferred to QCAT.

Clause 269 states that this part relates to an existing tribunal proceeding taken under part 2, division 3, to be a proceeding before QCAT and an existing court proceeding transferred to QCAT under section 268(4).

Clause 270 provides a definition of former entity for part 4. The term 'former entity' is used in this part to refer to either the former tribunal or the court the proceeding was before immediately before the commencement.

Clause 271 provides for the conduct of the proceeding by QCAT. Procedurally, QCAT deals with the matter under this Act or an enabling Act. However, QCAT can only exercise the functions that the former entity had in relation to the matter under the former Act and can only make a decision the former entity could have made in relation to the matter under the former Act.

It also clarifies that if prior to the commencement of this provision the matter for which a person could have applied to a former tribunal was an appeal, the decision that could have been appealed against is a reviewable decision for applying this Act to the proceeding. This provision is relevant where an enabling Act prior to amendment by the Jurisdiction Provisions Bill may have referred to the process of applying for a review of an administrative decision as an appeal. Under this Act this is known as a review of a reviewable decision and all enabling Acts will be amended by the Jurisdiction Provisions Bill to now refer to this process as a review or an external review.

It provides that anything done or existing in relation to a proceeding continues and is taken to be done or existing in relation to the proceeding under this Act.

Where the former entity has made a prescribed interim decision (such as an injunction), it is taken to be an decision of QCAT and can be enforced as if it were a final decision of QCAT or in the way provided for in the former Act if that Act provides for enforcement in a different way.

Any notice given by the former entity to attend a stated hearing or produce a stated document is taken to be a notice under the section 97(1) of this Act.

There is also provision for a warrant issued under the repealed *Commercial and Consumer Act 2003*, section 79, but not executed, to continue to have effect as if it were a warrant issued under this Act.

Clause 272 clarifies that any time fixed for something to be done in relation to a proceeding prior to commencement, continues to apply following commencement. The time period that applies will be that fixed under the former Act prior to the commencement of the Jurisdiction Provisions Bill and this Bill.

Clause 273 states that if a former Act provided for the way in which a proceeding may be withdrawn, then from commencement, the proceeding may be withdrawn by filing a notice of withdrawal in the QCAT registry. However, if the former Act limited the circumstances or period within which the proceeding could be withdrawn, the withdrawal must comply with the limitation. If the former Act did not provide for withdrawal, the withdrawal may be made in accordance with this Act.

Clause 274 is a transitional provision for related proceedings such as mediation, pre-hearing conferences, inquiries and investigations. A related proceeding that started but was not finished before commencement should continue under the former Act and may continue to be conducted by the person who was conducting it. It will then be taken to have been conducted under this Act and QCAT may deal with it only in the way the former entity would have been required to have dealt with it under the former Act.

Clause 275 sets out how any inconsistencies and other difficulties that may arise during the transition may be dealt with.

Many of the transitional provisions in Chapter 7 state that QCAT may only perform the function that the former tribunal or the former entity could perform. This clause provides that if there is an inconsistency between this Act or an enabling Act and a former Act that affects QCAT's ability to perform a function under a former Act in relation to the proceeding then for the purpose of performing the function to the fullest extent practicable QCAT may disregard the inconsistent provision.

QCAT may also make any order or give a direction about QCAT's practices, procedures or powers in relation to a proceeding where this Act or an enabling Act has not provided sufficiently for the transition from the application of the former Act to the application of this Act to the proceeding. However in doing so, QCAT must, so far as is practicable ensure the order or direction does not cause prejudice or detriment to a

party and causes the least inconvenience to QCAT and the parties. This power is only exercisable by a judicial member.

Part 5 Other transitional provisions

Clause 276 is a transitional provision for information notices for reviewable decisions during the transition period. If prior to commencement a decision maker has made a decision that if after commencement would be a reviewable decision for this Act, and at commencement the person who could apply for a review of the decision has not yet made an application but is still within time to apply, there are certain requirements set out in this clause for the notice that must be given to the person.

Clause 277 is a transitional provision for the rules under this Act. Section 224(2) provides that a rule under this Act may only be made with the consent of the rule committee. However initial rules for QCAT will be made prior to the commencement of section 223 that enables the President to establish the rules committee.

Clause 278 provides a time limited regulation-making power for saving and transitional provisions.

Clause 279 clarifies that the amendment of subordinate legislation by the Jurisdiction Provisions Bill does not affect the power of the entity that made the subordinate legislation to further amend the subordinate legislation or to repeal it.

Summary of the above transitional provisions for proceedings before former tribunals and continuing entities

	Person could apply before commencement day but hasn't (and are still within time to apply)	**Application filed before commencement day but not yet begun to be heard (Existing proceeding that is a pending proceeding)**	**Action part heard on commencement day** **(Existing proceeding that is not a pending proceeding)**
	<u>Continuing Entities (including courts)</u>		
Application	**Application** to be made in QCAT Clause 267 Application must be made within the prescribed time period and in the way it could have been made before commencement.	**Application** already made in continuing entity.	**Application** already made in continuing entity.
Jurisdiction	**QCAT has jurisdiction** to deal with the matter under the QCAT Act Clause 267(2)	**The continuing entity must hear and decide the matter.** Clause 268(2) A court has discretion to transfer a pending proceeding to QCAT. Clause 268 (4)	**The continuing entity must continue to hear and decide the matter.** Clause 268(2) A court has discretion to transfer a pending proceeding to QCAT. Clause 268 (4)
Procedure	**Procedure** that applies shall be the procedure prescribed in the QCAT Act and the Rules. Clause 267(5)	If the matter is heard and determined by the continuing entity - the **procedure** is that of the continuing entity prior to commencement. Clause 268(2) If transferred to QCAT - **procedure** is that under the QCAT Act or enabling Act. Clause 271(1)	**Procedure** is that of the continuing entity and it has the functions and powers of the continuing entity prior to commencement. Clause 268(2)

	Person could apply before commencement day but hasn't (and are still within time to apply)	**Application filed before commencement day but not yet begun to be heard (Existing proceeding that is a pending proceeding)**	**Action part heard on commencement day** **(Existing proceeding that is not a pending proceeding)**
Powers and functions	The **powers and functions** of QCAT are those that QCAT has under QCAT Act, Rules	If the matter is heard and determined by the continuing entity – the continuing entity has the **functions and powers** of the continuing entity prior to commencement. Clause 268(2) If transferred to QCAT - **powers and functions** that applies shall be the powers and functions of the Court under the enabling Act prior to commencement day. Clause 271(2)	The continuing entity has the **functions and powers** of the continuing entity prior to commencement. Clause 268(2)
Appeals	**Appeal rights** as provided for in QCAT Act, Part 8, Chapter 2.	If the matter is heard and determined by the continuing entity - Original **appeal rights** apply (those prior to commencement day). Clause 268 (8) If QCAT hears and determines the mater **-Appeal rights** as provided for in QCAT Act, Part 8, Chapter 2. Clause 271	Original **appeal rights** apply (those prior to commencement day). Clause 268(8)

	Person could apply before commencement day but hasn't (and are still within time to apply)	**Application filed before commencement day but not yet begun to be heard (Existing proceeding that is a pending proceeding)**	**Action part heard on commencement day** **(Existing proceeding that is not a pending proceeding)**
		Former tribunals	
Application	**Application** to be made in QCAT Clause 255 Application must be made within the prescribed time period and in the way it could have been made before commencement.	**Application** was already made in former tribunal.	**Application** was already made in former tribunal.
Jurisdiction	QCAT has **jurisdiction** to deal with the matter under the QCAT Act Clause 255(2)	QCAT has **jurisdiction** to deal with the matter under the QCAT Act Clause 256(3) The proceeding is taken to be a proceeding of QCAT upon commencement. Clause 256(2)	QCAT has **jurisdiction** to deal with the matter the subject of the proceeding from commencement. Clause 257(3) The proceeding is taken to be a proceeding before QCAT. Clause 257(2)
Procedure	The **procedure** that applies shall be the procedure prescribed in the QCAT Act and the Rules.	The **procedure** that applies shall be the procedure prescribed in the QCAT Act and the Rules or an enabling Act. Clause 271(1)	The **procedure** that applies shall be procedure prescribed in the QCAT Act and the Rules or an enabling Act. Clause 271(1)

	Person could apply before commencement day but hasn't (and are still within time to apply)	**Application filed before commencement day but not yet begun to be heard (Existing proceeding that is a pending proceeding)**	**Action part heard on commencement day** **(Existing proceeding that is not a pending proceeding)**
Powers and functions	The **powers and functions** of QCAT are those that QCAT has under QCAT Act, Rules and enabling Act as of commencement day.	The **powers and functions** of QCAT are only those of the former tribunal. Clause 271(2)	The **powers and functions** of QCAT are only those of the former tribunal. Clause 271(2)
Appeals	**Appeal rights** as provided for in QCAT Act Part 2, Chapter 8 Clause 255	**Appeal rights** as provided for in QCAT Act Part 2, Chapter 8. Clause 271	Original **appeal rights** apply (those prior to commencement day). Clause 257(7) and (8)

Schedule 1 Former tribunals

Schedule 1 lists the tribunals that are "former tribunals" for the purpose of section 244 which is the definitions section for the transitional provisions contained in chapter 7 of this Act.

Schedule 2 Subject matter for rules

Schedule 2 sets out a non-exhaustive list of matters about which tribunal rules can be made under section 224. Other matters for which rules may be made are set out in various provisions of this Act.

Schedule 3 Dictionary

Schedule 3 contains the definitions of words and phrases used in this Act.