

Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009

Explanatory Notes

Objectives of the Bill

The objectives of the Bill are to:

- amend legislation (enabling legislation) to confer jurisdiction on the Queensland Civil and Administrative Tribunal (QCAT) to hear and determine matters under the legislation; and
- amend enabling legislation to ensure that, where specialist procedures or powers are required for QCAT to properly perform its functions under the QCAT Bill, these powers and procedures are provided for.

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 provide 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 it 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 review jurisdiction of the courts that 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 panels' terms of reference. Two bills were recommended to be implemented. The Queensland Civil and Administrative Tribunal Bill 2009 (the QCAT Bill) creates the tribunal, contains the membership and tribunal staff provisions, and sets out the tribunal's generic functions and powers. The Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009 (the Jurisdiction Provisions Bill) amends various legislation to confer jurisdiction on QCAT. The two bills are to be introduced as cognate bills. The bills together implement the recommendations of the panel in the stage two report.

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

Achievement of the objectives

To achieve its objectives, the Jurisdiction Provisions Bill confers jurisdiction on QCAT through amendments to over 200 pieces of legislation ('enabling Acts').

An enabling Act that confers jurisdiction on QCAT is either:

- (a) an Act that confers original, review or appeal jurisdiction on the tribunal; or
- (b) subordinate legislation that confers review jurisdiction on the tribunal.

It is inappropriate for subordinate legislation to confer original jurisdiction on QCAT. Therefore some amendments in the Jurisdiction Provisions Bill delete provisions in subordinate legislation that confer original jurisdiction and insert these provisions in relevant Acts instead.

The range of jurisdiction conferred on QCAT encompass the existing jurisdictions of 18 tribunals that will be abolished, 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 jurisdiction of the Magistrates Court.

The following tribunals will be abolished and their jurisdiction conferred on QCAT:

- 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**

While the QCAT Bill provides for the general powers and procedures for matters heard in QCAT, the Jurisdiction Provisions Bill amends enabling legislation to ensure that, where specialist procedures or powers are required for QCAT to properly perform its functions under the QCAT Bill, these powers and procedures are provided for specifically in the enabling legislation.

To achieve this objective, some of the Jurisdiction Provisions Bill amendments to the enabling Acts that are Acts, and not subordinate legislation, add to, vary or exclude specific functions and powers stated in the QCAT Bill. Amendments to enabling Acts that are Acts, and not subordinate legislation, also include provisions that add to, vary or exclude provisions in the QCAT Bill dealing with requirements for applications and the conduct of proceedings, for example who must be notified of a proceeding, providing for additional people who are parties to a proceeding, providing for who may be represented in a proceeding without the tribunal's leave, and how the tribunal must be constituted for a proceeding.

Because of the nature of subordinate legislation, amendments in the Jurisdiction Provisions Bill to subordinate legislation only confer review jurisdiction, including jurisdiction to stay a reviewable decision, on the tribunal; and do not add to, otherwise vary, or exclude anything provided in the QCAT Bill.

Alternative Ways of Achieving 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; providing 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 provisions of the Jurisdiction Provisions Bill are generally consistent with fundamental legislative principles of the *Legislative Standards Act 1992*. Set out below, according to the chapters of the bill, are the provisions that have been identified as representing a possible breach of a fundamental legislative principle. Where no chapter is cited, no provisions have been identified as possibly breaching fundamental legislative principles.

Chapter 2 – Department of Communities

The provisions in Chapter 2 are generally consistent with fundamental legislative principles of the *Legislative Standards Act 1992*. However the following provisions may represent a breach of fundamental legislative principles and are discussed below:

- Provisions amending the *Adoption of Children Act 1964*
- Provisions amending the *Child Protection Act 1999*
- Provisions amending the *Commission for Children and Young People and Child Guardian Act 2000*
- Clauses 52 and 53 amending sections 102 and 108 respectively of the *Disability Services Act 2006*.

The QCAT Act will repeal the *Children Services Tribunal Act 2000*. The provisions discussed below replicate provisions that were in the *Children Services Tribunal Act 2000* and were thought necessary to retain in the appropriate enabling Acts for QCAT to ensure proceedings are accessible and appropriate for children.

Amendment of *Adoption of Children Act 1964*

- new section 36I amending the *Adoption of Children Act 1964* (Children must not be compelled to give evidence)
- new section 36K amending the *Adoption of Children Act 1964* (Children giving evidence or expressing views to tribunal)
- new section 36L amending the *Adoption of Children Act 1964* (Questioning of children)
- new section 36M amending the *Adoption of Children Act 1964* (Confidentiality orders).

Where the Bill departs from fundamental legislative principles, this occurs in the context of the tension between the rights of individuals as safeguarded by the *Legislative Standards Act 1992* and the competing rights of children and young people to participate in review processes in a way which protects them from distress and harm which may occur through a strictly adversarial review process.

New section 36I provides that children cannot be compelled to give evidence in a proceeding for a reviewable decision under the *Adoption of Children Act 1964* and specifically overrides the QCAT Act so that children must not be required to attend a hearing of a proceeding to give evidence or produce a statement document or other thing to the tribunal.

New section 36K provides that where children are giving evidence or expressing their views to the tribunal only the constituting members, the lawyer, the separate representative and the child's support person may be present.

New section 36L prohibits the cross examination of children who give evidence or express their views to the tribunal.

While it will be rare that a particular child is the subject of a reviewable decision under the *Adoption of Children Act 1964*, it is possible. These provisions are considered necessary to ensure their views and wishes are heard and to reduce the stress for children and young people who choose to give evidence. The children involved in these proceedings may be very

vulnerable and should not be required to give evidence and be cross-examined. The restriction on cross examination is also justified given this review occurs in an administrative proceeding as opposed to a court environment. Further as the primary focus of the tribunal in these proceedings is to make the best possible decision in the interests of the child about whom the reviewable decision has been made, the protection is considered appropriate and the departure from fundamental legislative principles warranted.

New section 36M gives the tribunal the power to make confidentiality orders in relation to documents produced, or evidence given to the tribunal. The effect of such an order is to prohibit or restrict the disclosure of the document or evidence to the parties in the proceedings. This power is considered necessary to ensure that very sensitive information about a child or prospective adoptive parent is not released that could result in harm to a child or young person, or jeopardise the safety of another person or unduly interfere with the privacy of a child or another person.

Amendment of *Child Protection Act 1999*

- new section 99T (Children must not be compelled to give evidence)
- new section 99V (Children giving evidence or expressing their views to the tribunal)
- new section 99W (Questioning of children)
- new section 99ZD (Confidentiality orders).

Where the Bill departs from fundamental legislative principles, this occurs in the context of the tension between the rights of individuals as safeguarded by the *Legislative Standards Act 1992* and the competing rights of children and young people to participate in review processes in a way which protects them from further distress and harm which may occur through a strictly adversarial review process. Given the vulnerability of the children and young people who may be involved in reviews by the tribunal in this jurisdiction and the principle that children have a right to be protected from harm, it is considered that the departure from the fundamental legislative principles in these specific circumstances is warranted.

New section 99T provides that children cannot be compelled to give evidence in a proceeding for a reviewable decision under the *Child Protection Act 1999* and specifically overrides the QCAT Act so that

children must not be required to attend a hearing of a proceeding to give evidence or produce a statement document or other thing to the tribunal.

New section 99V provides that where children are giving evidence or expressing their views to the tribunal only the constituting members, the lawyer, the separate representative and the child's support person may be present. New section 99W prohibits the cross examination of children who give evidence or express their views to the tribunal.

Many of the children involved in these proceedings will have suffered abuse and neglect within their families. They should not be required to give evidence and be cross-examined in an administrative proceeding where a party to the proceeding is likely to be the person who abused them. The parties may also be persons who have considerable influence over the child and young person. Their presence may impact on the child's capacity to give their best possible evidence or to express their true views.

New section 99ZD gives the tribunal the power to make confidentiality orders in relation to documents produced, or evidence given to the tribunal. The effect of such an order is to prohibit or restrict the disclosure of the document or evidence to the parties in the proceedings. This power is considered necessary to ensure that very sensitive information about a child is not released that could result in further harm to a child or young person, or jeopardise the safety of another person or unduly interfere with the privacy of a child or another person.

Amendment of *Commission for Children and Young People and Child Guardian Act 2000*

- new section 128G (Children must not be compelled to give evidence)
- new section 128H (Children giving evidence)
- new section 128I (Questioning of children)
- new section 128J (Provisions for QCAT child-related employment)

Collectively these provisions are aimed at children giving evidence in child-related employment reviews. Where the Bill departs from fundamental legislative principles, this occurs in the context of the tension between the rights of individuals as safeguarded by the *Legislative Standards Act 1992* and the competing rights of children and young people to participate in review processes in a way which protects them from distress and harm which may occur through a strictly adversarial review process.

New section 128G provides that children cannot be compelled to give evidence in a proceeding for a QCAT child-related employment review and specifically overrides the QCAT Act so that children must not be required to attend a hearing of a proceeding to give evidence or produce a statement document or other thing to the tribunal.

New section 128H and 128I provide that where children who are not parties to proceedings are giving evidence only the constituting members and the child's support person may be present and that these children must not be cross-examined.

New section 128J applies where a child is an applicant for a review of a decision and elects to give evidence. The child may refuse to be cross examined at any time and if this happens then the review ceases.

These provisions are considered necessary firstly to ensure that review processes are accessible for children who may be applicants for a review of a child-related employment decision and secondly to protect children who are not parties giving evidence for an applicant for a review. While it will be very rare that children who are not parties are giving evidence for applicants, these provisions are important as in many cases the applicant may be a person with considerable influence over the child.

Amendment of the *Disability Services Act 2006*

The proposed amendments to the *Disability Services Act 2006* do not impinge upon any fundamental legislative principles, except arguably clauses 52 and 53 which amend sections 102 and 108 respectively. These sections provide there is no right of review against the decision of the chief executive to issue a negative notice where a person has been convicted of an excluding offence and received imprisonment or been subject to a disqualification order.

These two sections potentially breach the fundamental legislative principle that an administrative decision is not subject to appropriate review (section 4(3)(a) of the *Legislative Standards Act 1992*).

Essentially, clauses 52 and 53 amends sections 102 and 108 respectively to make the references more accurate and reflect current drafting practice regarding reviews and QCAT.

However, the effect of sections 102 and 108 remains that if a person is convicted of an excluding offence with a penalty of imprisonment or a disqualification order, they cannot work at an outlet of a Department of Communities funded non-government service provider, where disability

services are provided. The overriding consideration for this was to protect or safeguard people with a disability from abuse, neglect or exploitation.

The list of excluding offences has been carefully selected and only those which impose a grave risk of violence to people with a disability, whose disability can create vulnerability, have been identified as excluding offences. These accord with the list of excluding offences under the *Commission for Children, Young People and Child Guardian Act 2000*.

It is an inherent requirement of working in the disability sector that the person can be trusted when people with a disability can be extremely vulnerable to abuse, neglect and exploitation.

Chapter 3 – Department of Community Safety

The provisions in Chapter 3 are consistent with fundamental legislative principles of the *Legislative Standards Act 1992* except for the following provisions:

- Clauses 103, 104 and 106 amending the *Fire and Rescue Service Act 1990*

Clause 103 amending the *Fire and Rescue Service Act 1990*

Clause 103 replicates existing section 69. Under section 69 the commissioner may require any occupier of premises to take measures for the purpose of reducing the risk of a fire occurring on the premises or reducing potential danger to persons, property or the environment if a fire occurring on the premises. A person to whom a requisition is given must comply with the requisition.

Requirements under section 69 are presented in broad terms and may not be sufficiently defined. Requirements are broadly defined as there is an extensive range of circumstances giving rise to unacceptable fire risk and these circumstances cannot be narrowly defined.

The Act does not specify that the occupier has an opportunity to present their case prior to the requisition being given.

Section 69 is used in circumstances where there is a recognised fire risk and where action is required to be taken in the interests of public safety. In such circumstances, timely and decisive action is essential. This section is particularly relied upon in relation to matters such as overcrowding in budget accommodation where there is a serious risk to safety that must be urgently addressed.

Although having a range of enforceable powers, the Queensland Fire and Rescue Service has a process and a policy of working with building owners to ensure compliance as the first step. It is only where there is an immediate threat to community safety or a failure to follow up by the building owner/occupier on the consultative approach that these powers are implemented.

Occupiers may apply for review and apply for a stay under QCAT.

No appeal rights are specified for notifications published in the gazette under section 69(2)(b).

Gazetted notifications under 69(2)(b) are used in very limited circumstances and would relate to, for example, large rural areas where there is a need for fire safety measures to be implemented such as clearing fire breaks or removal of vegetation or other flammable material.

Under section 69(6) where an occupier of premises fails to comply with a notification or notice, an authorised fire officer and any assistant may enter the premises and take any of the measures directed by the notification or notice to be taken, including seizure of property. Additionally, there is no provision for compensation for action taken under this section.

In circumstances where there is a serious and urgent fire risk, authorised fire officers must be able to take appropriate action in the interests of the safety of the community.

Fire officers are appropriately authorised and carry identification to that effect. Such entry can only occur where the occupier has failed to comply with a notification and officers may only take such action as was specified in the notification.

Proceeds of the disposal of any seized property may only be applied in payment of expenses incurred as a consequence of the occupier's failure to comply.

There are no additional possible breaches of fundamental legislative principles that the amendments to section 69 represent. Clause 103 simply replicates the original provision.

Clause 104 amending the *Fire and Rescue Service Act 1990*

Clause 104 replicates existing section 104G. Under section 104G the commissioner may give to the occupier or owner of a building written notice requiring the occupier or owner to remedy any matter in respect of

which the commissioner is of the opinion that the occupier or owner has failed to comply with this division or with regulations made under this part.

The Act does not specify that the occupier has an opportunity to present their case prior to the notice being given.

Fire safety requirements are specified under the *Fire and Rescue Service Act 1990*. Notices are only issued where the commissioner identifies a failure to comply.

Although having a range of enforceable powers, the Queensland Fire and Rescue Service has a process and a policy of working with building owners to ensure compliance as the first step. It is only where there is an immediate threat to community safety or a failure to follow up by the building owner/occupier on the consultative approach that these powers are implemented.

Owners or occupiers may apply for review under QCAT. If an owner or occupier applies for review, they are not liable to a penalty under the Act for any failure on their part to comply with the notice on and before the date on which they are given notice of the outcome of the review.

There are no additional possible breaches of fundamental legislative principles that the amendments to section 104G represent. Clause 104 simply replicates the original provision.

Clause 106 amending the *Fire and Rescue Service Act 1990*

Clause 106 replicates existing section 104KF. Under section 104KF, if the commissioner decides under section 104KD that a licensed building is an at risk licensed building, the commissioner may give the occupier of the building a notice stating the occupancy number for the building and when the occupancy notice takes effect.

The Act does not specify that the occupier has an opportunity to present their case prior to the notice being given.

In circumstances where there is a serious and urgent fire risk, authorised fire officers must be able to take appropriate action in the interests of the safety of the community.

Although having a range of enforceable powers, the Queensland Fire and Rescue Service has a process and a policy of working with building owners to ensure compliance as the first step. It is only where there is an immediate threat to community safety or a failure to follow up by the

building owner/occupier on the consultative approach that these powers are implemented.

Owners or occupiers may apply for review under QCAT. If an owner or occupier applies for review, they are not liable to a penalty under the Act for any failure on their part to comply with the notice on and before the date on which they are given notice of the outcome of the review.

There are no additional possible breaches of fundamental legislative principles that the amendments to section 10KF represent. Clause 106 simply replicates the original provision.

Chapter 5 – Department of Employment, Economic Development and Innovation

The provisions in Chapter 5 are consistent with fundamental legislative principles of the *Legislative Standards Act 1992* except for the following:

- Clause 556 and 557 amendments to the *Funeral Benefit Business Regulation 2000*
- Clause 705 amendments to the *Property Agents and Motor Dealers Act 2000*
- Clause 707 amendments to the *Property Agents and Motor Dealers Act 2000*
- Clause 301, 304 and 311 amendments to the *Agricultural Chemicals Distribution Control Regulation 1998*,
- Clause 342 amendments to the *Apiaries Regulation 1998*
- Clause 616 amendments to the *Liquid Fuel Supply Act 1984*.

Clause 556 and 557 amendment of the *Funeral Benefit Business Regulation 2000*

Clause 556 omits section 45 (Notice of appeal by corporation) and clause 557 omits section 47 (Notice of appeal). Section 45 provides that an appeal against a refusal by the registrar to register a rule or an amendment to a rule must be started within 30 days after a corporation has received notice of the refusal. Section 47 provides that an appeal against the service of a notice preventing moneys to be drawn from an account must be started within 30 days.

These sections are omitted as the time period for applying for a review is provided for in the QCAT Act. A potential inconsistency with the fundamental legislative principle that legislation should have sufficient

regard to the rights and liberties of individuals arises as the time period for applying for a review under the QCAT Act is 28 days. While this change decreases the number of days in which a review must be started, it is unlikely to adversely affect the rights of a funeral benefit business to apply for a review of a decision of the registrar.

Clause 705 amendment of the *Property Agents and Motor Dealers Act 2000*

Clause 705 inserts a new section 528BB which provides that a person being examined at a public examination must answer questions and that it is not a reasonable excuse to fail to answer a question if the answer might tend to incriminate the person. This is inconsistent with the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals as it abrogates the protection against self-incrimination required by section 4(3)(f) of the *Legislative Standards Act 1992*.

The use of public examinations under the Act is reserved only for the most serious of cases. The inconsistency is justified as the questions posed at a public examination concern matters that are particularly within the knowledge of the person being examined and would be difficult to establish by any alternative evidential means. The interests of the public and aggrieved parties outweigh any possible detriment to the person being examined. Furthermore, any possible detriment to the person being examined is limited by the fact that the answer given at the public examination can not be used in a criminal or civil proceeding.

Clause 707 amendment of the *Property Agents and Motor Dealers Act 2000*

Clause 707 inserts a new section 529A that empowers QCAT to order a person stop doing something that is in contravention of the *Property Agents and Motor Dealers Act 2000*. It is similar to an injunctive power, but it can be exercised upon application by the chief executive prior to other proceedings in either QCAT's original or review jurisdiction being started.

It 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 as the tribunal may make the order without notice to the person. However, the potential breach is mitigated by the necessity for the tribunal to allow the prohibited person a reasonable opportunity to show cause why the order should not be confirmed, where that person has not been given prior notice of the application. If the tribunal is not satisfied that the order

should continue in force after considering the prohibited person's evidence and submissions, then the tribunal must rescind the order.

It is expected that orders under this section would only be made 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. They would be used very rarely. However the power is necessary as there is an overarching concern to protect the community from very serious illegal activity of property agents, motor dealers and auctioneers.

Clauses 301, 304 and 311 amendments of the *Agricultural Chemicals Distribution Control Regulation 1998*

Clause 301 amends section 12 to replace the right to appeal to the Magistrates Court against the decision of the Agricultural Chemicals Distribution Control Board (the board) to cancel the examination result for a person who sat for an examination, with a right to apply to QCAT for a review of the decision. The amendment also substitutes the reference to 'written notice' with 'an information notice' consequential to the transfer of jurisdiction to QCAT. The information notice must comply with section 157(2) of the QCAT Act.

Clause 304 replaces section 17 to provide QCAT with jurisdiction to hear reviews of decisions by the standards officer to suspend a licence instead of the Magistrates Court. The replacement of section 17 refers to reviews of these decisions as reviews rather than appeals. This reflects that, under the QCAT Act, the process of reviewing an administrative decision is known as a review rather than as an appeal.

Clause 311 amends section 43 to replace the right to appeal to the Magistrates Court against a board decision to refuse an application for a distribution permit or to impose a permit condition for the issuing of a distribution permit with a right to apply to QCAT for a review of the decision.

The amendments also remove reference to section 22A to 22E of the *Agricultural Chemicals Distribution Control Act 1966* which has been omitted from that Act as they duplicate procedural provisions contained in the QCAT Act.

There is a potential breach of the fundamental legislative principle that a regulation should have sufficient regard to the institution of Parliament in that sections 12, 17 and 43 of this regulation contain review rights that are not matter appropriate to subordinate legislation (as identified in the Scrutiny of Legislation Committee Alert Digest 1996/5).

A review of the full suite of Biosecurity legislation and subordinate legislation (including this regulation) has recommended an update to the drafting language and protocols used in the Biosecurity legislation. Consequently, it is currently proposed that this breach will be remedied through the repeal of these sections by provisions in an integrated Biosecurity Bill to be introduced within the next 12-18 months.

Given that the focus of the current Bill is to transfer jurisdiction to QCAT, the continuance of this potential breach of a fundamental legislative principle is justified in order to maintain the status quo pending the enactment of the proposed new Biosecurity legislation.

Clause 342 amendment of the *Apiaries Regulation 1998*

Clause 342 amends section 18 to provide that QCAT now has jurisdiction to review the decisions outlined in the section, rather than the Magistrates Court.

This regulation also potentially breaches the fundamental legislative principle that a regulation should have sufficient regard to the institution of Parliament in that this regulation contains review rights that are not matter appropriate to subordinate legislation (as identified in the Scrutiny of Legislation Committee Alert Digest 1996/5).

This breach is justified for the same reasons identified above in relation to the *Agricultural Chemicals Distribution Control Regulation 1998*. The *Apiaries Regulation* will also be replaced by the new Biosecurity legislation.

Clause 616 amendments to the *Liquid Fuel Supply Act 1984*

Clause 616 amends the *Liquid Fuel Supply Act 1984* to provide an exemption for the Minister to provide a QCAT information notice in certain circumstances: see proposed new section 35AA. This raises a possible breach of a fundamental legislative principle in that the principles of natural justice require that a person is notified of a decision that adversely affects their interests.

Under the QCAT Bill, a QCAT information notice must be given to each person who may apply to the tribunal to review the decision: see section 157.

However, in some cases it may be impractical or inappropriate to provide a QCAT information notice to each person within an association or class. For example, each person within a class or association may not be identifiable. This may be particularly problematic in the emergency situations in which the Act operates. Further, as information notices may contain personal or confidential information, it may not be appropriate to provide an information notice to a large class or association of persons. The specific exemption provided in clause 616 from the QCAT information notice requirements is necessary to address these circumstances.

Chapter 6 – Department of Environment and Natural Resource Management

The provisions in Chapter 6 are consistent with fundamental legislative principles of the *Legislative Standards Act 1992* except for the following provisions:

- Parts 3 and 5 providing for the internal and external review of decisions under the *Marine Parks Regulation 2006* and *Nature Conservation (Administration) Regulation 2006*.

Parts 3 and 5 provide for the internal and external review of decisions under the *Marine Parks Regulation 2006* and *Nature Conservation (Administration) Regulation 2006*.

This raises a possible breach of the fundamental legislative principle that bills should have sufficient regard to the institution of Parliament and should allow the delegation of legislative power only in appropriate circumstances. In *Alert Digest* No. 5 of 1996, the Scrutiny of Legislation Committee expressed the view that review of decisions and appeals should generally be established in an Act rather than in subordinate legislation.

The Jurisdiction Provisions Bill amends internal and external review provisions in the *Marine Parks Regulation 2006* and the *Nature Conservation (Administration) Regulation 2006* to transfer external review jurisdiction to QCAT, but does not move the provisions into the relevant Act except where the subordinate legislation altered the provisions of the QCAT Act by providing for different tribunal functions, powers or procedures.

It is intended that these review and appeal provisions will be transferred from subordinate legislation into the Acts at the first practicable opportunity, following consideration of other relevant matters. For example, consideration is presently being given to the need to incorporate

marine park approvals under the *Marine Parks Act 2004* into the Integrated Development Assessment System under the *Integrated Planning Act 1997*. Consequently it may be necessary to consider whether the Planning and Environment Court should deal with the external review of marine park development decisions.

Chapter 7 – Department of Health

The provisions in Chapter 7 are consistent with fundamental legislative principles of the *Legislative Standards Act 1992* except for the following provisions:

- Clause 1117 amendments to *Medical Radiation Technologists Regulation 2002*
- Clause 1223 amendments to *Psychologists Registration Regulation 2002*
- Various provisions from clause 1020 in amendments to *Health (Drugs and Poisons) Regulation 1996*
- Clause 1041 amendments to *Health Practitioners (Professional Standards) Act 1999*
- Clause 1122 amendments to *Nursing Act 1992*

Medical Radiation Technologists Regulation 2002 and Psychologists Registration Regulation 2002

The two Regulations enable a person to appeal against a decision of the board to the District Court. This raises a fundamental legislative principle in that reviews of decisions and appeals should be established in an Act rather than by subordinate legislation.

The relevant provisions in the Regulation relate to the details of supervised practice programs for probationary registrants. This also includes provisions about, for example, whether a person is a suitable person to be a supervisor of a probationary registrant. The subject matter, detail and technical nature of these provisions are such that they are appropriate for inclusion in a regulation, rather than an Act. However, it was also considered that certain decisions made by the board in the Regulation should be reviewable by a court; for example, if a board declares a person ineligible to be a supervisor of a probationary registrant.

These appeal provisions have been in the Regulations for seven years. The proposed amendments in clause 1117 *Medical Radiation Technologists Regulation 2002* and clause 1223 *Psychologists Registration Regulation*

2002 merely update the terminology to reflect the transition in jurisdiction from the District Court to the new Queensland Civil and Administrative Tribunal.

Health (Drugs and Poisons) Regulation 1996

The Regulation provides review rights for applicants in relation to various decisions of the Chief executive about approvals, licenses and endorsements. This raises a fundamental legislative principle in that reviews of decisions and appeals should be established in an Act rather than by subordinate legislation.

The subject matter, detail and technical nature of these provisions are such that they are appropriate for inclusion in a regulation, rather than an Act. However, it is important that certain decisions made by the chief executive that have the potential to affect a person's livelihood are externally reviewable.

There have been review provisions in the Regulation for 13 years. The proposed amendments merely update the terminology to reflect the transition in jurisdiction from the Magistrates Court to the new Queensland Civil and Administrative Tribunal.

Health Practitioners (Professional Standards) Act 1999 and Nursing Act 1992

Section 59 of the *Health Practitioners (Professional Standards) Act 1999* and section 67 of the *Nursing Act 1992* confer on a registration board and the council the power to suspend or impose conditions on the registration of a registrant or nurse where it reasonably believes the registrant or nurse poses an imminent risk to the life, health, safety or welfare of a person and it is necessary to take action to protect the person.

In view of the need for action to be taken immediately, a board or council is not required to provide the registrant with an opportunity to be heard before making its decision under this provision. It is arguable that the absence of a requirement to seek submissions is a breach of natural justice.

The provision is defensible on the grounds that action may only be taken if there is an imminent risk to persons. In these circumstances, seeking submissions from the registrant or nurse will result in an unreasonable delay and increase the risk of harm to a person or persons.

It should also be noted that the registrant or nurse has a right of appeal to the tribunal and the tribunal must hear and determine the matter as quickly as possible.

The proposed amendments to the *Health Practitioners (Professional Standards Act) 1999* will merely update the terminology in the section from ‘appeal’ to ‘review’ to reflect QCAT’s jurisdiction, and amend the notice requirements to align with those in the QCAT Bill.

The proposed amendment to section 67 of the *Nursing Act 1992* are consequential to the overall objective to change the terminology in the *Nursing Act 1992* in relation to disciplinary proceedings for nurses, to reflect that these proceedings are administrative rather than criminal in nature. The term ‘charge’, which refers to the decision to start disciplinary proceedings, will be removed as the use of this word can equate disciplinary proceedings with criminal prosecutions. The nature of these two types of proceedings is different and this distinction will be reflected in the terminology used in the new provisions inserted in the *Nursing Act 1992*.

Chapter 9 – Department of Justice and Attorney-General

The provisions in Chapter 9 are consistent with fundamental legislative principles of the *Legislative Standards Act 1992* except for the following provisions:

- various clauses in amendments to the *Guardianship and Administration Act 2000*
- clause 1468 amendment to the *Judicial Review Act 1991*
- clause 1510 amendment to the *Legal Profession Act 2007*

Clauses 1439 amending section 7, 1440 amending section 9 and 1445 inserting a new chapter 6 in the *Guardianship and Administration Act 2000*

Clauses 1439 and 1440 confer the existing jurisdiction and powers of the Guardianship and Administration Tribunal on QCAT and clause 1445 confers the functions of the Guardianship and Administration Tribunal on QCAT as the Guardianship and Administration Tribunal will no longer exist after the establishment of QCAT.

There are no changes to the jurisdiction, powers and functions of the former Guardianship and Administration Tribunal under the *Guardianship and Administration Act 2000* (the Act) when the jurisdiction, powers and functions are transferred to QCAT. The amendments therefore do not represent any additional possible breaches to the fundamental legislative principles.

However, as noted when the Guardianship and Administration Tribunal was first established in 2000, the powers that will now be exercised by

QCAT present a number of inconsistencies with the rights and liberties of the individual.

The QCAT amendments make no changes to the balance achieved between the right of an adult with impaired capacity to exercise autonomy in decision-making with their right to adequate and appropriate support for decision-making. QCAT's powers that infringe the rights of the of person who are in some way associated with the management of the personal or financial affairs of adults with impaired capacity are also unchanged from when they were exercised by the Guardianship and Administration Tribunal. These powers are still able to be justified on the basis that persons with impaired capacity need protection from neglect, abuse, and exploitation when they are not able to exercise their right to make decisions on their own behalf. In balancing the rights of persons with impaired capacity with the rights of others, the provisions continue to favour the rights of persons with impaired capacity.

Clause 1446 inserting a new part 1 to chapter 7 in the *Guardianship and Administration Act 2000*

Clause 1446 omits part 1 of chapter 7 and replaces it with a new part 1, retaining only those provisions that are not dealt with under the QCAT Act or those provisions that are to override the generic provisions of the QCAT Act. As such, the new part 1 retains the requirement that hearings are to be in public except when the tribunal makes a closure order or adult evidence order. The new part retains the provisions that require the publication of proceedings and decisions to comply with limitation orders.

The amendments therefore do not represent any additional possible breaches to the fundamental legislative principles. However, the provisions that are retained originally posed a possible breach to the fundamental legislative principle that legislation have sufficient regard to rights and liberties of an individual (confidentiality). The provisions retained continue to balance the need to provide for accountability and transparency in decision-making against the privacy rights of a person.

Clause 1457 amending section 137 in the *Guardianship and Administration Act 2000*

Clause 1457 deletes the general witness offence provisions as these are now provided for under the QCAT Act and any possible breaches to fundamental legislative principles are addressed in the explanatory notes to the QCAT Bill. The derivative use immunity provisions are retained in the Act to prevent the use of information in civil or criminal proceedings

against the person, other than in certain proceedings identified in section 137.

The amendments therefore do not represent any additional possible breaches to the fundamental legislative principles. However the original provision in section 137 may present a possible breach to the fundamental legislative principle to provide appropriate protection against self-incrimination.

Section 137 was originally enacted on the recommendation of the Queensland Law Reform Commission which considered abrogation of the privilege necessary to protect the interests of people at risk because of impaired capacity who will often not be in a position to speak for themselves. Individuals caring for adults with impaired capacity will therefore often be the only source of information about possible abuse or exploitation of the adult. For this reason the abrogation of privilege in these matters is retained.

Clause 1468 amending section 246 and clause 1470 amending section 248 in the *Guardianship and Administration Act 2000*

Clause 1470 amends the definitions to ensure that the former president, deputy president, members, registry staff and tribunal experts for the Guardianship and Administration Tribunal retain their protection from liability if acting honestly and if they are not negligent. The protection from liability for current QCAT members performing functions under this Act is provided under the QCAT Act. The definitions retain the existing protection for other people not affected by the QCAT amalgamation process, for example the adult guardian. Clause 1468 amends the definition of official in section 246 to ensure the current protection afforded for whistleblowers in the GAAT is provided to the equivalent positions in QCAT.

The amendments do not represent any additional possible breaches to the fundamental legislative principles. However the original provisions in section 246 and 248 represented a possible breach of a fundamental legislative principle by conferring immunity from proceeding or prosecution. Both provisions were justified when they were originally enacted and are appropriately limited.

Clause 1475 amending schedule 2 of the *Judicial Review Act 1991*

Clause 1475 makes a consequential amendment to section 3(2) of schedule 2 which sets out the decisions for which reasons are not required to be

given under the *Judicial Review Act 1991* by replacing the reference to ‘a Misconduct Tribunal’ with a reference to QCAT under the *Crime and Misconduct Act 2001*. This will replicate the current situation so that reasons for the decision of the Crime and Misconduct Commission or a chief executive officer of a unit of public administration to initiate a proceeding in the original jurisdiction of QCAT under the *Crime and Misconduct Act 2001* are not required to be given. This is appropriate as the substance of the disciplinary matter and the reasons for bringing the proceeding will be dealt with as part of the substantive disciplinary proceeding before QCAT.

Clause 1510 amending section 396 of the *Legal Profession Act 2007*

Clause 1510 makes a consequential amendment to section 396 to add a reference to application and application for review in subsection (5) to the reference to ‘appeal or otherwise’. The amendment clarifies that, with the transfer of review jurisdiction under this Act to QCAT, these decisions remain non-reviewable in accordance with the current policy contained in section 396. The Scrutiny of Legislation Committee noted this potential breach in the Alert Digest (No 3 of 2004) in relation to the equivalent provision in the *Legal Profession Act 2004* (section 182). The Committee referred to Parliament the question whether this denial of review rights was acceptable in the circumstances.

The then Attorney-General provided the following comment:

Under clause 182, if the Queensland Law Society decides to not pay an amount in excess of the prescribed cap on claims for the fidelity fund, that decision is not reviewable. The purpose of the cap on claims is to ensure that, while providing for reasonable amounts of compensation, the viability of the fund cannot be jeopardised by a single large claim or groups of claims. This maximises the availability of the fund for all potential claimants. At the same time, the Society can exceed the cap having regard to the position of the fund and the circumstances of a particular case. As outlined in the explanatory notes for the Bill, if the cap is not exceeded, the Society is already paying the maximum claim generally allowed under the legislation and to provide a right of appeal for payments not made in excess of the cap would not be workable.

The Committee noted the Attorney-General’s response.

Chapter 10 – Department of Police

The provisions in Chapter 10 are consistent with fundamental legislative principles of the *Legislative Standards Act 1992* except for:

- Clause 1608 amending part 4 of the *Prostitution Act 1999* and
- Clause 1623 amending section 145 of the *Weapons Act 1990*.

Clause 1608 Amendments to part 4 of the *Prostitution Act 1999*

The amendments to the *Prostitution Act 1999* contain shorter timeframes than the QCAT Act. However, the amendments replicate the current *Prostitution Act 1999* timeframes that apply to appeals heard by the Independent Assessor.

New section 64C inserted by clause 1608 provides for the review procedures to be applied if, under section 64A or 64B, an applicant for a development application applies to QCAT for a review of a decision of the assessment manager.

New section 64C(2) provides for the obligation that is imposed on the applicant, under the QCAT Act, section 37, to give a copy of the application to the assessment manager must be complied with within five business days after the day the application for review is made.

New section 64C(3) provides that the obligation imposed on the assessment manager, under the QCAT Act, section 21(2), to give a statement of reasons, and documents and other things to QCAT must be complied with within 10 business days after the day the assessment manager is notified of the making of the application for review.

New section 64C(4) provides that within 10 business days after receiving material from the assessment manager under the QCAT Act, section 21(2), QCAT must—

- (a) make a preliminary assessment of the decision of the assessment manager that is the subject of the review; and
- (b) give a copy of the preliminary assessment and the reasons for the preliminary assessment to the parties to the review.

New section 64C(5) provides that QCAT must give the parties to the review 10 business days after receiving the preliminary assessment to make written submissions about the assessment.

The original timeframes were set so that the appeal process would be faithful to the rationale for establishing the Office of the Independent

Assessor. The timeframes set the industry standard to ensure speedy (quick) decisions in these matters. Should the timelines be extended it may compromise the whole process to the extent that people may be deterred from making application for legal brothels. This in turn would potentially have an adverse impact on the number of brothels and on Government's objectives in establishing the Act.

Clause 1623 Amendment to section 145 of the *Weapons Act 1990*

The amendments to the *Weapons Act 1990* in this Bill retain the existing right of dealer, armourer or theatrical ordnance supplier where their licence has been revoked or an application to renew their licence has been refused, to continue trading while an appeal against the renewal or revocation decision is on foot.

This right has existed since the inception of the Act and reflects the position that this category of licensee warrants a different approach to the standard which would prevent trading until the outcome of the appeal is known.

The principles of the Act provide that weapon possession and use are subordinate to the need to ensure public and individual safety; and public and individual safety is improved by imposing strict controls on the possession of weapons and requiring the safe and secure storage and carriage of weapons.

A comprehensive review of the *Weapons Act 2009*, currently being undertaken by the Department of Police, will consider whether this provision should be retained.

Chapter 12 – Department of Public Works

The provisions in Chapter 12 are consistent with fundamental legislative principles of the *Legislative Standards Act 1992* except for the following provisions:

- New section 97 *Queensland Building Services Authority Act 1991*
- New section 97B and 97C *Queensland Building Services Authority Act 1991*

The *Commercial and Consumer Tribunal Act 2003* (CCT Act) will be repealed by the QCAT Act. These new provisions inserted into the *Queensland Building Services Authority Act 1991* and the *Queensland Building Services Authority Act 1991* replicate provisions from the CCT

Act that are required for this jurisdiction but not suitable for insertion into the QCAT Act for general application.

New section 97 *Queensland Building Services Authority Act 1991*

Clause 1694 inserts a new section 97 *Queensland Building Services Authority Act 1991*. New section 97 allows a member of the tribunal and persons authorised by the tribunal to enter and inspect a building or land relevant to the proceeding. This is inconsistent with fundamental legislative principles unless the relevant powers of entry can only be exercised with a warrant issued by a judicial officer (section 4(3)(e) *Legislative Standards Act 1992*). While new section 97 does not require a warrant, authorisation by a tribunal member is a mandatory prerequisite. Accordingly, it is not considered that the clause represents a substantial breach of fundamental legislative principles.

New sections 97B and 97C *Queensland Building Services Authority Act 1991*

Clause 1694 inserts a new section 97B (Stop Orders) and 97C (Suspension Orders). New section 97B empowers QCAT to order a person stop doing something that is in contravention of the *Queensland Building Services Authority Act 1991*. It is similar to an injunctive power, but it can be exercised upon application by the Queensland Building Services Authority prior to other proceedings in either QCAT's original or review jurisdiction being started. New section 97C empowers QCAT to suspend a licence for a certain period or until the holder of the licence complies with a condition imposed on the licence by the tribunal.

Both new sections 97B and 97C potentially breach 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 as the tribunal may make either a stop order under section 97B or a suspension order under section 97C without notice to the person. However, the potential breach is mitigated by the necessity for the tribunal to allow the person a reasonable opportunity to show cause why the order should not continue in force, where that person has not been given prior notice of the application. If the tribunal is not satisfied that the order should continue in force after considering the person's evidence and submissions, then the tribunal must rescind the order.

It is expected that orders under this new section 97B would only be made 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. They would be used very rarely.

Section 97C also provides a general power to the tribunal to suspend a person's licence on certain grounds and for a certain duration. This power is necessary for the tribunal's disciplinary jurisdiction. As for section 97B it is expected an *ex parte* order would only be made on rare occasions where the situation is urgent.

Chapter 13 – Department of Transport and Main Roads

The provisions in chapter 13 are generally consistent with fundamental legislative principles of the *Legislative Standards Act 1992*. However the following provision may represent a breach to the fundamental legislative principles and is discussed below:

- Provisions amending the *Transport Operations (Road Use Management) Act 1995*.

Transport Operations (Road Use Management) Act 1995, section 131(1A)

Section 131(1A) of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) currently provides that the outcome of appeals of certain decisions relating to licences under the Act are final and binding and without further appeal. Clause 1497 of the Bill updates a reference in section 131(1A) of the *Justices Act 1886* with a reference to the new QCAT Act. It also preserves the existing position by providing that a decision of QCAT on a review is final and binding and without further appeal, which could represent a breach to the principle that legislation is to have sufficient regard to the rights and liberties of individuals.

Section 131(1A) of the TORUM Act allows licence holders to appeal certain decisions made in relation to those licences - for example, a decision by the chief executive to refuse to renew a driver licence or to suspend an existing licence. Before lodging such an appeal to the court, however, the holder of a licence that is affected by one of these decisions can apply to the chief executive to reconsider that decision. This application is made under section 38 of the *Transport Operations (Road Use Management - Driver Licensing) Regulation 1999*. If after reconsideration by the chief executive the original decision is confirmed, it is then open to the person to appeal the original decision to the court. This appeal is to be replaced by an application to QCAT to review the decision.

It is considered that this two tier system - with an internal review of the original decision-maker's decision and a subsequent right of appeal to a court or tribunal - provides appropriate review of the administrative decisions made in relation to licences that are covered by section 131 of the TORUM Act.

Chapter 14 – Queensland Treasury

The provisions in chapter 14 are consistent with fundamental legislative principles of the *Legislative Standards Act 1992* except for the following provisions:

- Clauses 1840 and 1841 - amendments to the *Community Ambulance Cover Act 2003*
- Clauses 1888 and 1890 – amendments to the *Taxation Administration Act 2001*.

Clause 1840 amendment of the *Community Ambulance Cover Act 2003*

Consistent with current section 139 of the *Community Ambulance Cover Act 2003*, clause 1827 provides that certain non-reviewable decisions are final and conclusive, and cannot be the subject of objection or appeal or QCAT review under part 9.

Part 9 of the *Community Ambulance Cover Act 2003* provides comprehensive rights of review under the current objection and appeal arrangements, and proposed arrangements for objections and QCAT reviews. Review rights are considered inappropriate for the following non-reviewable decisions:

- Section 83: decision to refuse to approve the amount of an electricity retailer's administration fee or the way it is worked out as the amount of the fee involves commercial considerations
- Section 103: refusal to approve a later time for payment by an electricity retailer of a levy amount as delay in payment of these monies confers an advantage on the electricity retailer and consequential opportunity cost and revenue risk for the State
- Section 110: decision not to waive a levy liability, because the liability may be reviewed under the proposed objection and review arrangements, review rights in relation to a non-waiver decision are not necessary.
- Section 128: refusal to exercise discretion to extend time for lodging an objection, given the potential significant impacts on revenue

certainty and customer equity. This approach is also consistent with the *Taxation Administration Act 2001*.

The limitations on review and appeal have been in the Act since 2003 and have gained community acceptance.

Clause 1841 amendment of the *Community Ambulance Cover Act 2003*

Consistent with current section 148 of the *Community Ambulance Cover Act 2003*, clause 1841 provides the production of a document signed by the commissioner purporting to be a copy of a statement of levy liability or a notice of a shortfall amount, in proceedings on a QCAT review, is evidence that the amount and other particulars of the liability is correct.

This provision is necessary to ensure that the proper mechanism for challenging the correctness of a statement of levy liability or a decision of the Commissioner is the current objection and appeal arrangements, or the proposed arrangements for QCAT reviews in part 9, rather than alternative review mechanisms such as proceedings for recovery of the outstanding amount.

Equivalent provisions have been in the Act since 2003 and in the *Taxation Administration Act* since 2001, and have gained community acceptance.

Clause 1888 amendment of the *Taxation Administration Act 2001*

Consistent with current section 76 *Taxation Administration Act 2001*, clause 1888 provides that certain non-reviewable decisions are final and conclusive, and cannot be the subject of objection or appeal or QCAT review under part 6.

Part 6 *Taxation Administration Act 2001* provides comprehensive rights of review under the current objection and appeal arrangements, and proposed arrangements for objections and QCAT reviews. Review rights are considered inappropriate for the following non-reviewable decisions, which principally may be made in the Commissioner's discretion to confer a special benefit on a person that would not otherwise exist:

- Refusal by the Commissioner to make an assessment where a self assessment is required to be made. It is inappropriate that this discretion be reviewable, as it would compromise the efficiency and effectiveness of ongoing assessment arrangements adopted by the Office of State Revenue. Part 6 provides rights of objection, and subsequent appeal or QCAT review, if taxpayers are dissatisfied with the interpretation required to be applied for the self assessment.

- The making of a compromise assessment. As these assessments may only be made by agreement between the taxpayer and the Commissioner, review rights are unnecessary and inappropriate.
- Refusal to make a reassessment decreasing liability outside of the objection and appeal, or proposed QCAT review process, and the making of reassessments based on the Commissioner's interpretations and practices. The objection and appeal, and proposed QCAT review processes, are the appropriate way in which assessments may be reviewed. It is inappropriate for the stated discretions to be reviewable, as further review may reopen a taxpayer's formal rights of review under the Act in circumstances where the objection, appeal and review rights for the assessment have already expired.
- Refusal to extend the time period for paying tax, or a decision to terminate a payment arrangement. The Commissioner has discretion to extend time for payment because in limited cases payment on time would cause significant financial hardship and jeopardise collection. However, given the significant nature of this discretion and potential impact on revenue certainty and taxpayer equity, it is appropriate that the Commissioner's decision regarding these matters not be called into question.
- Refusal to extend the time for lodging an objection. The Commissioner has discretion to extend this period because there will be limited cases where taxpayers have been unable to comply with time limits through no fault of their own. However, given the significant nature of this discretion, and potential impact on revenue certainty and taxpayer equity, it is appropriate that the Commissioner's decision regarding these matters not be called into question.
- Refusal to provide access to information. As the Commissioner's discretion ensures the continued confidentiality of information obtained under the tax laws and that the *Freedom of Information Act 1992* remains the basis for seeking access to that information, it is inappropriate for this decision to be reviewable.

The limitation on review and appeal were subject to extensive consultation during development of the Act. The current provisions have been in the Act since 2001 and have gained community acceptance.

Clause 1890 amendment of the *Taxation Administration Act 2001*

Consistent with current section 132 of the *Taxation Administration Act 2001*, clause 1890 provides the production of an assessment notice signed by the commissioner, in proceedings on a appeal or review of a decision on objection is evidence that the amount and other particulars of the assessment is correct, and in other proceedings is conclusive evidence of the matters.

This provision is necessary to ensure that the proper mechanism for challenging the correctness of an assessment is the current objection and appeal arrangements, or the proposed arrangements for QCAT reviews, in part 6, rather than alternative review mechanisms.

The limitations on review and appeal were subject to extensive consultation during development of the Act. It has been in the Act since 2001, and has gained community acceptance.

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, 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 draft bills in accordance with those recommendations to facilitate further consultation.

Exposure drafts of the QCAT Bill and the Jurisdiction Provisions Bill were released for targeted public consultation in February 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 Jurisdiction Provisions Bill. 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 and the Jurisdiction Provisions Bill that have been taken into account in finalising the bills.

Government

Because the Jurisdiction Provisions Bill amends legislation administered in every portfolio of government and the QCAT Bill will make decisions about every portfolio in government, ongoing consultation with all government agencies occurred in the development and drafting of the bills.

Notes on Provisions

Acronyms used in notes on provisions

The acronyms used in these notes on provisions are set out below. If an acronym is not listed here, it will be defined the first time it is used in the notes on provisions for that chapter.

‘QCAT Act’ means the Queensland Civil and Administrative Tribunal Act proposed by the Queensland Civil and Administrative Tribunal Bill 2009.

‘QCAT Bill’ means the Queensland Civil and Administrative Tribunal Bill 2009.

‘Jurisdiction Provisions Bill’ means the Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Bill 2009.

‘this Bill’ means the Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Bill 2009.

‘this Act’ means the Act that is being amended by the provision.

‘CCT’ means the Commercial and Consumer Tribunal.

‘SCT’ means the Small Claims Tribunals.

Chapter 1 Preliminary

Clause 1 states the short title of the Bill.

Clause 2 states that this Act commences on proclamation, other than amendments to certain Acts and Regulations. These amendments, which commence on assent, will enable the registry of the Commercial and Consumer Tribunal to be the registry for certain tribunals leading up to the commencement of QCAT. The early inclusion of these registries in the Commercial and Consumer Tribunal registry will facilitate the smooth transition of tribunal registries into the new QCAT registry. The registries affected are the registries of the Misconduct Tribunal, the Nursing Tribunal, the Panel of Referees under the *Fire and Rescue Service Act 1990* and the Veterinary Tribunal.

Chapter 2 Department of Communities

Part 1 Amendment of Adoption of Children Act 1964

Clause 3 states this part amends the *Adoption of Children Act 1964*.

Clause 4 omits the current definition of tribunal and inserts a new definition which reflects that QCAT will review decisions previously reviewed by the Children Services Tribunal.

Clause 5 amends section 13AA (7) so that the notice given by the chief executive to a person whose name has been removed from the adoption list must comply with the requirements set out in section 157(2) of the QCAT Act. This reflects that QCAT will have jurisdiction to review the decision by the chief executive to remove a person's name from the adoption list. Section 157(2) sets out the standard requirements for an information notice to be given by the decision maker for a reviewable decision to each person who may apply to the tribunal to review the decision.

Clause 6 amends section 13AC (4) so that the notice to be given by the chief executive to a person whose name has been removed from the expression of interest register must comply with the requirements set out in section 157(2) of the QCAT Act. This reflects that QCAT will have jurisdiction to review the decision by the chief executive to remove a person's name from the expression of interest register.

Clause 7 amends section 13D to reflect that QCAT will review decisions previously reviewed by the Children Services Tribunal.

Clause 8 amends section 13E (4) so that the notice to be given by the chief executive to a person whose name has been removed from the assessment register must comply with the requirements set out in section 157(2) of the QCAT Act. This reflects that QCAT will have jurisdiction to review a decision of the chief executive to remove a person's name from the assessment register.

Clause 9 amends section 14D(2) to clarify that the person may apply under the QCAT Act to QCAT to have the decision or assessment reviewed.

Clause 10 amends section 33(1) to remove the reference to the tribunal. The former Children Services Tribunal has never been able to make interim or final adoption orders, only the chief executive is able to do this. The amendments now make this clear.

Insertion of new Part 3A Tribunal Proceedings

Clause 11 inserts after section 35 a new part 3A – Tribunal proceedings. The new part applies to proceedings in QCAT in relation to reviewable decisions under this Act. The provisions in this part operate in addition to the QCAT Act.

Division 1 Preliminary

New section 36 states that the part applies to a proceeding of the tribunal that relates to the adoption of children.

New section 36A contains the relevant definitions for part 3A.

New section 36B states that the object of the part is to provide for the tribunal:

- to make decisions, in a review about the eligibility or suitability of a prospective adoptive parent, that promote the welfare and interests of children who may be adopted by them and
- to conduct proceedings in a way that uses adversarial and inquisitorial procedures, as appropriate, to arrive at the best possible decision in the circumstances and
- to foster an atmosphere of review which enhances the delivery of adoption services to children.

The objects put a clear emphasis on the needs of children and not on the needs of those persons wishing to become adoptive parents.

New section 36C states that when exercising its jurisdiction, functions or powers in relation to this Act, the tribunal must have regard to the principle in section 10 of the Act. This means that not only must QCAT have regard to this principle in making its decision, but also in exercising any other functions or powers.

Division 2 Notice of Proceedings

New section 36D enables the government entity in which the reviewable decision was made to nominate an officer or the holder of an office in the entity as the decision maker for the purpose of the review. This clause enables flexibility in relation to who may appear in a review as the decision maker. It reflects the fact that officers involved in the making of the original decision may, by the time it is reviewed by the tribunal, no longer be in the employ of the entity or for any other reason are not available to appear at the review.

Division 3 Tribunal Proceedings

New section 36E sets out how the tribunal is to be constituted for a review of a decision under this Act. The section requires the constituting membership to include, to the extent practicable, Indigenous members if the proceeding relates to a child who is Aboriginal or Torres Strait Islander.

The president is bound to choose members to constitute the tribunal that the president considers possess the appropriate commitment to the principle in section 10, extensive professional knowledge and experience of children and have demonstrated appropriate knowledge and experience. At least one of the three constituting members must be a legally qualified member. A legally qualified member is defined in the QCAT Act as a judicial member, an ordinary member or supplementary member who is a magistrate, or a senior or ordinary member who is an Australian lawyer of at least 6 years standing. In order to ensure that only appropriate persons are able to sit as members the provision includes ineligibility criteria in relation to former approved carers under the *Child Protection Act 1999*.

New section 36F provides that proceedings before the tribunal to which this part applies are to be held in private. This is despite the QCAT Act that provides for the public hearing of a proceeding unless otherwise ordered by the tribunal. This section also provides for certain persons to be entitled to be present at the proceeding. This section aims to protect the privacy and dignity of children and persons seeking to adopt by ensuring that personal information about their lives and their families is not released in an open proceeding.

Division 4 Children in tribunal proceedings

In most cases a particular child will not be the subject of reviews of decisions under this Act. However, where a particular child is the subject of the decision under review, the purpose of the provisions in this division is to ensure the accessibility of review processes to children and young people, to ensure their views and wishes are heard and to reduce the stress for children and young people who choose to give evidence or express their views in a proceeding.

Many of the children and young people involved in reviews of decisions under this Act will be particularly vulnerable. They should not be required to give evidence and be cross-examined in an administrative proceeding where a party may be a person who has considerable influence over the child and young person. Their presence may impact on the child's capacity to give their best possible evidence or to express their true views. There is provision in this division for children to give their views to the tribunal by other means without being required to give evidence in a proceeding and be cross-examined on that evidence.

New s 36G obliges the tribunal to take steps to ensure that children taking part in proceedings understand the tribunal's processes. The imposition of

this obligation recognises the particularly vulnerable status of children and is in addition to the obligations on the tribunal in the QCAT Act.

New section 36H provides that if a reviewable decision is about the suitability of a person to be the adoptive parent of a particular child and the decision is the subject of a review application, the tribunal must consider whether the child should be separately represented. The separate representative is obligated to act in the child's best interests having regard to the child's views and wishes. The separate representative has the same rights and obligations of a party. This means, for example, that a separate representative has the same entitlement to inspect and view documents filed with the tribunal in a review, to call and cross-examine witnesses and to appeal a decision of the tribunal.

New section 36I provides that before a child gives evidence in a proceeding the tribunal must be satisfied that the child is willing to do so. The child must not be compelled to give evidence, nor must the tribunal compel a child to attend a hearing of a proceeding to give evidence for a reviewable decision under this Act or produce a document or other thing to the tribunal. The provision specifically overrides section 97(1) of the QCAT Act.

New section 36J provides that if the tribunal is reviewing a decision about the suitability of a person to be the adoptive parent of a particular child, the child has the right to have their views made known to the tribunal, whether or not they are a witness.

New section 36K restricts who can be present while the child is presenting their views to the tribunal or giving evidence. If the child is 12 years of age or older and is represented by a lawyer or a separate representative, the child can choose to give evidence or present their views to the tribunal in the presence of the parties. The provision recognises the sensitive nature of matters disclosed to the tribunal and the need to ensure the protection of children's privacy and to encourage children to give evidence in a safe and supportive atmosphere.

New section 36L provides that a child who has chosen to give evidence or express their views in the presence of the parties under the previous section cannot be cross-examined. The section specifies that only tribunal members, the child's lawyer or the child's separate representative may ask the child questions. The provision recognises the sensitive nature of matters disclosed to the tribunal and the need to ensure the protection of

children's privacy and to encourage children to give evidence in a safe and supportive atmosphere.

Division 5 Confidentiality

The provisions in this division provide specific requirements for confidentiality of information given in tribunal proceedings under this part. These requirements are stricter than those in the QCAT Act due to the sensitive nature of the information given in proceedings and the need to protect the privacy of parties and children involved in proceedings. Under these provisions only parties may have access to the information given in the proceedings and even this access by parties to proceedings may be restricted under a confidentiality order made under new section 36M. In addition any information published by the tribunal must be de-identified (not identify any person involved in the proceeding).

New section 36M provides that the tribunal may make a 'confidentiality order', prohibiting or restricting the disclosure to a party to a review of all or some of the evidence given before the tribunal, or of the whole or part of the contents of a document given to, or received in evidence by, the tribunal for the review. The tribunal may make a confidentiality order on its own initiative or on application by a party to the review. The tribunal may make a confidentiality order if it is satisfied that if it does not do so a child is likely to be harmed or the safety of another person is likely to be endangered or there would be undue interference with the privacy of a child or another person.

The definition of 'non-publication order' in the QCAT Act will include a 'confidentiality order' made under section 36M(1) of this Act. This is because the QCAT Act has a number of provisions restricting access to information that is the subject of a 'non-publication order' and it is also appropriate to apply these restrictions to information subject to confidentiality orders.

New section 36N provides that only parties to these proceedings may have access to the register of proceedings kept by the principal registrar of QCAT under section 229 of the QCAT Act. This specifically overrides section 229 of the QCAT Act that provides for public access to the register of proceedings. Access to the register of proceedings is also subject to a non-publication order made under the QCAT Act or a 'confidentiality order' made under this Act (see section 229 of the QCAT Act).

New section 36O provides that a person who is not a party to the proceeding may not inspect, or obtain a copy of, the record or a part of the

record kept under the QCAT Act section 230. This specifically overrides section 230 of the QCAT Act that provides for public access to the record of proceedings. Access to the record of proceedings is also subject to a non-publication order made under the QCAT Act or a 'confidentiality order' made under this Act (see section 230 of the QCAT Act).

New section 36P makes it an offence for any person to publish information given in evidence or otherwise in a tribunal proceeding or information likely to identify a person involved in the proceeding. This provision recognises the emotional trauma to a child (even many years later) of seeing or hearing themselves and their family publicly identified as a family involved in adoption proceedings. It recognises the child's right to privacy. The section gives the tribunal the discretion to allow publication only where the tribunal or the president is satisfied the publication of the information is in the public interest and does not conflict with the best interests of the child.

This means that if QCAT publishes its final decision in a proceeding under this part (as it may under section 125 of the QCAT Act) it must ensure that the decision or the reasons for its decision does not include information that would be likely to identify a person involved in the proceeding. Publication of its decision or reasons for its decision is also subject to a non-publication order made under the QCAT Act or a 'confidentiality order' made under this Act (see section 125 of the QCAT Act).

Clause 12 amends section 58 by omitting the reference to the tribunal. This section provides for any proceedings under this Act in a court or a tribunal to be held in camera. As the new section 36F provides for proceedings in relation to a review of a decision under this Act in QCAT to be held in private, there is no need to duplicate this requirement in section 58.

Part 2 Amendment of Child Protection Act 1999

Clause 13 states this part amends the *Child Protection Act 1999*.

Clause 14 amends section 78(2) so that the notice given by the chief executive for a decision under this section must comply with the requirements set out in section 157(2) of the QCAT Act. This reflects that QCAT will have the jurisdiction to review the decision of the chief

executive in section 78(1) to direct the parent to do or refrain from doing something specifically relating to the supervision matters stated in the child protection order. Section 157(2) sets out the standard requirements for an information notice to be given by the decision maker for a reviewable decision to each person who may apply to the tribunal to review the decision.

Subsection (4) is replaced with a new subsection replacing the reference to section 70 of the *Children's Services Tribunal Act 2000* (CST Act) with a reference to section 22(3) of the QCAT Act so that QCAT may not stay the operation of this decision.

Clause 15 amends section 86(2) so that the notice given by the chief executive for a decision under this section must state in addition to the person in whose care the child is placed and where the child is living, that the child or child's parent may apply under the QCAT Act to the tribunal to have the decision reviewed, how and the period in which to apply for the review and the right to have the operation of the decision stayed. This reflects that QCAT will have the jurisdiction to review the decision about the person in whose care to place the child. The new requirements for the notice of the decision comply with section 157(2) QCAT Act.

Subsection (5) is also amended so that the notice for a decision under section 86(4) must state in addition to that the chief executive has decided not to tell the parents the person in whose care the child has been placed and where the child is living that the child or child's parent may apply under the QCAT Act to the tribunal to have the decision reviewed, how and the period in which to apply for the review and the right to have the operation of the decision stayed. This reflects that QCAT will have the jurisdiction to review the decision of the chief executive not to comply with the requirement to give written notice stating the person in whose care the child is placed and where the child is living. The new requirements for the notice of the decision comply with section 157(2) of the QCAT Act.

Clause 16 amends section 87 so that the notice to be given by the chief executive for a decision under this section must comply with section 157(2) of the QCAT Act. This reflects that QCAT will have jurisdiction to review the decision to refuse, restrict or place conditions on contact between a child and their parent or family members.

Clause 17 amends section 90(3) so that if under section 91 the carer is entitled to apply to have the decision to remove a child from their care reviewed, the notice to be given by the chief executive must state in

addition to the reasons for the decision that the carer may apply under the QCAT Act to the tribunal to have the decision reviewed, how and the period in which to apply for the review and the right to have the operation of the decision stayed. This reflects that QCAT will have jurisdiction to review the chief executive's decision to remove a child from a carer's care. The new requirements for the notice of the decision comply with section 157(2) of the QCAT Act.

Subsection (4) is also amended so that the notice to the child must, in addition to including the reasons for the decision, state that the child may apply under the QCAT Act to the tribunal to have the decision reviewed, how and the period in which to apply for the review and the right to have the operation of the decision stayed.

Insertion of new chapter 2A – Tribunal proceedings

Clause 18 inserts a new chapter 2A - Tribunal proceedings. The new part applies to proceedings in QCAT in relation to reviewable decisions under this Act. The provisions in this part operate in addition to the QCAT Act.

Part 1 Preliminary

New section 99A states that the chapter applies to a proceeding of the tribunal that relates to this Act.

New section 99B contains the relevant definitions for chapter 2A.

New section 99C states that the object of the chapter is to provide for the tribunal:

- to make decisions in a review that promote the welfare and best interests of the child about whom the reviewable decision was made and
- to conduct proceedings in a way that uses adversarial and inquisitorial procedures, as appropriate, to arrive at the best possible decision in the circumstances and
- to foster an atmosphere of review that enhances the delivery of services to children.

New section 99D states that when exercising its jurisdiction, functions or powers in relation to this Act, the tribunal must have regard to the principles mentioned in section 5. This means that not only must QCAT have regard to these principles in making its decision, but also in exercising any other functions or powers such as considering whether to stay the operation of a decision or join a party to the proceedings for example.

Part 2 Tribunal proceedings

New s 99E sets out the procedures the registrar and the decision-maker must follow once a review application has been filed. The purpose of the section is to ensure—

- the decision-maker is quickly notified of the review application
- the registrar is quickly provided with information about the names and addresses of all other persons who are entitled to apply for the review and
- all persons entitled to seek review of the decision are informed of the review application.

The section requires the registrar to notify these persons and inform them of their right to elect to become a party.

New section 99F provides for the situation where the Commissioner for Children and Young People and Child Guardian exercises the right under section 140B of the *Commission for Children and Young People and Child Guardian Act 2000* to apply for a review of a decision by the chief executive. The commissioner's application for review must be made within 28 days after the commissioner gives notice under section 140B(4) of the *Commission for Children and Young People and Child Guardian Act 2000* of the commissioner's intention to apply to QCAT for a review of the decision.

New section 99G enables the government entity in which the reviewable decision was made to nominate an officer or the holder of an office in the entity as the decision maker for the purpose of the review. This clause enables flexibility in relation to who may appear in a review as the decision maker. It reflects the fact that officers involved in the making of the original decision may, by the time it is reviewed by the tribunal, no longer be in the employ of the entity or for any other reason are not available to appear at the review. It also reflects the fact that decision making in relation to children in care under this Act is frequently done on a collaborative basis with a number of officers having detailed case knowledge of the family to whom the decision relates.

New section 99H sets out how the tribunal is to be constituted for a review of a decision under this Act. The section requires the constituting membership to include, to the extent practicable, Indigenous members if the proceeding relates to a child who is Aboriginal or Torres Strait Islander. The president is bound to choose members to constitute the tribunal that the

president considers possess the appropriate commitment to the principles set out in section 5, extensive professional knowledge and experience of children and have demonstrated appropriate knowledge and experience. At least one of the three constituting members must be a legally qualified member. A legally qualified member is defined in the QCAT Act as a judicial member, an ordinary member or supplementary member who is a magistrate, or a senior or ordinary member who is an Australian lawyer of at least 6 years standing. In order to ensure that only appropriate persons are able to sit as members the provision includes ineligibility criteria in relation to former approved carers.

New section 99I limits QCAT's power to stay the operation of a reviewable decision under section 22(3) of the QCAT Act. If the tribunal is constituted by a single member or two members, it may only stay the operation of a reviewable decision if the decision-maker for a reviewable decision does not oppose the staying of the decision's operation.

New section 99J provides for proceedings before the tribunal to be held in private. It sets out who may be present at a hearing. This provision aims to protect the privacy and dignity of children, many of whom have suffered abuse or neglect in their families and intervention by the State into their lives, by ensuring that personal information about their lives and their families is not released further in an open proceeding. Child protection proceedings in the Childrens Court are closed proceedings. These clauses ensure the same protection is given to children in administrative decision making proceedings about their care and welfare.

New section 99K gives the tribunal discretion to order that a proceeding be held in public provided no identifying information about a child will be given in the proceeding.

New section 99L sets out matters the tribunal must consider when exercising its power to adjourn a proceeding involving a child. It also sets out what the tribunal must do when it adjourns a proceeding.

New section 99M empowers the president to suspend a review if—

- some or all the matters to which the reviewable decision relates is also before a court and
- the president considers that the court will decide the matters quickly and

- the court's decision would effectively decide the issues before the tribunal.

The new section requires the president to dismiss the review application if the court's decision effectively decides the issues before the tribunal. The purpose of the section is to guard against forum shopping and to ensure the tribunal's resources are not used in making decisions, which cannot take effect because of the determination of a related application by a court. An example of the application of this clause would be in circumstances where the tribunal is hearing a review application about a decision made under this Act to place a child with a particular carer and there is a concurrent application before the Childrens Court for revocation of the child's child protection order. The Court has listed the matter for hearing in two weeks. If the Court revokes the child protection order, the child would be returned to his or her family and the issue of placement of the child would be resolved. If the Court does not revoke the child protection order, the clause enables the suspension of the review to be cancelled. The tribunal may then continue to hear the application.

New section 99N provides for additional purposes for a compulsory conference under the QCAT Act for a proceeding under this part in recognition of the particularly vulnerable nature of the parties in this jurisdiction, particularly children. In addition to anything the person presiding over the conference may do under the QCAT Act, the person may—

- identify information to be given to the tribunal by the parties
- give the parties information about the tribunal's practice and procedures and
- refer the parties to alternative dispute resolution.

In addition, this section provides a power to the person presiding over the conference to meet with a party separately—

- if the person considers doing so may avoid the escalation of conflict between the parties or
- if the party is a child and the person considers doing so is in the child's best interests having regard to the child's views and wishes.

Part 3 Children in proceedings

The purpose of the provisions in this part is to ensure the accessibility of review processes to children and young people, to ensure their views and wishes are heard and to reduce the stress for children and young people who choose to give evidence or express their views in a proceeding.

Many of the children and young people involved in reviews of decisions under this Act will have suffered abuse and neglect within their families. They should not be required to give evidence and be cross-examined in an administrative proceeding where a party may be the person who abused them or is currently caring for them. The parties may also be persons who have considerable influence over the child and young person. Their presence may impact on the child's capacity to give their best possible evidence or to express their true views. It may also be contrary to strengthening positive family relationships for children to give evidence in matters about their care by their parents. Children may give their views to the tribunal by other means without being required to give evidence in a proceeding and be cross-examined on that evidence.

New section 99O obliges the tribunal to take steps to ensure that children, other than those who are a party to proceedings, taking part in proceedings understand the tribunal's processes. In relation to children who are parties or who have the right to start a review, subsection (2) obliges the tribunal to take reasonable steps to provide necessary assistance, including through providing information, to those children to enable them to start or participate in a review. Given the vulnerable status of children, it is important that they are assisted in exercising their right to take matters before and engage meaningfully in proceedings before the tribunal.

New section 99P enables applications for review to be filed on behalf of a child with the president's permission. The president's permission can only be given if—

- the person seeking to make the application is not entitled to make an application in their own name and
- the president considers that it is in the child's best interests for the application to be made and it would be inappropriate or unreasonable to expect the child to make the application themselves.

Generally children and young people should be encouraged and supported to exercise their rights themselves. However, this section recognises that there will be circumstances where children and young people will not be

capable of acting on their own behalf because, for example, he or she is too young, is experiencing developmental delays or has an intellectual disability and a review of the decision affecting them would be appropriate to ensure their ongoing protection and wellbeing.

Oversight by the president is required to ensure—

- that children and young people have the opportunity to make the application themselves if this is possible and appropriate and
- to safeguard against the possibility of persons who do not have rights to seek review using a child without the child's knowledge as a means of obtaining review of a decision with which they do not agree in circumstances where it would not be in the child's best interests for the review to occur.

New section 99Q obliges the tribunal to consider the appointment of a separate representative for a child about whom the reviewable decision was made, whether or not the child is a party to the review. The separate representative is obligated to act in the child's best interests having regard to the child's views and wishes. The separate representative has the same rights and obligations of a party. This means, for example, that a separate representative has the same entitlement to inspect and view documents filed with the tribunal in a review, to call and cross-examine witnesses and to appeal a decision of the tribunal.

New section 99R prevents a separate representative from being called to give evidence in a proceeding about a communication with a child for whom the separate representative was appointed. The purpose of this provision is to clarify that any communications between the child and the separate representative are privileged, that is, disclosure of the content of the communications cannot be compelled in any proceeding.

New section 99S clarifies that even though a child or young person who is a party may be represented by a separate representative under section 99Q, that party may also be represented before the tribunal by a lawyer.

The purpose of this provision is also to ensure that children and young people are represented by a lawyer if they choose to have a representative. The provision reflects the reality that the vast majority of children and young people do not have the skills or the life experience to represent themselves adequately. It also reflects the fact that it would be inappropriate to require children and young people to personally appear

and make submissions where the review is about a decision related to their care and their parents and/or carers are also parties to the review.

New section 99T provides that before a child gives evidence in a proceeding the tribunal must be satisfied that the child is willing to do so. The child cannot be compelled to give evidence, nor can the tribunal compel a child to attend a hearing of a proceeding to give evidence or produce a document or other thing to the tribunal. This provision specifically overrides section 97(1) of the QCAT Act

New section 99U provides that if the tribunal is reviewing a decision about a child, the child has the right to have their views made known to the tribunal, whether or not they are a party or a witness to the review.

New section 99V restricts who can be present while the child is presenting their views to the tribunal or giving evidence. If the child is 12 years of age or older and is represented, the child can choose to give evidence or present their views to the tribunal in the presence of the parties. The provision recognises the sensitive nature of matters disclosed to the tribunal and the need to ensure the protection of children's privacy and to encourage children to give evidence in a safe and supportive atmosphere.

New section 99W provides that a child who has chosen to give evidence or express their views in the presence of the parties under the previous section cannot be cross-examined. The section specifies that only tribunal members, the child's lawyer or the child's separate representative may ask the child questions. The provision recognises the sensitive nature of matters disclosed to the tribunal and the need to ensure the protection of children's privacy and to encourage children to give evidence in a safe and supportive atmosphere.

New section 99X creates an exception to the application of sections 99V and 99W, in relation to a person under the age of 18 years who is a parent of a child about whom the reviewable decision was made and is a party to a review. If the parent elects to give evidence, the tribunal is required to tell the parent before they give evidence that they may be cross-examined on their evidence, that they may refuse to be further cross-examined but if they do so, this may affect the weight given to the parent's evidence. This provision attempts to achieve an appropriate balance between the rights of a young parent who will often themselves be very vulnerable and the fact that it is the best interests of his or her child which is the paramount consideration in the review.

Part 4 Medical examinations

New section 99Y enables the president or tribunal to make an order to authorise the medical examination of a child. The president or tribunal must be satisfied that any medical information already before the tribunal is insufficient for the purposes of the review and that it is in the child's best interests to make the order authorising the medical examination. When deciding whether the order would be in the child's best interests, the tribunal must consider the child's views and wishes and the effect a further medical examination may have on a child having regard to the number of previous medical examinations of the child.

New section 99Z provides that if an order authorising a medical examination is made under section 99Y then a doctor can examine the child. A parent or guardian's consent is not required. However, this provision does not affect any rights of the child under common law to refuse a medical examination. When deciding any liability in relation to carrying out the examination, the doctor is taken to have the consent of the child's parents or guardian.

Part 5 Parties

New section 99ZA sets out who are the parties to a review of a decision under this Act.

New section 99ZB enables persons notified of a review application under new section 99E(6) above to elect to become a party to a review by filing a notice of election with the registrar within 7 days after the person receives the information notice. The purpose of this provision is to ensure that all persons entitled to seek review of a decision are informed of any review application in relation to the decision and have the opportunity to be included in the review by electing to become parties. The provision recognises that the other persons entitled to seek review of a decision have a special interest in any review application and should have an automatic entitlement to participate rather than being required to apply for the leave of the tribunal to be joined as parties. The election process ensures that persons who do not wish to participate are not compelled to do so.

New section 99ZC enables the tribunal, of its own motion or on application by the person, to join a person who is genuinely concerned in the subject matter of the review as a party. Where the review concerns a child, the tribunal may only join the person if it is satisfied that to do so would be in the child's best interests.

Part 6 Confidentiality

The provisions in this part provide specific requirements for confidentiality of information given in tribunal proceedings under this part. These requirements are stricter than those in the QCAT Act due to the sensitive nature of the information given in proceedings and the need to protect the privacy of parties and children involved in proceedings. Under these provisions only parties may have access to the information given in the proceedings and even this access by parties to proceedings may be restricted under a confidentiality order made under new section 99ZD. In addition any information published by the tribunal must be de-identified (not identify any person involved in the proceeding).

New section 99ZD(1) provides that the tribunal may make a ‘confidentiality order’, prohibiting or restricting the disclosure to a party to a review of all or some of the evidence given before the tribunal, or of the whole or part of the contents of a document given to, or received in evidence by, the tribunal for the review. The tribunal may make a confidentiality order on its own initiative or on application by a party to the review. The tribunal may make a confidentiality order if it is satisfied that if it does not do so a child is likely to be harmed or the safety of another person is likely to be endangered or there would be undue interference with the privacy of a child or another person.

The definition of ‘non-publication order’ in the QCAT Act will include a ‘confidentiality order’ made under section 99ZD of this Act. The QCAT Act has a number of provisions restricting access to information that is the subject of a ‘non-publication order’ and it is also appropriate to apply these restrictions to information subject to confidentiality orders.

New section 99ZE provides that only parties to these proceedings may have access to the register of proceedings kept by the principal registrar of QCAT under section 229 of the QCAT Act. This specifically overrides section 229 of the QCAT Act that provides for public access to the register of proceedings. Access to the register of proceedings is also subject to a non-publication order made under the QCAT Act or a ‘confidentiality order’ made under this Act (see section 229 of the QCAT Act).

New section 99ZF provides that a person who is not a party to a proceeding may not inspect, or obtain a copy of, the record or a part of the record kept under the QCAT Act section 230. This specifically overrides section 230 of the QCAT Act that provides for public access to the record of proceedings. Access to the record of proceedings is also subject to a non-publication

order made under the QCAT Act or a ‘confidentiality order’ made under this Act (see section 230 of the QCAT Act).

New section 99ZG makes it an offence for any person to publish information given in evidence or otherwise in a tribunal proceeding or information likely to identify a person involved in the proceeding. This provision recognises the emotional trauma to a child (even many years later) of seeing or hearing themselves and their family publicly identified as a family involved in child protection proceedings. It recognises the child’s right to privacy. The section gives the tribunal discretion to allow publication only where the tribunal or the president is satisfied the publication of the information is in the public interest and does not conflict with the best interests of the child.

This means that if QCAT publishes its final decision in a proceeding under this part (as it may under section 125 of the QCAT Act) it must ensure that the decision or the reasons for its decision does not include information that would be likely to identify a person involved in the proceeding. Publication of its decision or reasons for its decision is also subject to a non-publication order made under the QCAT Act or a ‘confidentiality order’ made under this Act (see section 125 of the QCAT Act).

Part 7 Ensuring tribunal decisions and recommendations are given effect

Section 24(3) of the QCAT Act enables the tribunal to make written recommendations about the policies, practices and procedures applying to reviewable decisions of the same kind to the chief executive of the entity in which a reviewable decision was made.

The provisions in this part enable the president to monitor the progress of the implementation of these recommendations in this jurisdiction.

New section 99ZH provides that part 7 applies to decisions of the tribunal other than a decision to confirm the reviewable decision and to recommendations made by the tribunal, after reviewing a reviewable decision, to the chief executive about policies, practices and procedures relevant to the making of the reviewable decision.

New section 99ZI provides that the president may ask the chief executive to notify the president within a reasonable stated time of the steps taken to implement the tribunal’s decision and/or recommendations and, if no steps have been taken, the reasons for this.

New section 99ZJ provides that if, after receiving the chief executive's report, the president considers that no adequate or appropriate steps have been taken to implement the tribunal's decision or recommendations, the president may report on the matter to the responsible Minister.

Clause 19 amends section 129(2) so that if the chief executive decides to refuse an application for a licence to provide care services, in addition to the notice stating the reasons for the decision it must also state that the applicant may apply to the tribunal to have the decision reviewed, how and the period in which to apply to have the decision reviewed and any right the applicant has to have the operation of the decision stayed. This reflects that QCAT will have jurisdiction to review the chief executive's decision to refuse an application for a licence to provide care services. The new requirements for the notice comply with section 157(2) of the QCAT Act.

Clause 20 amends section 136(2) so that if the chief executive decides to refuse an application for, or to renew, a certificate, in addition to the notice stating the reasons for the decision it must also state that the applicant may apply to the tribunal to have the decision reviewed, how and the period in which to apply to have the decision reviewed and any right the applicant has to have the operation of the decision stayed. This reflects that QCAT will have jurisdiction to review the chief executive's decision to refuse an application for, or to renew, a certificate. The new requirements for the notice comply with section 157(2) of the QCAT Act.

Clause 21 amends section 137(7) so that if the chief executive decides to refuse an application to amend an authority, in addition to the notice stating the reasons for the decision, the notice must also state that the applicant may apply to the tribunal to have the decision reviewed, how and the period in which to apply to have the decision reviewed and any right the applicant has to have the operation of the decision stayed. This reflects that QCAT will have jurisdiction to review the chief executive's decision to refuse an application for an amendment of an authority by the holder of that authority. The new requirements for the notice comply with section 157(2) of the QCAT Act.

Clause 22 amends section 138(6) so that, if the chief executive decides an amendment is necessary to an authority, the notice given to the holder of the authority in addition to stating the reasons for the decision must also state that the holder may apply to the tribunal to have the decision reviewed, how and the period in which to apply to have the decision reviewed and any right the holder has to have the operation of the decision stayed. This reflects that QCAT will have jurisdiction to review the chief

executive's decision to amend an authority. The new requirements for the notice comply with section 157(2) of the QCAT Act.

Clause 23 amends section 140(5) so that, if the chief executive decides to suspend or cancel an authority under this section, the notice given to the holder of the authority in addition to stating the reasons for the decision must also state that the holder may apply to the tribunal to have the decision reviewed, how and the period in which to apply to have the decision reviewed and any right the holder has to have the operation of the decision stayed. This reflects that QCAT will have jurisdiction to review the chief executive's decision to suspend or cancel an authority. The new requirements for the notice comply with section 157(2) of the QCAT Act.

Clause 24 amends section 140AI(2) so that, if the chief executive cancels a person's authority under this subdivision, the notice given to the person in addition to stating the reasons for the decision, must also state that the person may apply to the tribunal to have the decision reviewed, how and the period in which to apply to have the decision reviewed and any right the person has to have the operation of the decision stayed. This reflects that QCAT will have jurisdiction to review the chief executive's decision to cancel an authority under this subdivision. The new requirements for the notice comply with section 157(2) of the QCAT Act.

Clause 25 amends the editor's note in section 247 to reflect that QCAT will have jurisdiction to review reviewable decisions.

Clause 26 replaces the definitions of 'reviewable decision' and 'tribunal'.

Part 3 Amendment of Child Protection (International Measures) Act 2003

Clause 27 states this part amends the *Child Protection (International Measures) Act 2003*.

Clause 28 omits the definitions of 'Children Services Tribunal' and 'Guardianship and Administration Tribunal'. This is consequential to the repeal of the *Children Services Tribunal Act 2000* by the QCAT Act and the abolition of the Guardianship and Administration Tribunal by this Bill. This clause also amends the definitions of 'Queensland court' and

‘registrar’ to include a reference to QCAT and the principal registrar of QCAT.

Part 4 **Amendment of Commission for Children and Young People and Child Guardian Act 2000**

Clause 29 states that this part amends the *Commission for Children and Young People and Child Guardian Act 2000*.

Clause 30 amends section 40 inserting a new subsection (1)(b)(iii). This amendment replaces the reference to the Children Services Tribunal with QCAT or the former tribunal and is consequential to the repeal of the *Children Services Tribunal Act 2000* (CST Act) by the QCAT Act. This clause also inserts a definition of ‘former tribunal’.

Clause 31 amends section 89ZG(4)(a), replacing the reference to the Children Services Tribunal with QCAT. This amendment is consequential to the repeal of the CST Act by the QCAT Act.

Clause 32 amends section 102B, inserting a new subsection (2). This amendment reflects that a relevant person who is issued a negative notice may now apply under the QCAT Act to QCAT for a review of the decision about whether there is an exceptional case as mentioned in section 102(4) or(7). The QCAT Act provides for the period during which and the way in which the application must be made to QCAT. The Magistrates Court will continue to have jurisdiction for an appeal in relation to the decision about whether the information given to the commissioner as investigative information, is investigative information in section 121C(2).

Clause 33 amends section 121(1) to replace the reference to the Children Services Tribunal with QCAT so that a person who is not a disqualified person may now apply to QCAT for a review of the decisions in section 121(1)(a) and (b). This clause also provides that QCAT may not stay the operation of the decision subject to review or grant an injunction in the proceeding for the review.

The QCAT Act has provisions for the procedures, functions and powers that QCAT may exercise in its review jurisdiction. While the amended section 121 confers jurisdiction on QCAT to review a child-related

employment decision, QCAT will not have the power to impose conditions on a person issued with a 'positive notice' or a 'positive notice blue card'.

Clause 34 amends section 121AA to replace the references to the Children Services Tribunal with QCAT. It is consequential to the conferral of jurisdiction on QCAT in section 121 to review child-related employment decisions.

Clause 35 amends section 121C to replace the reference to the Children Services Tribunal with QCAT. The amendment clarifies that QCAT does not have the jurisdiction to review a decision of the police commissioner that information about a person is investigative information or that information that is investigative information may be given to the commissioner.

Clause 36 amends section 121E (2) to reflect that if the Magistrates Court confirms the decision that the information given to the commissioner is investigative information, the person may now apply under the QCAT Act to QCAT to have the commissioner's decision to issue the negative notice reviewed.

Clause 37 inserts new part 6A and 6B.

Part 6A QCAT proceedings about child-related employment review

The provisions in this part are primarily aimed at children appearing in child-related employment review proceedings. As the CST Act will be repealed, specific provisions that were once in that Act that are aimed at protecting children who may appear in the tribunal that are relevant to child-related employment reviews have been included in this Act to complement the provisions in the QCAT Act.

New section 128A inserts some definitions for the new part 6A.

New section 128B provides that this part applies for a child-related employment review. This part applies to these proceedings in addition to the QCAT Act.

New section 128C states that a child-related employment decision is to be reviewed under the principle that the welfare and best interests of a child are paramount.

New section 128D provides that a hearing of a proceeding for a QCAT child-related employment review must be held in private. This is despite the QCAT Act that provides for the public hearing of a proceeding unless

otherwise ordered by the tribunal. This is because information about a person's criminal history will be frequently discussed during the proceedings. This information is required to be kept confidential under this Act and should not be disclosed publicly on review. Certain persons listed in subsection (2) are entitled to be present despite the proceeding being closed to the public.

New section 128E provides for an application for a child-related employment review to be made on behalf of a child but only with the permission of the QCAT president. The president's permission can only be given if:

- the person is not, on the person's own behalf, entitled to apply for the child-related employment review and
- it is in the child's best interests that the application be made and
- it would be inappropriate for, or unreasonable to require, the child to make the application himself or herself.

Generally a child should be encouraged to make an application themselves and it is likely that most children who are applicants will be capable of doing so. However this provision recognises that there will be circumstances where some children and young persons will be particularly vulnerable.

New section 128F provides that an application made on behalf of a child may only be withdrawn with the leave of the QCAT president or the tribunal.

New section 128G provides that children cannot be compelled to give evidence in a proceeding for a QCAT child-related employment review. This section specifically overrides the requirements in section 97(1) of the QCAT Act in relation to children in these proceedings. A child must not be required to attend a hearing of a proceeding to give evidence or produce a stated document or other thing to QCAT. Also before a child gives evidence in a proceeding, QCAT must satisfy itself that the child is willing to give evidence.

These provisions are necessary to protect all children who may be involved in proceedings whether or not they are parties. However it would be on very rare occasions that children who are not parties would be giving evidence in the tribunal for child-related employment reviews. The tribunal must be satisfied in each situation that before a child gives evidence

(without being compelled to by the tribunal) that the child is actually willing to give the evidence.

New section 128H provides that where a child does give evidence in a QCAT child-related employment review but is not a party to the proceeding, only the constituting members and the child's support person (with the child's agreement) may be present while the child gives evidence.

New section 128I provides that where a child does give evidence in a QCAT child-related employment review but is not a party to the proceeding, the child must not be cross-examined and only the constituting members may ask questions of the child.

New section 128J applies where a child is an applicant for review of a decision of the commissioner to declare the young person unsuitable for child related employment. While there is not a prohibition on cross examining children who are parties (as there are for children who are not parties who are giving evidence) this section does provide some protective provisions. If the child elects to give evidence, the tribunal is required to tell the child before they give evidence that they may be cross examined, that they may refuse to be cross examined at any time, and if they do refuse to be cross-examined then the review application is taken to be withdrawn and the review ceases.

Part 6B QCAT to give statistical information to commissioner

New section 128K requires the president to provide the commissioner with non-identifying information about reviews to support the general advocacy and oversight role of the Commission for Children and Young People and Child Guardian. The prescribed reviewable decisions for which information must be given are listed in the section.

Clause 38 replaces the reference to the Children Services Tribunal with QCAT so that if the commissioner is dissatisfied with a reviewable decision or has been unable to resolve the matter with the chief executive (child safety) the commissioner may now apply to QCAT to have the reviewable decision reviewed. These reviewable decisions relate to decisions made under the *Child Protection Act 1999* and specific provisions for the conduct of these reviews are inserted in the *Child Protection Act 1999* by this Bill.

Clause 39 omits the definition for 'Children Services Tribunal' from the schedule 4 (dictionary) and inserts new definitions for 'child-related employment decision', 'QCAT child-related employment review', 'constituting members', and 'QCAT president'.

Part 5 **Amendment of Community Services Act 2007**

Clause 40 states that this part amends the *Community Services Act 2007*.

Clause 41 removes the word ‘appeals’ from the heading of part 9, which is currently ‘Reviews and appeals’. This amendment is consequential to the transfer of jurisdiction to hear reviews of decisions of the chief executive to QCAT in place of the CCT. While the Act previously referred to the process of applying for a review of these decisions as an appeal, under the QCAT Act this is known as a review of a reviewable decision.

Clause 42 amends section 93 to refer to the review of a decision rather than the appeal of a decision, in order to provide consistency with the terminology used under the QCAT Act.

Clause 43 amends the heading in part 9, division 2 (Review of decision) by inserting ‘by chief executive’ to differentiate the internal review process for reviewable decisions from the QCAT review process.

Clause 44 amends section 95, which provides for the stay of original decisions, in order provide consistency with the terminology used under the QCAT Act by referring to review of decisions rather than appeal of decisions.

Clause 45 amends section 96(4) to place on the chief executive an obligation to provide a QCAT information notice about a review decision to the interested person.

Clause 46 replaces the part 9, division 3 heading in order to provide consistency with the terminology used under the QCAT Act by referring to review of decisions rather than appeal of decisions.

Clause 47 replaces section 97 to state that an interested person for a review decision may apply, in the way provided under the QCAT Act, to QCAT for a review of a review decision. Previously, the interested person for the decision could appeal against a review decision to the CCT.

Clause 48 omits section 98, which provides that an appeal is to be by way of rehearing, as procedures for reviews by QCAT are provided for in the QCAT Act.

Clause 49 amends the dictionary to the Act, by substituting the definition of tribunal so that tribunal now means QCAT instead of the CCT. The

effect of this amendment is that reviewable decisions are now reviewed by QCAT instead of the CCT. The clause also omits the definition of appeal and inserts the definition of QCAT information notice as a consequence of the transfer of jurisdiction to QCAT.

Part 6 **Amendment of Disability Services Act 2006**

Clause 50 states that this part amends the *Disability Services Act 2006*.

Clause 51 amends section 87 to reflect that QCAT will now review decisions of the chief executive about whether there is an exceptional case as mentioned in section 85(4) or (7). The notice given to the engaged person under section 87(2) will now advise the person of the right of review by QCAT. This amendment is consequential to the amendment of the Act to provide that the right of review is to QCAT instead of the CCT. The right of appeal to the Magistrates Court about only the investigative information is unchanged by the amendments.

Clause 52 amends section 102. *Clause 52(1)* amends section 102(3)(a) and (5) by replacing ‘appeal’ with ‘review’ to make the references more accurate and reflect current drafting practice, and to clarify that there is no review under the Act against the decision of the chief executive to cancel the positive notice and substitute a negative notice. *Clause 52(2)* omits section 102(6) (which contains the definition of *appeal*) which is no longer required.

Clause 53 amends section 108. *Clause 53(1)* amends section 108(1) to clarify that a person when making an application to QCAT for a review of certain decisions of the chief executive could do so as provided under the QCAT Act. *Clause 53(2)* makes a punctuation amendment to section 108(4).

Clause 54 replaces section 113(2). The replacement section 113(2) provides that if a Magistrates Court confirms the decision appealed against regarding investigative information, the person who appealed the decision will have a right to apply to QCAT to review a decision of the chief executive about whether there is an exceptional case as mentioned in section 85(4) or (7). Previously the right of review was vested in the CCT.

The notice given under section 112(4) must comply with section 157(2) of the QCAT Act.

Clause 55 amends section 123D(2)(a)(ii) by omitting ‘guardianship’ to reflect that QCAT will assume jurisdiction from the Guardianship and Administration Tribunal (GAAT).

Clause 56 amends section 123E by omitting the definition of ‘guardianship tribunal’ and ‘guardianship’ in the definition of containment or seclusion approval to reflect that QCAT will assume jurisdiction from GAAT.

Clause 57 amends section 123X(4) by omitting ‘guardianship’ to reflect that QCAT will assume jurisdiction from GAAT.

Clause 58 amends section 123Y by omitting ‘guardianship’ to reflect that QCAT will assume jurisdiction from GAAT.

Clause 59 amends section 123ZE by omitting ‘guardianship’ from the note to paragraph (b) to reflect that QCAT will assume jurisdiction from GAAT.

Clause 60 amends section 123ZK(8) to provide that a person given notice under subsection (5) or (6) may apply to QCAT for a review of a decision of the chief executive to give, or refuse to give, a short term approval to use a restrictive practice (other than containment or seclusion) in relation to an adult with an intellectual or cognitive disability in certain circumstances. Previously, the person given notice could apply to GAAT and GAAT could make the order it considered appropriate.

Clause 61 amends section 123ZL(3) by omitting ‘guardianship’ to reflect that QCAT will assume jurisdiction from GAAT.

Clause 62 amends section 123ZN(5) to provide that a relevant service provider may apply to QCAT for a review of a decision of the chief executive not to approve a short term plan. Previously, the relevant service provider could apply to GAAT and GAAT could make the order it considered appropriate.

Clause 63 amends section 123ZZ, heading. The amendment is minor and clarifies that the section relates to an application for review by the chief executive.

Clause 64 amends part 14, heading. The amendment is minor to make the heading more accurate.

Clause 65 amends section 208(1)(d) to reflect that a person may apply to QCAT for a review as provided under the QCAT Act, instead of CCT.

Clause 66 amends part 14, division 2, heading. The amendment replaces 'of decision' with 'by chief executive' to clarify that the division relates to a review by the chief executive.

Clause 67 amends section 210. Clause 67(1) amends section 210(5) and clause 67(2) amends section 210(7) to make the references more accurate and reflect current drafting practice. Clause 67(3) amends section 210(8) to clarify that the chief executive's decision to issue a negative notice must not be stayed by the chief executive or QCAT.

Clause 68 amends 211(4) to provide that the notice given to the interested person after the chief executive has decided the application under section 209 for a review of a decision must be a notice that meets the requirements under section 157(2) of the QCAT Act.

Clause 69 amends part 14, division 3, heading to clarify that the division relates to a review by QCAT, and to reflect a more accurate reference and current drafting practice.

Clause 70 replaces section 212. The replacement section 212 provides that an interested person may now apply to QCAT for a review of the review decision. The section makes it clear that a person has a right to apply whether or not they have received a review decision notice for the review decision. New section 212(4) also defines a 'review decision notice' as a notice complying with section 157(2) of the QCAT Act. This replacement section amends the Act to provide that the right of review is to QCAT instead of CCT.

Clause 71 omits section 213 (which provides that an appeal is by way of rehearing) as the way in which the review will be heard is provided for under the QCAT Act.

Clause 72 amends section 248(2)(a) by omitting 'guardianship' to reflect that QCAT will assume jurisdiction from GAAT.

Clause 73 amends schedule 7 (Dictionary). Clause 73(1) omits the definitions of appeal, guardianship tribunal and tribunal, and clause 73(2) inserts a new definition for tribunal to mean QCAT. These amendments are consequential as a result of the Act conferring jurisdiction on QCAT.

Part 7 **Amendment of Domestic and Family Violence Protection Act 1989**

Clause 74 states that this part amends the *Domestic and Family Violence Protection Act 1989*.

Clause 75 amends section 38, which provides jurisdiction for the Magistrates Court where an application for a protection order or variation of a protection order and an application under section 62A are made to the Court. A Magistrates Court is provided with jurisdiction to exercise the powers or make orders that a small claims tribunal may exercise or make to determine a tenancy application under the *Residential Tenancies Act 1994* or the *Small Claims Tribunal Act 1973* (SCT Act). The amendment replaces references to a small claims tribunal and the SCT Act with references to QCAT and the QCAT Act, consequential to the conferring of jurisdiction for the hearing and deciding of tenancy applications on QCAT in place of a small claims tribunal.

Clause 76 amends section 62A, which provides procedural provisions for tenancy applications. The amendment replaces references to a small claims tribunal and the SCT Act with QCAT and the QCAT Act, as a consequence of the transfer of jurisdiction for the hearing of tenancy applications to QCAT. The amendment also inserts a new subsection (4A) to clarify that a court hearing matters under section 62A must not be open to the public.

Clause 77 amends the dictionary to omit the definition of small claims tribunal and replace a reference to the small claims tribunal with a reference to QCAT in the definition of tenancy application. These amendments are consequential to the transfer of jurisdiction for the hearing of tenancy applications to QCAT.

Part 8 **Amendment of Guide, Hearing and Assistance Dogs Act 2009**

Clause 78 states that this part amends the *Guide, Hearing and Assistance Dogs Act 2009*.

Clause 79 amends the heading to part 7. The amendment provides consistency with terms applied under the QCAT Act by referring to ‘review’ of decisions rather than ‘appeals’.

Clause 80 amends section 67 to omit the definition of reviewed decision notice. The definition will now be contained in new section 72.

Clause 81 amends heading to part 7, division 3 by omitting the heading and replacing it with ‘Review by chief executive’ to clarify that the division relates to a review by the chief executive.

Clause 82 amends section 70. Clause 82(1) amends section 70(5) and clause 82(2) amends section 70(7) to provide consistency with terms applied under the QCAT Act.

Clause 83 amends section 71. Clause 83(1) omits ‘Review’ from the heading of section 71 and replaces it with ‘Reviewed’ to provide consistency with terms applied under the QCAT Act. Clause 83(2) amends section 71(4) to provide that the notice given to the interested person after the chief executive has decided the application under section 69 for a review of a decision must be a notice that meets the requirements under section 157(2) of the QCAT Act.

Clause 84 amends the heading to part 7, division 4 to clarify that the division relates to a review by QCAT, and provides consistency with terms applied under the QCAT Act and reflects current drafting practice.

Clause 85 replaces section 72 and omits section 73. The replacement section 72 provides that an interested person may now apply to QCAT for a review of the reviewed decision. The section makes it clear that a person has a right to apply whether or not they have received a reviewed decision notice for the reviewed decision. New section 72(4) also defines a *reviewed decision notice* as a notice complying with section 157(2) of the QCAT Act. This replacement section amends the Act to provide that the right of review is to QCAT instead of the CCT.

Clause 85 also omits section 73 (which provides that an appeal is by way of rehearing) as the way in which the review will be heard is provided for under the QCAT Act.

Clause 86 amends dictionary in schedule 4. Clause 86(1) omits the definitions of reviewed decision notice and tribunal. Clause 86(2) inserts a new definition for tribunal to mean QCAT. These amendments are consequential as a result of the Act conferring jurisdiction on QCAT.

Part 9 Amendment of Residential Tenancies and Rooming Accommodation Act 2008

Clause 87 states that part 9 amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

Clause 88 inserts a provision requiring QCAT to exercise its original jurisdiction in relation to an application for a review of an abandonment order under section 361 of the Act. QCAT may make an order if it is satisfied the applicant did not abandon the premises or only abandoned the premises on a day after the day stated.

Clause 89 inserts a provision which clarifies that chapter 6, part 2 of the Act about applications to QCAT applies to applications made by another person entitled to make an application to QCAT under the Act.

Clause 90 inserts a provision that requires applications to QCAT under the Act to be made in the way provided under the QCAT Act.

Clause 91 inserts a provision that requires specific applications to QCAT to be held in private because in deciding the application QCAT must have regard to the domestic violence issues.

Clause 92 removes section 504 (2) of the Act about certificates signed by a registrar under the *Small Claims Tribunal Act 1973* (SCT Act) as a comparable evidentiary provision about certificates signed by the principal registrar is included in the QCAT Act.

Clause 93 replaces the reference to the SCT Act in section 516 of the Act about applications for more than the prescribed amount with a reference to the QCAT Act.

Clause 94 replaces references to the SCT Act or a small claims tribunal in the definitions of registrar, registry, and tribunal in schedule 2 of the Act with references to the QCAT Act and QCAT.

Chapter 3 Department of Community Safety

Part 1 Amendment of Building Fire Safety Regulation 2008

Clause 95 states that part 1 amends the *Building Fire Safety Regulation 2008*.

Clause 96 omits section 73 which specifies the fee applicable for making an objection under section 104SB of the *Fire and Rescue Service Act 1990*. Such objections will fall under the jurisdiction of QCAT and the fees applicable to QCAT will apply.

Part 2 Amendment of Corrective Services Act 2006

Clause 97 states that this part amends the *Corrective Services Act 2006*.

Clause 98 amends section 319A to substitute the definition of ‘Tribunal’ to mean ‘QCAT’ instead of ‘the Anti-Discrimination Tribunal’. This amendment is consequential to the transfer of the jurisdiction of the Anti-Discrimination Tribunal to QCAT, as provided in the amendments to the *Anti-Discrimination Act 1991* in this Act. Section 241 of the QCAT Act provides that upon the commencement of QCAT the Anti-Discrimination Tribunal will be abolished.

Part 3 **Amendment of Disaster Management Act 2003**

Clause 99 states that part 3 amends the *Disaster Management Act 2003*.

Clause 100 relates to compensation. A person who suffers loss or damage because of the exercise, or purported exercise, of a power under specific sections of the *Disaster Management Act 2003* may apply to the chief executive for compensation. Clause 100 amends section 124 to specify that, in circumstances where the chief executive decides not to pay compensation, or the amount is less than the amount claimed, notices to that effect must advise the applicant that they may apply, under the QCAT Act for a review of the decision and how they may apply. The notice must comply with section 157(2) of the QCAT Act. Section 157(2) provides that a notification must include certain information about the decision; including the reasons for the decision and that the person has a right to have the decision reviewed by QCAT.

Clause 101 replaces part II, division 1, subdivision 3 with a new 'subdivision 3 Review of decision'. The existing section 125 is amended to specify that an applicant who is dissatisfied with the chief executive's decision to refuse to pay compensation, or about the amount of compensation, may apply for review of the decision by QCAT. Sections 126 to 129 are omitted as they relate to appeal procedures which are no longer relevant as the procedures as provided under the QCAT Act will apply.

Part 4 **Amendment of Fire and Rescue Service Act 1990**

Clause 102 states that part 4 amends the *Fire and Rescue Service Act 1990*.

Clause 103 relates to section 69 which provides for requisitions by the Commissioner to reduce fire risk. Requisitions may be given by giving a notice to the occupier concerned or notification published in the gazette. In instances where a notice is given to the occupier concerned, that notice must comply with the QCAT Act, section 157(2).

Clause 104 amends section 104G which deals with notices given by the Commissioner to occupiers or owners of buildings requiring them to remedy any matters in which they have failed to comply with the relevant division of the Act, or regulations. The clause specifies the content of the notice including:

- that the commissioner has decided the occupier or owner has failed to comply with this division or with regulations made under this part;
- the action to be taken by the occupier or owner to remedy the failure;
- the period within which the failure must be remedied;
- the reasons for the decision;
- that the occupier may apply to QCAT for a review of the occupancy notice;
- how, and the period within which, the occupier may apply to QCAT for the review; and
- any right the occupier has to have the operation of the occupancy notice stayed under the QCAT Act.

Clause 105 relates to notices refusing applications for certificates of compliance under section 104I. Section 104(I)(8A) is replaced. The new section 104(I)(8A) specifies that the notice must state:

- the grounds of the refusal;
- any steps required to be taken by the applicant before any further application will be granted;
- that the applicant may apply to QCAT for a review of the refusal; and
- how, and the period within which, the applicant may apply to QCAT for the review.

Additionally, clause 105 amends section 104I(10) to ensure the subsection refers appropriately to part 9B.

Clause 106 relates to occupancy notices given to occupiers of at risk licensed buildings under section 104KF. Section 104KF (f) and (g) are removed and replaced with a new (f) (g) and (h) which specifies that the notice must state that the occupier may apply to QCAT for a review of the

occupancy notice, how, and the period within which, the occupier may apply to QCAT for the review and any right the occupier has to have the operation of the occupancy notice stayed under the QCAT Act.

Clause 107 amends section 104KI which relates to re-assessments of occupancy notices. Section 104KI (c) and (d) are replaced with a new (c) and (d) which specifies that the resultant decision notice must state that the occupier may apply under the QCAT Act to QCAT for a review of the occupancy notice, how, and the period within which, the occupier may apply to QCAT for the review.

Clause 108 amends the heading of part 9B to refer to the review process rather than objections, in order to provide consistency with terms applied under the QCAT Act.

Clause 109 omits section 104SA as the sections of relevance to 104SA are also omitted.

Clause 110 amends the wording of section 104SB to refer to an application for review. The clause also removes the requirement for an application to be made to the Commissioner within 21 days. Timeframes for lodging an application for review will be in accordance with the QCAT Act. The reference to a fee has also been removed as fees will be charged under the QCAT Act.

Clause 111 omits section 104SC that provides for the Panel of Referees to be convened. The role of the Panel of Referees will now be performed by QCAT.

Clause 112 omits section 104SD that specifies the membership of the Panel of Referees. The composition of members of QCAT when it hears matters under this Act will be determined in accordance with the QCAT Act. The existing requirement for membership of the panel to include one person nominated by the local government in whose area is situated the building to which the notice objected to relates; and one person nominated by the chief executive of the department administering the *Building Act 1975* will no longer be specified under the legislation. The QCAT Act ensures that members with the equivalent knowledge and skills will be chosen to constitute the tribunal when this is necessary. QCAT may seek the assistance of a representative of liquor licensing in any matters where it feels such assistance to be necessary.

Clause 113 omits section 104SE that specifies the manner in which the Panel of Referees makes its determination in relation to an objection, as the

processes by which QCAT will determine the matter are set out in the QCAT Act.

Clause 114 replaces section 104SF to include reference to a review by QCAT rather than objection, in order to provide consistency with terms applied under the QCAT Act.

Clause 115 omits section 104SG in relation to staying a notice given under section 69(2)(a) as the QCAT Act empowers the tribunal to order stays.

Clause 116 omits section 104SH in relation to appeals from the Panel of Referees as the appeal processes under the QCAT Act will apply.

Clause 117 amends section 154 in relation to the regulation making power of the Governor in Council to remove subsection (d) ‘the institution and determination of objections under part 9B and appeals from determinations’ as the Governor in Council will make the relevant regulations under the QCAT Act.

Chapter 4 Department of Education and Training

Part 1 Amendment of Child Care Act 2002

Clause 118 states that this part amends the *Child Care Act 2002*.

The amendments will confer jurisdiction from the Children Services Tribunal (CST) to QCAT for reviewable decisions under this Act. The *Children Services Tribunal Act 2000* will be repealed.

Clause 119 amends subsection 107A(2)(b) by omitting reference to the tribunal and replacing it with a reference to QCAT.

Clause 120 amends subsections 131(5)(a) and (b) to remove the reference to the CST, and to make the terminology consistent with the QCAT Act.

While previously this Act referred to the process for applying for a review of an administrative decision as an appeal, it will now be referred to as a review, for the purposes of conferring jurisdiction on QCAT.

Clause 121 replaces the part 9, Division 1 heading to refer to QCAT as the body reviewing the decisions outlined in this Part.

Clause 122 amends section 163, subsections (1) and (2) to reflect that a person may now apply to QCAT for a review of the decisions under these subsections.

Clause 123 amends section 164 to state that a notice given by the chief executive following a decision made under section 163 must comply with section 157(2) QCAT Act.

Clause 124 inserts new section 164A to provide for how the tribunal must be constituted for a review of a decision under this Act. Where practicable, at least one member should have specialist knowledge and expertise relevant to the review matter. This section also prescribes circumstances where a person is unable to be a tribunal member for reviews under this Act.

Part 2 Amendment of Education (General Provisions) Act 2006

Clause 125 states that this part amends the *Education (General Provisions) Act 2006*.

The amendments to this Act confer both review and original jurisdiction on QCAT, previously exercised by the District Court and the Magistrates Court.

Clause 126 amends section 36 by omitting the reference to part 4 and replacing it with 'part 3'. This is consequential to the renumbering of these parts in chapter 12 by clause 137.

Clause 127 amends subsection 37(3)(a)(iii) by omitting the reference to part 4 and replacing it with 'part 3'. This is consequential to the renumbering of these parts in chapter 12 by clause 137.

Clause 128 replaces subsection 69(2)(b) with a new subsection 69(2)(b) which provides that the notice given by the supervisor must be given within

7 days after advising the student of the supervisor's decision, and must comply with section 157(2) QCAT Act. This reflects that QCAT will have the jurisdiction to review a decision of the principal's supervisor about an allocation of semesters or an application for an extra semester under this section.

The new subsection also reflects that whereas previously the review of an administrative decision by a court was known as an appeal, under the QCAT Act this will be known as a review of a reviewable decision.

Clause 129 replaces subsection 72(3)(b)(ii) with a new subsection 72(3)(b)(ii) which provides the notice given by the chief executive must comply with section 157(2) QCAT Act. This reflects that QCAT will have jurisdiction to review a decision made by the chief executive under this section about the allocation of semesters.

The new subsection also uses the term review not appeal for the reasons described in the notes to clause 128.

Clause 130 replaces subsection 139(4) with a new subsection 139(4) that provides that a person may apply, as provided under the QCAT Act, to QCAT for a review of the decision to refuse membership of a Parents and Citizens Association.

Clause 131 amends subsection 154(3) to provide that the Minister must give notice of a removal decision under that section that complies with section 157(2) QCAT Act.

Clause 132 replaces subsection 197(5)(b)(i) and (ii) with a new subsection that reflects that QCAT will have jurisdiction to conduct a review of a decision about an exemption. The reference to an appeal is replaced with a reference to review to reflect the change in terminology in the QCAT Act as described in clause 128. This clause also omits the definition of 'appeal' in subsection (6).

Clause 133 amends subsection 200(3) by omitting references to part 4 and replacing them with 'part 3'. This is consequential to the renumbering of these parts in chapter 12 by clause 137. This clause also omits the definition of 'appeal' in subsection (4).

Clause 134 replaces subsections 226(3)(b)(i) and (ii) with new subsections that reflect that QCAT will have jurisdiction to review the chief executive's decision about a registration of a child for home education. This clause also omits the definition of 'appeal' in subsection (4).

The reference to appeal is replaced with a reference to review to reflect the change in terminology in the QCAT Act as described in clause 128.

Clause 135 amends subsection 237(2) by omitting reference to part 4 and replacing it with ‘part 3’. This is consequential to the renumbering of these parts in chapter 12 by clause 137.

Clause 136 omits chapter 12, part 1, to remove the definition of ‘court’, reflecting that original and review jurisdiction under chapter 12 will be conferred on QCAT.

Clause 137 renumbers parts 2, 3 and 4 of chapter 12 as parts 1, 2 and 3, due to the omission of part 1, chapter 12.

Clause 138 replaces subsection 302(4) with a new subsection that provides that the notice given by the chief executive must in addition to stating that the student is excluded from all State schools for a stated period of not more than 1 year or permanently, also comply with section 157(2) QCAT Act. This reflects that QCAT will have jurisdiction to review a decision of the chief executive to exclude a student from all state schools.

Clause 139 replaces subsection 309(6) with a new subsection that provides that the notice given by the chief executive, if the decision relates to all State schools, must in addition to stating that the prospective student is excluded from all State schools for a stated period of not more than 1 year or permanently, also comply with section 157(2) QCAT Act.

Clause 140 renumbers parts 5 and 6 of chapter 12 as parts 4 and 5. This renumbering is consequential to the omission of part 1 by clause 136.

Clause 141 replaces subsection 340(3)(e) and (f) with a new subsection 340(3A) which provides that a direction prohibiting entry on premises under this section must comply with section 157(2) QCAT Act, as if it were a decision. This reflects that QCAT will have jurisdiction to review a decision prohibiting a person from entering the premises of a State instructional institution and that for the purposes of the QCAT Act the direction is a decision.

Clause 142 amends section 341 to omit the reference to ‘a court’ and inserting references to QCAT, reflecting that the chief executive may apply to QCAT for an order prohibiting a person from entering the premises of a State instructional institution for more than 60 days, but not more than 1 year.

Clause 143 omits section 342 as it duplicates provisions in the QCAT Act. The appeal provisions of the QCAT Act will apply to an appeal from a decision of QCAT.

Clause 144 renumbers part 7 of chapter 12 as ‘part 6’. This renumbering is consequential to the omission of part 1 by clause 136.

Clause 145 replaces subsection 349(3)(e) and (f) with a new subsection 349(3A) that provides that a direction prohibiting a person from entering a non-State school under this section must comply with section 157(2) QCAT Act as if it were a decision. This reflects that QCAT will have jurisdiction to review a decision prohibiting a person from entering a non-State school and that for the purposes of the QCAT Act the direction is a decision.

Clause 146 amends section 350 to omit the reference to ‘a court’ and to reflect that that a non-State school’s governing body, or its nominee for this subsection may apply to QCAT for an order prohibiting a person from entering the schools premises for more than 60 days, but not more than 1 year.

Clause 147 omits section 351 as it duplicates provisions in the QCAT Act. The appeal provisions of the QCAT Act will apply to an appeal from a decision of QCAT.

Clause 148 renumbers part 8 of chapter 12 as ‘part 7’. This renumbering is consequential to the omission of part 1 by clause 136.

Clause 149 amends section 352 to omit the reference to ‘a court’ and to reflect that the chief executive may apply to a QCAT for an order prohibiting a person from entering the premises of all State instructional institutions and non-State schools for up to 1 year.

Clause 150 amends section 353 to omit the references to ‘a court’ and to reflect that the chief executive may apply to QCAT for an order prohibiting a person from entering the premises of all State instructional institutions for up to 1 year.

Clause 151 omits section 354 as it as it duplicates provisions in the QCAT Act. The appeal provisions of the QCAT Act will apply to an appeal from a decision of QCAT.

Clause 152 amends the chapter 12, part 9 heading by amending the reference to the part as ‘part 8 provisions relating to parts 5 – 7’. This renumbering is consequential to the omission of part 1 by clause 136.

Clause 153 amends section 355 by omitting reference to parts 6 and 7 and replacing it with parts 5 and 6. This renumbering is consequential to the omission of part 1 by clause 136.

Clause 154 amends the heading of section 357 and subsections 357(1) and (2) by omitting reference to ‘a court’ and inserting QCAT. This section outlines the penalties for non-compliance with an order of QCAT under sections 341, 350, 352 and 353 and the amendments reflect that QCAT will have the jurisdiction to make orders under these sections.

Clause 155 amends section 362(3) by omitting part 4 and replacing it with ‘part 3’. This renumbering is consequential to the omission of part 1 by clause 136.

Clause 156 renumbers parts 10 and 11 of chapter 12 as ‘parts 9 and 10’. This renumbering is consequential to the omission of part 1 by clause 136.

Clause 157 omits the heading to chapter 15 and replaces it with ‘Internal and External Reviews’. The Part 1 heading is also omitted and replaced with ‘Internal Reviews of decisions by chief executive’. This reflects that while previous provisions referred to a review of an administrative decision of the chief executive as an ‘appeal’, under the QCAT Act this will be known as a review of a reviewable decision. A distinction is made between an internal review of a decision conducted by the chief executive and an external review of the chief executive’s decision by QCAT.

Clause 158 replaces subsection 392(5) providing that if a review decision is not the decision sought by the applicant, the notice must comply with section 157(2) of the QCAT Act.

Clause 159 replaces the chapter 15, part 2 heading with ‘Part 2 External reviews by QCAT’ reflecting the distinction between internal and external reviews as described in the notes to clause 157.

Clause 160 replaces section 394 with a new section 394 that provides for external reviews to QCAT. Subsection 394(1) provides that the applicant may apply as provided under the QCAT Act.

Clause 161 omits section 395 as this section duplicates the provisions of the QCAT Act that provide for the procedures, functions and powers for QCAT’s review jurisdiction.

Clause 162 amends the Chapter 15, part 3, heading and replacing it with ‘External reviews of’ to reflect the distinction between internal and external reviews as described in the note to clause 157.

Clause 163 omits section 396 omitting the definition of court.

Clause 164 replaces section 397 with a new section that reflects that a person given a direction under section 340 or 349 may apply to QCAT for a review of the original direction.

Clause 165 replaces section 398 with a new section that provides that an application under section 397 must be made as provided under the QCAT Act.

Clause 166 omits sections 399 and 400 as these sections duplicate the provisions of the QCAT Act that deal with the functions and powers of QCAT in its review jurisdiction.

Clause 167 amends the chapter 15, part 4 heading to omit ‘Appeal against’ and insert ‘External review of’ to reflect the change in terminology in this Act to be consistent with the QCAT Act as explained in the note to clause 157.

Clause 168 amends section 401 by omitting the definition of ‘court’ because it is unnecessary in view of the jurisdiction now to be exercised by QCAT.

Clause 169 amends section 402 to replace references to ‘appeal’ with ‘review’ for the reasons explained in the note to clause 157. These amendments also reflect that QCAT will have jurisdiction to review a decision in this part upon application of an aggrieved person. A review must be started as provided under the QCAT Act to lodge an application and have the decision reviewed.

This clause also omits subsection 402(3) to (6) as these will duplicate provisions in the QCAT Act in relation to the procedures, functions and powers of QCAT in its review jurisdiction.

Clause 170 amends section 453 by omitting the reference to ‘part 2’ and replacing it with ‘part 1’.

Clause 171 amends the schedule 4 (Dictionary).

This clause omits the definition of ‘court’ as the reference is no longer required in view of the jurisdiction now being undertaken by QCAT.

Various definitions are amended consequential to the renumbering of parts of the Act.

Part 3 **Amendment of Education (Overseas Students) Act 1996**

Clause 172 states that this part amends the *Education (Overseas Students) Act 1996*.

The amendments to this Act will confer review jurisdiction upon QCAT previously exercised by the District Court and the Magistrates Court.

Clause 173 replaces subsection 11(5) with a new subsection that provides that a notice given when the chief executive decides to suspend or cancel the registration of a provider must comply with section 157(2) QCAT Act.

Clause 174 omits the Part 3 heading and replaces it with 'Review of decisions'. The removal of the reference to 'appeal' reflects that while previously provisions referred to a review of an administrative decision as an appeal, this will be known as a review of a reviewable decision under the QCAT Act.

Clause 175 amends the section 19 heading, replacing it with 'Review by QCAT', removing the reference to 'appeal' for the reasons described above. The section is also amended to confer jurisdiction on QCAT to review a reviewable decision under this Act.

Clause 176 omits sections 20, 21, 22, 23, 24 and 25 as the provisions duplicate the provisions of the QCAT Act that provide for the procedures, functions and powers of QCAT in its review jurisdiction.

Part 4 **Amendment of Education (Queensland College of Teachers) Act 2005**

Clause 177 states that this part amends the *Education (Queensland College of Teachers) Act 2005*.

Under the current provisions of this Act, the function of the Teachers Disciplinary Committee (TDC) is to hear and determine disciplinary matters referred to it by the College of Teachers (the College) or the Professional Practice and Conduct Committee (PP & C). The amendments

to this Act will confer this jurisdiction upon QCAT. Whereas a teacher or the College may have appealed against a decision of the TDC to the District Court, QCAT will exercise review jurisdiction for these decisions.

Clause 178 amends subsection 44(4)(b) by replacing the reference to the Teachers Disciplinary Committee with QCAT. This reflects that QCAT will have the power to amend, impose or remove a condition of the teacher's registration or permission to teach.

Clause 179 amends section 50 so that the notice that is given for a suspension of a teacher's registration under section 48 or 49 must include the evidence or other material on which the decision was based and to reflect that the college will refer a disciplinary matter to QCAT rather than the Teachers Disciplinary Committee to determine whether a ground for disciplinary action against the teacher exists.

A new subsection (5) is included that states the college must refer the continuation of the suspension of an approved teacher to QCAT for review under section 53.

Clause 180 amends subsection 52(a) by omitting reference to the Teachers Disciplinary Committee and replacing it with a reference to QCAT.

Clause 181 replaces section 53 with a new section 53 that provides that QCAT must decide whether to continue a suspension of a teacher under section 48. This new section clarifies that the review by QCAT of a suspension must be decided in its original jurisdiction. The section also sets out that QCAT must decide if it is an exceptional case in which the best interests of children would not be harmed if the suspension were ended.

Clause 182 amends section 54 by omitting reference to the Teachers Disciplinary Committee and replacing it with QCAT. This amendment reflects that QCAT must invite the approved teacher to show why the matter is an exceptional case in which the best interests of children would not be harmed if the suspension of the teacher's registration or permission to teach were ended.

Clause 183 amends section 55 by omitting reference to the Teachers Disciplinary Committee and replacing it with QCAT. Subsection 55(6)(b) is replaced with a new provision providing for application to QCAT where the decision is not an exceptional case.

Clause 184 amends subsections 56(4)(a) and 56(6) by providing that there is no appeal relating to the decisions of the College in this section under either the QCAT Act or this Act.

Clause 185 amends subsection 64(1) by omitting reference to the Teachers Disciplinary Committee and replacing it with QCAT. This reflects that QCAT will have the power to suspend or cancel an approved teacher's registration or permission to teach.

Clause 186 amends subsections 67(1) and 67(4)(a) by omitting reference to 'the Teachers Disciplinary Committee' and replacing it with QCAT reflecting that QCAT will have the power to suspend an approved teacher's registration or permission to teach.

Clause 187 amends subsection 82(2) by omitting reference to the Teachers Disciplinary Committee and replacing it with QCAT.

Clause 188 amends section 97 by omitting references to disciplinary committee and replacing it with disciplinary body or omitting references to teachers disciplinary committee and replacing it with QCAT. Subsection 97(2) provides that a show cause matter or general matter must be referred to QCAT and for a PP & C matter to the PP & C committee. An additional subsection 97(4) is inserted requiring the college to set out the grounds for disciplinary action and the facts and circumstances forming the basis for the grounds and to provide that information to QCAT. This will assist QCAT when giving the notice of the disciplinary proceedings to the teacher. This clause also provides that QCAT must conduct a hearing and make decisions about the disciplinary matter referred to it by the College.

Clause 189 amends the Chapter 5, Part 2 heading by replacing the reference to the Teachers Disciplinary Committee with QCAT. This amendment reflects that QCAT will have the jurisdiction to conduct a show cause matter under this part.

Clause 190 replaces section 100 with a new section providing that Part 2 applies to a show cause matter referred to QCAT by the College of Teachers or the PP & C under chapter 1, part 1.

Clause 191 amends section 101 by replacing references to the Teachers Disciplinary Committee with references to QCAT. This amendment reflects that QCAT must give the relevant teacher a show cause notice.

Clause 192 amends section 102 by replacing references to the Teachers Disciplinary Committee with references to QCAT. Subsection 102(3) is amended to provide that QCAT must decide to cancel the teacher's registration or permission to teach under this subsection. Subsection 102(5) is amended to provide that if QCAT decides not to order cancellation of the

teacher's registration or permission to teach, QCAT may do one or more of the actions outlined in this section.

Subsection 102(5)(e)(ii) is amended to provide additional provisions for QCAT in relation to the award of costs to those in the QCAT Act. QCAT has the power to make an order requiring the teacher to pay costs to the College having regard to any expenses incurred by the College in investigating the matter and the expenses incurred by the college in the QCAT proceedings.

Clause 193 amends section 103 by replacing references to Teacher's Disciplinary Committee with reference to QCAT.

Clause 194 amends section 104 by replacing references to the committee with reference to QCAT. Subsections 104(1), 104(2), 104(3) and 104(4) are omitted and replaced with a new provision that QCAT must give notice of a decision under sections 102 and 103 originating with a complaint to the College of Teachers to the complainant and where a teacher's registration or permission to teach is cancelled to the employing authority and the principal of each school where the teacher was employed. Subsections 104(5) and 104(6) are renumbered as subsections 104(3) and 104(4) respectively.

Clause 195 amends the chapter 5, part 3 heading by replacing the reference to the Teachers Disciplinary Committee with a reference to QCAT.

Clause 196 amends section 105 by replacing the reference to the Teachers Disciplinary Committee with a reference to QCAT. This amendment reflects that QCAT will have the jurisdiction to consider a general matter referred by the College under section 97 or a PP & C matter referred by the PP & C committee under Chapter 6, part 1.

Clause 197 amends section 106 by omitting references to the Teachers Disciplinary Committee and replacing it with references to QCAT. This amendment reflects that QCAT may authorise an investigation into a matter under this part if it reasonably believes further information is required to decide the matter.

Clause 198 amends section 107 by omitting the reference to the Teachers Disciplinary Committee and replacing it with QCAT, so that chapter 6, part 2, division 2 of the Act applies to the hearing and making of decisions about the matter under this part by QCAT.

Clause 199 amends section 112 by omitting reference to Teachers Disciplinary Committee and replacing it with references to QCAT. This

reflects that if QCAT becomes aware or reasonably suspects that disciplinary information or other information before it discloses an offence it may report the offence to the persons listed in subsection (2)(a).

Clause 200 amends the chapter 6 heading by omitting reference to ‘committees’ and replacing it with ‘bodies’ reflecting that QCAT will also have disciplinary jurisdiction.

Clause 201 amends subsection 115(1)(b) by omitting reference to the Teachers Disciplinary Committee and replacing it with QCAT reflecting that the PP & C committee may refer a disciplinary matter to QCAT for hearing.

Clause 202 replaces subsection 123(2)(b) with a new subsection providing that the PP & C committee may refer a matter to QCAT if the committee believes disciplinary action mentioned in section 160(2)(d) to (h) or (j) should be taken against the teacher. A new subsection 123(4A) is inserted requiring the College to inform QCAT about the grounds for the disciplinary matter and the facts and circumstances forming the basis for the grounds. This clause also provides that QCAT must conduct a hearing and make decisions about the disciplinary matter referred to it by the College, having regard to the information provided by the college.

Clause 203 replaces the chapter 6, part 2 heading with ‘Disciplinary proceedings of QCAT’ reflecting that QCAT rather than the teachers disciplinary committee will have jurisdiction to conduct disciplinary proceedings.

Clause 204 replaces chapter 6, part 2, division 1 containing provisions for the establishment, membership and functions of the teachers disciplinary committee. A new division 1 ‘Constitution of QCAT for disciplinary proceedings’ is inserted.

New section 124 provides that for disciplinary matters under the this Act, QCAT must be constituted by a legally qualified member who is familiar with school environments and 2 other members of whom one must be a registered teacher and one must be a person who is not a registered teacher.

New section 125 provides that the presiding member of QCAT for a disciplinary proceeding under this Act is the legally qualified member mentioned in section 124.

Clause 205 amends the heading for chapter 6, part 2, division 2 by omitting reference to the Teachers Disciplinary Committee and replacing it with

QCAT reflecting that QCAT will be conducting teachers disciplinary proceedings.

Clause 206 amends section 130 by omitting references to the Teachers Disciplinary Committee and replacing it with QCAT so that this division applies to disciplinary proceedings before QCAT.

Clause 207 omits section 131 as provision for parties to proceedings before QCAT is dealt with under the QCAT Act.

Clause 208 amends the heading for chapter 6, part 2, division 2, subdivision 2 by omitting reference to the Teachers Disciplinary Committee and replacing it with QCAT.

Clause 209 omits section 132 as the QCAT Act will provide for the time and place of the hearing to be set.

Clause 210 amends section 133 by omitting provisions that will duplicate provisions in the QCAT Act in relation to the requirement to give a notice of a hearing and inserts a new provision providing for who QCAT must give a notice to. Subsections 133(3)(a) and 133(3)(b) are amended to reflect that the notice given to QCAT must contain the grounds for disciplinary action against the teacher and the facts and circumstances forming the basis of the grounds.

Clause 211 omits sections 134 and 135 as they will duplicate provisions of the QCAT Act in relation to service and compulsory conferences.

Clause 212 amends section 136 by omitting references to committee and replacing it with references to QCAT. This reflects that QCAT will have the power to require a teacher to undergo a health assessment.

Clause 213 omits section 137, as the QCAT Act will provide for when a hearing will be open to the public or closed.

Clause 214 omits subsections 138(1) and 138(4) as the QCAT Act will provide for when parties may be represented. Subsection 138(2) is amended by deleting reference to the committee and replacing it with a reference to QCAT. Subsections 138(2) and 138(3) are renumbered as subsections 138(1) and 138(2) respectively.

Clause 215 omits sections 139, 140, 141, 142, 143, 144, 145 and 146 as the provisions of the QCAT Act in relation to the conduct of hearings will apply.

Clause 216 amends section 147 by omitting the reference to the committee and replacing it with QCAT providing for QCAT to receive or adopting findings of another disciplinary body, court, tribunal or other entity.

Clause 217 omits sections 148, 149, 150 and 151 as these will duplicate QCAT procedural provisions.

Clause 218 amends section 152 omitting references to the committee and replacing it with QCAT. The effect of this amendment is to empower QCAT to make an interim order exercising a power conferred on QCAT under sections 160 and 161, but it must be the least onerous order the committee considers necessary in the circumstances. The college must give effect to the interim order made by QCAT under this section.

Clause 219 omits section 153, as the provisions of the QCAT Act in relation to record of proceedings will apply.

Clause 220 omits chapter 6, part 2, division 2, subdivision 3 as the offence provisions of the QCAT Act will apply.

Clause 221 amends chapter 6, part 2, division 2, subdivision 4 by renumbering it as chapter 6, part 2, division 2, subdivision 3.

Clause 222 amends section 158 by replacing references to the committee with QCAT. This reflects that QCAT must have regard to any relevant previous decision by a disciplinary committee when deciding whether a ground for disciplinary action exists. Definitions of 'disciplinary committee' and 'former Teachers Disciplinary Committee' for this section are inserted.

Clause 223 amends section 159 by replacing references to the committee with QCAT, providing that if QCAT decides no ground for disciplinary action against the relevant teacher is established, it must end any suspension under section 48 or 49.

Clause 224 amends section 160 by omitting references to the committee and replacing it with QCAT. Subsection 160(2)(f)(ii) is replaced with a new provision that provides additional provisions for QCAT in relation to the award of costs to those in the QCAT Act. QCAT has the power to make an order requiring the teacher to pay costs to the College having regard to any expenses incurred by the College in investigating the matter and the expenses incurred by the college in the QCAT proceedings.

Clause 225 amends section 161 replacing the references to the committee and replacing it with QCAT. Subsection 161(2)(b)(ii) is omitted and is replaced with a new provision that provides additional provisions for

QCAT in relation to the award of costs to those in the QCAT Act. QCAT has the power to make an order requiring the teacher to pay costs to the College having regard to any expenses incurred by the College in investigating the matter and the expenses incurred by the college in the QCAT proceedings.

Clause 226 omits section 162, as the QCAT Act will provide a power for the tribunal to make a non-publication order.

Clause 227 amends the heading chapter 6, part 2, division 2, subdivision 5 (Action after decision about disciplinary action) by renumbering it as chapter 6, part 2, division 2, subdivision 4 (Action after decision about disciplinary action).

Clause 228 omits section 163, as the QCAT Act provisions about notice of a decision will apply.

Clause 229 amends section 164 by replacing references to the committee with references to QCAT. This reflects that QCAT may also notify the additional persons listed in subsection (1)(b) about the tribunal's decision in disciplinary proceedings under this Act.

Clause 230 amends section 165 by omitting reference to the committee and replacing it with QCAT reflecting that QCAT will be making a decision about disciplinary proceedings that will be the subject of the College's notice to interstate regulatory authorities.

Clause 231 amends section 166 replacing references to the committee with QCAT. This section states that the college may publish the relevant teacher's identity and nature and outcome of the proceedings. This is subject to a non-publication order. Subsection (4) is amended to reflect that any non-publication order will be made by QCAT under the QCAT Act, as clause 226 omitted the non-publication order provision under this Act.

Clause 232 amends chapter 6, part 2, division 2, subdivision 6 (Effect of decision) by renumbering this heading as chapter 6, part 2, division 2, subdivision 5 (Effect of decision).

Clause 233 amends section 167 by omitting reference to committee and replacing it with reference to QCAT. This reflects that QCAT's decision will be binding on the College and the relevant teacher.

Clause 234 amends section 168 by replacing the reference to the committee with QCAT, reflecting that the College must give effect to or secure compliance with the committee's decision.

Clause 235 omits chapter 6, part 2, division 2, subdivision 7 (Immunities) as the provisions of the QCAT Act in relation to immunity of members will apply.

Clause 236 amends subsection 170(1) by inserting the words ‘before the PP&C committee’ after the words ‘proceedings’. Subsection 170(2)(a) is amended by omitting ‘committee’ and inserting ‘PP&C committee’. This makes it clear that the records of disciplinary proceedings concerned are those of the PP & C committee.

Clause 237 omits section 171, as the provisions of the QCAT Act will apply in relation to the payment of costs or penalties.

Clause 238 amends subsection 201(2)(b) by omitting reference to the Teachers Disciplinary Committee and replacing it with QCAT, reflecting that an investigator must give a written report of an investigation to QCAT (in circumstances where it was not authorised by the College or the PP & C committee).

Clause 239 omits the chapter 8 heading and replaces it with ‘Internal and external reviews’. The chapter 8, part 1 heading is also omitted and replaced with ‘Internal reviews’. The removal of the reference to appeal reflects that while previous provisions may have referred to a review of a decision in schedule 1 of the Act as an appeal, the QCAT Act will refer to this as a review of a reviewable decision. The references to internal review and external review are inserted to distinguish between an internal review conducted by a review committee established by the College and an external review conducted by QCAT.

Clause 240 amends section 209 replacing references to appeal with review. This reflects that while previous provisions referred to a review of an administrative decision as an ‘appeal’, under the QCAT Act this will be known as a review of a reviewable decision.

Clause 241 amends subsection 212(2) by omitting appeal and replacing it with review for the reasons described above.

Clause 242 replaces subsection 213(2) with a new subsection so that the notice given by the college for a review decision must comply with section 157(2) QCAT Act.

Clause 243 omits the heading for Chapter 8, part 2, Appeals and replaces it with ‘External reviews’ for the reasons described above.

Clause 244 omits section 214 as these definitions are no longer relevant.

Clause 245 replaces section 215 with a new provision that provides that a person who has applied for a review of an original decision under part 1 and is dissatisfied with the review may apply to QCAT for a review of the original decision.

Clause 246 omits sections 216, 217, 218 and 219 because the provisions of the QCAT Act in relation to its review jurisdiction will apply.

Clause 247 replaces section 220 with a new provision clarifying that part 1 applies to a disciplinary proceeding in QCAT and another proceeding under this Act.

Clause 248 amends section 221 by replacing references to a disciplinary committee with the PP&C committee.

Clause 249 amends section 222 by omitting section 222(d) as the section will not apply to members of QCAT. This clause also amends section 222 by renumbering subsections 222(e) to (f) as subsections 222(d) to (e).

Clause 250 amends subsection 288(5) by omitting the reference to the Teachers Disciplinary Committee and replacing it with QCAT, reflecting that QCAT will have jurisdiction to conduct teachers disciplinary proceedings.

Clause 251 amends subsection 294(1)(g) by omitting the reference to the Teachers Disciplinary Committee and replacing it with QCAT so that a person appointed by QCAT to conduct a health assessment under section 136 of this Act will not be civilly liable for an honest act or omission.

Clause 252 amends section 296 by omitting references to the Teachers Disciplinary Committee, reflecting that the College will no longer be providing administrative support for the Teachers Disciplinary Committee whose functions will be conferred on QCAT.

Clause 253 amends the schedule 3 dictionary by omitting the definitions of ‘appealable decision’ and ‘Teachers Disciplinary Committee’. This clause also amends the definition of ‘disciplinary committees’ by inserting reference to ‘QCAT when undertaking disciplinary action under this Act’.

Part 5 **Amendment of Education (Queensland Studies Authority) Regulation 2002**

Clause 254 states that this part amends the *Education (Queensland Studies Authority) Regulation 2002* (EQSA Regulation).

The amendments to the EQSA Regulation will confer review jurisdiction upon QCAT. Under the EQSA Regulation appeals had been to the District Court.

Clause 255 amends subsection 3R(2) by omitting ‘appeals against the decision’ and replacing it with ‘apply for a review of the decision’. This amendment reflects that while previous provisions referred to a review of an administrative decision as an appeal, under the QCAT Act it will be known as a review of a reviewable decision.

Clause 256 amends subsection 3ZE(2) by omitting ‘appeals against the decision’ and replacing it with ‘apply for a review of the decision’, for the reasons discussed above.

Clause 257 amends subsection 3ZL(2) by omitting ‘appeals against the decision’ and replacing it with ‘apply for a review of the decision’ for the reasons discussed above.

Clause 258 replaces the part 9 heading with ‘Internal and external reviews’. This new heading distinguishes between an internal review conducted by the authority and an external review conducted by QCAT.

Clause 259 omits the heading of part 9 division 1 and replaces it with ‘Internal review’ to make it clear that this division relates to an internal review conducted by the authority.

Clause 260 amends section 59 by replacing references to appeal with references to review. This reflects that while previous provisions referred to a review of an administrative decision as an ‘appeal’, under the QCAT Act this will be known as a review of a reviewable decision.

Clause 261 amends section 62 by replacing the references to appeal with references to review for the reasons discussed above.

Clause 262 amends subsection 63(2) to state that the review notice must comply with section 157(2) QCAT Act. This reflects that QCAT will have the jurisdiction to conduct a review of review decision from the authority.

Clause 263 replaces the part 9, division 2 heading with ‘External reviews’.

Clause 264 replaces section 64 with a new section that outlines who may apply for an external review to QCAT.

Clause 265 omits sections 65 to 68 as these sections duplicate provisions in the QCAT Act in relation to the procedure, functions and powers of QCAT in its review jurisdiction.

Part 6 Amendment of Higher Education (General Provisions) Act 2008

Clause 266 states that this part amends the *Higher Education (General Provisions) Act 2008*.

This Act provided for appeal to the District Court in certain situations where decisions of the Minister required an information notice to be given. The amendments to this Act confer the review jurisdiction upon QCAT.

Clause 267 amends subsection 19(1)(b)(i) by replacing ‘appeal against’ with ‘apply to QCAT under part 6 for a review of’. This removal of the reference to appeal reflects that while previous provisions referred to a review of an administrative decision as an appeal it will be known as a review of a reviewable decision under the QCAT Act. Subsection 19(1)(b)(ii) is amended to reflect that QCAT will have jurisdiction to conduct a review of the decision to refuse to renew a registration under this section.

Clause 268 amends subsection 22(4)(a) by omitting ‘appeal against’ and inserting ‘apply to QCAT under part 6 for a review of’. The reason for the removal of the reference to appeal is discussed above. Subsection 22(4)(b) is amended to reflect that QCAT will have jurisdiction to conduct a review of the decision to change conditions of a registration under this section.

Clause 269 amends subsection 32(1)(b)(i) by replacing ‘appeal against’ with ‘apply to QCAT under part 6 for a review of’. The reason for the removal of the reference to appeal is discussed above. Subsection 32(1)(b)(ii) is amended to reflect that QCAT will have jurisdiction to conduct a review of the decision to refuse to renew an accreditation under this section.

Clause 270 amends subsection 35(4)(a) by replacing 'appeal against' with 'apply to QCAT under part 6 for a review of'. The reason for the removal of the reference to appeal is discussed above. Subsection 35(4)(b) is amended to reflect that QCAT will have jurisdiction to conduct a review of the decision to change the conditions of accreditation under this section.

Clause 271 amends subsection 54(1)(b)(i) by replacing 'appeal against' with 'apply to QCAT under part 6 for a review of'. The reason for the removal of the reference to appeal is discussed above. Subsection 54(1)(b)(ii) is amended to reflect that QCAT will have jurisdiction to conduct a review of the decision to refuse to renew an authority under this section.

Clause 272 amends subsection 56(4)(a) by replacing 'appeal against' with 'apply to QCAT under part 6 for a review of'. The reason for the removal of the reference to appeal is discussed above. Subsection 56(4)(b) is amended to reflect that QCAT will have jurisdiction to conduct a review of the decision to change the conditions of a self-accrediting authority under this section.

Clause 273 amends subsection 97(1)(b)(i) by replacing 'appeal against' with 'apply to QCAT under part 6 for a review of'. The reason for the removal of the reference to appeal is discussed above. Subsection 97(1)(b)(ii) is amended to reflect that QCAT will have jurisdiction to conduct a review of the decision to refuse to renew an approval under this section.

Clause 274 amends subsection 99(4)(a) by replacing 'appeal against' with 'apply to QCAT under part 6 for a review of'. The reason for the removal of the reference to appeal is discussed above. Subsection 99(4)(b) is amended to reflect that QCAT will have jurisdiction to conduct a review of the decision to change the conditions of an approval under this section.

Clause 275 replaces the part 6 heading 'Appeals' with 'Review of decisions'. The reason for the removal of the reference to appeal is discussed above.

Clause 276 replaces section 106 with a new provision providing that people who are given or identified to receive a notice for a decision of the Minister may seek external review to QCAT.

Clause 277 omits section 107 as this provision is no longer necessary as the provisions of the QCAT Act regarding commencement of reviews will apply.

Clause 278 replaces section 108 with a new provision outlining that the review of a decision by QCAT will be by way of rehearing, on the material before the Minister and any further evidence allowed by QCAT. This provision specifically overrides the QCAT Act that states that the tribunal must hear and decide a review of a reviewable decision by way of a fresh hearing on the merits.

Clause 279 omits section 109 as this provision is no longer necessary because the powers of QCAT in its review jurisdiction will be outlined in the QCAT Act.

Clause 280 amends subsection 127(5)(a) by replacing 'appeal against' with 'apply to QCAT under part 6 for a review of'. The reason for the removal of the reference to appeal is discussed above. Subsection 127(5)(b) is amended to reflect that QCAT will have jurisdiction to conduct a review of the decision to cancel an authority under this section.

Clause 281 omits the definition of 'appellant' in the schedule 2 dictionary as it is no longer a relevant term for the reasons discussed above. This clause also amends the definition of an 'information notice' so that the notice must comply with section 157(2) QCAT Act.

Part 7 Amendment of Vocational Education, Training and Employment Act 2000

Clause 282 states that this part amends the *Vocational Education, Training and Employment Act 2000*.

These amendments will confer review jurisdiction upon QCAT. Under this Act appeals had been to the District Court. However, appeals to the Queensland Industrial Relations Commission will remain in that jurisdiction.

Clause 283 inserts a new section 141BA, which enables the Training Ombudsman to make a decision about whether to deal with an employment exemption, which is the subject of an application to QCAT.

Clause 284 amends section 141D to replace subsection (2) with a new provision stating that the notice given by the Ombudsman after completing

a review of the council's decision must comply with section 157(2) QCAT Act. This reflects that QCAT will have jurisdiction to review an adverse decision of the Ombudsman about an employment exemption for a young person.

Clause 285 inserts a new section 144A, which provides for arrangements to be made between the Training Ombudsman and QCAT about the conduct of matters.

Clause 286 amends section 183B(4) by amending the information notice requirements for a decision of the council under this section. In addition to the notice stating the decision, the reasons for the decision and the day the decision has effect the notice must state:

- That the young person or parent of the young person may
 - within 30 days after receiving the notice, apply to have the decision reviewed by the ombudsman or
 - apply, as provided under the QCAT Act, to QCAT for a review of the decision
- How to apply for a review
- Any right the young person or parent of the young person has to have the operation of the decision stayed.

This amendment reflects that QCAT will have jurisdiction to review an application for an employment exemption and that the notice requirements must comply with section 157(2) QCAT Act.

Clause 287 amends subsection 183C(5) providing for a right of review to either the Training Ombudsman or QCAT and clarifying the time periods for both types of reviews. The notice requirements are amended so that the notice complies with section 157(2) QCAT Act.

Clause 288 replaces the Chapter 8 heading with 'Reviews and appeals'. The reference to appeal is removed to reflect that while previously provisions referred to a review of an administrative decision as an appeal under the QCAT Act it will be referred to as a review of a reviewable decision.

Clause 289 replaces section 224 with a new section 224 'Review by QCAT'. The new section outlines that an aggrieved person may apply to QCAT for a review of the following decisions:

- (a) decision about the registration of a training organisation;

- (b) a decision about the accreditation of a course;
- (c) a decision about the recognition of a group training organisation or principal employer organisation;
- (d) a decision about an employment exemption for a young person in the compulsory participation phase.

Clause 290 omits sections 225 to 229 as these provisions duplicate the provisions of the QCAT Act that apply to the procedures, functions and powers of QCAT in its review jurisdiction.

Clause 291 omits section 340 as this provision is made redundant by the provisions of the QCAT Act.

Clause 292 amends the definition in the schedule 3 (Dictionary) of an 'information notice' to ensure that a person is fully informed of the decision and their rights arising from the decision and that the notice complies with section 157(2) QCAT Act.

Part 8 **Amendment of Vocational Education, Training and Employment Regulation 2000**

Clause 293 amends the *Vocational Education, Training and Employment Regulation 2000* (VETE Regulation).

The amendments to VETE Regulation will confer review jurisdiction upon QCAT.

Clause 294 amends subsection 6D(5) to reflect that QCAT will have jurisdiction to review a decision to cancel a transfer approval.

Chapter 5 Department of Employment, Economic Development and Innovation

Part 1 Amendment of Agricultural Chemicals Distribution Control Act 1966

Clause 295 provides that part 1 amends the *Agricultural Chemicals Distribution Control Act 1966*.

Clause 296 amends section 22 to provide a right to apply to QCAT for a review of a decision of the Agricultural Chemicals Distribution Control Board to refuse an application for a licence or the renewal of a licence and a decision of the chief executive to cancel or suspend a licence. Previously, an applicant or licensee could appeal against the decision to the Magistrates Court. The change in terminology in the section from ‘appeal’ to ‘review’ reflects that, under the QCAT Act, the process of reviewing an administrative decision is known as a review rather than as an appeal.

Clause 297 removes sections 22A to 22E regarding appeals to the Magistrates Court as these provisions will duplicate provisions in the QCAT Act and Rules in relation to applications, stays, hearing procedures, powers and appeals for QCAT.

Clause 298 amends section 23 to replace references to court with QCAT.

Clause 299 amends the dictionary in the schedule by replacing the definition of ‘information notice’ with the meaning of an information notice under the QCAT Act, section 157(2).

Part 2 **Amendment of Agricultural Chemicals Distribution Control Regulation 1998**

Clause 300 states that part 2 amends the *Agricultural Chemicals Distribution Control Regulation 1998*.

Clause 301 amends section 12 to replace the right to appeal to the Magistrates Court against the decision of the Agricultural Chemicals Distribution Control Board (the board) to cancel the examination result for a person who sat for an examination with a right to apply to QCAT for a review of the decision. The amendment also substitutes the reference to ‘written notice’ with ‘an information notice’ consequential to the transfer of jurisdiction to QCAT. The information notice must comply with section 157(2) of the QCAT Act.

Clause 302 amends section 15 by removing the existing notice requirements that apply if the board decides to refuse an application for a licence and substituting a requirement to give an information notice complying with section 157(2) of the QCAT Act. This amendment is consequential to the amendment to section 22 of the *Agricultural Chemicals Distribution Control Act 1966* that decisions of the board to refuse an application for a licence are reviewed by QCAT instead of the Magistrates Court.

Clause 303 amends section 16 to replace the existing notice requirements applying in relation to a decision of the standards officer to suspend a licence with a requirement to give an information notice for the decision. An information notice must comply with section 157(2) of the QCAT Act. This amendment reflects that QCAT will now have jurisdiction to review this decision.

Clause 304 replaces section 17 to provide QCAT with jurisdiction to hear reviews of decisions by the standards officer to suspend a licence instead of the Magistrates Court. The replacement of section 17 refers to reviews of these decisions as reviews rather than appeals. This reflects that, under the QCAT Act, the process of reviewing an administrative decision is known as a review rather than as an appeal.

Clause 305 amends section 18 to replace reference to ‘appeal’ with ‘review’ and to replace reference to the Magistrates Court with QCAT. These amendments are consequential to the amendments to section 17.

Clause 306 amends section 19 to replace references to ‘notice’ with an ‘information notice’ and ‘appeal’ with ‘review’. These amendments are consequential to the amendments to section 16(1) and section 17 and reflect that QCAT will now have jurisdiction to review these decisions.

Clause 307 amends section 19A to replace the reference to ‘appeal’ with ‘review’. This amendment is consequential to the amendment to section 17 of the regulation and section 22 of the *Agricultural Chemicals Distribution Control Act 1966* that reviews of decisions to cancel or suspend a licence will now be heard by QCAT instead of the Magistrates Court.

Clause 308 amends section 39 to replace reference to ‘notice’ with ‘information notice’. This amendment is consequential to the amendment to section 43 that reviews of board decisions to refuse an application for a distribution permit will now be heard by QCAT instead of the Magistrates Court. The information notice must comply with section 157(2) of the QCAT Act.

Clause 309 amends section 41 to replace the reference to ‘written notice’ with ‘information notice’ and remove section 41(3) which prescribed the requirements of a written notice. These amendments are consequential to the amendment to section 43 that reviews of board decisions to impose a permit condition for the issuing of a distribution permit will now be heard by QCAT instead of the Magistrates Court. The information notice must comply with section 157(2) of the QCAT Act.

Clause 310 amends section 42 to replace the reference to ‘written notice’ with ‘information notice’ and remove section 42(2) which prescribed the contents of a written notice. This reflects that reviews will now be heard by QCAT instead of the Magistrates Court as provided in section 43.

Clause 311 amends section 43 to replace the right to appeal to the Magistrates Court against a board decision to refuse an application for a distribution permit or to impose a permit condition for the issuing of a distribution permit with a right to apply to QCAT for a review of the decision.

The amendments also remove reference to section 22A to 22E of the *Agricultural Chemicals Distribution Control Act 1966* which has been omitted from that Act as they duplicate procedural provisions contained in the QCAT Act.

Part 3 **Amendment of Agricultural Standards Act 1994**

Clause 312 provides that part 3 amends the *Agricultural Standards Act 1994*.

Clause 313 amends the part 5 heading to provide consistency with terms applied under the QCAT Act by replacing the reference to ‘review’ with ‘internal review’. An internal review of a decision is a review conducted by the chief executive. The amendment is being made because appeals against decisions that were heard by the Magistrates Court will now be heard as external reviews by QCAT. Accordingly, a distinction now needs to be drawn between an internal review and an external review.

Clause 314 amends section 47 to replace references to ‘review’ with ‘internal review’ for the reasons explained in the note to clause 313.

Clause 315 amends section 48 to replace references to ‘review’ with ‘internal review’ for the reasons explained in the note to clause 313.

Clause 316 replaces section 49. Replacement section 49(1) retains the existing requirement for the chief executive to make a decision on an application for internal review within 28 days after the application is made, and also inserts a new requirement that upon making a decision on an application for internal review the chief executive must give an information notice for the decision to the applicant. The information notice must comply with section 157(2) of the QCAT Act. Section 49(2) is also replaced. The effect of this amendment is that decisions of the chief executive under section 49(1) are taken to be confirmed if the chief executive has not made a decision within 28 days.

Clause 317 replaces section 50 so that QCAT now has jurisdiction to hear applications for a stay of an internal review decision rather than the Magistrates Court. Replacement section 50 also enables QCAT to stay a decision to secure the effectiveness of the internal review, and any later application to QCAT for review.

Clause 318 replaces part 6, dealing with appeals, to provide that QCAT has jurisdiction to review decisions where a person is given or is entitled to be given an information notice for the decision. Reviews of these decisions were previously heard as appeals to the Magistrates Court. The amendments also provide consistency with terms applied under the QCAT

Act by referring to ‘external review’ of decisions to QCAT rather than ‘appeals’ to the Magistrates Court.

Clause 319 amends the schedule 2 dictionary to insert a new definition for ‘information notice’ with the meaning of an information notice under the QCAT Act, section 157(2).

Part 4 Amendment of Animal Care and Protection Act 2001

Clause 320 provides that part 4 amends the *Animal Care and Protection Act 2001*.

Clause 321 amends section 192 to relocate the footnote referring to other sections of the Act as a note and change the reference to section 204(3) to section 204(2) to reflect the renumbering of section 204.

Clause 322 replaces the heading of chapter 7, part 4, division 1, changing it from ‘review of decisions’ to ‘internal reviews’ The amendment is being made because appeals against certain decisions under the Act that were heard by the Magistrates Court will now be heard as external reviews by QCAT. The QCAT Act refers to the process of reviewing an administrative decision as a review rather than as an appeal. Accordingly, a distinction now needs to be drawn between an internal review by the chief executive and an external review by QCAT.

Clause 323 replaces sections 193 and 194. Section 193 currently provides that every appeal against an original decision must be in the first instance by way of an application for a review. The new section 193 replaces the reference to appeal with a reference to appeal or application for external review in order to reflect that appeals against original decisions, other than original decisions to seize or forfeit an animal or other thing, heard by the Magistrates Court will now be heard as external reviews by QCAT. The new section 193 also replaces the reference to ‘review’ with ‘internal review’ to draw a distinction between an internal review by the chief executive and an external review by QCAT.

Replacement section 194 replaces the reference to ‘review’ with ‘internal review’ for the reasons explained in the note to clause 322.

Clause 324 amends section 195 to replace references to ‘review’ with ‘internal review’ as explained in the note to clause 322.

Clause 325 amends section 196 to provide that stay applications regarding original decisions are made to and determined by QCAT with the exception of stay applications regarding original decisions to seize or forfeit an animal or other thing, which will remain in the Magistrates Court. The amendments also replace references to ‘reviews’ with ‘internal reviews’ and insert reference to external reviews as explained in the note to clause 322.

Clause 326 amends section 197 to replace references to ‘review’ with ‘internal review’ and ‘review decision’ with ‘internal review decision’ as explained in the note to clause 322.

Clause 327 replaces section 198, which provides for the giving of notice of a review decision by the chief executive to the applicant. The replacement section 198 substitutes references to ‘review’ with ‘internal review’ for the reasons explained in the note to clause 322.

Consequential to the transfer of jurisdiction for reviews of certain original decisions to QCAT, the replacement subsection also requires that the notice of the decision for these decisions must be accompanied by a QCAT information notice for the decision. However, under new subsection 198(4), the chief must give an information notice only if this Act so requires. The effect of new subsection 198(4) is that the requirement to give an information notice for these decisions is limited to those instances where a right of review is triggered by a decision under the this Act in the first instance. Given the large number of decisions, this limitation is necessary to create administrative efficiency.

Clause 328 inserts a new division 1A to provide QCAT with the jurisdiction to conduct external reviews regarding internal reviews decisions, other than original decisions to seize or forfeit an animal or other thing. The Magistrates Court previously heard appeals of these decisions.

Clause 329 replaces section 199, which currently provides for the Magistrates Court to hear appeals against review decisions. The replacement section 199 now only allows external appeals to the Magistrates Court regarding the seizure or forfeiture of an animal or other thing. New division 1A inserted by clause 328 provides for QCAT to review decisions other than those specified in replacement section 199.

Clause 330 amends section 200 to replace references to ‘review’ with ‘internal review’ as explained in the note to clause 322.

Clause 331 amends section 201 to replace references to ‘review’ with ‘internal review’ as explained in the note to clause 322.

Clause 332 amends section 202 to replace references to ‘review’ with ‘internal review’ as explained in the note to clause 322.

Clause 333 amends section 203 to replace references to ‘review’ with ‘internal review’ as explained in the note to clause 322.

Clause 334 amends section 204 to omit reference to appeals and include reference to internal review decisions about forfeiture and seizure.

Clause 335 amends the schedule dictionary to omit the definitions of ‘review application’ and ‘review decision’, which are no longer necessary and inserts definitions for ‘external review’, ‘internal review application’, ‘internal review decision’ and ‘information notice’.

Part 5 **Amendment of Apiaries Regulation 1998**

Clause 336 provides that part 5 amends the *Apiaries Regulation 1998*.

Clause 337 amends section 2, containing the definitions for the Act, to insert the definition of ‘information notice’ with the meaning of a notice complying with the QCAT Act, section 157(2).

Clause 338 amends section 8A by replacing the requirement to provide a ‘written notice’ for a decision under part 2, division 2 with a requirement to provide an ‘information notice for the decision’ complying with section 157(2) of the QCAT Act. This amendment reflects that QCAT now has the jurisdiction to determine reviews regarding decisions made under part 2, division 2.

Clause 339 amends section 16 by inserting a new subsection (3) to require an inspector to give an information notice about a decision to direct a person in charge of an appliance, bee, bee product or hive to move it to a stated quarantine area for inspection. This amendment reflects that the jurisdiction to determine reviews regarding decisions made under this section will now reside with QCAT.

Clause 340 amends section 17A by replacing reference to ‘written notice’ with ‘an information notice for the decision’ and deleting the former notice requirements as the requirements of an information notice are set out in section 157(2) of the QCAT Act.

Clause 341 amends the heading to part 4 to replace the term ‘appeals’ with ‘reviews’ in order to provide consistency with terms applied under the QCAT Act which refer to ‘review’ of decisions rather than ‘appeals’.

Clause 342 amends section 18 to provide that QCAT now has jurisdiction to review the decisions outlined in the section, rather than the Magistrates Court.

Clause 343 omits sections 19 to 23 as these provisions refer to former appeal arrangements in the Magistrates Court. As a result of the change of jurisdiction to QCAT, the QCAT Act arrangements will apply for reviews of decisions by QCAT.

Part 6 Amendment of Associations Incorporation Act 1981

Clause 344 provides that part 6 amends the *Associations Incorporation Act 1981*.

Clause 345 amends the heading of part 12, (Reviews and appeals) by omitting ‘and appeals’. While the previous provisions in part 12 referred to the process of applying for a review of an administrative decision as an ‘appeal’, under the QCAT Act this will be known as a review of a reviewable decision. The amendments in this Act do not affect any existing rights to apply for a review of the reviewable decisions in the Act.

Clause 346 amends the heading of part 12, Division 1 (Review of decisions) by omitting ‘Review’ and inserting ‘Internal review’ to clarify that reviews under the division are internal reviews by the chief executive. Reviews to QCAT are external reviews.

Clause 347 omits section 111 and inserts a new section 111 entitled ‘Stay of operation of disputed decision’ which gives QCAT the power to stay the operation of a decision if an application for internal review has been made. Previously, the District Court had the power to make such orders. This provides an additional power for QCAT, as under the QCAT Act, the

tribunal may only stay the operation of a decision if a proceeding has started. The terms ‘disputed decision’ and ‘reviewable’ decision are defined in the new section 111 to differentiate between a decision that is subject to internal review and a decision which is subject to external review by QCAT.

Clause 348 amends section 112 by omitting ‘this part’ in subsection (1) and inserting ‘this division for review of a disputed decision’. The division referred to (division 1) deals with internal reviews whereas division 2 deals with external reviews. This further highlights the distinction between internal and external reviews. The decision notice requirement in subsection (4) is replaced with a requirement that a QCAT information notice for the decision be given. A definition of ‘QCAT information notice’ is inserted in a new subsection (5). This reflects that QCAT now has jurisdiction to review reviewable decisions under this part. Previously, a person could appeal to the District Court against a decision.

Clause 349 omits part 12, division 2 (Appeals against reconsidered decisions) and inserts a new division 2 entitled ‘External review of decisions’. A new section 113 is inserted that provides that an application for an external review of a reviewable decision may be made to QCAT. Procedural matters and the orders that QCAT may make are provided for in the QCAT Act and Rules.

Part 7 Amendment of Biodiscovery Act 2004

Clause 350 states that this part amends the *Biodiscovery Act 2004*.

Clause 351 amends section 21(4) so that the notice that must be given for a decision by the EPA chief executive informing the holder of a biodiscovery collection authority of her or his decision to proceed with an amendment, suspension or cancellation must be a QCAT information notice. The schedule dictionary defines a QCAT information notice as a notice complying with section 157(2) QCAT Act. This amendment reflects that QCAT will have jurisdiction to review this decision.

Clause 352 amends section 22 to reflect that a QCAT information notice must now be given for a decision of the EPA chief executive to cancel a collection authority.

Clause 353 inserts a reference to review in addition to a reference to an appeal in section 86 to reflect the proceedings available under the QCAT Act..

Clause 354 replaces the part 9 heading with a new heading ‘Internal reviews’ to clarify that an internal review refers to the review of a decision of a chief executive by the EPA Minister, in respect of a decision regarding the granting of a biodiscovery collection authority, or DSDI Minister in respect of a decision regarding the approval of a biodiscovery plan.

Clause 355 repeals existing part 10 relating to appeals to the Magistrates Court and inserts a new part into the Act entitled ‘External reviews’. The new heading reflects that external review of a decision made by the EPA chief executive will be undertaken by the Queensland Civil and Administrative Tribunal.

The new section 103 clarifies that the holder of a biodiscovery collection authority which is subsequently amended, suspended or cancelled under section 21 of the Act may apply to QCAT for a review of the decision, in place of the right to appeal to a Magistrates Court.

Clause 356 amends the schedule dictionary to amend the definition of ‘Information notice’ and to insert a new definition ‘QCAT information notice’.

Part 8 **Amendment of Body Corporate and Community Management Act 1997**

Clause 357 states that this part amends the *Body Corporate and Community Management Act 1997* (the BCCM Act).

Clause 358 amends section 48 so that the owner of a lot in a community titles scheme may now apply, under the QCAT Act, for an order of QCAT for the adjustment of a lot entitlement schedule, in addition to their existing right to apply, under chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule. Previously, the owner of a lot could apply, under the *Commercial and Consumer Tribunal Act 2003* (the CCT Act), for an order of the CCT or, under chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule. The

clause also clarifies that this matter will be part of QCAT's original jurisdiction.

Clause 359 amends section 49, which sets out matters the CCT or a specialist adjudicator may and may not have regard to upon application for an adjustment of a lot entitlement schedule. The amendment replaces references to 'the CCT' with 'QCAT' as a consequence of the amendment to section 48 which vests jurisdiction with QCAT to determine an application about the adjustment of a lot entitlement schedule instead of the CCT.

Clause 360 amends section 62(4)(b), which provides that the consent to the recording of a new community management statement need not be in the form of a resolution without dissent or special resolution if the new statement is different from the existing statement only to the extent necessary for compliance with the order of an adjudicator, the District Court or the CCT made under this Act for the lodging of a request for the recording of the new statement. The amendment replaces the reference to 'the CCT' with 'QCAT' as a consequence of the transfer of the CCT's jurisdiction to determine body corporate disputes to QCAT (see amendments to sections 48, 133, 149A, 149B, 178 and 289).

Clause 361 amends section 133 so that a reviewing party may apply, under the QCAT Act, for an order of QCAT to resolve a dispute arising out of a review of the terms of a service contract under chapter 3, part 2, division 7, in addition to their existing right to apply under chapter 6, for an order of a specialist adjudicator. Previously, a reviewing party could apply, under the CCT Act, for an order of the CCT or, under chapter 6, for an order of a specialist adjudicator to resolve the dispute. The clause also clarifies that this matter will be part of QCAT's original jurisdiction.

Clause 362 amends section 135, which contains other provisions about a review of the terms of a service contract, to replace the reference to the CCT with QCAT. This amendment is consequential to the transfer of the CCT's jurisdiction for determining a dispute about a review of the terms of a service contract to QCAT.

Clause 363 amends section 149A so that a party to a dispute about the transfer of a letting agent's management rights under chapter 3, part 2, division 8 may apply, under the QCAT Act, for an order of QCAT to resolve the dispute, in addition to their existing right to apply, under chapter 6, for an order of a specialist adjudicator to resolve the dispute. Previously, a dispute of this nature was resolved by an order of the CCT or

a specialist adjudicator. The clause also clarifies that this matter will be part of QCAT's original jurisdiction.

Clause 364 amends section 149B so that a party to a dispute about a claimed or anticipated contractual matter mentioned in subsection (1) may apply, under the QCAT Act, for an order of QCAT to resolve the dispute, in addition to their existing right to apply, under chapter 6, for an order of a specialist adjudicator to resolve the dispute. Previously, a dispute of this nature could be resolved by an order of the CCT or a specialist adjudicator. The clause also clarifies that this matter will be part of QCAT's original jurisdiction.

Clause 365 amends section 178(2)(b) so that the body corporate for a community titles scheme may apply, under the QCAT Act, for an order of QCAT to resolve particular disputes about whether an exclusive use by-law should continue in force, in addition to its existing right to apply under chapter 6, for an order of a specialist adjudicator. Previously, a dispute of this nature could be resolved by an order of the CCT or a specialist adjudicator. The clause also clarifies that this matter will be part of QCAT's original jurisdiction.

Clause 366 amends section 229(2)(a)(ii) so that complex disputes are to be resolved by an order of QCAT exercising the tribunal's original jurisdiction under the QCAT Act or by an order of a specialist adjudicator under chapter 6 of the BCCM Act.

This clause also amends section 229(2)(b) so that QCAT rather than the District Court may make an order on an appeal about a complex dispute from QCAT exercising its original jurisdiction under the QCAT Act or from a specialist adjudicator under chapter 6. An appeal from either QCAT exercising its original jurisdiction or an order of a specialist adjudicator would be heard in QCAT's appeal jurisdiction, by the appeal tribunal. An order of a specialist adjudicator or QCAT on a complex dispute may only be appealed to the appeal tribunal of QCAT on a question of law.

Previously, complex disputes were resolved by an order of the CCT or a specialist adjudicator, and these orders were only appealable to the District Court on a question of law.

This clause amends section 229(3)(b) so that the only remedy for a dispute that is not a complex dispute is the resolution of the dispute by a dispute resolution process or an order of the appeal tribunal on appeal from an adjudicator on a question of law. Previously, for a dispute that is not a

complex dispute, the CCT had jurisdiction to hear an appeal from an adjudicator on a question of law.

This clause inserts a new subsection (5) clarifying that subsections (2) and (3), which confer exclusive jurisdiction for disputes that may be resolved under chapter 6 by a dispute resolution process, do not affect the jurisdiction of the Court of Appeal to hear an appeal from QCAT, to hear a proceeding that has been transferred to it under the QCAT Act, or to decide a question of law referred to it under the QCAT Act.

Clause 367 amends section 230(3) to replace the reference to ‘District Court and the CCT’ with ‘appeal tribunal’. This amendment recognises that appeals of orders of QCAT and adjudicators will now be made to the QCAT’s appeal tribunal on a question of law.

Clause 368 amends section 239C, which provides for the continuation of an application where the standing of a party to an application changes before the application is disposed of. The amendment inserts a new subsection (5) requiring that if the commissioner substitutes another person as the relevant person for an application, the commissioner must give a QCAT information notice about the substitution to both the substitute person and the applicant for the application. This is because the commissioner’s decision to substitute a person as a relevant person for the application is a ‘reviewable decision’ for QCAT. The requirements for a QCAT information notice are set out in section 157(2) of the QCAT Act.

Clause 369 amends section 241A which provides the commissioner must give the applicant a written notice if the commissioner decides to reject an application. The amendment substitutes the current notice requirements with a requirement that the commissioner must give a QCAT information notice for a decision to reject an application. This is because the commissioner’s decision to reject an application is a ‘reviewable decision’ for QCAT. The requirements for a QCAT information notice are set out in section 157(2) of the QCAT Act.

Clause 370 amends section 245 to require that the commissioner must give an applicant a QCAT information notice if the commissioner withholds permission to change an application or imposes conditions on the permission to change an application. This is because the commissioner’s decision to reject an application is a ‘reviewable decision’ for QCAT. The requirements for a QCAT information notice are set out in section 157(2) of the QCAT Act.

Clause 371 amends section 288A to omit the definition of ‘appeal body’ for part 11. The definition is no longer required because the QCAT appeal tribunal will have jurisdiction to hear both an appeal about a complex dispute and an appeal about a dispute that is not a complex dispute.

Clause 372 amends section 289 to replace the reference to the ‘District Court and the CCT’ in the heading and the reference to the ‘appeal body’ in subsection (2) with ‘appeal tribunal’. This amendment establishes the right of a person aggrieved by an order of an adjudicator to appeal to the QCAT appeal tribunal. An appeal will continue to be limited to a question of law. Previously, an appeal of a specialist adjudicator’s order about a complex dispute was heard by the District Court and an appeal of an adjudicator’s order about a non-complex dispute was heard by the CCT.

Clause 373 amends section 290, which makes provision for starting an appeal and contains a number of administrative requirements for appeals. The amendments replace references to ‘appeal body’ with ‘appeal tribunal’, and the reference to ‘relevant official of the appeal body’ with ‘principal registrar’. The amendments are consequential to the vesting of jurisdiction with the QCAT appeal tribunal for the hearing of appeals of adjudicator’s orders on a question of law.

Clause 374 omits section 291, which provides for the stay of operation of orders appealed against, as it duplicates provisions of the QCAT Act.

Clause 375 amends section 292 to replace the reference to ‘appeal body’ with ‘appeal tribunal’ under the QCAT Act.

Clause 376 omits sections 293 and 293A, which deal with the appeal procedure for appeals to the District Court and the CCT. These sections are no longer required because the QCAT appeal tribunal will now hear appeals and the relevant procedural provisions are in the QCAT Act.

Clause 377 replaces section 294, which sets out the powers of the appeal body on appeal. The replacement section 294 sets out the powers of the appeal tribunal in deciding appeals of adjudicator orders.

Subsection (1) confers the jurisdiction and powers of an adjudicator under the Act on the tribunal. Subsection (2) provides the appeal tribunal may amend or substitute an order only if the adjudicator who made the order being appealed would have had jurisdiction to make the amended or substituted order or decision. Subsection (3) clarifies that subsection (2) does not limit the power of the appeal tribunal to award costs under the QCAT Act for a proceeding under the QCAT Act.

Subsection (1) of the previous section 294 is no longer required because it duplicates provisions of the QCAT Act.

Clause 378 amends section 294A to replace references to the CCT and the CCT Act with references to QCAT and the QCAT Act and to replace references to the chairperson of the CCT with the president of QCAT. This amendment is consequential to the transfer of the CCT's jurisdiction under the Act to QCAT.

Clause 379 replaces the reference to 'the CCT' with 'QCAT' in section 295. This amendment is consequential to the transfer of the CCT's jurisdiction under the Act to QCAT.

Clause 380 replaces the chapter 7, part 1 heading so that it will be called 'External review of decisions'. This reflects the overall change in terminology throughout the enabling Acts for QCAT. The process of having an administrative decision reviewed by an external body is described in the QCAT Act as a review process not an appeal.

Clause 381 omits sections 304 and 305 and replaces them with a new section 304. The replacement section 304 will provide that the aggrieved person may apply, as provided under the QCAT Act, to QCAT for a review of particular decisions of the commissioner on an application. These decisions are the rejection of an application, the withholding of permission to change an application, the imposition of conditions on permission to change an application, and the substitution of a person as a relevant person for an application. Previously the District Court reviewed these decisions.

The clause omits section 305 as it relates to the previous appeal process in the District Court.

Clause 382 replaces the reference to 'making appeal' in the section 306 heading with 'applying for external review' as the process of having an administrative decision reviewed by QCAT is described in the QCAT Act as a review process not an appeal. This clause also amends section 306 so that it will now state that an application for review to QCAT must be made within 6 weeks after the aggrieved person receives a QCAT information notice. This will override the provision in the QCAT Act that an application for a review must be made within 28 days of notification of the decision.

Clause 383 omits sections 307 and 308 so that the provisions in the QCAT Act in relation to QCAT's review jurisdiction will apply.

Clause 384 amends section 313A by replacing the reference to ‘CCT’ in the heading with ‘QCAT’ and amending subsection (1)(b) to reflect the transfer of the CCT’s jurisdiction under the Act to QCAT.

Clause 385 inserts a new chapter 8, part 7 containing transitional provisions for this Bill.

New section 363 clarifies the purpose of the transitional provisions in the new chapter 8, part 7.

The Act will now provide for appeals from orders of an adjudicator to be appealed to QCAT’s appeal tribunal. Previously, appeals from orders of a department adjudicator for disputes that are not complex were made to the CCT, and appeals from orders of a specialist adjudicator or the CCT for complex disputes were made to the District Court.

The transitional provisions in chapter 7 of the QCAT Act will apply to appeals that have not been started before the commencement and appeals started but not finished before the commencement. New section 363 states that the purpose of the part is to provide that a proceeding for an appeal from an order of an adjudicator that is, under chapter 7 of the QCAT Act, started before QCAT, taken to be before QCAT or transferred to QCAT, is to be dealt with in QCAT’s appeal jurisdiction rather than, as provided under chapter 7 of the QCAT Act, in QCAT’s review jurisdiction.

New section 364 inserts definitions for the transitional provisions in this part.

New section 365 applies if a proceeding for an appeal from an order of an adjudicator is started or is about to be started under section 255 of the QCAT Act. Section 255 is a transitional provision for proceedings that immediately before the commencement could have been started in a former tribunal. If a person had the right to start a proceeding before a former tribunal prior to the commencement and they have not yet done so then QCAT has jurisdiction to deal with the matter under the QCAT Act. Under section 255(3) of the QCAT Act, the person may start the proceeding within the prescribed period in the way they could have prior to the commencement. Under section 255(4) of the QCAT Act, QCAT will deal with the matter procedurally under the QCAT Act and will have the functions under the QCAT Act and the enabling Act as amended by this Bill.

Section 255(5) of the QCAT Act clarifies that if prior to commencement 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 this Bill may have referred to the process of applying for a review of an administrative decision as an 'appeal'. Under the QCAT Act this is known as a review of a reviewable decision and all enabling Acts will be amended by this Bill to now refer to this process as a review rather than an appeal. However, an order of an adjudicator is not an administrative decision and reviews of these decisions will be heard in QCAT's appeal jurisdiction as 'appeals'.

Therefore, new section 365 clarifies that a proceeding for an appeal from an order of an adjudicator started or about to be started under section 255 of the QCAT Act is taken to be an appeal to the appeal tribunal against the making of the order by the adjudicator, despite section 255(5) of the QCAT Act.

New section 366 applies if a proceeding for an appeal from an order of an adjudicator is started or is about to be started under section 267 of the QCAT Act. Section 267 of the QCAT Act is a transitional provision for continuing entities, including a court. If a person had a right to start a proceeding before a continuing entity, and was within time to do so, but at the commencement of this provision had not yet done so, then QCAT has jurisdiction to deal with the matter under the QCAT Act. Under 267(4) of the QCAT Act, the person may start the proceeding within the prescribed period in the way they could have prior to the commencement. Under section 267(5) of the QCAT Act, QCAT will deal with the matter procedurally under the QCAT Act and will have the functions under the QCAT Act and the enabling Act as amended by this Bill.

Section 267(6) of the QCAT Act 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 this Bill may have referred to the process of applying for a review of an administrative decision as an appeal. However, an order of an adjudicator is not an administrative decision and reviews of these decisions will be heard in QCAT's appeal jurisdiction as 'appeals'.

Therefore, new section 366 clarifies that a proceeding for an appeal from an order of an adjudicator started or about to be started under section 267 of the QCAT Act is taken to be an appeal to the appeal tribunal against the

making of the order by the adjudicator, despite section 267(6) of the QCAT Act.

New section 367 applies to an existing tribunal proceeding that is for an appeal from an order of an adjudicator to the former tribunal (the CCT) and is taken under the QCAT Act, chapter 7, part 2, division 3 to be a proceeding before QCAT, or to an existing court proceeding that is for an appeal from an order of an adjudicator to the District Court and that is transferred to QCAT. Section 271 provides for the conduct of these proceedings by QCAT.

Section 271(3) of the QCAT Act 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 this Bill may have referred to the process of applying for a review of an administrative decision as an appeal. However, an order of an adjudicator is not an administrative decision and reviews of these decisions will be heard in QCAT's appeal jurisdiction as 'appeals'.

Therefore, new section 367 provides that for applying section 271 of the QCAT Act to the proceeding, the proceeding is taken to be an appeal to the appeal tribunal against the making of the order by the adjudicator, despite section 271(3) of the QCAT Act.

Clause 386 omits certain definitions from the schedule 6 dictionary and inserts new definitions as a consequence of the amendments in this Bill.

Part 9 Amendment of Casino Control Act 1982

Clause 387 confirms the Act amended is the *Casino Control Act 1982*.

Clause 388 replaces part 9A. Section 91A clarifies who can apply to QCAT, under the QCAT Act, for a review of a decision.

Section 91B limits the conduct of review by the tribunal to the evidence before the chief executive when the original decision was made, and similarly limits the way in which a reopened review is conducted. It also

clarifies that the review outcome is decided on the law at the time of the original decision, not the law existing at the time of the review.

Section 91C enables new evidence to be considered by the tribunal in certain circumstances. The tribunal must consider whether to allow the new evidence and allow it if satisfied the party did not know and could not reasonably have been expected to know of the existence of the new evidence before the chief executive's decision was made, and, that the tribunal considers under the circumstances it would be unfair not to allow the new evidence to be presented. If the tribunal gives leave to present the new evidence it must adjourn the proceedings for a stated time to allow the chief executive to reconsider the original decision and the new evidence and allow for further submissions by affected persons. Alternatively, if the tribunal considers the nature of the new evidence makes it appropriate for a new application to be made, the tribunal may require the applicant to make a fresh application to the chief executive about the matter.

Section 91D relates to appealing decisions of QCAT. Chapter 2, part 8, division 1 of the QCAT Act (Appeals to appeal tribunal) does not apply. The only avenue of appeal against a decision of QCAT for decisions under this Act is to the Court of Appeal. The appeal may be on a question of law only. The provisions of the QCAT Act requiring a judicial member to have constituted QCAT in the proceeding and appeals involving a question of fact or question of mixed law and fact also do not apply.

Clause 389 omits section 93 of the Act relating to appeals to the Minister.

Clause 390 amends section 97 of the Act to provide that what was formerly an appeal to the Magistrates Court regarding an exclusion direction becomes a review of the decision by QCAT.

Clause 391 omits sections 135 and 136 of the Act relating to transitional provisions which dealt with show cause notices and the immediate suspension of a licence.

Clause 392 omits section 138 relating to transitional provisions which dealt with appeals to the Queensland Gaming Commission.

Clause 393 amends the schedule of the Act to omit definitions for gaming commission and registrar, insert a definition for tribunal which means QCAT and substitute the definition for information notice.

Part 10 **Amendment of Casino Control Regulation 1999**

Clause 394 confirms the regulation amended is the *Casino Control Regulation 1999*.

Clause 395 omits item 7 of schedule 4 relating to fees for filing a notice of appeal with the registrar of the Queensland Gaming Commission.

Part 11 **Amendment of Charitable and Non-Profit Gaming Act 1999**

Clause 396 confirms the Act amended is the *Charitable and Non-Profit Gaming Act 1999*.

Clause 397 amends section 153 of the Act to omit appeals to the Magistrates Court regarding the forfeiture of things to the State in relation to infringement notice penalties.

Clause 398 replaces part 8 of the Act. Section 174 clarifies who can apply to QCAT, under the QCAT Act, for a review of a decision.

Section 175 limits the conduct of review by the tribunal to the evidence before the chief executive when the original decision was made, and similarly limits the way in which a reopened review is conducted. It also clarifies that the review outcome is decided on the law at the time of the original decision, not the law existing at the time of the review.

Section 176 enables new evidence to be considered by the tribunal in certain circumstances. The tribunal must consider whether to allow the new evidence and allow it if satisfied the party did not know and could not reasonably have been expected to know of the existence of the new evidence before the chief executive's decision was made, and, that the tribunal considers under the circumstances it would be unfair not to allow the new evidence to be presented. If the tribunal gives leave to present the new evidence it must adjourn the proceedings for a stated time to allow the chief executive to reconsider the original decision and the new evidence and allow for further submissions by affected persons. Alternatively, if the tribunal considers the nature of the new evidence makes it appropriate for a

new application to be made, the tribunal may require the applicant to make a fresh application to the chief executive about the matter.

Section 177 relates to appealing decisions of QCAT. Chapter 2, part 8, division 1 of the QCAT Act (Appeals to appeal tribunal) does not apply. The only avenue of appeal against a decision of QCAT under this Act is to the Court of Appeal. The appeal may be on a question of law only. The provisions of the QCAT Act requiring a judicial member to have constituted QCAT in the proceeding and appeals involving a question of fact or question of mixed law and fact also do not apply.

Clause 399 amends schedule 2 of the Act to omit the definition for the Queensland Gaming Commission, insert a definition for tribunal which means QCAT and substitute the definition for information notice.

Part 12 Amendment of Charitable and Non-Profit Gaming Regulation 1999

Clause 400 confirms the regulation amended is the *Charitable and Non-Profit Gaming Regulation 1999*.

Clause 401 omits item 10 of schedule 2 relating to fees for filing a notice of appeal with the registrar of the Queensland Gaming Commission.

Part 13 Amendment of Chemical Usage (Agricultural and Veterinary) Control Act 1988

Clause 402 provides that part 13 amends the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

Clause 403 amends section 16 to provide that an information notice must accompany a notice given under this section. This reflects that QCAT now has the jurisdiction to review directions given under section 16, rather than the Magistrates Court. An information notice must comply with section 157(2) of the QCAT Act.

Clause 404 amends section 17 by inserting a new subsection to provide that an information notice must be given about a decision to refuse an application made under this section. This reflects that QCAT now has the jurisdiction to review a decision to refuse an application under this section, rather than the Magistrates Court. An information notice must comply with section 157(2) of the QCAT Act.

Clause 405 inserts a new section 21A to provide that QCAT has jurisdiction to review a direction contained in a notice provided under section 16 and a decision of an inspector to refuse an application under section 17. The term ‘review’ is used in favour of ‘appeal’ (the terminology previously adopted by section 22) to reflect that under the QCAT Act reviews of administrative decisions are known as reviews of reviewable decisions.

New subsection 21A(3) provides that a standards officer or inspector must give a person an information notice for a decision only if this Act so requires. The effect of this new subsection is to provide that the requirement to issue an information notice under the QCAT Act is limited to those instances where a right of review is triggered by a decision under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* in the first instance. Given the large number of decisions, this limitation is necessary to create administrative efficiency.

Clause 406 amends section 22 to reflect that a person may now only appeal to the Magistrates Court regarding a decision by an inspector to seize a thing under section 20. The provision will no longer provide for appeals to the Magistrates Court against inspectors’ directions under section 16 or decisions under section 17. This jurisdiction has now been transferred to QCAT.

Clause 407 amends the schedule dictionary to insert the definition of ‘information notice’ with the meaning of a notice complying with the QCAT Act, section 157.

Part 14 **Amendment of Clean Energy Act 2008**

Clause 408 provides that part 14 amends the *Clean Energy Act 2008*.

Clause 409 amends the heading of part 9 to clarify that the part deals only with reviews of decisions, rather than appeals and reviews. This is achieved by removing the words ‘Appeal and review’ and replacing them with the word ‘Review’ in order to provide consistency with terms applied under the QCAT Act by referring to ‘review’ of decisions rather than ‘appeals and review’.

Clause 410 amends section 30 to provide that where an application is made to the Minister for an internal review of a decision, and the decision of the Minister in response differs from that sought by the applicant, the notification of the review decision to the applicant must comply with section 157(2) of the QCAT Act. Section 157(2) provides that a notification must include certain information about the decision; including the reasons for the decision and that the person has a right to have the decision reviewed by QCAT.

Clause 411 changes the heading of part 9, division 2 from ‘Appeals’ to ‘External Reviews’ in order to provide consistency with terms applied under the QCAT Bill by referring to ‘review’ of decisions rather than ‘appeals’.

Clause 412 amends section 31 to provide that a person dissatisfied with an internal review decision may apply to QCAT for an external review of that decision, rather than appealing the decision to the Magistrates Court.

Clause 413 removes sections 32 to 35, which set out the Magistrates Court appeal process. The appeal process to apply is prescribed under the QCAT Act, as provided in the amended section 31.

Part 15 **Amendment of Consumer Credit (Queensland) Act 1994**

Clause 414 provides that part 15 amends the *Consumer Credit (Queensland) Act 1994*.

Clause 415 amends the definition of ‘court’ in section 7(2) by omitting ‘a Small Claims Tribunal’ and inserting ‘QCAT’. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* (SCT Act) by the QCAT Act. QCAT now has jurisdiction to hear and determine small claims matters as part of the minor civil disputes jurisdiction.

Part 16 Amendment of Cooperatives Act 1997

Clause 416 provides that part 16 amends the *Cooperatives Act 1997*.

Clause 417 omits part 2, division 7 (Appeals) and inserts a new division 7 that gives QCAT the power to review a failure of the registrar to approve a disclosure statement (new section 29), approve draft rules (new section 30) or register a cooperative (new section 31). References to an ‘appeal’ have been replaced with ‘review’. While the previous provisions referred to the process for applying for a review of an administrative decision as an ‘appeal’, under the QCAT Act this will be known as a review of a reviewable decision. The amendments in this Act do not affect any existing right to apply for a review of the reviewable decisions in the Act.

Clause 418 omits sections 110-112 that deal with appeals to the Supreme Court for a failure of the registrar to approve or register an alteration of a cooperative’s rules. A new section 110 is inserted that gives QCAT the power to review a failure of the registrar to approve or register an alteration of a cooperative’s rules.

Part 17 Amendment of Credit Act 1987

Clause 419 provides that part 17 amends the *Credit Act 1987*.

Clause 420 amends section 8 by omitting the reference to ‘a Small Claims Tribunal’. A new subsection 2 is inserted that defines ‘court’ to include QCAT. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* by the QCAT Act. QCAT now has the jurisdiction to hear

and determine small claims matters as part of the minor civil disputes jurisdiction.

Part 18 Amendment of Credit (Rural Finance) Act 1996

Clause 421 provides that Part 18 amends the *Credit (Rural Finance) Act 1996*.

Clause 422 amends the definition of ‘court’ in section 6(2) by omitting ‘a small claims tribunal’ and inserting ‘QCAT’. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* by the QCAT Act. QCAT now has the jurisdiction to hear and determine small claims matters as part of the minor civil disputes jurisdiction.

Part 19 Amendment of Drugs Misuse Act 1986

Clause 423 provides that part 19 amends the *Drugs Misuse Act 1986*.

Clause 424 amends section 46 to insert a definition of ‘information notice’ with the meaning of a notice complying with section 157(2) of the QCAT Act.

Clause 425 replaces part 5B, division 10 (Appeals) with a new division 10, comprising a new section 85, to provide that applications for review by persons dissatisfied with decisions will now be made to QCAT instead of the District Court. The new section 85 also provides that the chief executive is required to give an information notice for a decision only if this Act so requires. Given the large number of decisions, this limitation is necessary to create administrative efficiency.

Clause 425 also omits sections 86-90 concerning starting an appeal, the stay of operation of decisions, hearing procedures, the powers of the court on appeal and appeal to the Supreme Court as these provisions are no

longer relevant because the processes under the QCAT Act will apply instead.

Clause 426 omits section 115 on the basis that it relates to a spent review clause and is now redundant.

Part 20 Amendment of Electricity Act 1994

Clause 427 provides that part 20 amends the *Electricity Act 1994*.

Clause 428 amends section 135FQ to provide that a signed assessment by the regulator under chapter 5A (Queensland Gas Scheme) is evidence for the purposes of an application for an external review, rather than appeal, of a decision.

Clause 429 amends section 152K(5) to remove the term ‘or appeal’ in order to provide consistency with terms applied under the QCAT Act by referring to ‘review’ of decisions rather than ‘appeals’. This has the effect of requiring that a written notice provided by an Inspecting Officer to the owner of a thing forfeited must include information relating to the owner’s rights of internal or external review.

Clauses 430 to 438 amend various sections of the Electricity Act to provide that where a notice of refusal is given to an applicant, the notice must include information to advise the applicant of their right to seek an internal review of the refusal, rather than their right to appeal the refusal, in order to provide consistency with terms applied under the QCAT Act by referring to ‘review’ of decisions rather than ‘appeal’. The amended sections concern:

- section 181 – Notice of refusal to issue generation authority (amended by *clause 430*);
- section 184C – Notice of refusal to transfer generation authority (amended by *clause 431*);
- section 190 – Notice of refusal to issue transmission authority (amended by *clause 432*);
- section 193C – Notice of refusal to transfer transmission authority (amended by *clause 433*);

- section 198 – Notice of refusal to issue distribution authority (amended by *clause 434*);
- section 201C – Notice of refusal to transfer distribution authority (amended by *clause 435*);
- section 206 – Notice of refusal to issue retail authority (amended by *clause 436*);
- section 211 – Notice of refusal to give special approval (amended by *clause 437*); and
- section 212C – Notice of refusal to transfer special approval (amended by *clause 438*).

Clause 439 amends the heading of chapter 10 to reflect that the chapter concerns internal and external reviews of decisions, rather than reviews and appeals.

Clause 440 amends the heading of part 1 of the chapter to reflect that the part concerns internal reviews of decisions, rather than all reviews.

Clauses 441 and 442 amend sections 214 and 215 to provide that references to reviews should be read as references to internal reviews.

Clause 443 amends the stay of decision provisions set out in section 216. The amendment has the effect of varying the decision body to which an application for a stay of a decision is lodged. Rather than applying to the Magistrates Court for an order to stay the operation of a decision, a person will be able to apply to QCAT for a stay order immediately following an application for an internal review of a decision.

Clause 444 amends section 217(1) to clarify that the power to make regulations about referring applications for review under part 1 concerns applications for internal review of decisions, rather than external review of decisions as these will be dealt with under the QCAT Act.

Clause 445 amends section 218 to clarify that the section applies to applications for internal reviews of decisions. Section 218(6) is amended to provide that where an internal review decision differs from that sought by an applicant, the written notice of decision provided under section 218(5) must be a QCAT information notice. The requirements of a QCAT information notice are set out in section 157 of the QCAT Act, which provides that a notice must include certain information about the decision; including the reasons for the decision and that the person has a right to have the decision reviewed by QCAT.

Clause 446 deletes the system of appeals formerly set out in chapter 10, part 2. This is replaced by a new section 219 which gives to a person whose interests are affected by an internal review decision under section 218 the right to apply to QCAT for an external review. It is intended that the application for external review will be dealt with under the QCAT Act. A regulation making power is provided in section 219(2) to exclude a person from applying for an external review in cases where the internal review decision gave effect to a resolution achieved by mediation or resulting from arbitration.

Clause 446 also inserts a new section 220 to exclude the general obligation under section 157 of the QCAT Act on reviewers to provide a review notice to a person, except where the requirement to provide a QCAT information notice is explicitly provided for under the Electricity Act.

Clause 447 amends schedule 1 of the Act to replace ‘Appeals against’ with ‘Review of’ and to remove the column headed Court in parts 1 to 3. This reflects the amendments to chapter 10, part 2 which provide for an external review instead of an appeal to a court.

Clause 448 amends schedule 5 (Dictionary) to insert a definition for ‘external review’. An external review refers to an external review by QCAT of a decision under the requirements of the QCAT Act. The clause also amends schedule 5 to distinguish between a ‘QCAT information notice’ and an ‘information notice’. A ‘QCAT information notice’ is defined as a notice which complies with the provisions of section 157(2) of the QCAT Act. This section provides that a notice must include certain information about a decision; including the reasons for the decision and that the person has a right to have the decision reviewed by QCAT. The definition of an ‘information notice’ in schedule 5 is amended to provide that the notice must provide information in relation to the rights of internal review.

Part 21 Amendment of Electricity Regulation 2006

Clause 449 provides that part 21 amends the *Electricity Regulation 2006*.

Clause 450 amends section 24 to provide that where the regulator directs a person to take away an electrical installation for non-compliance, a QCAT information notice about the decision must be given to the person. Section

157(2) of the QCAT Act sets out the requirements of what is required in the QCAT information notice.

Clause 451 amends section 30H to clarify that where an information notice is given under section 30G in relation to a reclassification decision, the decision will only take effect at the end of the applicable internal and external review periods.

Clause 452 amends section 88(6) to provide that where the Queensland Competition Authority determines a dispute about a matter under section 88, the Authority must give the parties a QCAT information notice.

Clause 453 amends section 90(3) to provide that the exception against a party to a dispute disclosing advice or information includes where the disclosure is for the purposes of an external review of the Queensland Competition Authority's decision in relation to the dispute.

Clauses 454 to 458 amend a number of sections in the Regulation to provide that a QCAT information notice must be provided by the regulator in particular circumstances, rather than an information notice. The amended sections are:

- section 139 – Requirements for registration (amended by *clause 454*);
- section 141 – Steps after registration (amended by *clause 455*);
- section 145 – Refusal to change energy efficiency label (amended by *clause 456*);
- section 147 – Transfer of registration (amended by *clause 457*); and
- section 149 – Cancellation of registration (amended by *clause 458*).

Clauses 459 and 460 make consequential amendments to sections 150 and 151 as a result of the amendment to section 149.

Clause 461 amends the heading of chapter 9 to clarify that the chapter concerns internal and external review of decisions, rather than reviews and appeals.

Clauses 462 and 463 amend sections 208 and 209 to clarify that an application for a review of a decision to the Queensland Competition Authority under section 209 is an application for an internal review.

Clause 464 amends section 210 (Stay of operation of decision etc.). The amendment has the effect of varying the decision body to which an application for a stay of a decision is lodged. Rather than applying to the Magistrates Court for an order to stay the operation of a decision, a person

will be able to apply to QCAT for a stay order immediately following an application for an internal review of a decision. The clause also confers jurisdiction on QCAT to make a stay order to secure the effectiveness of the internal review and any later application for external review.

Clause 465 amends section 211 to clarify that an application for a review of a decision to the Queensland Competition Authority under section 209 is an application for an internal review. The clause further amends the section to require a QCAT information notice to be provided where the internal review decision is not the decision sought by the applicant.

Clause 466 amends the heading of chapter 9, part 2 to clarify that the part deals with external reviews in addition to appeals.

Clause 467 replaces division 1 of chapter 9, part 2 (Appeals against decisions on what is fair and reasonable) with a new division 1 (External review by QCAT).

New section 212 provides that an application for the external review of a decision may be made to QCAT by a party to a dispute under section 88 in relation to the Queensland Competition Authority's decision and by a person whose interests are affected by a decision mentioned in schedule 6. Section 88 concerns disputes about what is fair and reasonable and schedule 6 lists administrative decisions made by the regulator and the Queensland Competition Authority.

Clause 468 replaces the heading of division 2 of chapter 9, part 2 to reflect that the division deals with appeals about recognition of previous service.

Clause 469 omits section 214(1) to clarify that the appeal provisions apply only to decisions of a person's employer under section 185 (and no longer apply to decisions set out in schedule 6).

Clauses 470 and 471 make consequential amendments to sections 215 and 216 so that they relate only to appeals against decisions of a person's employer under section 185.

Clauses 472 and 473 amend sections 220 (Procedure of court) and 221 (Appeals) to make clear that the sections only concern appeals to the Industrial Magistrates Court.

Clause 474 amends the schedule 6 heading to reflect that QCAT will have jurisdiction to hear external review of administrative decisions set out in schedule 6. The clause also amends the reference in the schedule to section 211 to reflect that the relevant decision is an internal review decision (see clause 465).

Clause 475 amends schedule 9 (Dictionary) to clarify that an ‘information notice’ must provide information in relation to rights of internal review.

Part 22 Amendment of Exotic Diseases in Animals Act 1981

Clause 476 provides that part 22 amends the *Exotic Diseases in Animals Act 1981*.

Clause 477 amends section 33 to change the jurisdiction for the review of valuation decisions from the District Court to QCAT and remove procedural matters relating to applications to the District Court. The effect of these amendments is that QCAT now has jurisdiction for review applications regarding valuations. The procedural matters relating to reviews in QCAT are set out in the QCAT Act and Rules.

Clause 478 removes sections 33A to 33D as they describe the old process for starting an appeal. These provisions duplicate provisions in the QCAT Act regarding starting applications for review, hearing procedures and appeals.

Clause 479 amends section 34 to replace reference to the Minister paying an amount of the compensation into the District Court with reference to the Minister paying an amount of compensation to QCAT to then deal with and apply the compensation amount in the way QCAT, on application by a claimant person orders. The effect of this amendment is that compensation amounts will be held in the QCAT trust account as per section 231 of the QCAT Act, pending QCAT orders arising out of applications for compensation by a claimant.

Part 23 **Amendment of Exotic Diseases in Animals Regulation 1998**

Clause 480 provides that part 23 amends the *Exotic Diseases in Animals Regulation 1998*.

Clause 481 replaces section 11 to reflect the transfer of jurisdiction for the hearing of applications, under section 33(1)(c) of the Act, for the fixing of market value of any animal or property in respect of which compensation is payable under the Act, from the District Court to QCAT.

The 60 day period within which the claimant may apply for compensation after receiving written notice of the Minister's decision under section 33(2) of the Act is retained for applications for compensation to QCAT.

Part 24 **Amendment of Explosives Act 1999**

Clause 482 provides that part 24 amends the *Explosives Act 1999*.

Clause 483 amends section 17 to provide that, where the chief inspector considers an application for an authority and decides to either issue the authority with conditions or refuse the application, the applicant must be given an information notice. The definition for 'information notice' is included in the amendment to the term in the dictionary in schedule 2.

Clause 484 replaces section 24(5) to provide that, where the chief inspector decides to suspend or cancel an authority under section 24, the chief inspector must give the authority holder an information notice as newly defined in the dictionary in schedule 2.

Clause 485 amends section 25 to provide that, where the chief inspector decides there is cause to urgently suspend or cancel an authority under the section, the chief inspector must immediately inform the authority holder of the decision by giving an information notice as newly defined in the dictionary in schedule 2. The decision will take effect on the day the notice is given to the authority holder or on a later day if specified in the notice.

Clause 486 replaces section 27(4) to provide that where the chief inspector decides to refuse an application for the replacement of a lost, stolen or destroyed authority, the chief inspector must give the authority holder an information notice for the decision as newly defined in the dictionary in schedule 2.

Clause 487 replaces section 28(7) to provide that where the chief inspector decides to refuse an application to amend an authority, the chief inspector must give the applicant an information notice as newly defined in the dictionary in schedule 2.

Clause 488 amends section 29 to provide that where the chief inspector decides to amend an authority without an application to do so, the chief inspector must give the authority holder an information notice as newly defined in the dictionary in schedule 2.

Clause 489 replaces section 58(2) to provide that a written notice from the chief inspector to an authority holder in relation to an explosives incident must either be accompanied by or include an information notice as newly defined in the dictionary in schedule 2.

Clause 490 amends the part 7 heading to clarify that the part deals with reviews of decisions, rather than reviews and appeals in order to provide consistency with terms applied under the QCAT Act by referring to 'review' of decisions rather than 'appeal'.

Clauses 491 to 494 amend the headings of division 1 and of sections 107 to 109 to clarify that the division specifically deals with internal reviews, rather than all reviews. Clause 494 additionally provides that where the chief inspector makes an internal review decision, the applicant must be given an information notice as newly defined in the dictionary in schedule 2.

Clause 495 amends the stay of decision provisions set out in section 110. The amendment has the effect of varying the decision body to which an application for a stay of a decision is lodged. Rather than applying to the Magistrates Court for an order to stay the operation of a decision, a person will be able to apply to QCAT for a stay order immediately following an application for an internal review of a decision. The clause further confers jurisdiction on QCAT to make a stay order to secure the effectiveness of the internal review and any later application for external review.

Clause 496 amends the heading of part 7, division 2 to clarify that the division deals with the external review of decisions by QCAT, rather than

appeals to the court, in order to provide consistency with terms applied under the QCAT Bill by referring to ‘review’ of decisions rather than ‘appeal’.

Clause 497 amends the heading of section 111 to reflect that the section deals with applications for external review. *Clause 497* further amends section 111 to replace the right of a person to appeal certain decisions to the Magistrates Court with a right to apply to QCAT for an external review of such decisions under the QCAT Act.

Clause 498 omits sections 112 to 116, which set out rules surrounding appeals. This is a consequence of omitting the system of appeals under section 111. Processes for applications to QCAT for external review will be provided for under the QCAT Act.

Clause 499 amends schedule 2 (Dictionary) to provide a definition for ‘external review’. An external review refers to an external review by QCAT of a decision under the requirements of the QCAT Act. The clause also provides a definition for the term ‘information notice’. An information notice is defined as a notice which complies with the provisions of section 157(2) of the QCAT Act. That section provides that a notice must include certain information about a decision; including the reasons for the decision and that the person has a right to have the decision reviewed by QCAT.

Part 25 Amendment of Explosives Regulation 2003

Clause 500 provides that part 25 amends the *Explosives Regulation 2003*.

Clauses 501 to 506 amend various sections of the Regulation to provide that the chief inspector must give an information notice to an applicant or person requesting a decision in specified circumstances. This replaces the current requirement to provide a decision notice or notice in such circumstances. The amended sections are:

- section 14 – Advice of chief inspector’s decision (amended by clause 501);
- section 17 – How chief inspector may deal with application (amended by clause 502);

- section 62 – How chief inspector must deal with explosives limits document (amended by clause 503);
- section 64 – Chief inspector may impose interim explosives limit (amended by clause 504);
- section 109 – Requirements for chief inspector exercising powers (amended by clause 505); and
- section 148 – Approval by chief inspector of collectors associations (amended by clause 506).

Clause 505 additionally amends section 109 to require the chief inspector to provide an information notice about the person's right to apply to QCAT for an external review of a decision, rather than providing information on appeal rights as the right of appeal to the court will be replaced by the right to apply to QCAT.

Clause 507 amends schedule 7 (Dictionary) to remove the definition of a decision notice as notice of decisions will now be provided under an information notice, complying with the requirements of section 157(2) of the QCAT Act.

Part 26 Amendment of Fair Trading Act 1989

Clause 508 provides that part 26 amends the *Fair Trading Act 1989*.

Clause 509 amends section 5 by omitting the definition of 'small claims tribunal'.

Clause 510 amends section 110 by omitting the reference to 'a Small Claims Tribunal' and inserting 'QCAT'. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* by the QCAT Act. QCAT now has the jurisdiction to hear and determine small claims matters as part of the minor civil dispute jurisdiction.

Part 27 **Amendment of Fisheries Act 1994**

Clause 511 provides that part 27 amends the *Fisheries Act 1994*.

Clause 512 amends section 42H to replace a reference to ‘written notice’ with ‘an information notice for the decision’. This reflects that QCAT now has jurisdiction to review certain decisions under section 185. The amendment provides consistency with the notice terminology applied in the QCAT Act. The requirements for an information notice are set out in section 157(2) of the QCAT Act and include the matters previously included in a written notice under this section.

Clause 513 amends section 60 to replace a reference to ‘written notice’ with ‘an information notice for the refusal’ for the reasons explained in the note to clause 512.

Clause 514 amends section 63 to replace a reference to ‘written notice’ with ‘an information notice for the decision’ for the reasons explained in the note to clause 512.

Clause 515 amends section 68 to replace a reference to ‘written notice’ with ‘an information notice for the decision’ for the reasons explained in the note to clause 512.

Clause 516 amends section 76F to replace a reference to ‘written notice’ with ‘an information notice for the refusal’ for the reasons explained in the note to clause 512.

Clause 517 omits part 9, which provides for appeals of decisions of the chief executive to the Fisheries Tribunal, and inserts a new part 9 which provides for applications for review of decisions of the chief executive to QCAT and sets out the constitution of QCAT for reviews under the Act.

Under this amendment the grounds of review will remain the same, which are:

- (a) the decision was contrary to the *Fisheries Act 1994*;
- (b) the decision was manifestly unfair;
- (c) the decision will cause severe personal hardship to the appellant.

The composition of QCAT for a review under the Act mirrors the composition formerly required in the Fisheries Tribunal in that the tribunal

must be constituted by 1 legally qualified member and 2 other members, at least 1 of whom must have extensive knowledge of and experience in fisheries matters.

The new part also provides, under new subsection 185(4) that, despite the provisions under section 157(2) of the QCAT Bill, the chief executive is required to give an information notice for a decision only if an information notice is required to be given under this Act. Given the large number of decisions, this limitation is necessary to create administrative efficiency.

Clause 518 removes redundant sections contained within part 12, division 4, subdivision 4, which referred to appeals that had been lodged prior to the *Integrated Planning Act 1997* being made. There are no longer any appeals which fit the criteria as described in within part 12, division 4, subdivision 4.

Clause 519 amends the schedule dictionary to omit the definitions of ‘continuing appeal’, ‘development authority’ and ‘tribunal’ which are no longer necessary and insert definitions for ‘information notice’, to reference section 157(2) of the QCAT Act, and ‘tribunal’ to refer to QCAT.

Part 28 Amendment of Fisheries (Coral Reef Fin Fish) Management Plan 2003

Clause 520 provides that that part 28 amends the *Fisheries (Coral Reef Fin Fish) Management Plan 2003*.

Clause 521 amends section 29 to provide that a preliminary notice must be accompanied by an information notice for the chief executive’s decision and that the preliminary notice must state that if the holder does not give the chief executive a reconsideration notice under section 30, the holder may apply to QCAT for a review of the decision. These amendments are consequential to the transfer of jurisdiction for reviews of certain decisions of the chief executive to QCAT. The information notice must comply with section 157(2) of the QCAT Act.

Clause 522 amends section 31 to replace the requirement that the chief executive give a ‘decision notice’ about the decision with a requirement to

give an ‘information notice’ for the decision, for reasons explained in the note to clause 521.

Clause 523 amends section 33 to replace the former requirement that the chief executive give a ‘decision notice’ about the decision with a requirement to give an ‘information notice’ for reasons explained in the note to clause 521.

Clause 524 amends section 36B to replace references to ‘appeal’ with ‘review’ to provide consistency with the terms applied under the QCAT Act by referring to ‘review’. This clause also updates the language used making it consistent with the language used in the QCAT Act to reflect the transfer of jurisdiction to QCAT.

Clause 525 amends section 36C to replace the former requirement that the chief executive give a ‘decision notice’ about the decision with a requirement to give an ‘information notice’ for the decision, for reasons explained in the note to clause 521.

Clause 526 amends section 36E to replace the former requirement that the chief executive give a ‘decision notice’ about the decision with a requirement to give an ‘information notice’ for the decision, for reasons explained in the note to clause 521.

Clause 527 amends section 38 to provide that a preliminary notice must be accompanied by an information notice for the amendment, for reasons explained in the note to clause 521.

Clause 528 amends section 61 to replace the former requirement that the chief executive give a ‘decision notice’ about the decision with a requirement to give an ‘information notice’ for the decision, for reasons explained in the note to clause 521.

Clause 529 amends the definition of ‘relevant day’ in section 66 to update references in the provision to appeals against decisions with references to applications for review in order to provide consistency with terms applied under the QCAT Act.

Clause 530 amends the schedule 8 dictionary to omit the definition of ‘decision notice’, consequential to substitution of references to ‘decision notice’ with ‘information notice’.

Part 29 **Amendment of Fisheries (East Coast Trawl) Management Plan 1999**

Clause 531 provides that part 29 amends the *Fisheries (East Coast Trawl) Management Plan 1999*.

Clause 532 amends section 81A to replace reference to ‘appeals’ with reference to ‘reviews’ in order to provide consistency with terms applied under the QCAT Act.

Clause 533 amends section 94 to replace reference to ‘appeals against’ with ‘applications for review of’ for reasons explained in the note to clause 532.

Clause 534 amends section 95 to omit the wording of appeal and replace it with reference to applications for review in order to provide consistency with terms applied under the QCAT Act.

Part 30 **Amendment of Fisheries Regulation 2008**

Clause 535 provides that part 30 amends the *Fisheries Regulation 2008*.

Clause 536 omits chapter 15, part 4, division 3 (Allowances). These provisions related to payment of witness fees for appearances before the Fisheries Tribunal. The Fisheries Tribunal is abolished by this Bill and jurisdiction has been transferred to QCAT. Witness fees for appearances before QCAT will be prescribed by a regulation made under the QCAT Act.

Clause 537 removes the row entry in the table called ‘Other fees’ relating to the cost of filing a notice of appeal. This entry is now redundant because the Fisheries Tribunal is abolished by this Act and jurisdiction has been transferred to QCAT. QCAT fees will be prescribed by a regulation made under the QCAT Act.

Clause 538 amends the schedule 11 dictionary to remove the definition of ‘information notice’ as this is now defined within the *Fisheries Act 1994*.

Part 31 **Amendment of Food Production (Safety) Act 2000**

Clause 539 provides that part 31 amends the *Food Production (Safety) Act 2000*.

Clause 540 amends section 48 to provide that an information notice for the decision must now be provided instead of a written notice if Safe Food decides to impose conditions on the accreditation. This reflects that, under section 126, QCAT now has jurisdiction to review decisions that were previously appealed to a Magistrates Court. The amendment provides consistency with the notice terminology applied in the QCAT Act. The requirements of an information notice are set out in section 157(2) of the QCAT Act.

Clause 541 amends section 49 to replace the reference to a ‘written notice’ with ‘an information notice for the decision’ for the reasons explained in the note to clause 540.

Clause 542 amends section 55 to replace the requirement for a written notice with the requirement to provide an information notice (for the reasons explained in the note to clause 540) and make a consequential amendment to renumber the subsections.

Clause 543 amends section 63 to replace the requirement for a written notice with the requirement to provide an information notice for the reasons explained in the note to clause 540.

Clause 544 amends section 64 to replace the reference to a written notice with the requirement to provide an information notice for the reasons explained in the note to clause 540.

Clause 545 amends section 70 to replace the requirement for a written notice with the requirement to provide an information notice (for the reasons explained in the note to clause 540) and make a consequential amendment to renumber the subsections.

Clause 546 replaces part 9 (Appeals) and inserts a new part 9 that provides that QCAT now has jurisdiction to hear reviews previously heard as appeals by the Magistrates Court. The terminology of ‘review’ is adopted instead of the former reference to ‘appeal’ to provide consistency with the terms applied under the QCAT Act. The procedural matters formerly included in part 9 are now set out in the QCAT Act and Rules.

Clause 547 amends the schedule 2 dictionary to insert the definition of ‘information notice’ with the meaning of an ‘information notice’ complying with the QCAT Act, section 157(2).

Part 32 Amendment of Funeral Benefit Business Act 1982

Clause 548 provides that part 32 amends the *Funeral Benefit Business Act 1982*.

Clause 549 inserts a definition of ‘QCAT information notice’ in section 5.

Clause 550 amends the heading and the body of section 52 by replacing references to the ‘court’ with references to ‘QCAT’. This gives QCAT the power to cancel a corporation’s registration to carry on a funeral benefit business. Previously, the Supreme Court had this power.

Clause 551 amends section 61 (Provisions as to rules) by omitting subsection (5) and inserting a new subsection (5), which provides that a QCAT information notice must be given for a decision to refuse to register a rule or an amendment to a rule. This reflects that QCAT will now have the jurisdiction to review decisions of the registrar to refuse to register a rule or an amendment to a rule.

Subsection (6) is amended to give QCAT the power to review a decision by the registrar. While the previous provision referred to the process of applying for a review of an administrative decision as an ‘appeal’, under the QCAT Act this will be known as a review of a reviewable decision. This amendment does not affect any existing rights to apply for a review of the reviewable decisions in the Act. Subsections (7) and (8) are omitted as they deal with the orders the court may make and the procedure for starting an appeal. Such matters are provided for in the QCAT Act and Rules.

Clause 552 amends section 65 by inserting a QCAT information notice requirement in a new subsection (3A) and providing that an application may be made to QCAT for a review of a decision to serve a notice under subsection (2). This reflects that QCAT will now have the jurisdiction to review such a decision of the registrar. Subsections (10) and (11) are omitted as they deal with the orders the court may make and the procedure for instituting an appeal. These matters are provided for in the QCAT Act.

References to the ‘court’ in subsection (12)(b) are replaced with references to ‘QCAT’.

Clause 553 omits section 87 which provides that the court may give directions about a matter before the court in the absence of any relevant rules of court. This section is no longer required as jurisdiction to hear reviews is being conferred to QCAT and such matters will be provided for in the QCAT Act.

Part 33 Amendment of Funeral Benefit Business Regulation 2000

Clause 554 provides that part 33 amends the *Funeral Benefit Business Regulation 2000*.

Clause 555 omits section 45 as the QCAT Act provides for the procedure and time period for commencing proceedings. This will also remove the current 30 day period for starting an appeal and the 28 day period under the QCAT Act will apply.

Clause 556 omits section 47 as the QCAT Act provides for the procedure and time period for commencing proceedings. This will also remove the current 30 day period for starting an appeal and the 28 day period under the QCAT Act will apply.

Part 34 Amendment of Gaming Machine Act 1991

Clause 557 confirms the Act amended is the *Gaming Machine Act 1991*.

Clause 558 omits section 8 of the Act relating to the former meaning of information notice.

Clause 559 replaces sections 29 to 38 of the Act. Section 29 clarifies who can apply to QCAT, under the QCAT Act, for a review of a decision. Section 30 ensures that where QCAT invites the chief executive, Queensland Gaming Commission (the Commission) or an inspector to

reconsider an original decision prior to the tribunal making a determination, any avenue of appeal provided for under section 29 of the Act no longer applies. Similarly, where the tribunal sets aside an original decision of the chief executive, Commission or an inspector and returns the matter to the decision maker for reconsideration, with the directions the tribunal considers appropriate, any avenue of appeal provided for under section 29 of the Act no longer applies. The purpose of section 30 is to limit the ability of applicants to re-litigate matters where they disagree with the re-considered decision.

Section 31 limits the conduct of review by the tribunal to the evidence before the chief executive when the original decision was made, and similarly limits the way in which a reopened review is conducted. It also clarifies that the review outcome is decided on the law at the time of the original decision, not the law existing at the time of the review.

Section 32 enables new evidence to be considered by the tribunal in certain circumstances. The tribunal must consider whether to allow the new evidence and allow new evidence if satisfied that the party did not know and could not reasonably have been expected to know of the existence of the new evidence before the chief executive's decision was made, and, the tribunal considers under the circumstances it would be unfair not to allow the new evidence to be presented. If the tribunal gives leave to present the new evidence it must adjourn the proceedings for a stated time to allow the chief executive to reconsider the original decision and the new evidence and allow for further submissions by affected persons. Alternatively, if the tribunal considers the nature of the new evidence makes it appropriate for a new application to be made, the tribunal may require the applicant to make a fresh application to the chief executive about the matter.

Section 33 relates to appealing decisions of QCAT. Chapter 2, part 8, division 1 of the QCAT Act (Appeals to appeal tribunal) does not apply. The only avenue of appeal against a decision of QCAT under this Act is to the Court of Appeal. The appeal may be on a question of law only. The provisions of the QCAT Act requiring a judicial member to have constituted QCAT in the proceeding and appeals involving a question of fact or question of mixed law and fact also do not apply.

Clause 560 amends section 261D of the Act to provide that what was formerly an appeal to the Magistrates Court regarding an exclusion direction becomes a review of the decision by QCAT.

Clause 561 omits section 384 of the Act which relates to a transitional provision that previously provided continuity of appeals for a decision where the Commission has ordered the chief executive to remove a listed person from the roll of recognised manufacturers and suppliers of gaming machines or the roll of recognised suppliers of restricted components.

Clause 562 omits section 389 of the Act which relates to a transitional provision that previously applied to section 384 where the Minister directed that the decision appealed against be set aside.

Clause 563 omits section 407 of the Act which relates to a transitional provision that previously applied where a person had appealed to the Minister against a decision or determination of the Commission made under an appeal provision.

Clause 564 omits sections 414 to 421 of the Act which relate to transitional provisions that previously applied to allocation disputes under the *Commercial and Consumer Tribunal Act 2003*.

Clause 565 amends the schedule of the Act to omit the definitions for appeal authority and registrar, insert a definition for tribunal which means QCAT, and substitute the definitions for information notice and decision maker.

Clause 566 inserts a new schedule 1 into the Act which provides descriptions of reviewable decisions. These decisions include:

- Decisions or determinations of the Commission affecting applicant for, or holder of, a licence which formerly went on appeal to the Minister;
- Decisions of the chief executive affecting applicants for, or holders of, licences which formerly went on appeal to the Commission;
- Decisions of the chief executive affecting applicants for, or holders of, licences which formerly went on appeal to the Minister;
- Decisions of the Commission affecting a licensed supplier which formerly went on appeal to the Magistrates Court; and
- Decisions of a licensee affecting persons which formerly went on appeal to the Magistrates Court.

Part 35 **Amendment of Gaming Machine Regulation 2002**

Clause 567 confirms the regulation amended is the *Gaming Machine Regulation 2002*.

Clause 568 omits items 1 and 2 of Schedule 5 relating to fees for making an appeal to the Minister and filing a notice of appeal with the registrar of the Queensland Gaming Commission. It also renumbers the previous items 3 to 53.

Part 36 **Amendment of Gas Supply Act 2003**

Clause 569 provides that part 36 amends the *Gas Supply Act 2003*.

Clause 570 amends section 233 to provide that where the Minister issues a prices notification direction, notification of the direction must be accompanied by a QCAT information notice as defined in the amendment to the dictionary in Schedule 2.

Clause 571 amends section 270ZM to provide that where the regulator decides to impose a civil penalty on a distributor or retailer under chapter 6, part 1A (Civil penalty for particular contraventions), the notification provided to the party must be a QCAT information notice.

Clause 572 amends the heading of chapter 6, part 1 to clarify that the part will deal with reviews, rather than reviews and appeals, in order to provide consistency with terms applied under the QCAT Act by referring to ‘review’ of decisions rather than ‘appeal’.

Clause 573 amends the chapter 6, part 1, division 1 heading to clarify that the division deals with internal reviews, rather than all reviews.

Clauses 574 to 581 amend various provisions to clarify that the division deals with internal reviews, rather than all reviews. The amended provisions are:

- section 271 – Who may apply for review (amended by clause 574);

- section 272 – Requirements for making review application (amended by clause 575);
- section 273 – Stay of operation of original decision (amended by clause 576);
- section 274 – Review decision (amended by clause 577);
- section 275 – Review procedure (amended by clause 578);
- section 276 – Reviewer may seek advice or information (amended by clause 579);
- section 277 – Offence about disclosure of advice or information (amended by clause 580);
- section 278 – Notice of review decision (amended by clause 581).

Clause 580 also amends section 277 to provide that it is a reasonable excuse for disclosure if it is for an internal review or an external review of the internal review.

Clause 581 also amends section 278 to provide that where an internal review decision differs from that sought by the applicant, the internal review notice must include or be accompanied by a QCAT information notice.

Clause 582 replaces the system of appeals formerly set out in chapter 6, part 1, division 2 with a new division 2, section 279 which gives the right to persons formerly entitled to lodge an appeal against certain decisions to apply to QCAT for external review of those decisions instead. As applications for external reviews will be dealt with under the QCAT Act, sections 280 to 285 concerning the appeals process are also omitted.

Clause 583 amends the heading of schedule 1 to clarify that the schedule concerns decisions which are subject to internal review.

Clause 584 amends schedule 2 (dictionary) to replace the definitions of ‘review application’, ‘review decision’ and ‘review notice’ with definitions of ‘internal review application’, ‘internal review decision’ and ‘internal review notice’. The clause also inserts a definition of the term ‘external review’ and ‘QCAT information notice’. An external review refers to an external review by QCAT of a decision under the requirements of the QCAT Act. A ‘QCAT information notice’ is defined as a notice complying with section 157(2) of the QCAT Act. That section provides that a notice must include certain

information about a decision; including the reasons for the decision and that the person has a right to have the decision reviewed by QCAT.

Part 37 **Amendment of Interactive Gambling (Player Protection) Act 1998**

Clause 585 confirms the Act amended is the *Interactive Gambling (Player Protection) Act 1998*.

Clause 586 amends section 105 of the Act to provide that where the chief executive issues a notice to a licensed provider to terminate an agency agreement, the notice will be in accordance with the information notice to be given pursuant to section 157(2) of the QCAT Act.

Clause 587 amends section 137 of the Act to provide that what was formerly an appeal to the Magistrates Court regarding an exclusion direction becomes a review of the decision by QCAT.

Clause 588 amends section 213 of the Act to provide that where an inspector decides to forfeit a thing and must tell the owner by written notice, the notice will be in accordance with the information notice to be given pursuant to section 157(2) of the QCAT Act.

Clause 589 replaces part 10 of the Act. New sections 249 to 253 clarify who can apply to QCAT, under the QCAT Act, for a review of a decision.

Section 249 clarifies when a licensed provider may apply for a review.

Section 250 clarifies when applicants for a key person licence may apply for a review.

Section 251 clarifies when key person licensees may apply for a review.

Section 252 clarifies when agents may apply for a review.

Section 253 clarifies when other persons may apply for a review.

Section 254 limits the conduct of review by the tribunal to the evidence before the chief executive when the original decision was made, and similarly limits the way in which a reopened review is conducted. It also clarifies that the review outcome is decided on the law at the time of the original decision, not the law existing at the time of the review.

Section 255 enables new evidence to be considered by the tribunal in certain circumstances. The tribunal must consider whether to allow the new evidence and allow it if satisfied the party did not know and could not reasonably have been expected to know of the existence of the new evidence before the chief executive's decision was made, and, that the tribunal considers under the circumstances it would be unfair not to allow the new evidence to be presented. If the tribunal gives leave to present the new evidence it must adjourn the proceedings for a stated time to allow the chief executive to reconsider the original decision and the new evidence and allow for further submissions by affected persons. Alternatively, if the tribunal considers the nature of the new evidence makes it appropriate for a new application to be made, the tribunal may require the applicant to make a fresh application to the chief executive about the matter.

Section 256 relates to appealing decisions of QCAT. Chapter 2, part 8, division 1 of the QCAT Act (Appeals to appeal tribunal) does not apply. The only avenue of appeal against a decision of QCAT under this Act is to the Court of Appeal. The appeal may be on a question of law only. The provisions of the QCAT Act requiring a judicial member to have constituted QCAT in the proceeding and appeals involving a question of fact or question of mixed law and fact also do not apply.

Clause 590 omits section 265 of the Act which previously related to show cause notices given to key person licensees.

Clause 591 omits section 267 of the Act which previously related to appeals to the Queensland Gaming Commission.

Clause 592 amends the schedule 2 heading of the Act to substitute the reference to review with appeal.

Clause 593 amends schedule 3 of the Act to omit the definitions for Queensland Gaming Commission and registrar, insert a definition for tribunal which means QCAT and substitute the definition for information notice.

Part 38 **Amendment of Interactive Gambling (Player Protection) Regulation 1998**

Clause 594 confirms the regulation amended is the *Interactive Gambling (Player Protection) Regulation 1998*.

Clause 595 replaces section 17 of the Regulation to provide for a licensed provider or claimant given an information notice for a decision of the chief executive to apply to QCAT for a review of the decision.

Clause 596 omits section 20 of the Regulation which refers to the registrar of the Queensland Gaming Commission (the Commission).

Clause 597 omits item 5 of Schedule 3 relating to fees for filing a notice of appeal with the registrar of the Commission.

Part 39 **Amendment of Introduction Agents Act 2001**

Clause 598 provides that part 39 amends the *Introduction Agents Act 2001*.

Clause 599 amends section 24 by replacing the decision notice requirement in subsection (3) with a requirement that a QCAT information notice be given for a decision of the chief executive to refuse to grant a licence. This reflects that QCAT now has jurisdiction to review such a decision whereas previously, a person could appeal to the Magistrates Court. A definition of 'QCAT information notice' is inserted into schedule 2 (Dictionary) by clause 603.

Clause 600 amends section 27 by replacing the decision notice requirement in subsection (4) with a requirement that a QCAT information notice be given for a decision of the chief executive to cancel, suspend, refuse to renew or impose a condition on a licence. This reflects that QCAT now has jurisdiction to review such decisions whereas previously, a person could appeal to the Magistrates Court.

Clause 601 amends section 30 by replacing the decision notice requirement in subsection (5) with a requirement that a QCAT information notice be

given for a decision of the chief executive to refuse to replace a licence. This reflects that QCAT now has jurisdiction to review such decisions whereas previously, a person could appeal to the Magistrates Court.

Clause 602 omits part 7 (Appeals) and inserts a new part 7 entitled 'External review', which gives QCAT the power to review reviewable decisions of the chief executive. While the previous provisions referred to the process of applying for a review of an administrative decision as an 'appeal', under the QCAT Act this will be known as a review of a reviewable decision. The amendments in this Act however, do not affect any existing rights to apply for a review of a reviewable decision.

New section 82 defines 'reviewable decision' for the purpose of part 7 of the Act.

New section 83 provides for the right to apply to QCAT for a review of a reviewable decision.

Clause 603 inserts a definition of 'QCAT information notice' and 'reviewable decision' into schedule 2 (Dictionary).

Part 40 Amendment of Keno Act 1996

Clause 604 confirms the Act amended is the *Keno Act 1996*.

Clause 605 amends section 101 of the Act to ensure that where the chief executive issues a notice in relation to the termination of an agency agreement the notice must comply with the QCAT Act, section 157(2).

Clause 606 amends section 154E of the Act to provide that what was formerly an appeal to the Magistrates Court regarding an exclusion direction becomes a review of the decision by QCAT.

Clause 607 amends section 190 of the Act to provide that where an inspector decides to forfeit a thing and must tell the owner by written notice, the notice will be in accordance with the information notice to be given pursuant to section 157(2) of the QCAT Act.

Clause 608 replaces part 11 of the Act. New sections 228 to 236 clarify who can apply to QCAT, under the QCAT Act, for a review of a decision.

Section 228 clarifies when a keno licensee may apply for a review under the QCAT Act.

Section 229 clarifies when the applicant for a keno employee licence may apply for a review under the QCAT Act.

Section 230 clarifies when a licensed keno employee may apply for a review under the QCAT Act.

Section 232 clarifies when a keno subagent may apply for a review under the QCAT Act.

Section 233 clarifies when other persons may apply for a review under the QCAT Act.

Section 234 limits the conduct of review by the tribunal to the evidence before the chief executive when the original decision was made, and similarly limits the way in which a reopened review is conducted. It also clarifies that the review outcome is decided on the law at the time of the original decision, not the law existing at the time of the review.

Section 235 enables new evidence to be considered by the tribunal in certain circumstances. The tribunal must consider whether to allow the new evidence and allow it if satisfied the party did not know and could not reasonably have been expected to know of the existence of the new evidence before the chief executive's decision was made, and, that the tribunal considers under the circumstances it would be unfair not to allow the new evidence to be presented. If the tribunal gives leave to present the new evidence it must adjourn the proceedings for a stated time to allow the chief executive to reconsider the original decision and the new evidence and allow for further submissions by affected persons. Alternatively, if the tribunal considers the nature of the new evidence makes it appropriate for a new application to be made, the tribunal may require the applicant to make a fresh application to the chief executive about the matter.

Section 236 relates to appealing decisions of QCAT. Chapter 2, part 8, division 1 of the QCAT Act (Appeals to appeal tribunal) does not apply. The only avenue of appeal against a decision of QCAT under this Act is to the Court of Appeal. The appeal may be on a question of law only. The provisions of the QCAT Act requiring a judicial member to have constituted QCAT in the proceeding and appeals involving a question of fact or question of mixed law and fact also do not apply.

Clause 609 omits section 246 of the Act which previously related to show cause notices given to licensed keno employees.

Clause 610 omits section 248 of the Act which previously related to appeals to the Queensland Gaming Commission.

Clause 611 amends schedule 4 of the Act to omit the definitions for Queensland Gaming Commission and registrar, insert a definition for tribunal which means QCAT and substitute the definition for information notice.

Part 41 Amendment of Keno Regulation 1997

Clause 612 confirms the regulation amended is the *Keno Regulation 1997*.

Clause 613 omits item 4 of Schedule 3 relating to the fee for filing a notice of appeal.

Part 42 Amendment of Liquid Fuel Supply Act 1984

Clause 614 provides that part 42 amends the *Liquid Fuel Supply Act 1984*.

Clause 615 amends the interpretation section contained in section 5 to provide a definition for an ‘information notice’. An information notice is defined as a notice complying with section 157(2) of the QCAT Act. That section provides that a notice must include certain information about a decision; including the reasons for the decision and that the person has a right to have the decision reviewed by QCAT.

Clause 616 replaces the right of appeal of persons dissatisfied with certain decisions of the Minister with a right to apply to QCAT for review for persons who are subject to those decisions. While it is intended that the general provisions of the QCAT Act apply to applications for review, a number of exceptions to the QCAT Act are provided to maintain the current policy applying to these decisions including that costs must not be awarded to either party. In addition, the Minister is not required to give an information notice for a decision where:

- it would be impracticable – for example, where a decision affects a large number of people or people who would be difficult to

identify because they are affected by virtue of being members of a class of person; or

- it would disclose confidential or personal confidential information – for example, commercially sensitive information or an individual’s personal details.

Clause 617 amends section 45 to replace the right of appeal of persons dissatisfied with a decision of the Minister concerning an objection against the disclosure of a trade secret, with a right to apply to QCAT for a review of the decision if the person has objected under subsection (1). The clause further requires the Minister to give the person who objected an information notice about the decision.

Clause 618 amends section 56 to clarify that an action may only be taken to compel or restrain action by the Minister or a delegate where the Act expressly provides for the review of a decision of the Minister.

Part 43 Amendment of Liquor Act 1992

Clause 619 confirms the Act amended is the *Liquor Act 1992*.

Clause 620 amends the objects of the Act to clarify the Act also provides for QCAT to hear and decide reviews of decisions under the Act.

Clause 621 deletes in section 4 of the Act the definitions of ‘chairperson’ and ‘director’ which relate to the former CCT and amends the definitions of ‘tribunal’ and ‘tribunal Act’ to refer to QCAT and the QCAT Act respectively.

Clause 622 replaces part 2, division 2. New definitions of ‘submission’ and ‘tribunal registrar’ are inserted for the division.

Amended section 30 clarifies who may apply for a review of a decision and provides for certain exclusions.

Amended section 31 deals with the failure of the chief executive to notify an applicant of the grant or refusal of their application within 30 days of the chief executive receiving all requirements and both parties taking all steps required of the Act in relation to the application. At the end of the period of 30 days, the chief executive is taken to have notified the applicant of a

decision to refuse the application. The applicant is able to act for the purposes of lodging an application for a review of the decision.

Section 32 requires the chief executive to provide the principal registrar with written notice of the names and addresses of all persons who made an application, submission or objection relevant to a review application. This information is to be provided after receiving notice of the application for the review. The principal registrar is to notify these parties, other than the person who made application for the review, that a review has been started. The principal registrar is also to give written notice of the time and place of the proposed review hearing to the review applicant, chief executive and persons whose names and addresses have been provided by the chief executive. This notice must occur at least 3 days prior to the review hearing.

Section 33 limits the conduct of review by QCAT to the evidence before the chief executive when the original decision was made, and similarly limits the way in which a re-opened review is conducted. It also clarifies that the review outcome is decided on the law at the time of the original decision, not the law existing at the time of the review.

Section 34 enables new evidence to be considered by QCAT in certain circumstances. QCAT must consider whether to allow the new evidence and allow it if satisfied the party did not know and could not reasonably have been expected to know of the existence of the new evidence before the chief executive's decision was made, and, that QCAT considers under the circumstances it would be unfair not to allow the new evidence to be presented. If QCAT gives leave to present the new evidence it must adjourn the proceedings for a stated time to allow the chief executive to reconsider the original decision and the new evidence and allow for further submissions by affected persons. Alternatively, if QCAT considers the nature of the new evidence makes it appropriate for a new application to be made, QCAT may require the applicant to make a fresh application to the chief executive about the matter.

Section 35 relates to appealing decisions of QCAT. Chapter 2, part 8, division 1 of the QCAT Act (Appeals to appeal tribunal) does not apply. The only avenue of appeal against a decision of QCAT under this Act is to the Court of Appeal. The appeal may be on a question of law only. The provisions of the QCAT Act requiring a judicial member to have constituted QCAT in the proceeding and appeals involving a question of fact or question of mixed law and fact also do not apply.

Clause 623 amends section 48(2)(d) by clarifying information may be disclosed by a person engaged in the administration of the Act relating to the status of an application to QCAT for a review and the names of the parties to the review.

Clause 624 amends section 134C to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 625 amends section 137B to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 626 amends section 137C to clarify the chief executive's notice of an urgent suspension decision must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 627 amends section 142P to clarify the chief executive's notice of a review decision must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 628 amends section 142T to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 629 amends section 142X to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 630 amends section 142ZE to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 631 amends section 208 to clarify a regulation may provide for an application by a person to QCAT about the failure to pay a fee amount relating to an annual licence fee, and the powers of QCAT in reviewing the application.

Part 44 **Amendment of Liquor Regulation 2002**

Clause 632 confirms the regulation amended is the *Liquor Regulation 2002*.

Clause 633 substitutes appeal provisions in section 8 for provisions relating to applications to QCAT for a review of a decision, in order to provide consistency with terms applied under the QCAT Act.

Clause 634 substitutes appeal provisions in section 9 for provisions relating to applications to QCAT for a review of a decision, in order to provide consistency with terms applied under the QCAT Act.

Clause 635 amends section 13 to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 636 amends section 15 to clarify the chief executive's decision notice to each applicant must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 637 amends section 18 to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 638 amends section 22 to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 639 amends section 24 to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 640 substitutes appeal provisions in section 36K for provisions relating to applications to QCAT for a review of a decision, in order to provide consistency with terms applied under the QCAT Act.

Clause 641 amends the heading in part 8, division 6 to substitute the reference to 'appeal' with 'application'.

Clause 642 amends section 36M to clarify a licensee may apply for a review.

Clause 643 replaces section 36N to clarify a person may apply to QCAT for an extension of time to pay an outstanding amount on certain grounds. The application may only be made during the suspension period. The suspension will continue for the period stated in the regulation.

Clause 644 amends section 36O by omitting reference in the heading to ‘appeal’ with ‘applications under this division’, deleting paragraphs (1) to (4) and renumbering. Appeal provisions and references are also substituted for applications to QCAT.

Part 45 Amendment of Lotteries Act 1997

Clause 645 confirms the Act amended is the *Lotteries Act 1997*.

Clause 646 amends section 79 of the Act to ensure that where the chief executive issues a notice to a lottery operator or lottery agent to amend an agency agreement, the operator or agent may apply under the QCAT Act for a review of the decision to require the amendment.

Clause 647 amends section 88 of the Act to ensure that where the chief executive gives a notice to a lottery operator or lottery agent regarding the termination of an agency agreement, the notice must comply with the QCAT Act, section 157(2).

Clause 648 amends section 132AA of the Act to ensure that where the chief executive gives a notice to a former lottery operator about a claims amount to be paid to the chief executive, the person may apply, under the QCAT Act, for a review of the decision about the likely claims amount.

Clause 649 amends section 176 of the Act to provide that where an inspector decides to forfeit a thing and must tell the owner by written notice, the notice will be in accordance with the information notice to be given pursuant to section 157(2) of the QCAT Act.

Clause 650 replaces Part 10 of the Act. New sections 214 to 218 clarify who can apply to QCAT, under the QCAT Act, for a review of a decision.

Section 214 clarifies when a lottery operator may apply for a review under the QCAT Act.

Section 215 clarifies when the applicant for a key person licence may apply for a review under the QCAT Act.

Section 216 clarifies when a licensee under a key person licence may apply for a review under the QCAT Act.

Section 217 clarifies when a lottery agent may apply for a review under the QCAT Act.

Section 218 clarifies when other persons may apply for a review under the QCAT Act.

Section 219 limits the conduct of review by QCAT to the evidence before the chief executive when the original decision was made, and similarly limits the way in which a reopened review is conducted. It also clarifies that the review outcome is decided on the law at the time of the original decision, not the law existing at the time of the review.

Section 220 enables new evidence to be considered by QCAT in certain circumstances. QCAT must consider whether to allow the new evidence and allow it if satisfied the party did not know and could not reasonably have been expected to know of the existence of the new evidence before the chief executive's decision was made, and, that QCAT considers under the circumstances it would be unfair not to allow the new evidence to be presented. If QCAT gives leave to present the new evidence it must adjourn the proceedings for a stated time to allow the chief executive to reconsider the original decision and the new evidence and allow for further submissions by affected persons. Alternatively, if QCAT considers the nature of the new evidence makes it appropriate for a new application to be made, QCAT may require the applicant to make a fresh application to the chief executive about the matter.

Section 221 relates to appealing decisions of QCAT. Chapter 2, part 8, division 1 of the QCAT Act (Appeals to appeal tribunal) does not apply. The only avenue of appeal against a decision of the QCAT under this Act is to the Court of Appeal. The appeal may be on a question of law only. The provisions of the QCAT Act requiring a judicial member to have constituted QCAT in the proceeding and appeals involving a question of fact or question of mixed law and fact also do not apply.

Clause 651 omits section 249 of the Act which previously related to show cause notices given to key person licensees.

Clause 652 omits section 251 of the Act which previously related to appeals to the Queensland Gaming Commission.

Clause 653 amends schedule 3 of the Act to omit the definitions for gaming commission and registrar, insert a definition of ‘tribunal’ which means QCAT and substitute the definition for ‘information notice’.

Part 46 Amendment of Lotteries Regulation 1997

Clause 654 confirms the regulation amended is the *Lotteries Regulation 1997*.

Clause 655 omits item 5 of schedule 3 relating to fees for filing a notice of appeal to the Queensland Gaming Commission.

Part 47 Amendment of Manufactured Homes (Residential Parks) Act 2003

Clause 656 provides that part 47 amends the *Manufactured Homes (Residential Parks) Act 2003*.

Clause 657 amends section 6 by replacing the reference to ‘schedule 2’ with ‘the schedule’ as a result of schedule 2 (Dictionary) being renumbered in clause 662.

Clause 658 amends section 50 by omitting subsection (6). The purpose of this subsection was to clarify that the now abolished CCT’s jurisdiction under section 50 is not review jurisdiction, but is jurisdiction to hear matters under an empowering Act. QCAT now has jurisdiction to hear and determine a matter about a park owner refusing to consent to the assignment of the seller’s interest and similar to the CCT, QCAT’s jurisdiction is not review jurisdiction but its original jurisdiction.

Clause 659 amends section 134 by omitting ‘the director’ in subsection (1)(c), which referred to the director of the CCT.

Clause 660 amends section 135 by omitting ‘or director’.

Clause 661 amends section 143 by removing ‘the director’ from the definition of ‘official’ in subsection (3).

Clause 662 amends schedule 2 (Dictionary) by omitting the definition of ‘director’ and ‘tribunal’. A new definition of ‘tribunal’ is inserted which means ‘QCAT’. This amendment has the effect of conveying jurisdiction on QCAT, rather than the CCT, to hear and determine matters and disputes under the Act. Schedule 2 is also renumbered as ‘schedule’ as there is no schedule 1 in the Act.

Part 48 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Clause 663 provides that part 48 amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 664 amends section 774 to ensure the outcome of a review is not prejudiced by a way of dealing with a forfeited thing.

Clauses 665 to 670 amend a number of provisions in part 1 to clarify that the part concerns internal reviews, rather than all reviews. The amended sections are:

- section 817 – Who may apply for review (amended by clause 665);
- section 818 – Requirement for making application (amended by clause 666);
- section 819 – Stay of operation of original decision (amended by clause 667);
- section 820 – Review decision (amended by clause 668);
- section 821 – Review procedure (amended by clause 669); and
- section 822 – Notice of review decision (amended by clause 670).

Clause 668 also amends section 820 to replace references to appeals following on internal review with reference to external review in order to provide consistency with terms applied under the QCAT Act by referring to 'review' of decisions rather than 'appeal'.

Clause 670 additionally amends section 822 to provide that where the decision in response to an internal review application differs from that sought by the applicant, a QCAT information notice must be provided to the applicant, unless the decision concerns the seizure or forfeiture of a thing, as those decisions are not reviewed by QCAT.

Clause 671 amends the heading of chapter 12, part 2 to reflect that the part deals with appeals and external reviews.

Clause 672 amends section 823 to provide that persons who have been given or are entitled to receive a QCAT information notice may apply to QCAT for external review of a decision. The situation where persons are given or are entitled to receive an information notice regarding the seizure or forfeiture of a thing is distinguished to provide that these persons may appeal to the District Court.

Clause 673 amends section 824 to reflect that the timeframe for appeal set out in the section does not apply to applications for external review.

Clause 674 amends the heading of schedule 1, table 2 to reflect that the listed decisions are subject to appeal and do not include internal review decisions subject to external review by QCAT.

Clause 675 amends schedule 2 (Dictionary) to rename the term 'review application' as 'internal review application'. A definition for 'QCAT information notice' is also provided. A QCAT information notice is defined as a notice complying with section 157(2) of the QCAT Act. That section provides that a notice must include certain information about a decision; including the reasons for the decision and that the person has a right to have the decision reviewed by QCAT. The clause also removes the definition for 'review decision' and inserts new definitions for the 'external review' of a decision and 'internal review decision'. An external review refers to an external review by QCAT of a decision under the requirements of the QCAT Act. An internal review decision is defined in section 820(1)(b).

Part 49 **Amendment of Plant Protection Act 1989**

Clause 676 provides that part 49 amends the *Plant Protection Act 1989*.

Clause 677 amends section 21N, which provides for the chief executive's decision on an application made under section 21M for reconsideration of a decision of an administrative character. The amendment is consequential to the transfer of jurisdiction for reviews of original decisions, other than decisions to seize a matter or thing, to QCAT. The clause replaces subsection (3) to require that, for decisions that are reviewable by QCAT, the notice of the decision must be accompanied by a QCAT information notice for the decision.

Clause 678 inserts the new part 6, division 2A to provide that QCAT has jurisdiction to hear reviews regarding decisions by the chief executive under section 21N other than decisions to seize a matter or thing.

Clause 679 amends section 21O, which currently provides for the Magistrates Court to hear appeals of decisions by the chief executive under section 21N. The amendment limits appeals to the Magistrates to decisions under section 21N about a decision to seize a matter or thing under this Act. As provided for in clause 678, other decisions under section 21N will now be reviewed by QCAT.

Clause 680 amends the schedule 2 dictionary to insert the definition of information notice meaning an information notice complying with the QCAT Act, section 157(2).

Part 50 **Amendment of Plant Protection Regulation 2002**

Clause 681 provides that part 50 amends the *Plant Protection Regulation 2002*.

Clause 682 amends section 62 to remove reference to the word 'appeal' and replace it with 'reconsideration' to provide consistency with section 21M of the Act which enables review of administrative decisions and to

ensure that use of the term ‘appeal’ only refers to appeals to the Magistrates Court.

Part 51 Amendment of Property Agents and Motor Dealers Act 2000

Clause 683 provides that part 51 amends the *Property Agents and Motor Dealers Act 2000*.

Clause 684 amends the note to section 70(1) reflecting the removal of the reference to ‘charge’ in the heading of section 529 (see clause 705 below).

Clause 685 amends the note to section 101(1) reflecting the removal of the reference to ‘charge’ in the heading of section 529 (see clause 705 below).

Clause 686 amends section 248 by replacing references to the ‘small claims tribunal’ with ‘tribunal’ (defined in the schedule 2 dictionary as QCAT). This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* by the QCAT Act. QCAT now has the jurisdiction to hear and determine small claims matters as part of the minor civil disputes jurisdiction.

Subsection (3) is amended to provide that QCAT may make the orders listed in paragraphs (a) to (c) which relate to the repair of defects covered by a statutory warranty, in addition to the orders it may make in section 13 QCAT Act. The definition of ‘minor civil dispute’ in Schedule 3 (Dictionary) of the QCAT Act includes a claim under section 248 of the Act and this gives QCAT the power to exercise its minor civil dispute jurisdiction for such claims. Section 13(2)(a) QCAT Act sets out the decisions QCAT may make to resolve a minor civil dispute.

Clause 687 amends section 249 by replacing references to the ‘small claims tribunal’ with ‘tribunal’ for the reasons explained in the notes to clause 686. Subsection (3) is omitted and replaced with a new subsection (3) which provides that the ‘prescribed amount’ means the amount prescribed under the QCAT Act. The effect of this amendment is that where an amount being claimed under section 248 is more than the prescribed amount for QCAT’s minor civil dispute jurisdiction, the dispute will be heard by a court which has jurisdiction for the recovery of a debt equal to the amount being claimed and any references to the ‘tribunal’ in section 248 will be taken as a reference to the court.

Clause 688 amends section 324 by replacing references to the ‘small claims tribunal’ with ‘tribunal’ for the reasons explained in the notes to clause 686. Subsection (3) is amended to provide that QCAT may make the orders listed in paragraphs (a) to (c) which relate to the repair of defects covered by a statutory warranty, in addition to the orders it may make in section 13 of the QCAT Act. The definition of ‘minor civil dispute’ in Schedule 3 (Dictionary) of the QCAT Act includes a claim under section 324 of the Act and this gives QCAT the power to exercise its minor civil dispute jurisdiction for such claims. Section 13(2)(a) QCAT Act sets out the decisions QCAT may make to resolve a minor civil dispute.

Clause 689 amends section 325 by replacing references to the ‘small claims tribunal’ with ‘tribunal’ for the reasons explained in the notes to clause 686. Subsection (3) is amended to provide that the ‘prescribed amount’ is the amount prescribed under the QCAT Act. The effect of this amendment is that where an amount being claimed under section 324 is more than the prescribed amount for QCAT’s minor civil dispute jurisdiction, the dispute will be heard by a court which has jurisdiction for the recovery of a debt equal to the amount being claimed and any references to the ‘tribunal’ in section 324 will be taken as a reference to the court.

Clause 690 amends section 472 by omitting the definition of ‘court’ in subsection (5) and inserting a new definition of ‘court’ which provides that a court includes the tribunal.

Clause 691 amends section 472A by inserting a new subsection (3) which provides that QCAT can not exercise its powers under section 61 of the QCAT Act to extend the time permitted to do a thing mentioned in subsection (1)(a) or (b). These amendments are made to replicate section 52(4)(a) of the CCT Act, which is repealed by the QCAT Act.

Clause 692 amends section 476 by omitting subsection (3) and inserting a new subsection (3) which provides that the chief executive must refer a claim, other than a minor claim to the tribunal and that the tribunal is to decide the claim.

Clause 693 amends section 481 by omitting subsection (4). The subsection deals with the chief executive’s decision notice which is now provided for in a new section 482.

Clause 694 omits section 482 and inserts a new section 482 entitled ‘Notifying decision’ which provides that the chief executive must give an information notice for a decision about a minor claim. A definition of

‘information notice’ is inserted in Schedule 2 (Dictionary) by clause 710 to mean a notice complying with the QCAT Act, section 157(2). This reflects that QCAT now has jurisdiction to review the chief executive’s decision about a minor claim. The new section 482 also prescribes additional information that must be included in an information notice.

Clause 695 amends section 483 to provide that a party may apply, as provided under the QCAT Act, to the tribunal for a review of the chief executive’s decision.

Clause 696 amends section 484 by replacing the reference to section 483 with a reference to the QCAT Act. This reflects that the time period for making a review is provided for in the QCAT Act and will no longer be provided in section 483.

Clause 697 omits section 485 as provisions relating to hearing dates and attendance notices will be provided for in the QCAT Act and Rules.

Clause 698 amends section 496 by omitting the reference to a finding of guilt on a disciplinary charge in subsection (1)(g)(vi). This amendment is consequential to the overall objective to change the terminology in the Act in relation to disciplinary proceedings as explained in the note to clause 705.

The reference to ‘the small claims tribunal’ in subsection 1(f) is omitted for the reasons explained in the notes to clause 686.

Clause 699 amends section 500B by omitting subsections (2) to (5). These subsections deal with procedural matters which are now provided for in the QCAT Act and Rules.

Clause 700 inserts a new chapter 14, part 5, division 2 entitled ‘Proceedings involving a claim against the fund’. The new section 512 allows the chief executive to make submissions in a proceeding involving a claim against the fund, which is inserted to replicate an amendment made to section 114 of the CCT Act by the *Justice (Fair Trading) Legislation Amendment Act 2008*.

A new section 513 is inserted which provides that section 131 of the QCAT Act applies to the chief executive. This allows the chief executive to register and enforce a monetary decision of the tribunal and replicates amendments made to section 93 of the CCT Act by the *Justice (Fair Trading) Legislation Amendment Act 2008*.

Clause 701 amends the heading of chapter 14, part 5, division 6 (Applications for summary order) by replacing ‘summary’ with

‘reimbursement’. This amendment is made as the order being sought by the chief executive can be more accurately described as an order by the tribunal that the claim fund be reimbursed by the respondent to a claim. Due to the provisions in this division, QCAT will have the power to make such orders whereas previously, the CCT had this power.

Clause 702 omits section 527 and inserts a new, but similar, section 527 which allows the chief executive to apply to QCAT for a reimbursement order. The terminology change to ‘reimbursement order’ has been explained in the notes to clause 701.

New section 527 provides that the chief executive may apply to QCAT for an order that a respondent reimburse the fund and for the documents that must accompany such an application.

Clause 703 amends section 528 by replacing ‘summary’ with ‘reimbursement’ in the heading and the body of the section. This reflects the amendments made by clauses 701 and 702. Minor consequential amendments have also been made to subsections (1)(c)(iii) and (iv) as a result of the amendments to sections 482 and 483.

Clause 704 inserts a new section 528B and section 528BA which deal with the procedure for public examinations. Previously, such provisions were in the CCT Act as the CCT had the power to conduct public examinations. As the CCT Act will be repealed by the QCAT Act, the sections are now inserted into the Act to provide for how public examinations can be conducted.

New section 528B provides for the procedure that must be followed before a public examination starts, including the issue of attendance notices and the content of those notices.

New section 528BA provides for the procedure for conducting a public examination. This section requires a person to answer a question put to the person at a public examination, unless the person has a reasonable excuse. However, it is not a reasonable excuse that answering may incriminate the person. This abrogation of the privilege against self incrimination is mitigated by subsection (5) that states the answer is not admissible in any criminal or civil proceeding against the person, other than –

- The public examination of a person or
- A proceeding to review a reviewable decision or
- An appeal against the tribunal’s decision to require the answer or

- A perjury proceeding.

Clause 705 amends the heading and the body of section 529 in relation to the terminology regarding disciplinary hearings removing the reference to ‘a charge’.

The overall objective is to change the terminology in the Act in relation to disciplinary proceedings to reflect that these proceedings are administrative rather than criminal in nature. Terms such as ‘guilty’ and ‘charge’ can equate disciplinary proceedings with criminal prosecutions. The nature of these two types of proceedings is different and this distinction will be reflected in the amended provisions that confer jurisdiction to QCAT to hear disciplinary proceedings.

Subsection (1)(b) is amended to provide a separate penalty for corporations to bring this section in line with other sections in the Act. A new paragraph (ba) is inserted in subsection (1) which provides that the tribunal may make a compensation order. This was an order that the CCT could make but as the CCT Act is being repealed by the QCAT Act, it is inserted into the Act. A new subsection (3) is inserted which provides that the chief executive may recover a fine as a debt in a court.

Clause 706 inserts a new section 529A (Stopping contraventions). This was an order that the CCT could make but as the CCT Act is being repealed by the QCAT Act, it is inserted into the Act.

The new section 529A allows the tribunal to order a person to stop something that is in contravention of the Act. It is an additional power for QCAT. While it is similar to an injunctive power, it can be exercised upon application by the chief executive prior to other proceedings in either QCAT’s original or review jurisdiction being started. The person the subject of a stop order may show cause why the order should not continue in force and the order may be rescinded in the tribunal is not satisfied that it should remain. The maximum penalty of 540 penalty units for contravening an order is consistent with other sections throughout the Act.

Clause 707 amends the heading and the body of section 532 by replacing ‘summary’ with ‘reimbursement’ to reflect previous amendments to the terminology explained in the note to clause 701. Minor wording amendments have also been made as a result of the amendments to sections 482 and 483.

Clause 708 inserts a new section 533 entitled ‘When tribunal order takes effect’ and a new chapter 14, part 5, division 11 entitled ‘Chief executive’s

right of appeal'. The new section 533 provides that a decision or order of QCAT for a claim fund proceeding takes effect when the decision or order is made (if all parties are present) or when the decision or order is published. The section also provides that a decision or order involving the claim fund must be published. This section 533 replicates the amendments made to section 92 of the CCT Act by the *Justice (Fair Trading) Legislation Amendment Act 2008*.

The new chapter 14, part 5, division 11 includes a new section 534 which allows the chief executive to appeal to the appeal tribunal, as constituted under the QCAT Act, against a decision of QCAT on the ground of an error of law. This new section replicates section 100(2) of the CCT Act which is repealed by the QCAT Act.

Clause 709 amends section 587 by omitting 'the presiding case manager' from subsection (3), a reference that was only relevant to the CCT.

Clause 710 amends schedule 2 (Dictionary) by omitting the definitions of 'information notice', 'presiding case manager', 'registrar' and 'tribunal'. New definitions of 'information notice', 'registrar' and 'tribunal' are inserted which refer to QCAT and the QCAT Act.

Part 52 Amendment of Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001

Clause 711 provides that part 52 amends the *Property Agents and Motor Dealers (Auctioneering Practice Code of Conduct) Regulation 2001*.

Clause 712 amends section 42(8)(c)(ii) of the Schedule (Auctioneering Practice Code of Conduct) by replacing 'a small claims tribunal' with 'QCAT'. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* by the QCAT Act. QCAT now has jurisdiction to hear and determine small claims matters as part of the minor civil disputes jurisdiction.

Part 53 **Amendment of Property Agents and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulation 2001**

Clause 713 provides that part 53 amends the *Property Agents and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulation 2001*.

Clause 714 amends section 37(8)(c)(ii) of the Schedule (Commercial Agency Practice Code of Conduct) by replacing ‘a small claims tribunal’ with ‘QCAT’. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* by the QCAT Act. QCAT now has jurisdiction to hear and determine small claims matters as part of the minor civil disputes jurisdiction.

Part 54 **Amendment of Property Agents and Motor Dealers (Motor Dealing Practice Code of Conduct) Regulation 2001**

Clause 715 provides that part 54 amends the *Property Agents and Motor Dealers (Motor Dealing Practice Code of Conduct) Regulation 2001*.

Clause 716 amends section 34(8)(c)(ii) of the Schedule (Motor Dealing Practice Code of Conduct) by replacing ‘a small claims tribunal’ with ‘QCAT’. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973*. QCAT now has jurisdiction to hear and determine small claims matters as part of the minor civil disputes jurisdiction.

Part 55 **Amendment of Property Agents
and Motor Dealers (Property
Developer Practice Code of
Conduct) Regulation 2001**

Clause 717 provides that part 55 amends the *Property Agents and Motor Dealers (Property Developer Practice Code of Conduct) Regulation 2001*.

Clause 718 amends section 21(8)(d)(ii) of the Schedule (Property Developer Practice Code of Conduct) by replacing ‘a small claims tribunal’ with ‘QCAT’. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* by the QCAT Act. QCAT now has jurisdiction to hear and determine small claims matters as part of the minor civil disputes jurisdiction.

Part 56 **Amendment of Property Agents
and Motor Dealers (Real Estate
Agency Practice Code of
Conduct) Regulation 2001**

Clause 719 provides that part 56 amends the *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001*.

Clause 720 amends section 43(8)(c)(ii) of the Schedule (Real Estate Agency Practice Code of Conduct) by replacing ‘a small claims tribunal’ with ‘QCAT’. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* by the QCAT Act. QCAT now has jurisdiction to hear and determine small claims matters as part of the minor civil disputes jurisdiction.

Part 57 Amendment of Property Agents and Motor Dealers (Restricted Letting Agency Practice Code of Conduct) Regulation 2001

Clause 721 provides that part 57 amends the *Property Agents and Motor Dealers (Restricted Letting Agency Practice Code of Conduct) Regulation 2001*.

Clause 722 amends section 38(8)(c)(ii) of the Schedule (Restricted Letting Agency Practice Code of Conduct) by replacing ‘a small claims tribunal’ with ‘QCAT’. This is a consequential amendment to the repeal of the *Small Claims Tribunal Act 1973* by the QCAT Act. QCAT now has jurisdiction to hear and determine small claims matters as part of the minor civil disputes jurisdiction.

Part 58 Amendment of Racing Act 2002

Clause 723 states that the *Racing Act 2002* is amended by part 58.

Clause 724 omits chapter 5 and inserts a new chapter 5 entitled ‘Review of decisions by tribunal’.

A new section 150 is inserted which states the decisions that may be reviewed by QCAT.

A new section 151 is inserted which provides that despite section 150(1), the following decisions may not be reviewed by QCAT:

- (a) a decision relating to the eligibility of an animal to race or the conditions under which an animal can race. These decisions are usually made on race day by stewards on the advice of veterinarians and relate to the physical condition of the animal, its behaviour, or fitness to race which could impact on the safety of persons and animals and the welfare of the animal concerned. Once a race has been run, there is no remedy to address the exclusion of the animal from the particular race;

- (b) a decision cancelling or suspending the licence for an animal, unless the cancellation or suspension is in addition to a decision to take disciplinary action relating to a person's licence or a decision to deal with the person by exclusion action under the control body's rules of racing.

For example, if an animal is unlawfully substituted for another animal in a race and the control body cancels the animal's licence and imposes a penalty on the animal's trainer, then subsequently the animal was sold to a new owner, the new owner could appeal against the decision to cancel the animal's licence. The basis of the appeal would be on the basis that the animal's licence was cancelled because of the trainer's actions and, as the animal no longer has any connections to the previous trainer or previous owner, the animal's licence should no longer be cancelled;

- (c) a decision about a protest or an objection against placed animals relating to an incident that happened during a race or trial. Final race results are required to be declared expeditiously to ensure that bets can be settled as soon as possible. It would be impractical to have an appeal from such decisions;
- (d) a decision imposing a penalty of not more than \$250. If a control body establishes an appeal committee, the committee may hear appeals from decisions of stewards imposing penalties between \$100 and \$2000. Appeals against decisions imposing a penalty of more than \$2000 lie to QCAT. Therefore, if a control body does not establish an appeal committee, there is the right of appeal to QCAT for penalties of \$250 and over;
- (e) a decision relating to what is commonly known as a 'betting dispute', i.e. a dispute between a racing bookmaker and a person who placed a bet with the racing bookmaker. Such disputes relate to a contract between the racing bookmaker and the punter and should be settled as a civil matter between the parties; and
- (f) a decision to stop, restart, rerun, postpone or abandon a race at a race meeting. It would be impractical to have an appeal from such decisions as they are made having regard to the circumstances that exist at the time. There is no remedy for a person or animal as a result of such a decision.

A new section 152 is inserted which provides that an appeal committee is taken to have dismissed an appeal if the appeal committee refuses to hear

or fails to decide an appeal within 6 weeks of its lodgement. Provision is made for an appeal committee to apply for an extension of time in which to consider an appeal.

A new section 153 is inserted which provides that QCAT must hear the review within 28 days of its lodgement unless special circumstances require the time period to be extended.

A new section 154 provides that QCAT must not be constituted to include a 'relevant person' as defined in subsection 4. The purpose of this provision is to ensure that QCAT is not constituted by persons who may have a conflict of interest or persons who have been convicted of certain offences.

Clause 725 omits chapter 6, part 3, division 6 and inserts a new division 6 consisting of a new section 242, which provides that an applicant for an eligibility certificate or a certificate holder may apply to QCAT for a review of a decision of the gaming executive refusing an application for an eligibility certificate, cancelling an eligibility certificate, or censuring an eligibility certificate holder. A person wishing to apply to a control body for a racing bookmaker's licence must hold an eligibility certificate issued by the gaming executive.

Clause 726 omits section 351(1)(b) which is now obsolete as the jurisdiction of the Queensland Gaming Commission to review decisions is transferred to QCAT. Consequently, subsections (c) to (e) of section 351 are renumbered.

Clause 727 amends section 355(2)(d) by omitting the reference to sections 168, 178 and 243. These sections provide for fees to be prescribed under a regulation. The reference to these sections is obsolete as the jurisdiction to impose the fees is transferred to QCAT.

Clause 728 amends schedule 3 by omitting obsolete definitions, inserting new definitions of 'QCAT registrar' and 'tribunal', and amending the definition of 'information notice'.

Part 59 **Amendment of Racing Regulation 2003**

Clause 729 states that the *Racing Regulation 2003* is amended by Part 59.

Clause 730 omits part 4 as these matters will now be dealt with under the QCAT Act.

Clause 731 omits item 7 from Schedule 3 as fees for these matters will be dealt with under the QCAT Act.

Part 60 Amendment of Residential Services (Accreditation) Act 2002

Clause 732 provides that part 60 amends the *Residential Services (Accreditation) Act 2002*.

Clause 733 amends section 84 by replacing ‘The Commercial and Consumer Tribunal’ with ‘QCAT’ to give QCAT the power to appoint a person as an administrator of a registered service.

Clause 734 amends section 85 by replacing references to ‘the Commercial and Consumer Tribunal’ and ‘the tribunal’ with ‘QCAT’ to give QCAT the power to hear an application to appoint a person as an administrator of a registered service.

Clause 735 amends section 86 by replacing references to ‘the Commercial and Consumer Tribunal’ and ‘the tribunal’ with ‘QCAT’. This reflects that QCAT will have the power to hear an application to appoint a person as an administrator of a registered service.

Clause 736 amends section 87 by replacing references to ‘the Commercial and Consumer Tribunal’ and ‘the tribunal’ with ‘QCAT’. This reflects that QCAT will have the power to hear an application to appoint a person as an administrator of a registered service.

Clause 737 amends section 88 by replacing ‘the Commercial and Consumer Tribunal’ with ‘QCAT’. This reflects that QCAT will have the power to hear an application to appoint a person as an administrator of a registered service.

Clause 738 amends section 90 by replacing references to ‘the Commercial and Consumer Tribunal’ and ‘the tribunal’ with ‘QCAT’. This reflects that QCAT will have the power to extend an appointment of a person as an administrator of a registered service.

Clause 739 amends section 101 by replacing ‘the *Commercial and Consumer Tribunal Act 2003*’ with ‘the QCAT Act’. It provides that, if after making reasonable enquiries the chief executive or administrator cannot locate the service provider, neither the chief executive or administrator need comply with a requirement under the QCAT Act or this part of the Act, to give information or service a document on a service provider.

Clause 740 amends section 129 by omitting paragraph (a) of subsection (5) and inserting a new paragraph (a) which refers to a review by QCAT. While the previous provision referred to the process of applying for a review of an administrative decision as an ‘appeal’, under the QCAT Act this will be known as a review of a reviewable decision. This amendment does not affect any existing rights to apply for a review of reviewable decisions in the Act. The word ‘another’ in subsection (5)(b) is replaced with ‘an’.

Clause 741 amends the heading of part 10 (Reviews and appeals) by omitting ‘and appeals’. The Act will no longer refer to ‘appeals’ and will instead refer to ‘reviews’ as explained in the notes to clause 740.

Clause 742 amends the heading and the body of section 154 by inserting ‘for this Act’ after ‘decisions’.

Clause 743 amends section 155 to clarify that the review to the chief executive is an internal review and that an application for external review may be made to QCAT if the matter is not resolved on internal review.

Clause 744 omits the heading of part 10, division 2 (Review of decision) and inserts a new heading entitled ‘Internal review of decisions’ to distinguish such reviews from external reviews by QCAT.

Clause 745 amends the heading of section 156 (Application for review) by replacing ‘review’ with ‘internal review’.

Clause 746 amends section 157 to give QCAT the power to stay the operation of a decision to secure the effectiveness of the internal review and any later review by QCAT. This power is in addition to QCAT’s power under the QCAT Act to stay the operation of a decision if QCAT proceedings have commenced.

Clause 747 amends section 158 by inserting ‘by the chief executive’ after ‘a decision’ in subsection (1) to clarify that the review is an internal review. The decision notice requirement in subsection (4) is replaced with a requirement that the chief executive give a QCAT information notice to the

interested person. This reflects that QCAT now has jurisdiction to review reviewable decisions under the Act whereas previously, a person could appeal to the CCT. A definition of ‘QCAT information notice’ is inserted into Schedule 2 (Dictionary) by clause 751.

Clause 748 omits part 10, division 3 (Appeal against decision) and inserts a new part 10, division 3 entitled ‘External review of decisions’. A new section 159 gives QCAT the power to review an internal review decision made by the chief executive. Previously, the CCT had the power to hear appeals and the previous section 160 provided that an appeal is by way of rehearing. Under the QCAT Act, a review by QCAT involves a fresh hearing.

Clause 749 amends section 177 by inserting the *Queensland Civil and Administrative Tribunal Act 2009* in the definition of ‘prescribed Act’.

Clause 750 amends the heading of Schedule 1 (Reviewable decisions) by inserting ‘for this Act’ after ‘decisions’.

Clause 751 amends schedule 2 (Dictionary) by omitting the definition of ‘Commercial and Consumer Tribunal’. A new definition of ‘QCAT information notice’ is inserted.

Part 61 Amendment of Retirement Villages Act 1999

Clause 752 provides that part 61 amends the *Retirement Villages Act 1999*.

Clause 753 amends section 28 by replacing the decision notice requirement in subsection (5) with a requirement that a QCAT information notice be given. This reflects that QCAT now has the jurisdiction to review a decision of the chief executive to refuse to register a retirement village scheme. A definition of ‘QCAT information notice’ is inserted into the Schedule (Dictionary) by clause 760. Subsection (6) is omitted and a new subsection (6) is inserted which provides that if the chief executive fails to decide an application to register a retirement village scheme within the required time, the chief executive is taken to have refused the application.

Clause 754 amends section 28A by replacing the additional information which is to be included in the deregistration notice in subsection (3) with a requirement that the chief executive must also give a QCAT information

notice. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to deregister a retirement village scheme.

Clause 755 omits sections 29 to 33, which deal with appeals to the District Court. A new section 29 is inserted which gives QCAT the power to review a decision of the chief executive. While the previous provisions referred to the process of applying for a review of an administrative decision as an appeal, under the QCAT Act this will be known as a review of a reviewable decision. The amendments in this Act do not affect any existing rights to apply for a review of a reviewable decision in the Act. The procedural matters covered in the sections being omitted are provided for in the QCAT Act.

Clause 756 omits part 10, division 1 (Preliminary). This division is no longer required as the procedure for making applications to QCAT is provided for in the QCAT Act and Rules.

Clause 757 omits sections 197 and 199. Section 197 provides that a person must not fail to comply with an order of the tribunal and section 199 provides that the tribunal's order can only be questioned on the ground of an error of law. These sections are omitted as such matters are provided for in the QCAT Act and Rules.

Clause 758 amends section 221 by omitting 'the registrar, the presiding case manager' from subsection (2). Evidentiary provisions for such persons are provided for in the QCAT Act.

Clause 759 omits section 226. It will duplicate reporting requirement provisions in the QCAT Act.

Clause 760 amends the schedule (Dictionary) by omitting the definitions of 'chairperson', 'presiding case manager', 'registrar' and 'tribunal'. New definitions of 'QCAT information notice', 'registrar' and 'tribunal' are inserted.

Part 62 Amendment of Second-hand Dealers and Pawnbrokers Act 2003

Clause 761 provides that part 62 amends the *Second-hand Dealers and Pawnbrokers Act 2003*.

Clause 762 amends section 12 by replacing the information notice requirement in subsection (4) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to refuse to grant a licence or to grant a licence with conditions. A definition of 'QCAT information notice' is inserted into Schedule 3 (Dictionary) by clause 771.

Clause 763 amends section 15 by replacing the information notice requirement in subsection (4) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to refuse to renew or restore a licence.

Clause 764 amends section 16 by replacing the information notice requirement in subsection (1)(b) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to refuse to grant a renewal of a licence.

Clause 765 amends section 17 by replacing the information notice requirement in subsection (1)(b) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to refuse to grant a restoration of a licence.

Clause 766 amends section 20 by replacing the information notice requirement in subsection (3) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to suspend, cancel, refuse to renew or refuse to restore a licence.

Clause 767 amends section 25 by replacing the information notice requirement in subsection (5) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to refuse to approve a place as an authorised place.

Clause 768 amends section 31 by replacing the information notice requirement in subsection (5) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to refuse to replace a licence.

Clause 769 amends the heading of part 6 (General offences, legal proceedings and appeals) by omitting 'appeals' and inserting 'review of

decisions'. This terminology change is explained in the notes to clause 770.

Clause 770 omits part 6, division 3 (Appeals) and inserts a new division 3 entitled 'Review of decisions'. A new section 107 is inserted which gives QCAT the power to review reviewable decisions, whereas the Magistrates Court previously had the power to hear an appeal. While the previous provisions referred to the process of applying for a review of an administrative decision as an 'appeal', under the QCAT Act this will be known as a review of a reviewable decision. The amendments however, do not affect any existing rights to apply for a review of a reviewable decision in the Act.

Clause 771 amends schedule 3 (Dictionary) by omitting the definition of 'information notice' and inserting a new definition of 'QCAT information notice'.

Part 63 Amendment of Security Providers Act 1993

Clause 772 provides that part 63 amends the *Security Providers Act 1993*.

Clause 773 amends section 14 by replacing the written notice requirements throughout the section with a requirement that QCAT information notices be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to refuse to grant a licence, grant a different licence, or impose conditions on a licence. A definition of 'QCAT information notice' is inserted into schedule 2 (Dictionary) by clause 781.

Clause 774 amends section 17 by replacing the written notice requirement in subsection (4) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief to refuse to amend a licence.

Clause 775 amends section 18 by replacing the written notice requirement in subsection (4) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to amend a licence, other than by the application of the licensee.

Clause 776 amends section 22 by replacing the written notice requirement in subsection (4) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to suspend, cancel or refuse to renew a licence.

Clause 777 amends section 25 by replacing the written notice requirement in subsection (4) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the chief executive to refuse to replace a licence.

Clause 778 amends the heading of part 2, division 6 (Appeals against licence decisions) by replacing ‘Appeals against’ with ‘Review of’. While the previous provisions referred to the process of applying for a review of an administrative decision as an ‘appeal’, under the QCAT Act this will be known as a review of a reviewable decision. The amendments in this Act however, do not affect any existing rights to apply for a review of a reviewable decision.

Clause 779 amends the heading and the body of section 26 (Right to appeal to the Court) to give QCAT the power to review decisions of the chief executive. Previously, the Magistrates Court had the power to hear appeals.

Clause 780 omits sections 27 to 31 which deal with procedural matters and the powers of the Magistrates Court. The sections are no longer required as such matters are provided for in the QCAT Act and Rules.

Clause 781 amends schedule 2 (Dictionary) by omitting the definition of ‘Court’ and inserting a definition of ‘QCAT information notice’.

Part 64 Amendment of Stock Act 1915

Clause 782 provides that part 64 amends the *Stock Act 1915*.

Clause 783 inserts new sections 35B and 35C. New section 35B provides that a person who is dissatisfied with an original decision, other than a decision to seize a thing, may apply to QCAT for an external review of the decision. The terminology ‘external review’ is used rather than appeal because the QCAT Act refers to reviews of administrative decisions as reviews rather than appeals.

The new section 35C also provides that an information notice must be given for a decision only if this Act so requires. Given the large number of decisions, this limitation is necessary to create administrative efficiency.

Clause 784 amends section 36, which provides for the Magistrates Court to hear appeals of an original decision, other than an original decision about compensation. The amendment limits the jurisdiction of the Magistrates Court to appeals against original decisions to seize a thing under this Act. As provided in clause 783, reviews of other original decisions will be heard by QCAT.

Clause 785 amends section 36A to provide that an appeal against a Magistrates Court decision regarding seizure of a thing will be to the District Court.

Clause 786 amends the schedule 2 dictionary to insert a definition of 'information notice' with the meaning of a notice complying with the QCAT Act, section 157.

Part 65 Amendment of Stock (Cattle Tick) Notice 2005

Clause 787 provides that part 65 amends the *Stock (Cattle Tick) Notice 2005*.

Clause 788 amends the schedule 2 dictionary to remove the definition for 'information notice'. This definition is no longer required because 'information notice' is now defined in the *Stock Act 1915*.

Part 66 Amendment of Stock Identification Regulation 2005

Clause 789 provides that part 66 amends the *Stock Identification Regulation 2005*.

Clause 790 amends the schedule dictionary to remove the definition for ‘information notice’. This definition is no longer required because ‘information notice’ is now defined in the *Stock Act 1915*.

Part 67 Amendment of Stock Regulation 1988

Clause 791 provides that part 67 amends the *Stock Regulation 1988*.

Clause 792 amends the schedule 8 dictionary to remove the definition for ‘information notice’ to provide consistency with the meaning of information notice in the QCAT Act. This definition is no longer required because ‘information notice’ is now defined in the *Stock Act 1915*.

Part 68 Amendment of Timber Utilisation and Marketing Act 1987

Clause 793 provides that part 68 amends the *Timber Utilisation and Marketing Act 1987*.

Clause 794 amends section 37 to replace references to the term ‘appeal’ with references to ‘applications’ for ‘internal review’ of decisions and make other terminology changes. The amendments are in line with terminology changes being made across Queensland legislation as a result of the creation of QCAT. The QCAT Act will refer to reviews of administrative decisions as reviews instead of appeals, creating the need to distinguish between internal reviews and external reviews to QCAT.

Part 69 Amendment of Timber Utilisation and Marketing Regulation 1998

Clause 795 provides that part 69 amends the *Timber Utilisation and Marketing Regulation 1998*.

Clause 796 amends section 9 to replace reference to the term ‘appeal’ with reference to ‘applications for internal review’ to distinguish between internal reviews and reviews to QCAT and provide consistency with the meaning of the term ‘review’ in the QCAT Act.

Part 70 Amendment of Tourism Services Act 2003

Clause 797 provides that part 70 amends the *Tourism Services Act 2003*.

Clause 798 amends section 17 by replacing the information notice requirement in subsection (3) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the commissioner to grant or renew a registration on a condition. A definition of ‘QCAT information notice’ is inserted into Schedule 2 (Dictionary) by clause 808.

Clause 799 amends section 18 by replacing the information notice requirements throughout the section with a requirement that QCAT information notices be given. This reflects that QCAT now has jurisdiction to review a decision of the commissioner to change the conditions of a registration.

Clause 800 amends section 21 by replacing the information notice requirement in subsection (4)(a) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the commissioner to refuse to grant a registration.

Clause 801 amends section 23 by replacing the information notice requirement in subsection (4)(a) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the commissioner to refuse to grant a renewal of a registration.

Clause 802 amends section 24 by replacing the information notice requirement in subsection (1)(b) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the commissioner to refuse to grant a renewal of a registration.

Clause 803 amends section 27 by replacing the information notice requirement in subsection (5) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the commissioner to refuse an application to replace a registration certificate.

Clause 804 amends section 29 by replacing the information notice requirements in subsections (3)(a) and (4) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the commissioner to suspend a registrant's registration.

Clause 805 amends section 56 by replacing the information notice requirements throughout the section with a requirement that QCAT information notices be given. This reflects that QCAT now has jurisdiction to review a decision of an inspector to forfeit a seized thing to the State.

Clause 806 amends section 85 to give QCAT the power to review decisions of the commissioner. Previously, the CCT had the power to hear and determine reviews.

Clause 807 amends the heading of part 14 (Transitional provision) by inserting 'for Act No. 61 of 2003' after 'provision'.

Clause 808 amends schedule 2 (Dictionary) by omitting the definitions of 'information notice' and 'tribunal' and inserting new definitions of 'QCAT information notice' and 'tribunal'.

Part 71 Amendment of Trade Measurement Act 1990

Clause 809 provides that part 71 amends the *Trade Measurement Act 1990*.

Clause 810 amends section 3 by inserting a definition of 'QCAT information notice'.

Clause 811 amends section 45 by replacing the notification requirement in subsection (3) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the licensing authority to refuse to grant a licence.

Clause 812 amends section 48 by replacing the notification requirement in subsection (4) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the licensing authority to impose or vary a condition on a licence.

Clause 813 amends section 52B by replacing the written notice requirement in subsection (5) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the licensing authority to cancel a licence.

Clause 814 amends section 54B by replacing the notification requirement in subsection (6) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the licensing authority to refuse to amend a licence.

Clause 815 amends section 54C to provide that if an application to change licence holders under section 54B is refused, each partner continues to hold a licence until the end of the period prescribed under the QCAT Act for applying to QCAT for a review, and, if the partnership applies for review, the end of the review.

Clause 816 amends section 55 by replacing the requirement to serve a statement of reasons in subsections (3)(a) and (b) with a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the licensing authority to prevent the employment of certain persons.

Clause 817 amends section 58 by replacing subsection (2) with a new, but substantially similar, subsection (2) which includes references to QCAT and a requirement that a QCAT information notice be given. This reflects that QCAT now has jurisdiction to review a decision of the licensing authority to take disciplinary action.

Clause 818 replaces the heading of part 6, division 4 (Appeals) with a new heading entitled 'Application for review'. While the previous provisions referred to the process of applying for a review of an administrative decision as an 'appeal', under the QCAT Act this will be known as a review of a reviewable decision. The amendments however, do not affect any existing rights to apply for a review of a reviewable decision in the Act.

Clause 819 amends the heading and the body of section 59 to give QCAT the power to review decisions of the licensing authority whereas the Magistrates Court previously had the power to hear appeals.

Part 72 **Amendment of Trade Measurement Administration Act 1990**

Clause 820 provides that part 72 amends the *Trade Measurement Administration Act 1990*.

Clause 821 omits part 5 (Appeals). This part is no longer required as it deals with appeals to the Magistrates Court. QCAT now has the power to hear reviews as provided for in the amendments to the *Trade Measurement Act 1990*.

Part 73 **Amendment of Travel Agents Act 1988**

Clause 822 provides that part 73 amends the *Travel Agents Act 1988*.

Clause 823 amends section 6 by inserting a definition of ‘QCAT information notice’.

Clause 824 amends section 18 by omitting subsection (3) and inserting a new subsection (3) which removes the requirement for written notice to be served. The requirement for notification, which will now be in the form of a QCAT information notice, is provided for in a new section 26. This reflects that QCAT now has jurisdiction to review a decision of the commissioner about a licence.

Clause 825 amends section 25 by replacing subsection (5) with a new, but substantially similar, subsection (5) which refers to a QCAT information notice instead of a notice in writing. A new subsection (5A) is inserted which provides that subsection (5) applies subject to any decision made by QCAT on a review. This reflects that QCAT now has jurisdiction to review a decision of the commissioner to suspend or cancel a licence.

Clause 826 omits part 3, division 3 (Appeals) and inserts a new division 3 entitled ‘Review by QCAT of particular decisions’.

The new section 26 provides that the commissioner must give a QCAT information notice for a decision about a licence. Additional information to

be included in the notice is also prescribed for a decision that relates to a suspension or a cancellation of a licence. This section also provides that an affected person may apply to QCAT for a review of the decision.

The new section 26A provides for the powers that QCAT may exercise on review of a decision in 26(1)(b)-(d).

The new section 27 provides that the compensation scheme trustees must give a QCAT information notice if an applicant is refused participation in the compensation scheme or a licensee's participation in the scheme is terminated. The new section 27 also prescribes additional information which must be included in the QCAT information notice.

The section also provides that an affected person may apply to QCAT for a review of such decisions. The new section 27A provides the powers that QCAT may exercise on the review of a decision mentioned in section 27(1).

The new section 28 provides that QCAT may conduct a review of a decision by the commissioner and the compensation scheme trustees concurrently. While the previous provisions referred to the process of applying for a review of an administrative decision as an 'appeal', under the QCAT Act this will be known as a review of a reviewable decision. The amendments however, do not affect any existing rights to apply for a review of a decision.

Clause 827 amends section 37 by replacing the word 'shall' with 'must' in subsection (1) and omitting subsections (2) and (3). New subsections (2), (3) and (4) are inserted which are substantially similar to the previous subsections (2) and (3) but include references to QCAT and QCAT information notice.

Clause 828 amends section 41 by omitting subsections (3) to (4) and inserting a new subsection (3) which requires the trustees to give a QCAT information notice about a decision regarding a claim for compensation. This reflects that QCAT now has jurisdiction to review such decisions.

Part 74 **Amendment of Veterinary Surgeons Act 1936 commencing on assent**

Clause 829 provides that part 74 amends the *Veterinary Surgeons Act 1936*.

This part commences on assent. These amendments are necessary to facilitate the transition of the registry for the Veterinary Surgeons Tribunal (VST) into the registry for the CCT prior to the commencement of QCAT. Upon commencement of QCAT, the VST will no longer exist and the QCAT registry will be the registry for proceedings under the *Veterinary Surgeons Act 1936*. This earlier transition of the VST registry is necessary to enable the gradual transition of registry functions to the physical location where the QCAT registry will eventually be located.

Clause 830 amends section 15G so that the registrar of the Veterinary Surgeon's Board (the board) can be distinguished from the director of the registry under the *Commercial and Consumer Tribunal Act 2003* who will take responsibility for the registry functions for the VST from the commencement of this provision until the commencement of QCAT. Currently the registrar of the board is also the registrar of the VST.

Clause 831 a new definition for 'registrar of the tribunal' is required in order to facilitate the recognition of the director under the *Commercial and Consumer Tribunal Act 2003* noted in clause 830.

Part 75 **Amendment of Veterinary Surgeons Act 1936 commencing by proclamation**

Clause 832 provides that part 75 amends the *Veterinary Surgeons Act 1936*.

These amendments will commence upon proclamation.

Clause 833 amends section 15(2) to reflect that the previous cost arrangement for the VST, where costs of the tribunal were paid out of the Veterinary Surgeon's Board funds, will no longer continue after the commencement of QCAT.

Clause 834 replaces part 2A. These provisions provided for the VST jurisdiction, composition and matters to consider in making a decision (including costs).

A new Part 2A Tribunal Proceedings is inserted.

The insertion of this new part reflects that QCAT now has jurisdiction to hear veterinary surgeon's disciplinary proceedings.

New section 15A provides for QCAT's jurisdiction. QCAT has jurisdiction-

- To hear and decide any disciplinary proceedings involving allegations of misconduct in a professional respect referred by the board against any veterinary surgeon and
- To hear and decide any application made under section 22C and
- To hear and decide show cause proceedings brought under section 22D.

New section 15B provides for how QCAT must be constituted for a proceeding under new section 15A. The proceeding is to be constituted by one legally qualified member and two other members who are veterinary surgeons. Under the QCAT Act a legally qualified member means a judicial member, or a senior or ordinary member who is an Australian lawyer of at least six years standing or a supplementary member who is a magistrate.

New section 15C states the matters that QCAT must consider in making decisions about a disciplinary proceeding alleging misconduct in a professional respect against a veterinary surgeon or whether or not a veterinary surgeon's name should be removed from the register of veterinary surgeons because the veterinary surgeon is medically unfit to practice veterinary science.

New section 15D provides for additional provisions in relation to costs. While the tribunal may make any order about costs it considers appropriate, the only costs allowable are:

- The costs allowable under the QCAT Act, and
- Any costs to the board of undertaking an investigation of a matter that was referred to the tribunal.

Clause 835 amends section 18 to insert a new requirement for the board to give an 'information notice' if the board refuses an application for registration. This reflects that QCAT will now have jurisdiction to review

this decision. The information notice must comply with section 157(2) of the QCAT Act.

Clause 836 amends section 18A (5)(c) to replace the term ‘guilty.’ This amendment is consequential to the overall objective to change the terminology in the *Veterinary Surgeons Act 1936* in relation to disciplinary proceedings for veterinary surgeons, to reflect that these proceedings are administrative rather than criminal in nature. Terms such as ‘guilty’ can equate disciplinary proceedings with criminal prosecutions. The nature of these two types of proceedings is different and this distinction will be reflected in the terminology used in the amended provisions in the Act that now confer jurisdiction on QCAT to hear disciplinary proceedings for veterinary surgeons.

Clause 837 amends section 19E to also replace the term ‘guilty’ for more appropriate terminology as explained in the note to clause 836.

Clause 838 amends section 22 to remove the reference to a ‘charge’ with terminology consistent with the other provisions in relation to disciplinary proceedings as explained in the note to clause 836.

Clause 839 amends section 22A to remove the references to ‘punish’ and ‘guilty’ for reasons explained in the note to clause 836.

Clause 840 amends section 22B to replace the references to ‘guilty’ and ‘charge’ for reasons explained in the note to clause 836.

Clause 841 amends section 22E to replace references to ‘guilty’ and ‘charge’ for reasons explained in the note to clause 836.

Clause 842 amends section 22F to replace reference to ‘guilty’ for reasons explained in the note to clause 836.

Clause 843 omits section 22G as it will duplicate the provisions in the QCAT ACT and Rules in relation to applications, referrals and notices of hearing.

Clause 844 replaces section 22H with a new provision that reflects that while the previous provision referred to the process of applying for a review of an administrative decision as an appeal, under the QCAT Act this will be known as a review of a reviewable decision. This new section now confers jurisdiction on QCAT for reviewing the decisions set out in subparagraphs (a) to (d). Provisions that would duplicate procedural provisions in the QCAT Act have been omitted.

Clause 845 amends section 24 to replace references to the District Court with the tribunal, to reflect that QCAT will now hear disciplinary proceedings concerning veterinary surgeons.

Clause 846 amends section 25 to omit the definitions of information notice that is now in the schedule dictionary.

Clause 847 amends section 25O to remove the reference to ‘charge’ for reasons explained in the note to clause 836.

Clause 848 omits section 28. This provision excluded membership of both the Veterinary Surgeon’s Board and Tribunal. It is no longer necessary as the Veterinary Surgeon’s Tribunal will no longer be in existence and the QCAT Act has provisions for conflicts of interest.

Clause 849 amends section 29B to reflect that the Veterinary Surgeon’s Tribunal will no longer be in existence.

Clause 850 removes a reference to the tribunal and renders this evidence provision relevant only to the Veterinary Surgeon’s Board (the board) to reflect that that the Veterinary Surgeon’s Tribunal will no longer be in existence. The QCAT Act will contain the relevant evidentiary provisions for QCAT.

Clause 851 amends section 33A removes references to the tribunal and renders this reporting provision relevant only to the board.

Clause 852 amends section 33D to replace the reference to ‘charge’ for reasons explained in the note to clause 836.

Clause 853 amends section 37 to replace the reference to ‘charge’ for reasons explained in the note to clause 836.

Clause 854 amends the schedule dictionary to omit definitions that are no longer necessary and insert new definitions for ‘information notice’ and ‘tribunal’.

Part 76 **Amendment of Wagering Act 1998**

Clause 855 confirms the Act amended is the *Wagering Act 1998*.

Clause 856 amends section 216E(b)(i) and (iii) of the Act to provide that what was formerly an appeal to the Magistrates Court regarding an exclusion direction becomes a review of the decision by QCAT.

Clause 857 amends section 255 of the Act to provide that where an inspector decides to forfeit a thing and must tell the owner by written notice, the notice will be in accordance with the information notice to be given pursuant to section 157(2) of the QCAT Act.

Clause 858 substitutes the part 14 heading. Reference to ‘appeals and reviews’ is replaced with ‘reviews by QCAT or Minister’ to reflect that while the process of applying for a review was previously referred to as an appeal, under the QCAT Act this is known as a review of a reviewable decision.

Clause 859 replaces part 14, division 1 of the Act. Sections 291 to 297 clarify who can apply to QCAT, under the QCAT Act, for a review of a decision.

Section 291 clarifies when authority operators may apply for a review under the QCAT Act.

Section 292 clarifies when licence operators may apply for a review under the QCAT Act.

Section 293 clarifies when applicants for key person licences may apply for a review under the QCAT Act.

Section 294 clarifies when key person licensees may apply for a review under the QCAT Act.

Section 295 clarifies when wagering agents may apply for a review under the QCAT Act.

Section 296 clarifies when the owner of things seized may apply for a review under the QCAT Act.

Section 297 clarifies when other persons may apply for a review under the QCAT Act.

Section 298 limits the conduct of review by QCAT to the evidence before the chief executive when the original decision was made, and similarly limits the way in which a reopened review is conducted. It also clarifies that the review outcome is decided on the law at the time of the original decision, not the law existing at the time of the review.

Section 299 enables new evidence to be considered by QCAT in certain circumstances. QCAT must consider whether to allow the new evidence and allow it if satisfied the party did not know and could not reasonably have been expected to know of the existence of the new evidence before the chief executive's decision was made, and, that QCAT considers under the circumstances it would be unfair not to allow the new evidence to be presented. If QCAT gives leave to present the new evidence it must adjourn the proceedings for a stated time to allow the chief executive to reconsider the original decision and the new evidence and allow for further submissions by affected persons. Alternatively, if QCAT considers the nature of the new evidence makes it appropriate for a new application to be made, QCAT may require the applicant to make a fresh application to the chief executive about the matter.

Section 300 relates to appealing decisions of QCAT. Chapter 2, part 8, division 1 of the QCAT Act (Appeals to appeal tribunal) does not apply. The only avenue of appeal against a decision of the QCAT under this Act is to the Court of Appeal. The appeal may be on a question of law only. The provisions of the QCAT Act requiring a judicial member to have constituted QCAT in the proceeding and appeals involving a question of fact or question of mixed law and fact also do not apply.

Clause 860 amends the part 14, division 2, heading.

Clause 861 omits section 331 of the Act which previously related to show cause notices given to key person licensees.

Clause 862 omits section 333 of the Act which previously related to appeals to the gaming commission.

Clause 863 amends schedule 2 of the Act to omit the definitions for 'Queensland Gaming Commission' and 'registrar', insert a definition for 'tribunal' which means QCAT and substitute the definition for 'information notice'.

Part 77 **Amendment of Wagering Regulation 1999**

Clause 864 states that the regulation amended is the *Wagering Regulation 1999*.

Clause 865 omits section 15 of the Regulation which defined the registrar of the Queensland Gaming Commission (the Commission). This amendment is consequential to the transfer of jurisdiction from the Commission to QCAT.

Clause 866 omits item 5 of schedule 3 relating to the fee for filing a notice of appeal to the Commission. This amendment is consequential to the transfer of jurisdiction from the Commission to QCAT.

Part 78 Amendment of Wine Industry Act 1994

Clause 867 confirms the Act amended is the *Wine Industry Act 1994*.

Clause 868 amends section 28 to clarify the chief executive's decision notice must also comply with the requirements of an information notice under the QCAT Act, section 157(2).

Clause 869 amends the heading of part 2, division 11 to remove reference to appeals and substitute 'review of decisions of chief executive' to reflect that while the process of applying for a review of an administrative decision was previously referred to as an appeal to the CCT, under the QCAT Act this is known as a review of a reviewable decision.

Clause 870 amends section 33 to omit reference to appeals and refer to reviews of decisions, in order to provide consistency with terms applied under the QCAT Act.

Part 79 Amendment of Wine Industry Regulation 1995

Clause 871 confirms the regulation amended is the *Wine Industry Regulation 1995*.

Clause 872 deletes a reference to the registrar of the tribunal. This amendment is consequential to the transfer of jurisdiction from the CCT to QCAT.

Chapter 6 Department of Environment and Resource Management

Part 1 Amendment of Land Protection (Pest and Stock Route Management) Act 2002

Clause 873 provides that this part amends the *Land Protection (Pest and Stock Route Management) Act 2002*.

Clause 874 amends section 161 of the Act to require that a notice given under the section must be accompanied by or include an information notice, complying with section 157(2) of the QCAT Act, for the decision to give the notice.

Section 161 empowers a local government to give a notice to a landowner requiring the owner to reduce the number of stock on the land. The notice may be given where the chief executive officer of that local government reasonably believes, because of the number of stock on land within which a part of the network in the local government's area is fenced or otherwise enclosed, sufficient pasture will not be available for travelling stock on the network.

Clause 875 replaces chapter 9 of the Act. The clause changes the heading of chapter 9 from 'Appeals' to 'Review of decisions by QCAT' and replaces section 296 to provide that an aggrieved person for a reviewable decision may apply to QCAT for a review of the decision instead of appealing to the Magistrates Court. The change in terminology in the chapter from 'appeal' to 'review' reflects that, under the QCAT Act, the process of reviewing an administrative decision is known as a review rather than an appeal.

Omitted sections 297 to 301 of the Act, which contain procedures relating to appeals under the Act, are no longer necessary because the right to appeal a decision to the Magistrates Court under the Act has been replaced with the right to apply to QCAT for a review of a decision and procedures for reviews by QCAT will be set out in the QCAT Act.

Clause 876 amends schedule 1 to the Act to replace references to ‘appealable decision’ with ‘reviewable decision’, reflecting that, under the QCAT Act, the process of reviewing an administrative decision is known as a review of a reviewable decision.

Clause 877 amends the dictionary to the Act in schedule 3 to amend, omit and insert definitions consequential to the transfer of jurisdiction for reviews of decisions under the Act from the Magistrates Court to QCAT.

Part 2 Amendment of Marine Parks Act 2004

Clause 878 states that this part amends the *Marine Parks Act 2004*.

Clause 879 replaces section 93(3) to achieve consistency with the term ‘review’ as applied under the QCAT Act (in regard to a compliance notice stating that a person may apply under part 8 for a review of the decision to give the notice), and adds a requirement for a compliance notice to state that a person may apply to QCAT for a stay of the decision to give the notice.

Clause 880 amends section 101 to insert a requirement for a removal notice given under that section to state that the person given the notice may apply under part 8 for a review of the decision to give the notice and may apply to QCAT for a stay of the decision to give the notice.

Clause 881 amends section 104 to require a removal notice given under that section to state that the person given the notice may apply under part 8 for a review of the decision to give the notice and may apply to QCAT for a stay of the decision to give the notice.

Clause 882 replaces the part 8 heading in order to provide consistency with terms applied under the QCAT Act by referring to ‘review’ of decisions rather than ‘appeals and review’.

Clause 883 replaces the term ‘appeal’ with ‘review’ in section 117 to provide consistency with terms applied under the QCAT Act.

Clause 884 replaces ‘review decision’ with ‘internal review decision’ in section 119 to avoid confusion with the term ‘review’ as applied in the QCAT Act. References to the Magistrates Court are also changed to QCAT

so as to confer jurisdiction upon QCAT. Sections 119(2) and 199(3) are replaced to adopt information notice requirements under section 157(2) of the QCAT Act.

Clause 885 amends section 120 so as to transfer the power to stay an original decision as defined in section 117(1), from the Magistrates Court to QCAT.

Clause 886 replaces part 8, division 3 to transfer jurisdiction for external review of an internal review decision from the Magistrates Court to QCAT and remove procedural matters that are now provided for in the QCAT Act.

Clause 887 deletes the definition of ‘review decision’ from the schedule (Dictionary) and replaces it with a definition for ‘internal review decision’.

Part 3 Amendment of Marine Parks Regulation 2006

Clause 888 states that this part amends the *Marine Parks Regulation 2006*.

Clause 889 replaces the heading for part 8 to provide consistency with terms applied under the QCAT Act by replacing reference to ‘review and appeal’ with reference to ‘internal and external review’.

Clause 890 replaces section 147 to provide consistency with terms applied under the QCAT Act, for example by removing reference to ‘appeal’ and applying reference to ‘review’.

Clause 891 amends section 148 to provide consistency with the term review as used in the QCAT Act. The term ‘review decision’ is also replaced with ‘internal review decision’ to remove possible confusion with external review.

Clause 892 amends section 149 to provide consistency with terms applied under the QCAT Act and to remove possible confusion over the decision types mentioned. The term ‘review’ is replaced with ‘internal review’; ‘appealable decision’ with ‘reviewable decision’ and ‘review decision’ with ‘internal review decision’. Section 149(3) is replaced to adopt information notice requirements under section 157(2) of the QCAT Act. Section 149(6) is also amended to refer to an application for an external review made to QCAT rather than to a Magistrates Court.

Clause 893 amends section 150 to adopt terms used under the QCAT Act and transfer the power to stay reviewable decisions from the Magistrates Court to QCAT.

Clause 894 replaces part 8, division 3 to provide for external review jurisdiction to be transferred from the Magistrates Court to QCAT and remove procedural matters that are now provided for in the QCAT Act. The inserted section 151 provides that a person given notice of an internal review decision can apply to QCAT for external review of the decision. The inserted section 152 confers on QCAT the power to extend the time for applying for an external review if it relates to joint Commonwealth State permissions, for example for marine parks in the Great Barrier Reef region, and is consistent with the replaced section 152(3).

Clause 895 makes amendments in the schedule 6 (Dictionary). The definition for 'review notice' is deleted. Definitions of 'appealable decision' and 'review decision' are replaced by 'reviewable decision' and 'internal review decision' respectively. In the definition of 'information notice', the words 'review or appeal' are replaced by 'internal review' and paragraph (f) is replaced in order to indicate that an application for a stay of a decision may be made to QCAT.

Part 4 **Amendment of Nature Conservation Act 1992**

Clause 896 states that this part amends the *Nature Conservation Act 1992*.

Clause 897 inserts a new part 10, division 4. The new section 173OA prevents QCAT from granting a stay of a decision to suspend or cancel an authority that allows a person to take or interfere with the cultural or natural resources of a protected area or take protected wildlife. In such cases it is not considered appropriate to grant a stay that would allow the continued operation of the authority. The new section 173OA in effect replaces the present sections 102(6) and 106(5) of the *Nature Conservation (Administration) Regulation 2006*. It has been relocated to the *Nature Conservation Act 1992* because under the QCAT Act only an Act of Parliament may alter the provisions of the QCAT Act by providing for different tribunal functions, powers or procedures.

Part 5 **Amendment of Nature Conservation (Administration) Regulation 2006**

Clause 898 states that this part amends the *Nature Conservation (Administration) Regulation 2006*.

Clause 899 replaces the heading for part 4 for consistency with terms applied under the QCAT Act by replacing reference to ‘review and appeal’ with reference to ‘internal and external reviews’.

Clause 900 replaces section 99 to provide consistency with terms applied under the QCAT Act, for example by removing reference to ‘appeal’ and applying reference to ‘internal and external review’.

Clause 901 replaces section 100 to provide consistency with terms applied under the QCAT Act by replacing reference to ‘appellable decision’ with reference to ‘reviewable decision’.

Clause 902 amends section 101 to replace the term ‘review’ with ‘internal review’; ‘appellable decision’ with ‘reviewable decision’ and ‘review decision’ with ‘internal review decision’ to provide consistency with terms applied under the QCAT Act. Sections 101(2) and 101(3) are replaced to adopt information notice requirements under section 157(2) of the QCAT Act. Section 101(5) is amended to refer to an application for an external review made to QCAT rather than to a Magistrates Court.

Clause 903 amends section 102 to adopt terms used under the QCAT Act and transfer the power to stay reviewable decisions from the Magistrates Court to QCAT. Subsection 102(6) which prevents QCAT from granting a stay of a decision to suspend or cancel an authority to take or interfere with the cultural or natural resources of a protected area or take protected wildlife is also omitted because this limitation was transferred to the *Nature Conservation Act 1992* and now appears as section 173OA.

Clause 904 replaces part 4, division 3 to transfer external review jurisdiction from the Magistrates Court to QCAT and remove procedural matters that are now provided for in the QCAT Act. The inserted section 103 provides that a person given notice of an internal review decision can apply to QCAT for external review of the decision. Clause 902 also removes subsection 106(5) which prevented the Magistrates Court from granting a stay of a decision to suspend or cancel an authority to take or

interfere with the cultural or natural resources of a protected area or take protected wildlife. This limitation is transferred to QCAT and now appears as section 173OA under the *Nature Conservation Act 1992*.

Clause 905 makes amendments in the schedule 7 (Dictionary). The definition for ‘review notice’ is deleted. Definitions of ‘appellable decision’ and ‘review decision’ are replaced by ‘reviewable decision’ and ‘internal review decision’ respectively. In the definition of ‘information notice’, the words ‘review or appeal’ are replaced by ‘internal review’ and paragraph (f) is replaced in order to indicate that an application for a stay of a decision may be made to QCAT.

Part 6 **Amendment of Queensland Heritage Act 1992**

Clause 906 states that this part amends the *Queensland Heritage Act 1992*.

Clause 907 replaces section 97 to require that applicants for compensation be given a notice of the decision. This notice must be accompanied by a QCAT information notice if the decision is to pay a lower amount than claimed or to not pay any compensation.

Clause 908 deletes part 9, division 2, subdivision 3 to transfer external review jurisdiction from the Magistrates Court to QCAT and remove procedural matters that are now provided for in the QCAT Act. The inserted section 98 provides that a person who is dissatisfied with a decision to pay a lower amount of compensation than claimed or to not pay any compensation can apply to QCAT for external review of the decision.

Part 7 **Amendment of Recreation Areas Management Act 2006**

Clause 909 states that this part amends the *Recreation Areas Management Act 2006*.

Clause 910 replaces section 206 to provide consistency with terms applied under the QCAT Act, for example by removing reference to ‘appeal’ and applying reference to ‘internal and external review’.

Clause 911 amends section 207 to provide consistency with terms applied under the QCAT Act by replacing the term ‘appellable’ with ‘reviewable’.

Clause 912 amends section 208 to provide consistency with terms applied under the QCAT Act, for example by replacing the term ‘review’ with ‘internal review’. Sections 208(2) and 208(3) are replaced to adopt the information notice requirements under section 157(2) of the QCAT Act. Section 208(5) is amended to refer to an application for an external review made to QCAT rather than to a Magistrates Court.

Clause 913 amends section 209 to adopt terms used under the QCAT Act and transfer the power to stay reviewable decisions from the Magistrates Court to QCAT.

Clause 914 replaces Part 9, division 4 to transfer external review jurisdiction from the Magistrates Court to QCAT and remove procedural matters that are now provided for in the QCAT Act. The inserted section 210 provides that a person given notice of an internal review decision can apply to QCAT for external review of the decision.

Clause 915 makes amendments to the schedule (Dictionary). The definition for ‘review notice’ is deleted. Definitions of ‘appellable decision’ and ‘review decision’ are replaced by ‘reviewable decision’ and ‘internal review decision’ respectively. In the definition of ‘information notice’, paragraph (c) is replaced to achieve consistency with the term ‘review’ as applied under the QCAT Act (in regard to the information notice stating that a person may apply for a review of the decision), and to indicate that that an application for a stay of the decision may be made to QCAT.

Part 8 Amendment of Surveyors Act 2003

Clause 916 provides that this part amends the *Surveyors Act 2003*.

Clause 917 amends the functions of the Surveyors Board of Queensland (the board) in section 9 of the Act so that the board may refer disciplinary

matters for hearing to QCAT (rather than to surveyors disciplinary committees as at present) or to existing professional conduct review panels.

Clause 918 amends section 53 of the Act, which details when the board is deemed to have failed to make a decision on an application for registration as a surveyor, to provide that an information notice need not be given by the board to the applicant for a decision taken to have been made under this section. Since the section relates to a failure to make a decision, no decision was made for which reasons can be provided.

Clause 919 amends section 58 of the Act, which details when the board is deemed to have failed to make a decision on an application to renew registration as a surveyor, to provide that an information notice need not be given by the board to the applicant for a decision taken to have been made under this section. Since the section relates to a failure to make a decision, no decision was made for which reasons can be provided.

Clause 920 amends section 89 of the Act, which enables the board to deal with cases of professional misconduct, by substituting the board's power to refer the matter to a disciplinary committee with a power to refer the matter to QCAT.

Clause 921 omits section 93 of the Act, which provides for how a disciplinary committee to whom the board has referred a matter about a registrant must hear and decide the matter. The section is no longer required because disciplinary matters will now be heard by QCAT rather than a disciplinary committee.

Clause 922 amends the heading to part 6 of the Act to reflect that disciplinary matters will now be heard by QCAT rather than a disciplinary committee.

Clause 923 omits part 6, divisions 1 to 4, which deal with the establishment of, membership of, proceedings of, and dealing with offences by a disciplinary committee. The divisions are no longer required because disciplinary matters will now be heard by QCAT rather than a disciplinary committee.

The clause also inserts a new section 94 providing QCAT with jurisdiction to hear and decide disciplinary proceedings referred to it by the board.

Clause 924 omits the headings to part 6, divisions 5 to 7 of the Act. With the removal of the power of the board to establish disciplinary committees and the transfer of jurisdiction for the hearing of serious disciplinary matters to QCAT, many of the provisions in these divisions are being

amended or omitted and the headings of these divisions are no longer appropriate.

Clause 925 amends section 118 of the Act, which deals with a decision by a disciplinary committee about whether a ground for disciplinary action is established, so that references to disciplinary committees will be replaced by references to QCAT.

Clause 926 amends section 119 of the Act, which provides for a decision of a disciplinary committee about disciplinary action against a registrant who has engaged in professional misconduct, so that references to disciplinary committees will be replaced by references to QCAT.

Clause 927 amends section 120 of the Act, which deals with a disciplinary committee deciding that a former registrant has engaged in professional misconduct, so that references to disciplinary committees will be replaced by references to QCAT.

Clause 928 amends section 121 of the Act, which details matters a disciplinary committee must consider in making decision about disciplinary action, so that references to disciplinary committees will be replaced by references to QCAT.

Clause 929 amends section 122 of the Act, which empowers a disciplinary committee to order costs it considers appropriate for the disciplinary proceedings, so that references to disciplinary committees will be replaced by references to QCAT.

Clause 930 omits section 123 of the Act, which provides for notification of a disciplinary committee's decision. The section is no longer required because disciplinary matters will now be heard by QCAT rather than a disciplinary committee.

Clause 931 amends section 124 of the Act, which gives the board discretion to notify others of the decision of a disciplinary committee, by replacing references to a disciplinary committee with references to QCAT.

Clause 932 omits sections 125 and 126 of the Act which detail the effect and implementation of a disciplinary committee decision. The sections are no longer required because disciplinary matters will be heard by QCAT rather than a disciplinary committee.

Clause 933 amends section 127 of the Act, which provides for disciplinary action to be recorded in a register, so that references to disciplinary committees will be replaced by references to QCAT.

Clause 934 amends section 140 of the Act, which provides power for an investigator under the Act to gain entry to a place with consent, by replacing references to a disciplinary committee with reference to QCAT. The section is amended because disciplinary matters will now be heard by QCAT rather than a disciplinary committee.

Clause 935 replaces parts 8 and 9 of the Act with a new part 8, 'Review of decisions by QCAT'. The provisions of part 8 (Appeals to the District Court) that are being replaced set out various procedural matters relating to appeals to the District Court by a person who is given, or is entitled to be given, an information notice for a decision. The new part 8, which comprises section 163, establishes the right of a person given, or entitled to be given, an information notice for a decision under the Act to apply to QCAT for review of the decision instead of appealing to the District Court. The change in terminology in the part from 'appeal' to 'review' reflects that, under the QCAT Act, the process of reviewing an administrative decision is known as a review rather than as an appeal.

Part 9 of the Act, which provides for appeals to the Court of Appeal from decisions of disciplinary committee, is omitted because disciplinary matters will now go to QCAT rather than to a disciplinary committee and appeals from decisions of QCAT will be dealt with under the QCAT Act.

Clause 936 omits schedule 1 of the Act, which details decisions for which information notices under the Act must be given. The schedule is being omitted for consistency with other Acts referring matters to QCAT which do not contain such a schedule. The requirement to give an information notice for these decisions is located in the relevant sections of the Act and is not affected by the removal of the schedule.

Clause 937 amends the dictionary to the Act to omit redundant definitions, amend existing definitions and substitute definitions consequential to the transfer of jurisdiction for the hearing of disciplinary matters and the review of decisions under the Act to QCAT.

Part 9 Amendment of Valuers Registration Act 1992

Clause 938 provides that this part amends the *Valuers Registration Act 1992*.

Clause 939 amends the dictionary to the Act consequential to the transfer of jurisdiction for the hearing of disciplinary matters and reviews of decisions under the Act to QCAT.

Clause 940 amends section 12 of the Act, which provides for removal from office of members of the Valuers Registration Board of Queensland (the board), by removing reference in the section to a committee. The reference is no longer required because disciplinary matters under the Act will now be heard by QCAT rather than a disciplinary committee.

Clause 941 amends section 33 of the Act, which requires that written notice be given to an applicant of the board's decision on an application for registration as a valuer. Currently section 33(2) requires that, if the application is refused, the notice must state the reasons for refusal and inform the applicant that the applicant may appeal against the refusal. The amendment will replace this with a requirement that the notice must be an information notice complying with section 157(2) of the QCAT Act. The amendment is being made because disciplinary matters under the Act will now be heard by QCAT rather than a disciplinary committee.

Clause 942 amends section 39 of the Act, which provides for the cancellation of the registration of a valuer, by omitting the board's power to order that a valuer's registration be cancelled where the valuer is guilty of misconduct in a professional respect. The clause also replaces the current requirement for the board to provide a written notice of its decision to cancel a valuer's registration under this section with a requirement that the notice given must be an information notice complying with section 157(2) of the QCAT Act. Both amendments are being made because serious disciplinary matters (those that amount to professional misconduct) under the Act will now be heard by QCAT rather than a disciplinary committee and QCAT will make the decision whether or not to cancel the valuer's registration rather than the board.

Clause 943 amends section 40 of the Act, which enables a person whose registration as a valuer has been cancelled to seek re-registration, by including a new subsection which requires that if the board refuses to restore the registration it must give the applicant an information notice complying with section 157(2) of the QCAT Act.

Clause 944 amends section 42D of the Act, which empowers the board to refuse to register a specialist retail valuer, by requiring that if the board refuses the registration it must give the applicant an information notice complying with section 157(2) of the QCAT Act. The amendment is being

made because disciplinary matters under the Act will now be heard by QCAT rather than a disciplinary committee.

Clause 945 replaces section 42GA(3), which requires that written notice be given to an applicant of the board's decision to remove a person from the list of specialist retail valuers. The amendment requires that the notice must be an information notice complying with section 157(2) of the QCAT Act. The amendment is being made because disciplinary matters under the Act will now be heard by QCAT rather than a disciplinary committee.

Clause 946 amends the heading of section 42H of the Act (Disciplinary charges against specialist retail valuers) by replacing 'charges' with 'proceedings'. The amendment is being made because it reflects the move away from criminal justice type language in Acts as a result of the enactment of the QCAT Act and the move towards language that better reflects civil and administrative justice.

Clause 947 omits sections 50 to 58 of the Act which detail the powers and procedures of disciplinary committees and inserts new sections 50, 51 and 52.

New section 50 will provide that disciplinary proceedings of a serious nature are referred by the board to QCAT instead of a disciplinary committee as at present.

New section 51 will empower the board to deal with disciplinary proceedings that are not of a serious nature. Under the new section 51 the board may:

- admonish or reprimand the valuer;
- order the valuer to give an undertaking to abstain from a particular conduct; or
- order the valuer to pay to the board a penalty of an amount equal to not more than 20 penalty units.

New section 52 requires the board to give to a valuer notice of intention to take disciplinary action against that valuer that is not of a serious nature under the new section 51 of the Act.

Clause 948 amends section 59 of the Act, which currently sets out the penalties a disciplinary committee can impose on a registered valuer, by replacing references to a disciplinary committee with references to QCAT. The section is being amended because serious disciplinary matters (matters

that amount to professional misconduct) under the Act will now be heard by QCAT.

Clause 949 amends section 61 of the Act to provide that a person aggrieved by particular decisions of the board may apply to QCAT for a review of the decision instead of appealing against the decision to a District Court judge. A number of changes in terminology, for example, the replacement of references to ‘appeal’ with ‘review’ reflect that, under the QCAT Act, the process of reviewing an administrative decision is known as a review rather than as an appeal.

Clause 950 amends section 64(3) of the Act, by removing the provision that all penalties and costs ordered by a disciplinary committee to be paid to the board constitute debts due to the board and may be recovered in a court having jurisdiction for the recovery of debts up to the amount concerned. The section is being amended because serious disciplinary matters under the Act (matters that amount to professional misconduct) will now be heard by QCAT and the QCAT Act will provide for penalties and costs from disciplinary proceedings.

Clause 951 inserts a new part 6, division 4 which provides a transitional provision. The division comprises a new section 78 which provides that if, immediately before the commencement, charges were laid by an investigator under the previous section 50 of the Act but no committee had been appointed, the board may consider the investigator’s report and take action under the new section 50 as though no charge had been laid.

This new section reflects the fact that under the Act the board will now decide whether to hear a matter or refer it to QCAT where the conduct would amount to professional misconduct. This is in contrast to the situation previously where an investigator would decide whether charges should be laid.

Part 10 Amendment of Vegetation Management Act 1999

Clause 952 provides that this part amends the *Vegetation Management Act 1999*.

Clause 953 amends section 55 of the Act by inserting a new subsection 3A which requires that a compliance notice issued under the Act must be accompanied by an information notice complying with the QCAT Act for the decision to give the notice. The amendment is consequential to the vesting of jurisdiction for the hearing of reviews of a decision to give a compliance notice under the Act with QCAT in place of the Magistrates Court.

Clause 954 amends the heading to part 4 of the Act to omit the word 'Appeals' and replace it with 'Reviews'. The amendment is being made because reviews of decisions to issue a compliance notice under the Act will now be heard by QCAT and, under the QCAT Act, the process of reviewing an administrative decision is known as a review rather than as an appeal.

Clause 955 omits part 4, division 1 of the Act (Appeals) and replaces it with a new division 'Review of decisions by QCAT'. The omitted division provides a right for a person who has been given a compliance notice to appeal to the Magistrates Court and empowers the court to grant a stay of the operation of a decision in order to secure the effectiveness of the appeal. The new division comprises a new section 62 that provides that a person who has been given a compliance notice may seek review of the decision to give the notice by QCAT rather than the Magistrates Court. The issue of seeking a stay of the operation of a decision will now be dealt with under the QCAT Act.

Clause 956 amends the dictionary to the Act to insert a definition of 'information notice'. The new definition is consequential to the transfer of jurisdiction for the hearing of reviews of decisions to give a compliance notice under the Act from the Magistrates Court to QCAT.

Part 11 Amendment of Water Act 2000

Clause 957 provides that this part amends the *Water Act 2000*.

Clause 958 omits section 778 of the Act. This section relates to action the regulator must take prior to initiating a spot audit of a water service provider's asset management plan or system leakage plan. Water service provider provisions were relocated to the *Water Supply (Safety and Reliability) Act 2008* and accordingly this section is no longer relevant or

needed. The regulator's powers and functions are now contained solely in the *Water Supply (Safety and Reliability) Act 2008* and an equivalent provision (section 464) was included in that Act.

Clause 959 amends section 781 of the Act by replacing references to appeal with references to internal review. The amendment is being made to reflect changes to terminology in the Act as a consequence of the review of particular decisions now being heard by QCAT.

Clause 960 amends section 861 of the Act by adding references to 'external review' after references to 'appeal'. The amendment is being made because reviews of decisions that were formerly heard by the Magistrates Court will now be heard by QCAT and, under the QCAT Act, the process of reviewing an administrative decision is known as a review rather than an appeal.

Clause 961 amends section 864 of the Act, which provides for the internal review of original decisions under the Act, to reflect that external reviews of decisions under the Act that were formerly heard by the Magistrates Court (as 'appeals') will now be heard by QCAT. The clause also introduces requirements for the provision of a review notice complying with the QCAT Act for decisions that are reviewable by QCAT.

Clause 962 amends section 865, which enables a stay to be granted on the operation of an original decision whilst it is under review, by replacing references to the Magistrates Court with references to QCAT. This amendment is being done because reviews of decisions under the Act that were formerly heard by the Magistrates Court will now be heard by QCAT.

Clause 963 amends the heading of Chapter 6, part 3 (Appeals) by inserting 'and external review'. The amendment is being made because appeals against decisions that were formally heard by the Magistrates Court will now be heard as external reviews by QCAT.

Clause 964 amends section 877 of the Act, which sets out who may appeal against review decisions and to which body the appeal may be made. The amendment replaces the right to appeal certain decisions to the Magistrates Court with a right to apply to QCAT for a review of those decisions.

Clause 965 amends the heading to section 878 of the Act, which details how to start an appeal against a review decision, by inserting 'to the Land Court'. This amendment is consequential to the fact that appeals against decisions that were formally heard by the Magistrates Court will now be

heard as external reviews by QCAT and the Land Court will be the only court that deals with appeals.

Clause 966 amends section 879 of the Act, which provides for staying the operation of a review decision, by removing references to arbitration because the service provider provisions have been relocated to the *Water Supply (Safety and Reliability) Act 2008*, and accordingly references to arbitration are no longer applicable. Prior to relocating the service provider provisions of this Act to the *Water Supply (Safety and Reliability) Act 2008*, decisions of the regulator or the issue of a compliance notice issued by the regulator or an authorised officer appointed by the regulator, could be arbitrated (after internal review) to the Queensland Competition Authority. These were the only matters under the Act for which an application for arbitration could be made.

Clause 967 amends the dictionary to the Act to amend existing definitions and insert new definitions consequential to the amendments in this Bill.

Part 12 Amendment of Water Supply (Safety and Reliability) Act 2008

Clause 968 provides that this part amends the *Water Supply (Safety and Reliability) Act 2008*.

Clause 969 amends section 466(1) of the Act which sets out what a compliance notice under the Act must contain, by changing references to ‘appeals’ to references to ‘internal review’. The amendment reflects the move away from criminal justice type language in Acts as a result of the enactment of the QCAT Act and the move towards language that better reflects civil and administrative justice.

Clause 970 replaces section 511 of the Act, which currently provides that every appeal against an original decision must be in the first instance by way of an application for a review. The new section 511 replaces the reference to appeal with a reference to appeal or application for external review in order to reflect that appeals against decisions that were heard by the Magistrates Court will now be heard as external reviews by QCAT. The new section 511 also replaces the reference to ‘review’ with ‘internal review’ to draw a distinction between an internal review and an external review by QCAT.

Clause 971 amends section 512 of the Act to omit references to ‘review’ and replace them with references to ‘internal review’. The amendment is being made because appeals against decisions that were formally heard by the Magistrates Court will now be heard as external reviews by QCAT. Accordingly, a distinction now needs to be drawn between an internal review and an external review.

Clause 972 amends section 513 of the Act to omit references to ‘review’ and replace them with references to ‘internal review’. The amendment is being made because appeals against decisions that were formally heard by the Magistrates Court will now be heard as external reviews by QCAT. Accordingly, a distinction now needs to be drawn between an internal review and an external review.

Clause 973 amends section 514 of the Act, which requires a reviewer to review a decision upon receipt of a request to do so. The amendments include mention of external reviews where mentions of appeals are made to reflect that appeals against decisions that were heard by the Magistrates Court will now be heard as external reviews by QCAT. The amendments also replace references to ‘review’ with ‘internal review’ to distinguish between an internal review and an external review by QCAT.

Clause 974 amends section 515 of the Act which sets out requirements for a notice of a review decision. The amendments are required to reflect the fact that appeals against decisions that were formally heard by the Magistrates Court will now be heard as external reviews by QCAT. The clause also requires that the review notice for decisions reviewable by QCAT must comply with section 157(2) of the QCAT Act.

Clause 975 makes consequential amendments to section 516 of the Act, which enables a stay to be granted on the operation of an original decision whilst it is under review, to reflect that the review of decisions under the Act that were formerly heard by the Magistrates Court will now be heard by QCAT.

Clause 976 replaces the heading of chapter 7, part 3 so that it states ‘Appeals and external reviews’ instead of ‘Appeals’. The new heading reflects that appeals against decisions that were formally heard by the Magistrates Court will now be heard as external reviews by QCAT.

Clause 977 amends section 517 of the Act to correct a cross reference in the section. Dam safety matters were relocated from the *Water Act 2000* to the *Water Supply (Safety and Reliability) Act 2008*. In the process of doing this, some provisions were recast or split. In addition, the Water Supply

Bill was renumbered during the drafting process, which resulted in a cross reference in section 517 being incorrect.

The clause also amends references to ‘appeal’ in the section and heading to include reference to external review to QCAT, replaces a reference to the Magistrates Court with QCAT, and replaces a reference to review with internal review to reflect the fact that appeals against decisions that were formally heard by the Magistrates Court will now be heard as external reviews by QCAT.

Clause 978 amends section 518 of the Act, which states the process for starting an appeal to the court. The section is being amended to include reference to the regulator in addition to the chief executive because decisions of the regulator relating to recycled water and drinking water can be appealed to the Planning and Environment Court (under the Act, the chief executive has decision making powers relating to dam safety; such decisions may be appealed to the Planning and Environment Court).

Previously, under the *Water Act 2000*, decisions of the regulator relating to service provider regulation could only be arbitrated by the Queensland Competition Authority and this is still the case under the *Water Supply (Safety and Reliability) Act 2008*. A decision was made, however, that the regulator’s decisions on new recycled water and drinking water matters would be able to be appealed to the Planning and Environment Court rather than arbitrated. These arrangements are correctly identified in section 517(a) (dam safety matters) and 517(c) regulator decisions and compliance actions on drinking water or recycled water matters.

Clause 979 amends section 519 of the Act, which provides for an appeal to a court for the stay of the operation of a review decision which is subject to appeal. In setting out which court may grant the stay, the amendment removes reference to it being the court to which the appellant could have applied for a stay of an original decision. This amendment is consequential to the fact that the Planning and Environment Court is the only court that deals with appeals, and provisions for stays by QCAT are dealt with in the QCAT Act. In addition, the mention of arbitration has been removed from section 519. *Clause 981* relocates these provisions to new section 524A so that it is located with the other arbitration provisions.

Clause 980 amends section 524 of the Act to insert reference to a ‘compliance notice’. This corrects an error made during the drafting of the *Water Supply (Safety and Reliability) Act 2008*. The amendment is consistent with the original provision in the *Water Act 2000*, under which a

service provider issued a compliance notice may apply for arbitration to the Queensland Competition Authority (originating sections of the *Water Act 2000* prior to being amended by the *Water Supply (Safety and Reliability) Act 2008* are sections 89(1) and 851(3)).

Clause 981 inserts a new section 524A into the Act which provides for the stay of operation of review decisions. Mention of arbitration has been removed from section 519 of the Act and relocated to this more appropriate position in the Act with the other arbitration provisions.

Clause 982 amends the dictionary to the Act to omit redundant definitions and insert new definitions consequential to the transfer of jurisdiction for the review of certain decisions made under the Act from the Magistrates Court to QCAT.

Chapter 7 Department of Health

Part 1 Amendment of Chiropractors Registration Act 2001

Clause 983 states that this part amends the *Chiropractors Registration Act 2001*.

Clause 984 amends section 5 of the Act to omit the reference to the ‘Health Practitioners Tribunal’ and replace with the new ‘QCAT’. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant’s registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 985 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 986 amends the heading in part 3, division 7, subdivision 1 to change the reference from ‘the District Court’ to ‘QCAT’ to reflect that

QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant's registration.

Clause 987 amends section 89 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 988 amends section 162 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 989 replaces part 6 with a new part titled 'Reviews by QCAT' and inserts two new sections 176 and 177.

New section 176 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 177 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant's mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register unless QCAT reasonably believes it is in the interests of users of the registrant's services or the public to know the details.

Clause 990 amends the dictionary in schedule 4 to omit the term 'appellant' which will no longer be used, amend the definition of 'review period' to replace the reference to the District Court with QCAT and align the definition of 'information notice' with that in the QCAT Act.

Part 2 **Amendment of Dental Practitioners Registration Act 2001**

Clause 991 states that this part amends the *Dental Practitioners Registration Act 2001*.

Clause 992 amends section 5 of the Act to omit the reference to ‘the Health Practitioners Tribunal’ and replace it with the new ‘QCAT’. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant’s registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 993 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 994 amends the heading in part 3, division 7, subdivision 1 to change the reference from ‘the District Court’ to ‘QCAT’ to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant’s registration.

Clause 995 amends section 89 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 996 amends section 184 to change the reference from ‘appeal’ to ‘review’, to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 997 replaces part 6 with a new part titled ‘Reviews by QCAT’ and inserts two new sections 198 and 199.

New section 198 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 199 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must state the reasons for the decision and for conditions that may be reviewed under part

3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant's mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register unless QCAT reasonably believes it is in the interests of users of the registrant's services or the public to know the details.

Clause 998 amends the dictionary in schedule 4 to omit the term 'appellant' which will no longer be used, amend the definition of 'review period' to replace the reference to the District Court with QCAT and align the definition of 'information notice' with that in the QCAT Act.

Part 3 Amendment of Dental Technicians and Dental Prosthetists Registration Act 2001

Clause 999 states that this part amends the *Dental Technicians and Dental Prosthetists Registration Act 2001*.

Clause 1000 amends section 5 of the Act to omit the reference to 'Health Practitioners Tribunal' and replace it with the new 'QCAT'. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant's registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1001 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1002 amends the heading in part 3, division 7, subdivision 1 to change the reference from 'the District Court' to 'QCAT' to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant's registration.

Clause 1003 amends section 90 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1004 amends section 166 to change reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1005 replaces part 6 with a new part titled ‘Reviews by QCAT’ and inserts two new sections 180 and 181.

New section 180 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 181 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant’s mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register unless QCAT reasonably believes it is in the interests of users of the registrant’s services or the public to know the details.

Clause 1006 amends the dictionary in schedule 4 to omit the term ‘appellant’ which will no longer be used, amend the definition of ‘review period’ to replace the reference to the District Court with QCAT and align the definition of ‘information notice’ with that in the QCAT Act.

Part 4 Amendment of Food Act 2006

Clause 1007 states that this part amends the *Food Act 2006*.

Clause 1008 amends section 193 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a decision of the chief executive under the Act as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1009 amends subsection 220(5) to require the notice to be a QCAT information notice.

Clause 1010 amends the heading of chapter 9 to remove the term 'Appeals', which will not be used by QCAT.

Clause 1011 amends section 236 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. Under this section, an application for a review of an original decision is first initiated by applying to the chief executive for an internal review of the decision. The decision made by the chief executive, after reviewing the original decision, is called the 'review decision'.

Clause 1012 amends section 239 to provide that the notice given to an applicant about the review decision must be a QCAT information notice. The clause also amends section 239 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT.

Clause 1013 omits section 240 of the Act, which provides for a stay of operation of a decision. This provision is no longer as required as this matter is provided for in section 22 of the QCAT Act.

Clause 1014 amends the heading of chapter 9, part 2 from 'Appeals' to 'External review of decisions' to reflect the terminology to be used by QCAT.

Clause 1015 amends section 241 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. This also reflects that QCAT has jurisdiction to review a review decision made by the chief executive.

Clause 1016 omits sections 242 to 246 from the Act as these matters are now dealt with in the QCAT Act.

Clause 1017 amends section 258 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT.

Clause 1018 amends schedule 3 to omit the definition of review notice and insert a new definition for information notice which aligns with that under the QCAT Act.

Part 5 **Amendment of Health (Drugs and Poisons) Regulation 1996**

Clause 1019 states that this part amends the *Health (Drugs and Poisons) Regulation 1996*.

Clause 1020 amends section 18 to provide that if a condition is stated on an endorsement, licence or approval, the chief executive must issue a QCAT information notice about the condition. The clause also amends section 18 to provide that a QCAT information notice must also be given if an endorsement, licence or approval is not approved. A QCAT information notice means a notice given under the QCAT Act about the decision.

However, if an endorsement is a treatment approval, a notice must be given which states the decision and that the applicant may apply to the chief executive for a statement of reasons under section 158 of the QCAT Act. This amendment maintains the status quo with respect to treatment approvals, but aligns the timeframes with those set out in section 158 of the QCAT Act.

Clause 1021 amends section 24 to require a QCAT information notice to be given if the chief executive considers there are grounds to suspend or cancel an endorsement.

Clause 1022 amends section 25 to require a QCAT information notice to be given if the chief executive decides to cancel or suspend an endorsement in urgent circumstances.

Clause 1023 amends section 25A to require a QCAT information notice to be given if the chief executive considers there are grounds to suspend or cancel an approval in urgent circumstances.

Clause 1024 amends section 27 to require a QCAT information notice to be given if the chief executive is not satisfied an endorsement has been lost, stolen or destroyed.

Clause 1025 amends section 28 to require a QCAT information notice to be given if the chief executive refuses to amend an endorsement on application.

Clause 1026 amends section 29 to provide that if the chief executive decides an endorsement should be amended, notice must be given to the applicant containing any information that is required to be given in a QCAT information notice.

Clause 1027 amends the heading of chapter 1, part 6 from ‘Appeals’ to ‘External review’ to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a decision by the chief executive as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1028 amends section 33 to reflect the change in terminology from ‘appeal’ to ‘review’ by QCAT and to give jurisdiction to QCAT to undertake a review of certain decisions of the chief executive.

Clause 1029 omits sections 34 to 39 as these matters will now be dealt with under the QCAT Act.

Clause 1030 amends the dictionary in appendix 9 to insert a definition for QCAT information notice.

Part 6 Amendment of Health Practitioners (Professional Standards) Act 1999

Clause 1031 states that this part amends the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1032 amends section 10 to clarify that the Act provides for QCAT’s functions under this Act. QCAT replaces the Health Practitioners Tribunal in making decisions affecting a registrant’s registration under this Act. This includes hearing disciplinary matters against registrants referred by the boards and also conducting reviews of decisions of the boards, panels and QCAT itself.

The clause also omits the provision dealing with appointment of the registrar of the Health Practitioners Tribunal. The appointment provisions for Registry staff of QCAT are in the QCAT Act.

Clause 1033 replaces the heading of part 2, division 4 to ‘QCAT’.

Clause 1034 omits and replaces part 2, division 4, subdivision 1. This Division established the Health Practitioners Tribunal, which is to be replaced by QCAT.

New section 26 specifies that QCAT must be constituted by a judicial member, which is defined under the QCAT Act as the President, Deputy President, or another member who is a District or Supreme Court judge.

Clause 1035 amends section 30 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a decision of a board or panel as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1036 amends section 31 to provide that assessors must be chosen by the Principal Registrar. Currently, the Registrar of the Health Practitioners Tribunal performs this and other functions. However, under the new QCAT, the Principal Registrar is the appropriate person to undertake these duties.

Clause 1037 amends section 32 so that the reference is to the ‘Principal’ Registrar, a term consistent with the QCAT Act.

Clause 1038 amends section 33 so that the reference is to the ‘Principal’ Registrar, a term consistent with the QCAT Act.

Clause 1039 omits part 2, division 4, subdivision 4, which provides for the functions and powers of the Registrar of the Health Practitioners Tribunal. This Division is no longer required.

Clause 1040 amends section 42 so that the reference is to the ‘Principal’ Registrar, a term consistent with the QCAT Act.

Clause 1041 amends section 59 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. The clause also amends the notice requirements to align with those under the QCAT Act.

Clause 1042 amends section 126 so that the reference is to the ‘Principal’ Registrar, a term consistent with the QCAT Act.

Clause 1043 amends section 205 to align the notice requirements with the contents of ‘information notice’ requirements in the QCAT Act.

Clause 1044 amends the heading of part 6, division 6 from ‘Health Practitioners Tribunal’ to ‘QCAT’.

Clause 1045 amends section 211 of the Act to clarify that QCAT has jurisdiction to review: ‘reviewable decisions’ by a board or panel under Part 9, Division 3; and also ‘tribunal review decisions’, which are certain decisions made by QCAT, under Part 9, Division 4. In the new QCAT jurisdiction, the term ‘appeal’ is being replaced with ‘review of reviewable decisions’. Consequently, changes to the language and terms in the Act

have been made to clearly distinguish between decisions of a board or panel that can be reviewed by QCAT and those decisions of QCAT which QCAT itself can subsequently review.

Clause 1046 omits subsection 212(3) as this provision cross-references section 230, which is being omitted from the Act. Section 230 enables the tribunal to proceed in absence of a party or to adjourn the hearing. The provision is being omitted from the Act as it duplicates provisions in the QCAT Act.

Clause 1047 amends section 213 to provide that the Principal Registrar must choose assessors to assist the tribunal.

Clause 1048 amends section 215 so that the reference is to the ‘Principal’ Registrar, a term consistent with the QCAT Act.

Clause 1049 omits section 216 from the Act as the QCAT Act and Rules will now provide service of notices.

Clause 1050 replaces section 217. Most of the current provision that deals with a directions conference is duplicated in the QCAT Act and will therefore be omitted from the Act. However, the new section 217 will continue to enable assessors to take part in a compulsory conference under the QCAT Act if the tribunal considers it necessary or desirable.

Clause 1051 amends section 219 to omit subsections (1) and (2) in relation to procedures for conducting a hearing, which are duplicated in the QCAT Act. New section 219 retains the current subsections requiring the tribunal to inform a party of certain matters if requested.

Clause 1052 omits sections 220 and 221 of the Act as these procedural matters duplicate provisions in the QCAT Act.

Clause 1053 amends section 222 to remove those provisions about hearings and circumstances where they may be closed that are duplicated in the QCAT Act, however retains the subsections which specify that a hearing for an impairment matter is not open to the public unless the tribunal reasonably believes it is in the public interest; or the registrant requests the matter be open to the public.

Clause 1054 omits sections 223 and 224 as these matters duplicate provisions in the QCAT Act.

Clause 1055 replaces section 225, removing the reference to a right of representation as this is provided for in section 43 of the QCAT Act.

Clause 1056 replaces section 227, removing the provisions in relation to how questions of law are to be decided which are duplicated in QCAT Act, but retaining the provisions requiring a member to have regard to assessors' views in deciding a question of fact.

Clause 1057 omits section 227A as this matter duplicates provisions in the QCAT Act.

Clause 1058 replaces section 228 removing those provisions that are duplicated in the QCAT Act, but retaining the provisions which apply if the tribunal has started to hear a matter but not made its decision, and the tribunal member or assessor assisting the tribunal, are unable to continue to take part in proceedings.

Clause 1059 omits sections 229 and 230 as these matters duplicate provisions in the QCAT Act.

Clause 1060 omits subsection 231(4) as this is now provided for in the QCAT Act.

Clause 1061 omits section 232 as this section duplicates provisions in the QCAT Act.

Clause 1062 omits sections 234 and 235 as these matters duplicate provisions in the QCAT Act.

Clause 1063 omits part 6, division 6, subdivision 3, which provides for 'Contempt of tribunal', because these provisions duplicate those in the QCAT Act.

Clause 1064 amends section 245 so that the reference is to the 'Principal' Registrar, a term consistent with the QCAT Act and to clarify that the notice must include the right the party has to appeal to the Court of Appeal under the QCAT Act. The clause also omits subsection 245(3) as this will be dealt with in the QCAT Act and Rules.

Clause 1065 amends section 249 replaces the reference to 'chairperson' with 'president', a term consistent with the QCAT Act.

Clause 1066 amends section 251 so that the reference is to the 'Principal' Registrar, a term consistent with the QCAT Act.

Clause 1067 omits section 252 as this provision is no longer required. The QCAT Act will instead ensure that decisions of QCAT are binding.

Clause 1068 amends section 253 to reflect that decisions will now be stayed under ‘the QCAT Act’. The section is also amended so that the reference is to ‘Principal’ Registrar, a term consistent with the QCAT Act.

Clause 1069 omits sections 256-259 as these matters duplicate provisions in the QCAT Act.

Clause 1070 amends section 261 so that the reference is to the ‘Principal’ Registrar, a term consistent with the QCAT Act.

Clause 1071 amends section 263 so that the reference is to the ‘Principal’ Registrar, a term consistent with the QCAT Act.

Clause 1072 amends section 301 so that the notice given by the board when it makes a decision under sections 298, 299 or 230 is consistent with the requirements in section 157(2) QCAT Act.

Clause 1073 amends section 305 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT.

Clause 1074 amends section 311 so that the notice given by the board if it decides to suspend or cancel, or imposes conditions on the registrant’s registration, is consistent with the requirements in section 157(2) QCAT Act.

Clause 1075 amends section 314 to clarify that the purposes of part 9 are to provide for the review of certain decisions by QCAT and for appeals from certain decisions under the Act to the Court of Appeal.

Clause 1076 amends section 316 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT.

Clause 1077 amends the heading of part 9, division 3 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT.

Clause 1078 amends section 325 to change the reference from ‘appealable decisions’ to ‘reviewable decisions’ to reflect the terminology to be used by QCAT.

Clause 1079 replaces sections 326 to 336.

New section 326 provides for who may apply to QCAT for a review of a reviewable decision.

New section 327 requires the principal registrar to give written notice to the Health Quality and Complaints Commission when an application for review of a reviewable decision is filed in the registry.

New section 328 clarifies that there is no right for a stay of operation of a decision that is made under section 59(2) of the Act and requires that the tribunal finalise the review as quickly as possible.

New section 329 clarifies that the panel is not a party to any proceedings in the tribunal's jurisdiction relating to a review of a panel decision.

New section 330 provides that the procedure for the hearing of a review is set out under the QCAT Act and under part 6, division 6, subdivision 2 of the *Health Practitioners (Professional Standards) Act 1999* (other than section 215).

New section 331 retains the current provision dealing with the tribunals' powers on review of reviewable decisions.

Clause 1080 amends section 337 to state which decisions of QCAT ('tribunal review decisions') may be reviewed by QCAT. The clause also clarifies that a tribunal review decision is a decision that may be reviewed by QCAT under its original jurisdiction under the QCAT legislation.

Clause 1081 amends section 338 to replace the reference to 'reviewable' with 'tribunal review' and to correct a cross-reference to reflect new numbering in the Act

Clause 1082 replaces sections 339 and 340.

New section 339 requires an application for a review of a tribunal review decision to state, in addition to the requirements under the QCAT Act, that the registrant believes the decision is no longer appropriate and the reasons for that belief.

New section 340 requires the Principal Registrar to give written notice of an application for review of a tribunal review decision to the registrant's board and the Health Quality and Complaints Commission.

Clause 1083 omits sections 341 and 342 as these matters duplicate provisions in the QCAT Act.

Clause 1084 amends section 343 to replace the reference to 'a notice of review' with 'an application for review under the QCAT Act' and 'reviewable' to 'tribunal review'. The clause also omits subsection 343(2)(b) which cross-references two sections that are being omitted from the Act because they duplicate provisions in the QCAT Act.

Clause 1085 omits section 344 as this provision is duplicated in the QCAT Act.

Clause 1086 amends section 345 to replace the reference to ‘reviewable decision’ with ‘tribunal review decision.’

Clause 1087 omits sections 348 and 349 as these sections duplicate provisions in the QCAT Act.

Clause 1088 amends section 350 to change the reference from ‘the notice of appeal’ to ‘a notice starting the appeal to the court of appeal’.

Clause 1089 omits sections 351 and 352 as these sections duplicate provisions in the QCAT Act.

Clause 1090 amends section 353 to clarify that, in deciding an appeal, the Court of Appeal may decide that its decision is a tribunal review decision; that is, a decision that may be reviewed by QCAT in its original jurisdiction. If this decision is made, the Court of Appeal must also state the time period in which the decision is not reviewable under division 4.

Clause 1091 amends section 367B so that the reference is to the ‘Principal Registrar’, a term consistent with the QCAT Act.

Clause 1092 amends section 392 so that the reference is to the ‘Principal Registrar’, a term consistent with the QCAT Act.

Clause 1093 amends section 394 so that the reference is to the ‘Principal Registrar’, a tem consistent with the QCAT Act.

Clause 1094 amends section 395 so that the reference is to the ‘Principal Registrar’, a tem consistent with the QCAT Act.

Clause 1095 amends section 397 so that the reference is to the ‘Principal Registrar’, a tem consistent with the QCAT Act.

Clause 1096 amends the schedule to omit terms from the Dictionary that are no longer required, and insert new terms relevant to QCAT.

Part 7 Amendment of Health Quality and Complaints Commission Act 2006

Clause 1097 states that this part amends the *Health Quality and Complaints Commission Act 2006*.

Clause 1098 amends section 190 of the Act. Section 190 enables the Commission to intervene in a disciplinary proceeding against a registered provider where the proceeding relates to a health complaint or an inquiry matter. This clause amends section 190 to change the reference from ‘Health Practitioners Tribunal’ and ‘Nursing Tribunal’ to the new Queensland Civil and Administrative Tribunal (QCAT). This reflects that QCAT will now have jurisdiction to conduct disciplinary proceedings against registered health practitioners and nurses.

Clause 1099 amends the dictionary in schedule 5 of the Act to omit the terms ‘Health Practitioners Tribunal’ and ‘Nursing Tribunal’, which will no longer exist, and to amend the definition of ‘disciplinary body’ to include ‘QCAT’.

Part 8 **Amendment of Medical Practitioners Registration Act 2001**

Clause 1100 states that this part amends the *Medical Practitioners Registration Act 2001*.

Clause 1101 amends section 5 of the Act to remove the reference to ‘Health Practitioners Tribunal’ and replace it with the new ‘QCAT’. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant’s registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1102 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 7 of the Act.

Clause 1103 amends the heading in part 3, division 8, subdivision 1 to change the reference from ‘the District Court’ to ‘QCAT’ to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant’s registration.

Clause 1104 amends section 99 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1105 amends section 223 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1106 replaces part 7 with a new part titled 'Reviews by QCAT' and inserts two new sections 237 and 238.

New section 237 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 238 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 8 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant's mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant's services or the public to know the details.

Clause 1107 amends the dictionary in schedule 3 to omit the term 'appellant' and 'tribunal' which will no longer be used, amend the definition of 'review period' to replace the reference to the District Court with QCAT and align the definition of 'information notice' with that in the QCAT Act.

Part 9 **Amendment of Medical Radiation Technologists Registration Act 2001**

Clause 1108 states that this part amends the *Medical Radiation Technologists Registration Act 2001*.

Clause 1109 amends section 5 of the Act to remove the reference to 'Health Practitioners Tribunal' and replace it with the new 'QCAT'. This

reflects that QCAT now has jurisdiction to make decisions affecting a registrant's registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1110 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1111 amends the heading in part 3, division 8, subdivision 1 to change the reference from 'the District Court' to 'QCAT' to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant's registration.

Clause 1112 amends section 103 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1113 amends section 177 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1114 replaces part 6 with a new part titled 'Reviews by QCAT' and inserts two new sections 191 and 192.

New section 191 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 192 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 8 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant's mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant's services or the public to know the details.

Clause 1115 amends the dictionary in schedule 3 to omit the term 'appellant' which will no longer be used, amend the definition of 'review

period’ to replace the reference to the District Court with QCAT and align the definition of ‘information notice’ with that in the QCAT Act.

Part 10 Amendment of Medical Radiation Technologists Registration Regulation 2002

Clause 1116 states that this part amends the *Medical Radiation Technologists Registration Regulation 2002*.

Clause 1117 omits part 4 as most of the provisions in current part 4 are provided for in the QCAT Act. The clause inserts a new part 4 titled ‘Reviews’.

New section 50 provides that a person who is given, or entitled to be given, notice about a decision may apply to QCAT for a review of the decision. This reflects that QCAT now has jurisdiction to review certain decisions of the board about registrants and probationary registrants.

Clause 1118 omits a number of terms in the dictionary that are no longer required and inserts a new definition for decision information notice.

Part 11 Amendment of Nursing Act 1992

Clause 1119 states that this part amends the *Nursing Act 1992*.

Clause 1120 omits certain definitions that are no longer required and amends the definition of tribunal to mean QCAT. This reflects that QCAT now has jurisdiction, instead of the Nursing Tribunal, to conduct disciplinary proceedings relating to nurses.

Clause 1121 amends section 42A to reflect the change in language from ‘charge’ to ‘disciplinary matters’. This amendment is consequential to the overall objective to change the terminology in the *Nursing Act 1992* in relation to disciplinary proceedings for nurses, to reflect that these proceedings are administrative rather than criminal in nature. The term ‘charge’, which refers to the decision to start disciplinary proceedings, will

be removed as the use of this word can equate disciplinary proceedings with criminal prosecutions. The nature of these two types of proceedings is different and this distinction will be reflected in the terminology used in the new provisions inserted in the *Nursing Act 1992*.

Clause 1122 amends section 67 to reflect the change in language from ‘charge’ to ‘disciplinary matter’.

Clause 1123 amends the definition of information notice in section 78 of the Act to align with the information notice provision in the QCAT Act.

Clause 1124 replaces the heading of part 5, division 1 from ‘Nursing Tribunal’ to ‘Matters referred to QCAT.’

Clause 1125 omits section 84 of the Act as this section is a transitional provision that is no longer required.

Clause 1126 amends section 85 of the Act to provide for QCAT’s functions under this Act. The clause also updates the terminology from ‘charge’ to ‘disciplinary matters’.

Clause 1127 replaces sections 86 to 98.

New section 86 provides that the tribunal must be constituted by a judicial member. This is a change from the current Nursing Tribunal’s constitution. The Nursing Tribunal is currently constituted by a lawyer, 2 registered nurses and 3 lay persons representing persons who use services provided by the nursing profession.

Similar to the current Health Practitioners Tribunal, QCAT will be constituted by a judicial member when hearing disciplinary matters about nurses and midwives, and will be assisted by 3 ‘assessors’ - one assessor chosen from the public panel of assessors (non-professionals) and two assessors chosen from the professional panel of assessors.

A new Division 1A has been inserted into the Act with new provisions about Assessors that are modelled on those in the *Health Practitioners (Professional Standards) Act 1999*.

New section 87 provides that the tribunal may be assisted by an assessor chosen by the president from the public panel of assessors and 2 assessors chosen by the president from the professional panel of assessors. However, the tribunal may conduct a hearing without the assistance of assessors if the tribunal is satisfied it is necessary because of the urgency of the matter.

Within the parameters of new sections 88 and 89, including such issues as gender and personal or professional interest, the principal registrar will

choose the assessors on the basis of considerations such as the council's advice, the curricula vitae provided by the members of the relevant panels of assessors, the availability and interest of the members and the experience of the members.

New section 88 of the Act outlines the restrictions on appointment of assessors under the Act. This includes that the member of at least one of the assessors be the same gender as the user of the service that is the subject of the complaint, unless one of the two exceptions applies. The president must also ensure that any assessor chosen does not have a personal or professional connection with the relevant person to whom the disciplinary proceedings relate that may prejudice the way in which the assessor carries out his or her functions.

New section 89 provides that the Council must advise the President if the matter is likely to raise issues of a specialist or technical nature; and if so, advise the President of the desirable professional background or skills of the assessors to be chosen from the professional panel of assessors. The President must have regard to the council's advice.

New section 90 provides that the function of an assessor is to advise the tribunal about questions of fact arising during the hearing of a disciplinary matter. To assist this function, the assessor may ask questions of a witness and discuss any questions of fact with a lawyer or other person appearing for a party at the hearing.

New section 91 provides that an assessor is entitled to be paid the remuneration and allowances decided by the Governor in Council.

New section 92 establishes a professional panel of assessors.

New sections 93 and 94 set out the criteria for appointment to the professional panel of assessors, including the circumstances under which a person is ineligible for appointment or disqualification from being a member of the panel. In practice, it is anticipated that only well regarded members of the nursing and midwifery profession will be appointed to the professional panel of assessors.

New section 95 sets out the procedure for recommending members of the professional panel of assessors.

New section 96 provides that the duration of appointment for a member of the professional panel of assessors is for a term of not longer than five years.

New section 97 clarifies that a member of the professional panel of assessors holds office on the conditions provided in the Act and any other conditions decided by the Governor in Council.

New section 98 provides the grounds upon which a member may vacate office.

Clause 1128 amends section 104 to replace the reference to ‘disciplinary charge’ with a reference to ‘disciplinary matter’ for the reasons outlined in the notes to clause 1121 and update the references to QCAT.

Clause 1129 omits sections 105 to 113 as these sections duplicate provisions in the QCAT Act.

Clause 1130 amends section 114 to remove the reference to ‘charge’ and to replace the reference to ‘chairperson’ with ‘president’ to reflect the language to be used by QCAT.

Clause 1131 omits section 115 as this matter duplicates a provision in the QCAT Act.

Clause 1132 amends section 116 to update the terminology from ‘charge’ to ‘disciplinary matter’ and omit subsection (5), which is covered by the QCAT Act.

Clause 1133 amends section 117 to omit subsection (1) as this matter is dealt with in the QCAT Act.

Clause 1134 replaces section 118 to provide that the tribunal must give notice to the Health Quality and Complaints Commission and any person who made a complaint relating to the decision. The clause also inserts a note to clarify that the tribunal is required to give notice to other persons under the QCAT Act.

Clause 1135 amends the heading of part 8, division 1 from ‘Appeals’ to ‘Reviews’ to reflect the terminology to be used by QCAT.

Clause 1136 amends section 137 to reflect the terminology to be used by QCAT.

Clause 1137 amends section 138 to give effect to the transition of certain office holders to QCAT.

Clause 1138 amends section 139 to remove a member of QCAT from being bound by this section.

Clause 1139 amends section 139A to correct a cross-reference.

Clause 1140 amends section 148 to remove subsections that are no longer required.

Part 12 Amendment of Nursing Regulation 2005

Clause 1141 states that this part amends the *Nursing Regulation 2005*.

Clause 1142 omits section 16 and part 4 as these provisions duplicate matters covered by the QCAT Act.

Part 13 Amendment of Occupational Therapists Registration Act 2001

Clause 1143 states that this part amends the *Occupational Therapists Registration Act 2001*.

Clause 1144 amends section 5 of the Act to remove the reference to 'Health Practitioners Tribunal' and replace it with the new 'QCAT'. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant's registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1145 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1146 amends the heading in part 3, division 7, subdivision 1 to change the reference from 'the District Court' to 'QCAT' to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant's registration.

Clause 1147 amends section 89 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1148 amends section 162 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1149 replaces part 6 with a new part titled ‘Reviews by QCAT’ and inserts two new sections 176 and 177.

New section 176 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 177 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant’s mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant’s services or the public to know the details.

Clause 1150 amends the dictionary in schedule 3 to omit the term ‘appellant’ which will no longer be used, amend the definition of ‘review period’ to replace the reference to the District Court with QCAT and align the definition of ‘information notice’ with that in the QCAT Act.

Part 14 Amendment of Optometrists Registration Act 2001

Clause 1151 states that this part amends the *Optometrists Registration Act 2001*.

Clause 1152 amends section 5 of the Act to remove the reference to ‘Health Practitioners Tribunal’ and replace it with the new ‘QCAT’. This reflects that QCAT now has jurisdiction to make decisions affecting a

registrant's registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1153 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1154 amends the heading in part 3, division 7, subdivision 1 to change the reference from 'the District Court' to 'QCAT' to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant's registration.

Clause 1155 amends section 89 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1156 amends section 162 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1157 replaces part 6 with a new part titled 'Reviews by QCAT' and inserts two new sections 176 and 177.

New section 176 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 177 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant's mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant's services or the public to know the details.

Clause 1158 amends the dictionary in schedule 4 to omit the term 'appellant' which will no longer be used, amend the definition of 'review

period' to replace the reference to the District Court with QCAT and align the definition of 'information notice' with that in the QCAT Act.

Part 15 Amendment of Osteopaths Registration Act 2001

Clause 1159 states that this part amends the *Osteopaths Registration Act 2001*.

Clause 1160 amends section 5 of the Act to remove the reference to 'Health Practitioners Tribunal' and replace it with the new 'QCAT'. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant's registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1161 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1162 amends the heading in part 3, division 7, Subdivision 1 to change the reference from 'the District Court' to 'QCAT' to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant's registration.

Clause 1163 amends section 89 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1164 amends section 162 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1165 replaces part 6 with a new part titled 'Reviews by QCAT' and inserts two new sections 176 and 177.

New section 176 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 177 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant's mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant's services or the public to know the details.

Clause 1166 amends the dictionary in schedule 2 to omit the term 'appellant' which will no longer be used, amend the definition of 'review period' to replace the reference to the District Court with QCAT and align the definition of 'information notice' with that in the QCAT Act.

Part 16 Amendment of Pest Management Act 2001

Clause 1167 states that this part amends the *Pest Management Act 2001*.

Clause 1168 amends subsection 14(1)(d)(iii) of the Act to reflect that the power to take disciplinary action under the *Commercial and Consumer Tribunal Act 2003* will now be inserted into sections 91, 97B and 97C of the *Queensland Building Services Authority Act 1991*.

Clause 1169 amends section 17 of the Act to reflect the change in terminology from 'appeal' to 'review' under QCAT. While previously, the Act referred to the process of applying for a review of a decision made under the Act as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1170 amends section 80 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT'.

Clause 1171 amends the heading of part 4 to omit the term 'Appeals'.

Clause 1172 amends section 103 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. Under this section, an application for a review of an original decision is first initiated by

applying to the chief executive for an internal review of the decision. The decision made by the chief executive, after reviewing the original decision, is called the ‘review decision’.

Clause 1173 amends section 106 to require the chief executive to give a QCAT information notice if the review decision is not the decision sought by the applicant. The clause also changes the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT.

Clause 1174 omits section 107 which provides for a stay of operation of a decision, as this is provided for in section 22 of the QCAT Act.

Clause 1175 replaces the part 4, division 2 heading of ‘Appeals’ with ‘External review of decisions.’

Clause 1176 amends section 108 to reflect the terminology to be used by QCAT and enable a person to apply for external review of a review decision to QCAT.

Clause 1177 omits sections 109-113 as these provisions are duplicated in the QCAT Act.

Clause 1178 amends the dictionary in schedule 3 to insert a new definition for QCAT information notice.

Part 17 Amendment of Pharmacists Registration Act 2001

Clause 1179 states that this part amends the *Pharmacists Registration Act 2001*.

Clause 1180 amends section 5 of the Act to remove the reference to ‘Health Practitioners Tribunal’ and replace it with the new ‘QCAT’. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant’s registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1181 amends section 53 of the Act. Section 53 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1182 amends the heading in part 3, division 7, subdivision 1 to change the reference from ‘the District Court’ to ‘QCAT’ to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant’s registration.

Clause 1183 amends section 93 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1184 amends section 167 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1185 replaces part 6 with a new part titled ‘Reviews by QCAT’ and inserts two new sections 181 and 182.

New section 181 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 182 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant’s mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant’s services or the public to know the details.

Clause 1186 amends the dictionary in schedule 4 to omit the term ‘appellant’ which will no longer be used, amend the definition of ‘review period’ to replace the reference to the District Court with QCAT and align the definition of ‘information notice’ with that in the QCAT Act.

Part 18 **Amendment of Physiotherapists Registration Act 2001**

Clause 1187 states that this part amends the *Physiotherapists Registration Act 2001*.

Clause 1188 amends section 5 of the Act to remove the reference to ‘Health Practitioners Tribunal’ and replace it with the new ‘QCAT’. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant’s registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1189 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1190 amends the heading in part 3, division 7, subdivision 1 to change the reference from ‘the District Court’ to ‘QCAT’ to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant’s registration.

Clause 1191 amends section 89 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1192 amends section 162 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1193 replaces part 6 with a new part titled ‘Reviews by QCAT’ and inserts two new sections 176 and 177.

New section 176 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 177 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of

the conditions should be recorded in the register if the conditions are because of a registrant's mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant's services or the public to know the details.

Clause 1194 amends the dictionary in schedule 4 to omit the term 'appellant' which will no longer be used, amend the definition of 'review period' to replace the reference to the District Court with QCAT and align the definition of 'information notice' with that in the QCAT Act.

Part 19 Amendment of Podiatrists Registration Act 2001

Clause 1195 states that this part amends the *Podiatrists Registration Act 2001*.

Clause 1196 amends section 5 of the Act to remove the reference to Health Practitioners Tribunal and replace it with the new QCAT. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant's registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1197 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1198 amends the heading in part 3, division 7, subdivision 1 to change the reference from the District Court to QCAT to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant's registration.

Clause 1199 amends section 89 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1200 amends section 162 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision

as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1201 replaces part 6 with a new part titled ‘Reviews by QCAT’ and inserts two new sections 176 and 177.

New section 176 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 177 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant’s mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant’s services or the public to know the details.

Clause 1202 amends the dictionary in schedule 4 to omit the term ‘appellant’ which will no longer be used, amend the definition of ‘review period’ to replace the reference to the District Court with QCAT and align the definition of ‘information notice’ with that in the QCAT Act.

Part 20 Amendment of Private Health Facilities Act 1999

Clause 1203 states that this part amends the *Private Health Facilities Act 1999*.

Clause 1204 amends section 111 of the Act to refer to a review under part 9 of the Act.

Clause 1205 amends the heading of part 9 to omit the term ‘Appeals’. While previously, the Act referred to the process of applying for a review of a decision under the Act as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1206 amends the heading of part 9, division 1 to ‘Internal review of decisions.’

Clause 1207 amends section 126 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. Under this section, an application for a review of an original decision is first initiated by applying to the chief health officer for an internal review of the decision. The decision made by the chief health officer, after reviewing the original decision, is called the ‘review decision’.

Clause 1208 amends section 129 to require the notice of the review decision to comply with section 157(2) QCAT Act and to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT.

Clause 1209 omits section 130 enabling a stay of operation of a decision, as this is provided for in section 22 of the QCAT Act.

Clause 1210 amends the heading in part 9, division 2 to ‘External review of decisions.’

Clause 1211 amends section 131 to enable a person to apply for external review of a review decision made by the chief health officer to QCAT.

Clause 1212 omits sections 132-136 as these provisions are duplicated in the QCAT Act.

Clause 1213 amends the dictionary in schedule 3 to omit the term ‘review notice’.

Part 21 **Amendment of Psychologists Registration Act 2001**

Clause 1214 states that this part amends the *Psychologists Registration Act 2001*.

Clause 1215 amends section 5 of the Act to remove the reference to Health Practitioners Tribunal and replace it with the new QCAT. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant’s registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1216 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1217 amends the heading in part 3, division 8, subdivision 1 to change the reference from the District Court to QCAT to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant's registration.

Clause 1218 amends section 104 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1219 amends section 178 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1220 replaces part 6 with a new part titled 'Reviews by QCAT' and inserts two new sections 192 and 193.

New section 192 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 193 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under part 3 division 8 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant's mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant's services or the public to know the details.

Clause 1221 amends the dictionary in schedule 3 to omit the term 'appellant' which will no longer be used, amend the definition of 'review period' to replace the reference to the District Court with QCAT and align the definition of 'information notice' with that in the QCAT Act.

Part 22 **Amendment of Psychologists Registration Regulation 2002**

Clause 1222 states that this part amends the *Psychologists Registration Regulation 2002*.

Clause 1223 omits part 4 as most of the provisions in current Part 4 are provided for in the QCAT legislation. The clause inserts a new Part 4 titled 'Reviews'

New section 49 provides that a person who is given, or entitled to be given, notice about a decision may apply to QCAT for a review of the decision. This reflects that QCAT will now have jurisdiction to conduct reviews of certain decisions of the boards about registrants and probationary registrants.

Clause 1224 amends the dictionary in schedule 3 to omit terms that are no longer required and insert a new definition for decision information notice.

Part 23 **Amendment of Public Health Act 2005**

Clause 1225 states that this part amends the *Public Health Act 2005*.

Clause 1226 replaces chapter 5, part 2, division 5 with a new division entitled 'Review of order to close school or child care service'. While previously, the Act referred to the process of applying for a review of this order as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

New section 182 enables a person to apply to QCAT for a review of the Minister's order to close a school or child care service.

Clause 1227 amends section 371 so that the notice given by the chief executive when deciding an application for compensation complies with the information notice requirements in section 157(2) QCAT Act.

Clause 1228 amends section 372 to enable a person who is dissatisfied with the chief executive's decision to refuse to pay compensation or about the amount of compensation, may apply to QCAT for a review of the decision.

Clause 1229 omits sections 373-375 as these provisions are duplicated by the QCAT Act.

Part 24 Amendment of Public Health (Infection Control for Personal Appearance Services) Act 2003

Clause 1230 states that this part amends the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

Clause 1231 amends the heading of part 7 to remove the term ‘Appeals.’ While previously, the Act referred to the process of applying for a review of a decision made under the Act as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1232 amends section 119 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. Under this section, an application for a review of an original decision is first initiated by applying to the local government for an internal review of the decision. The decision made by the local government, after reviewing the original decision, is called the ‘review decision’.

Clause 1233 amends section 122 so that the notice given by the local government for a review of a decision under part 4 is a QCAT information notice and to reflect the terminology to be used by QCAT.

Clause 1234 omits section 123 enabling a stay of operation of a decision, as this provision is duplicated in section 22 of the QCAT Act.

Clause 1235 replaces the heading of part 7, division 2 with ‘External review of decisions.’

Clause 1236 amends section 124 to enable a person to apply to QCAT for a review of a review decision.

Clause 1237 omits sections 125-130 as these provisions are duplicated in the QCAT Act.

Clause 1238 amends the dictionary in schedule 2 to omit the definition of review notice and insert a definition for QCAT information notice.

Part 25 **Amendment of Radiation Safety Act 1999**

Clause 1239 states that this part amends the *Radiation Safety Act 1999*.

Clause 1240 amends section 136 to refer to a review under part 10 of the Act.

Clause 1241 amends the heading in part 10 to remove the term ‘appeals’. While previously, the Act referred to the process of applying for a review of a decision made under the Act as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1242 amends section 182 to change the reference from ‘appeal’ to ‘review’ to reflect the terminology to be used by QCAT. Under this section, an application for a review of an original decision is first initiated by applying to the chief executive for an internal review of the decision. The decision made by the chief executive, after reviewing the original decision, is called the ‘review decision’.

Clause 1243 amends section 186 to provide that the notice of a decision in schedule 1 of the *Radiation Safety Act 1999* given by the chief executive is a QCAT information notice and to reflect the terminology to be used by QCAT.

Clause 1244 omits section 187 as this provision is duplicated in section 22 of the QCAT Act.

Clause 1245 replaces the heading in part 10 division 2 with ‘External review of decisions.’

Clause 1246 amends section 188 to enable a person to apply to QCAT for a review of the review decision.

Clause 1247 omits sections 189-194 as these provisions are duplicated in the QCAT Act.

Clause 1248 amends the dictionary in schedule 2 to omit the definition of review notice which is no longer required and insert a new definition for QCAT information notice.

Part 26

Amendment of Speech Pathologists Registration Act 2001

Clause 1249 states that this part amends the *Speech Pathologists Registration Act 2001*.

Clause 1250 amends section 5 of the Act to remove the reference to 'Health Practitioners Tribunal' and replace it with the new 'QCAT'. This reflects that QCAT now has jurisdiction to make decisions affecting a registrant's registration under the *Health Practitioners (Professional Standards) Act 1999*.

Clause 1251 amends section 49 of the Act. Section 49 of the Act provides that an assessment report is not admissible in any proceedings other than stated proceedings. This clause amends the definition of stated proceedings to include an external review by QCAT under part 6 of the Act.

Clause 1252 amends the heading in part 3, division 7, subdivision 1 to change the reference from 'the District Court' to 'QCAT' to reflect that QCAT, rather than the District Court, will now have jurisdiction to impose conditions on a registrant's registration.

Clause 1253 amends section 89 of the Act to specify that an applicant may not apply to the board for a review of conditions while a review by QCAT of the decision to impose the conditions is pending.

Clause 1254 amends section 162 to change the reference from 'appeal' to 'review' to reflect the terminology to be used by QCAT. While previously, the Act referred to the process of applying for a review of a board decision as an appeal, under the QCAT Act, this is known as a review of a reviewable decision.

Clause 1255 replaces part 6 with a new part titled 'Reviews by QCAT' and inserts two new sections 176 and 177.

New section 176 provides that a person who is given, or is entitled to be given an information notice for an original decision may apply for a review of the decision by QCAT.

New section 177 provides that if, on the review of an original decision, QCAT decides to impose conditions on a registration, QCAT must: state the reasons for the decision; and for conditions that may be reviewed under

part 3 division 7 (about general registration), decide and state the review period applying to the conditions. QCAT must also state whether details of the conditions should be recorded in the register if the conditions are because of a registrant's mental and physical health. Finally, the new section requires QCAT to decide not to record details of the conditions in the register where imposed because to physical and mental health, unless QCAT reasonable believes it is in the interests of users of the registrant's services or the public to know the details.

Clause 1256 amends the dictionary in schedule 3 to omit the term 'appellant' which will no longer be used, amend the definition of 'review period' to replace the reference to the District Court with QCAT and align the definition of 'information notice' with that in the QCAT Act.

Chapter 8 Department of Infrastructure and Planning

Part 1 Amendment of Animal Management (Cats and Dogs) Act 2008

Clause 1257 states that this part amends the *Animal Management (Cats and Dogs) Act 2008*.

Clause 1258 amends section 127 to amend references to 'review applications' to refer to applications for 'internal review' in order to provide consistency with terms applied under the QCAT Act.

Under this Act the initial appeal against a decision must be made by way of an application for a review by the relevant local government. The amendment makes it clear that an initial application must be an application for internal review, not an application to QCAT. Similarly, references to an appeal against an order are amended to refer to 'external review' to indicate that, if the outcome of an internal review is not considered satisfactory by the appellant, an appeal can be made to QCAT.

Clause 1259 amends section 131 to remove references to a 'review' or an 'appeal' and insert references to an 'internal review' or an 'external review'. This reflects similar amendments made throughout the Act in order to provide consistency with terms applied under the QCAT Act.

Clause 1260 removes 'and appeals' from the heading to chapter 8 (Reviews and appeals). This reflects amendments throughout the Act removing references to 'appeals' and inserting in their place references to 'external reviews' in order to provide consistency with terms applied under the QCAT Act.

Clause 1261 inserts 'Internal' in the heading to chapter 8, part 1 (Review of decisions). This reflects amendments throughout the Act removing references to 'review' (referring to a local government review) and inserting in their place references to 'internal review', in order to provide consistency with terms applied under the QCAT Act.

Clause 1262 substitutes a new section 180 to replace references to 'review', (referring to a local government review) with references to 'internal review'. The amendment also replaces the heading to indicate an external review must be preceded by an internal review.

Clause 1263 amends section 181 by removing references to 'review' (referring to a local government review) and inserting in their place references to 'internal review', in order to provide consistency with terms applied under the QCAT Act.

Clause 1264 amends section 184 in several instances. The amendments reflect the transfer of appeals from the Magistrates Court to QCAT and the change of references to first and subsequent appeals to internal review and external review.

- Substituted section 184(2) indicates an applicant must apply to QCAT for a stay of an original decision.
- Substituted section 184(3) indicates QCAT may stay the original decision.
- In section 184(4), 'court' is amended to 'QCAT'.
- In section 184(5), 'the appeal' is replaced by 'the internal review and any external review and appeal'.
- Substituted section 184(6)(a) and (b) change references to 'court' and 'review decision' to 'QCAT' and 'internal review decision'.

Clause 1265 amends section 185 to change references to a 'review' or an 'appeal' to an 'internal review' or an application for 'external review' in order to provide consistency with terms applied under the QCAT Act.

Clause 1266 amends section 186(1), (4) and (5) by changing references to a 'review' or an 'appeal' to an 'internal review' or an application for 'external review', in order to provide consistency with terms applied under the QCAT Act.

Clause 1267 amends the section 187 heading and section 187 by changing references to a 'review' to an 'internal review'. It also removes a reference to the 'Magistrates Court' and inserts 'QCAT' in its place, and amends the contents of a review notice to reflect QCAT requirements when the person is entitled to apply to QCAT for a review of the decision.

Clause 1268 replaces chapter 8, part 2 (Appeals) with new chapter 8, part 2 (External reviews), comprising new sections 188 and 189. The new part indicates who may apply for an external review to QCAT and sets out the conditions on which a stay of the preceding internal review decision. However, various administrative and procedural matters contained in the current part 2 are removed, as these will be dealt with under the QCAT Act.

Clause 1269 amends schedule 2 (Dictionary) as follows.

- The definition for 'review decision' is omitted.
- New definitions for 'external review' and 'internal review decision' are inserted.
- The definition for 'information notice' is amended to refer to an 'internal review'.

Part 2 Amendment of Building Act 1975

Clause 1270 states that this part amends the *Building Act 1975*. This is necessary as the CCT, which has review powers under the Act will be replaced by QCAT.

Clause 1271 amends section 171 to specifically limit the power of the Queensland Building Services Authority (BSA) under this section to amend, cancel or suspend a building certifier's licence for reasons of suitability because of unsatisfactory conduct or professional misconduct.

Power is given to the BSA under sections 204(4) and (6) of the Act to take action against certifiers for both unsatisfactory conduct and professional misconduct respectively. This may occur upon complaint or after an audit. The power to directly hear matters of professional misconduct and review the BSA's decisions will be transferred from the CCT to QCAT with regard to professional misconduct.

This amendment puts the matter beyond doubt that for unsatisfactory conduct or professional misconduct, the BSA must use the methods prescribed in section 204 of the Act.

The criteria for deciding the suitability of applicants and licenses has not been amended. Section 186 of the Act will still permit the BSA to consider an applicant's suitability based on the matters specified in section 186(2). For example, if a private building certifier has previously been convicted of a relevant offence or dealings where standards of honesty and integrity are involved.

Clause 1272 amends section 179(3)(e) to replace the reference to the 'Commercial and Consumer Tribunal' with 'tribunal'. The definition of tribunal in the schedule 2 dictionary now means QCAT. The effect of this amendment is that details of QCAT orders regarding building certifiers are recorded on the register of building certifiers. This reflects that QCAT now has the power to make orders about building certifiers regarding professional misconduct under section 208 of the Act and reviewable BSA decisions under chapter 6, part 3 of the Act. These matters were previously heard in the CCT which will be abolished upon the commencement of QCAT.

Clause 1273, subclause 1 amends the section 189 heading to replace the reference to the CCT with the tribunal. The definition of tribunal in the schedule dictionary now means QCAT.

Subclause 2 omits sections 189(2) and (3) and inserts a new section 189(2) to make it clear that an application may be made to QCAT for a review of a BSA decision under chapter 6, part 3 where a person is given or is entitled to be given an information notice about a decision. The application will be subject to the procedures provided in the QCAT Act.

Clause 1274 amends section 204(6) to replace the reference to the CCT with tribunal. Tribunal is now defined in schedule 2 as QCAT.

Power is given to the BSA under sections 204(4) and (6) of the Act to take action against certifiers for both unsatisfactory conduct and professional

misconduct respectively. This may occur upon complaint or after an audit. The effect of this amendment is to transfer the power to directly hear matters of professional misconduct and review the BSA's decisions from the CCT to QCAT.

Clause 1275 amends section 205 to provide that an application may be made by a building certifier or complainant to QCAT instead of the CCT, for a review of a BSA decision under section 204(1) or (4). The effect of this amendment is to transfer jurisdiction to review BSA decisions under section 204(1) and (4) from the CCT to QCAT. An application to QCAT will be subject to procedures provided in the QCAT Act.

Subclause 2 omits the 20 business days timeframe for applications to the CCT as the QCAT Act provides timeframes for lodging applications to QCAT. This amendment is consequential to the transfer of jurisdiction from the CCT to QCAT.

Clause 1276 amends section 206(1) to replace the reference to the CCT with tribunal. Tribunal is now defined in schedule 2 to mean QCAT. This amendment is consequential to the transfer of jurisdiction from the CCT to QCAT.

Clause 1277 amends section 207(2)(b) to replace the reference to the CCT with tribunal. Tribunal is now defined in schedule 2 to mean QCAT. This amendment is consequential to the transfer of jurisdiction from the CCT to QCAT.

Clause 1278 amends section 208 to omit the references to the CCT and replace with references to the tribunal. Tribunal is now defined as QCAT in schedule 2 of the Act. The effect of this amendment is to transfer jurisdiction regarding disciplinary proceedings as provided in this section, from the CCT to QCAT.

Subsection (3) is inserted to provide that applications under section 208(1) must be made as provided under the QCAT Act. This reflects the transfer of jurisdiction from the CCT to QCAT.

Clause 1279 amends section 209 to omit the existing section 209 and insert a new section, which provides that the president of QCAT may only appoint certain members to constitute the tribunal for a disciplinary proceeding.

This recognises that matters presented before QCAT will often involve the consideration of complex building matters (as they relate to disciplinary matters) that require expert knowledge.

This amendment permits the president to appoint persons with specialist knowledge in the building certification industry and specialist knowledge to assist QCAT. This may include specialist knowledge of the current practices in hearings and tribunal decisions.

Clause 1280 amends section 210(3) to replace the reference to the CCT with tribunal. Tribunal is now defined in schedule 2 to mean QCAT. This amendment is consequential to the transfer of jurisdiction from the CCT to QCAT.

Clause 1281 amends section 211, to replace reference to the ‘Commercial and Consumer Tribunal’ to ‘tribunal’ (defined in schedule 2 to mean QCAT) and omit the reference to a provision in the *Commercial and Consumer Tribunal Act 2003*. This reflects that QCAT now has jurisdiction regarding building certifier’s professional misconduct. These matters were previously heard in the CCT, which is abolished upon the commencement of QCAT.

Clause 1282 amends section 212 to replace the reference to the CCT with tribunal and omit the reference to a provision of the *Commercial and Consumer Tribunal Act 2003*. This reflects that QCAT now has the power to make orders regarding disciplinary proceedings for professional misconduct against a former building certifier. These matters were previously heard in the CCT which is abolished upon the commencement of QCAT.

Clause 1283 amends section 213 to replace references to the CCT with tribunal (defined in schedule 2 to mean QCAT). The effect of this amendment is that it enables QCAT (instead of the CCT) to order the suspension or cancellation of a building certifiers licence if the building certifier fails to comply with an order or direction of QCAT within the time allowed by QCAT.

Clause 1284 amends section 214(b) to replace the reference to the CCT with tribunal. Tribunal is defined in schedule 2 to mean QCAT. This amendment is consequential to the transfer of jurisdiction from the CCT to QCAT.

Clause 1285 amends schedule 2 dictionary.

Subclause 1 removes the definitions of ‘Commercial and Consumer Tribunal’, ‘information notice’ and ‘Tribunal Act’ which are no longer relevant as a result of the transfer of jurisdiction from the CCT to QCAT.

Subclause 2 inserts a new definition of ‘information notice’ to provide that for applications to QCAT the information notice must comply with section 157(2) of the QCAT Act. Information notices for decisions that may be appealed under the *Integrated Planning Act 1997* are required to comply with existing requirements (e.g. appeals to the Building and Development Tribunals).

Subclauses 3 and 4 replace the reference to the ‘Commercial and Consumer Tribunal’ with ‘tribunal’. ‘Tribunal’ is defined in schedule 2 to mean QCAT.

Part 3 **Amendment of Local Government Act 1993**

Clause 1286 states that part 3 amends the *Local Government Act 1993*.

Clause 1287 inserts into section 939 new subsections (3) and (4) to include a requirement for a local government to provide a QCAT information notice for a refused or conditional levee bank approval. Despite section 157 of the QCAT Act, a local government need not give a notice unless the permission is refused or is subject to conditions.

Clause 1288 amends section 940 to reflect the change in terminology from appeal to application for review as provided for under the QCAT Act.

Clause 1289 replaces chapter 13, part 5, division 3 (Appeals), sections 942 to 954, with new division 3 heading (Review by QCAT) and new section 942 to confer jurisdiction on QCAT for a review of a local government decision to prohibit or regulate the construction and maintenance of levee banks. Previously an appeal tribunal for hearing and deciding appeals against decisions of a local government on an application was formed by the chief executive of the department within which the *Water Act 2000* is administered or that chief executive’s delegate.

Clause 1290 amends section 996 to require the chief executive officer of the local government to give an information notice complying with section 157(2) of the QCAT Act instead of a written notice to the owner of the land if there is an amendment to the land record. As a consequence of jurisdiction being transferred from the Magistrates Court to QCAT, an

information notice is required by a person who wishes to apply for a review of the amendment of the land record to QCAT under new section 999.

Clause 1291 replaces chapter 14, part 4, division 2, sections 999 to 1003, with new division 2, sections 999 and 1000 to confer jurisdiction on QCAT for a review of a local government decision if a person is dissatisfied by the amendment of the land record, other than a removal of land under section 1051A. Previously the Act provided that a person aggrieved by an amendment of a land record, other than a removal of land under section 1051A, could appeal to the Magistrates Court against the amendment.

Under new section 1000, in deciding the review, QCAT may confirm the amendment or set aside the amendment and order the particulars previously contained in the land record to be restored.

Clause 1292 amends section 1130 to omit subsections (2) and (3) as a consequence of the jurisdiction of the Anti-Discrimination Tribunal (ADT) to hear local government appeals in relation to equal opportunity in employment being transferred to QCAT.

Clauses 1293 inserts new part 3A (Equal opportunity of employment) as a consequence of the appeal jurisdiction of ADT to deal with local government discriminatory matters, previously provided for under the *Local Government Regulation 2005* (LGR), being transferred to QCAT. As the QCAT Act does not enable a regulation to confer original jurisdiction, the provisions in the LGR part 14 are being transferred to the *Local Government Act 1993* part 3A to confer jurisdiction on QCAT. Any provisions previously in the LGR part 14 that are redundant because of QCAT's jurisdiction have been omitted from the LGR.

New part 3A, division 1, sections 1137A to 1137D provides for the purposes and role of equal employment opportunity and how the purposes are best achieved, including merit principles and exemptions. The new sections are transferred from the LGR and reflect the policy intent provided for in sections 51 to 54.

New division 2, section 1137E provides for a local government to develop an equal employment opportunity (EEO) management plan. The new division reflects the policy intent provided for in section 55 of the LGR. Section 1137E(3) also provides that a regulation may prescribe how a local government must develop its EEO management plan. The prescribed steps to be followed in developing an EEO management plan remain in the LGR as new section 51.

New division 3, sections 1137F and 1137G provide that a local government must take any action necessary to implement its equal employment opportunity (EEO) plan and that a person who exercises powers relating to employment matters of a local government must have regard to the EEO management plan. These requirements reflect the policy intent provided for in sections 57 and 58 of the LGR.

New division 4, sections 1137H to 1137J provide for chief executive supervision if the chief executive is dissatisfied with any matter relating to the action taken by a local government to promote equal employment opportunity. These provisions reflect the policy provided for under sections 60, 61 and 62 of the LGR.

New section 1137J (2)(b) provides that the chief executive may report the matter to the Minister or refer the matter to QCAT to give a report. Previously the LGR section 62(2)(b) conferred jurisdiction on the ADT. The ADT jurisdiction has been transferred to QCAT under amendments to the *Anti-Discrimination Act 1991* in this Bill.

The LGR conferred on the ADT powers of conciliation under sections 63 and 64, power to investigate under section 65, provision for representation on the ADT. These processes are now provided for under the QCAT Act and have consequently been omitted from the LGR. The abrogation of privilege provisions under section 66 have been omitted entirely as they are no longer necessary.

New division 5, section 1137K confers jurisdiction on QCAT to investigate a referral made to it under section 1137J. Jurisdiction to investigate a matter relating to the action taken by a local government to promote equal employment opportunity was previously conferred on the ADT under the LGR section 67.

New section 1137L requires QCAT at the end of a referral to give a report, with or without recommendations, to the chief executive officer of the local government and the chief executive. Previously the LGR section 68 required the ADT to give the report.

New section 1137M confers jurisdiction on QCAT to recommend that a local government amend its EEO management plan. New section 1137N provides that a local government must comply with a recommendation. Previously the LGR section 69 conferred this jurisdiction on the ADT to make recommendations and section 70 required the local government to comply with a recommendation.

New division 6, section 1137O provides that the Minister may table in the Legislative Assembly a report given to the Minister under section 1137J(2)(a) or 1137L(2). This provision reflects the policy intent provided for under section 71 of the LGR.

Clause 1294 amends the schedule 2 (Dictionary) as a consequence of the transfer of appeal jurisdiction of the ADT currently provided for under the local government legislation to QCAT. Definitions transferred from the LGR schedule 7 include:

- EEO management plan;
- employment matters;
- target group; and
- unlawful discrimination.

Part 4 Amendment of Local Government Regulation 2005

Clause 1295 states that this part amends the *Local Government Regulation 2005*.

Clause 1296 replaces part 14, division 1, sections 51 to 71 with division 1, sections 51 and 52 as a consequence of the appeal jurisdiction of Anti-Discrimination Tribunal (ADT) to deal with local government discrimination matters being transferred to QCAT. As QCAT does not enable a regulation to confer original jurisdiction, the *Local Government Regulation 2005* (LGR) part 14 is being transferred to the *Local Government Act 1993* part 3A to confer jurisdiction on QCAT. Any provisions previously in the LGR part 14 that are redundant because of QCAT's jurisdiction have been omitted from the LGR.

Previous sections 51 to 54, which provided for the purposes and role of equal employment opportunity and how the purposes are best achieved, including merit principles and exemptions have been transferred to the *Local Government Act 1993* new part 3A, division 1, sections 1137A to 1137D as a consequence of the appeal jurisdiction of ADT to deal with local government discriminatory matters being transferred to QCAT.

Previous section 55, which provided for a local government to develop an equal employment opportunity (EEO) management plan, has been transferred to the *Local Government Act 1993* new part 3A, division 2, section 1137E as a consequence of the appeal jurisdiction of ADT to deal with local government discriminatory matters being transferred to QCAT.

New section 51 mirrors the previous section 56 and details, for section 1137E (3) of the *Local Government Act 1993*, the prescribed steps to be followed in developing an equal employment opportunity management plan.

Previous sections 57 and 58, which provided for a local government to take any action necessary to implement its equal employment opportunity (EEO) management plan and that a person who exercises powers relating to employment matters of a local government must have regard to the EEO management plan, have been transferred to the *Local Government Act 1993* new part 3A, division 3, sections 1137F and 1137G as a consequence of the appeal jurisdiction of ADT to deal with local government discriminatory matters being transferred to QCAT.

Previous section 59 has been renumbered as new section 52 as a consequential amendment to enable sequential numbering within division 1.

Clause 1297 amends schedule 7 (Dictionary) to omit certain definitions as a consequence of the transfer of appeal jurisdiction of the ADT to QCAT. Definitions transferred to the *Local Government Act 1993* schedule 2 and omitted from the LGR are:

- EEO management plan;
- employment matters;
- target group; and
- unlawful discrimination.

Part 5 **Amendment of Plumbing and Drainage Act 2002**

Clause 1298 states that this part amends the *Plumbing and Drainage Act 2002*. The amendments are necessary as the CCT, which has review powers under the Act will be replaced by QCAT.

Clause 1299 amends section 20(3) to replace the reference to ‘secretary’ with ‘registrar’ to better reflect the role of the secretary to the Plumbers and Drainers Board (the board).

Clause 1300 amends section 29 to replace the references to ‘secretary’ with ‘registrar’ for the reasons explained in the note to clause 1299.

Clause 1301 amends section 29A to replace the references to ‘secretary’ with ‘registrar’ for the reasons explained in the note to clause 1299.

Clause 1302 amends section 30 to replace the reference to ‘secretary’ with ‘registrar’ for the reasons explained in the note to clause 1299.

Clause 1303 amends section 55 to replace the reference to the CCT with QCAT. This reflects that QCAT now has the jurisdiction to review the board’s decision to impose conditions on a licence.

Clause 1304 inserts part 3, division 7, subdivision 1 heading ‘Grounds’. This new subdivision heading complements the changes made to division 7 in particular, changes to the board’s powers.

Clause 1305 amends section 64 to limit the powers of the board to take disciplinary action to be subject to the new section 70A. This reflects the amendments to part 3, division 7 that provide that the board can take disciplinary action for all matters except matters where it would be reasonable to suspend the licensee’s licence for more than 12 months or cancel the licensee’s licence. Section 70A provides that the board must refer these disciplinary matters to QCAT.

Clause 1306 inserts a new part 3, division 7, subdivision 2 heading ‘Action by board about disciplinary matters’, which complements the changes made to part 3, division 7, in particular, to distinguish between disciplinary action taken by the board and disciplinary matters the board must refer to QCAT.

Clause 1307 replaces section 65 to limit the power of the board to take disciplinary action.

Principally, the amendment means that the board’s power to cancel a licence will now be heard at first instance by QCAT rather than the current method where a dissatisfied person has a right to appeal the board’s decision to the CCT. In addition, the right of the board to suspend a

licensee's licence has been restricted to a period of no more than 12 months.

These changes are consistent with the philosophy for the establishment of QCAT that matters involving cancellation of licence and significant suspension have a direct affect on the livelihood of licensees and thus should be considered by independent persons with appropriate legal training.

Clause 1308 amends section 66 to vary the show cause procedure to allow for show cause notices to be provided where the board must refer matters to QCAT. This amendment is consequential to the amendment to section 65 and the insertion of the new section 70A that provide that the board must refer matters to QCAT where it would be reasonable in the circumstances to suspend a licensee's licence for more than 12 months or to cancel a licensee's licence.

Clause 1309 amends section 68 to add an additional subparagraph (c) to include referral to QCAT under the new section 70A as an action the board may take about a matter. This amendment is consequential to the insertion of section 70A requiring the board to refer matters to QCAT where it would be reasonable in the circumstances to suspend a licensee's licence for more than 12 months or to cancel a licensee's licence.

Clause 1310 amends section 69 to insert a new subsection (1) to ensure that the board, in addition to advising the licensee that it has decided to take no further action about a matter, must also advise the licensee if it decides to refer the matter to QCAT. This amendment is consequential to the insertion of the new section 70A.

Clause 1311 amends section 70 to remove the references to the board having the power to cancel a licence. This amendment is consequential to the amendments to section 65, which remove the board's power to cancel a licence. The amendments to section 70C empower QCAT to cancel a licence.

Clause 1312 inserts a new part 3, division 7, subdivision 3 regarding referral to QCAT of particular proposed suspensions or proposed cancellations.

The new section 70A provides that where the board decides that grounds exist under section 65 and it would be reasonable to take action to suspend the licensee's licence for more than 12 months or to cancel it, the matter

must be referred to QCAT. This section is complemented by amendments to other sections including sections 65 and 66.

The new section 70B provides that where a matter is referred to QCAT by the board, QCAT must be constituted by one legally qualified member under the QCAT Act and one member who has at least 10 years experience in the plumbing and drainage industry. This recognises that matters presented before QCAT will often involve the consideration of complex plumbing and drainage matters (as they relate to disciplinary matters) that require the use of expert knowledge.

The new section 70C provides powers to QCAT to take disciplinary action where matters are referred to QCAT by the board. The powers mirror those in section 65, save the inclusion of additional powers not held by the board including the power to suspend licences for more than 12 months and to cancel licences.

Clause 1313 inserts a new part 3, division 7, subdivision 4, heading 'Miscellaneous' to keep the miscellaneous provisions which relate to the board and QCAT together.

Clause 1314 amends section 71 to insert a reference to QCAT. This is necessary where QCAT decides to suspend or cancel a licence under the new 70C. In this case the licensee must comply with section 71 and return the licence to the board as provided in the section.

Clause 1315 amends section 129 to insert a new subsection 129(2) and omit subsection (3). The effect of the replacement of subsection (2) is that QCAT will now have jurisdiction to review decisions of the board regarding plumbing and drainage licences instead of the CCT.

Subsection (3) is omitted as it duplicates provisions in the QCAT Act regarding the timeframes for review applications to QCAT.

Clause 1316 replaces the existing section 130. The effect is to require QCAT to state the review period where it decides to impose conditions on a licence. This amendment is consequential to the insertion of the new section 70C, which confers jurisdiction on QCAT to make disciplinary orders.

Clause 1317 omits section 131. The powers of QCAT in reviewing board decisions are included in the QCAT Act. QCAT has review jurisdiction as conferred on QCAT by the Act to review a decision made or taken to have been made by the board under the Act.

Clause 1318 amends section 135 to replace the references to ‘secretary’ with ‘registrar’ for the reasons explained in the note to clause 1299.

Clause 1319 amends section 136 to replace the reference to ‘secretary’ with ‘registrar’ for the reasons explained in the note to clause 1299.

Clause 1320 amends section 137 to replace the reference to ‘secretary’ with ‘registrar’ for the reasons explained in the note to clause 1299.

Clause 1321 inserts a new part 10, division 5 – Transitional provisions for *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

Section 174 provides the definitions of ‘commencement’ and ‘previous’ for the transitional provisions.

Section 175 provides for the transitional application of the new section 70A. The board is required to comply with the new section 70A if the board has given the licensee a show cause notice under the former section 66 but had not informed the licensee under the former section 69 whether it had decided to take disciplinary action against the licensee or not take further action. This includes where the board has not made a decision and therefore has not advised the licensee of its decision.

The effect is that under the new section 70A the board must refer these matters to QCAT where it would be reasonable in the circumstances to suspend the licence for more than 12 months or cancel the licence.

If immediately before the commencement of this Act the board is considering grounds for discipline under section 64 but no show cause notice has been issued, the new provisions will apply.

Where immediately before the commencement of this Act the board has made their decision whether to take disciplinary action and they have advised the licensee of its decision, the board’s decision will continue to operate.

The transitional provisions in the QCAT Act will apply regarding plumbing and drainage matters in the CCT immediately before the commencement of QCAT.

Section 176 is consequential to the amendments to replace the references to ‘secretary’ in the Act with ‘registrar’ for the reasons explained in the note to clause 1299. A person appointed as the secretary of the board immediately before the commencement of the Act is taken to be the registrar for the board under section 29(1). The effect of this amendment is

that it continues the appointment of the secretary at the time of commencement as the registrar after commencement.

Clause 1322 amends the schedule dictionary.

Subclause 1 removes the definition of ‘secretary’.

Subclause 2 inserts a new definition of ‘registrar’ to reflect the replacement of the references to ‘secretary’ with ‘registrar’ throughout the Act for the reasons explained in the note to clause 1299.

Subclause 3 inserts a new paragraph (a) to the definition of ‘information notice’ to provide that for applications to QCAT the information notice must comply with section 157(2) of the QCAT Act. The subparagraph referring to cancellation of a licence is removed as this power will be exercised exclusively by QCAT. The requirement for information notices in paragraph (b) for other matters in the Act remains unchanged.

Subclause 4 replaces the reference to the ‘Commercial and Consumer Tribunal’ with a reference to ‘QCAT’ in the definition of ‘review period’. Reviews of decisions by the board will now be conducted by QCAT.

Chapter 9 Department of Justice and Attorney-General

Part 1 Amendment of Acts Interpretation Act 1954

Clause 1323 provides that this part amends the *Acts Interpretation Act 1954*.

Clause 1324 amends section 36 to include definitions for ‘QCAT’ and ‘QCAT Act’ as these words are commonly used throughout amendments to the statute book contained in this Bill.

Part 2 Amendment of Anti-Discrimination Act 1991

Clause 1325 states that this part amends the *Anti-Discrimination Act 1991*.

Clause 1326 amends section 113. Under the previous section 113(2) the Anti-Discrimination Tribunal (ADT) was required to only provide a written notice to the Anti-Discrimination Commissioner (the Commissioner) of an exemption application. The ADT will be abolished and its jurisdiction will be conferred on QCAT. To ensure consistency with the notice requirements in the QCAT Act, section 113(2) is amended to require QCAT to give a copy of an exemption application and material filed in support of the application to the Commissioner.

The requirement that the tribunal must have regard to any submission made by the Commissioner on an exemption application, including a submission on the process for considering the application, is retained in the new section 113(2).

Clause 1327 inserts section 113A to enable the Commissioner, or a person with a relevant interest, to appeal against QCAT’s decision on an exemption application. This amendment clarifies the uncertainty about

whether the Commissioner may appeal an exemption decision. In relation to the Commissioner appearing as a party to an exemption appeal, the intervention and party provisions of the QCAT Act will apply.

Clause 1328 amends section 124(2)(e) to replace the reference to the ADT with reference to QCAT. This amendment is consequential to the transfer of jurisdiction from the ADT to QCAT.

Clause 1329 amends section 125(2)(d) to insert reference to QCAT Act procedures for dealing with a complaint or offence. This amendment is consequential to amendments to chapter 7 of the *Anti-Discrimination Act 1991* which transfer jurisdiction from the ADT to QCAT.

Clause 1330 amends section 140 to replace the reference to ‘or tribunal’ with ‘or any tribunal’ to clarify that this provision refers to any tribunal rather than QCAT alone.

Clause 1331 amends the heading to section 144 to omit the reference to ‘interim orders’ and replace with a reference to ‘applications for orders’. This amendment is made to distinguish applications under section 144 from interim orders under section 58 of the QCAT Act. Applications under section 144 of the Act are not ‘interim’ orders for the purposes of section 58 of the QCAT Act.

The amendments to section 144 also omit subsections 144(3) – (5) regarding the enforcement of orders and the application of the rules of the Supreme Court. Instead, the QCAT Act provisions about enforcement will apply and the QCAT Rules will set out the requirements for applications under section 144.

Section 144 is also amended to insert a new subsection (3) to include rule 6 of the ADT Rules in the Act due to the repeal of the ADT Rules upon the commencement of the QCAT Act. The effect is that QCAT (like the former ADT) may hear an application for an order under section 144(1) in the absence of the respondent if it is satisfied it is in the interests of justice.

Clause 1332 amends section 155(5) to reflect that while previously the Commissioner was referred to as a ‘complainant’ in this section, under the QCAT Act the Commissioner will be referred to as an ‘applicant’. The term ‘applicant’ is defined in the schedule 3 dictionary of the QCAT Act.

Clause 1333 inserts a new section 164AA to provide for the confidentiality of conciliations. This substantially duplicates Rule 11 of the ADT Rules which is repealed upon the commencement of the QCAT Act.

Clause 1334 inserts a new subsection 164A(6) to provide that the complainant is the applicant for the purposes of the QCAT Act. This amendment is consequential to the transfer of jurisdiction from the ADT to QCAT, where the term ‘applicant’ is used.

Clause 1335 inserts a new subsection 166(5) to provide that the complainant is the applicant for the purposes of the QCAT Act for the reasons explained in the note to clause 1334.

Clause 1336 inserts a new subsection 167(7) to provide that the complainant is the applicant for the purposes of the QCAT Act for the reasons explained in the note to clause 1334.

Clause 1337 amends the heading in chapter 7, part 2 to replace the reference to the ADT with reference to QCAT. This amendment is consequential to the transfer of jurisdiction from the ADT to QCAT.

Clause 1338 amends chapter 7, part 2 to insert a new division 1A which summarises QCAT’s functions for the Act and substantially adopts the ADT’s functions which were previously set out in section 248 of the Act. The entire chapter 9, part 2 (including section 248) which provided for the establishment and functions of the ADT is now omitted from the Act. This is consequential to the transfer of jurisdiction from the ADT to QCAT.

Clause 1339 replaces sections 176-184 with new sections 176-178.

A new section 176 is inserted to provide an exception to the generic provisions set out in chapter 4, part 2 of the QCAT Act regarding the constitution of QCAT. The effect of this amendment is that matters under the *Anti-Discrimination Act 1991* will continue to be heard by a single member who is legally qualified (as previously required by the former section 176). However, in cases where the tribunal’s opinion is sought, QCAT must be constituted by a judicial member as provided by the new section 228A. The terms ‘legally qualified member’ and ‘judicial member’ are defined in the schedule 3 dictionary of the QCAT Act.

The inclusion of a new section 177 is to clarify that QCAT may join a third party to a proceeding where the person is not a complainant or respondent to the complaint to which the proceeding relates. Former decisions of the ADT have narrowly interpreted the former section 177 thus restricting the use of section 177 to join third parties to a proceeding. The relevant decisions include *Lundbergs v QSuper* [2003] QADT 8, *Mickelo v Kotlaro & Cellcom Pty Ltd t/a Melbourne Hotel* [2004] QADT 31, *H v T* [2006]

QADT 20 and *Black and White (Quick Service) Taxis Ltd v Sailor & Anor* [2008] QSC 77.

A new section 178 provides further clarity by providing that QCAT may amend a complaint referred to it by the Commissioner even if the amendment concerns matters not included in the complaint.

Clause 1340 deletes sections 187, 188 and 190 regarding representation, referral of complaints for conciliation and interim orders protecting complainant's interests.

Representation, interim orders and alternative dispute resolution are set out in the QCAT Act. The QCAT Rules will also set out matters relating to representation.

Clause 1341 amends section 191(2) to change the maximum penalty for disclosing a person's identity to 100 penalty units. The effect of this amendment is that the maximum penalty has increased from 35 penalty units for individuals. The rationale for this change is to align the maximum penalty in this provision with the penalty provided in section 213 of the QCAT Act for contravention of a decision of the tribunal.

Clause 1342 omits section 192 regarding an ADT order to restrict the publication of evidence. The QCAT Act provides for non-publication orders and the penalty for contravention of a non-publication order.

Clause 1343 removes sections 201 – 203. The provisions in the QCAT Act in relation to powers, attendance at hearings and public hearings apply instead.

Clause 1344 amends section 207(3) to require QCAT to give a copy of the Commissioner's investigative report to the complainant and respondent as the Commissioner will not necessarily have the current address for service of the parties.

Clause 1345 replaces section 208(1) in order to remove the evaluation of evidence provisions which duplicate provisions in the QCAT Act.

The new section 208 retains the considerations previously set out in section 208(1)(a), (f) - (i) and (k) as these are unique to this jurisdiction. The requirement previously included in section 208(1)(h) is retained in new section 208(1)(d) with a minor amendment to allow the Commissioner's report to be received into evidence even where the report was obtained other than where the Commissioner has provided a copy.

Clause 1346 removes section 209(2) as the QCAT Act provides that contravention of a QCAT order is an offence. Due to the removal of subsection (2), subsections (3) to (6) are consequentially renumbered.

Clause 1347 omits sections 211 – 213 because requests for written reasons for orders, enforcement orders and costs are provided for under the QCAT Act.

Clause 1348 removes chapter 7, part 2, divisions 3A and 4 because the QCAT Act and QCAT Rules will apply to these matters. Chapter 7, part 3 is also removed as the QCAT Act provides for appeals from QCAT and referrals of questions of law.

Clause 1349 amends section 220 to replace the references to ‘the ADT’ with ‘the former ADT’ and insert the related transitional definitions. This amendment is consequential to the transfer of jurisdiction from the ADT to QCAT and ensures that the offence of improper communication of official information continues to apply to members, staff and other officers of the former ADT.

Clause 1350 amends the heading of chapter 7, part 4, division 3 to remove reference to the offence provisions applying to the ADT. These provisions however will not apply to QCAT in lieu of the ADT as the QCAT Act contains offences including providing false and misleading information and contempt (which includes obstruction).

Clause 1351 removes section 224 and section 226B as contempt and non-publication orders are provided for in the QCAT Act.

Clause 1352 inserts a new section 228A to provide that where the Commissioner asks QCAT for an opinion, QCAT must be constituted by a judicial member. The term ‘judicial member’ is defined in the schedule 3 dictionary of the QCAT Act. This is an exception to the generic provisions for the constitution of QCAT in chapter 4, part 2 of the QCAT Act. The effect of this amendment is that tribunal opinions under the Act will now be heard by a judicial member of QCAT instead of a single legally qualified member of the ADT.

Clause 1353 amends section 233 to remove reference to appeals to the Supreme Court on a question of law. Chapter 2, part 8, division 2 of the QCAT Act will apply to appeals under the *Anti-Discrimination Act 1991*. The Commissioner or a person with a relevant interest may appeal a QCAT decision in the Court of Appeal on a question of law. Questions of fact or

mixed questions of law and fact may also be heard in the Court of Appeal with the leave of the court.

Clause 1354 removes chapter 9, part 2 entirely because the ADT is abolished and the jurisdiction conferred on QCAT. The new section 174A replicates the functions of the ADT and transfers jurisdiction to QCAT. The QCAT Act provides for the establishment of QCAT including the appointment of members, principal registrar and staff and the tribunal's powers.

Clause 1355 removes reference to section 257 which is omitted by clause 1354.

Clause 1356 amends section 263C to remove the reference to the tribunal. The QCAT Rules will provide for the service of notices and other documents. This section will continue to apply to addresses for service provided to the Commissioner.

Clause 1357 omits section 263D. The QCAT Rules will provide for the service of notices and other documents.

Clause 1358 amends section 263E(2) and (3). A new subsection (2) is inserted to remove reference to the ADT. Matters relating to service of QCAT documents will be set out in the QCAT Rules. However, the requirement that a relevant party for a complaint must give all other relevant parties a copy of a written notice given under subsection (1) is retained.

Subsection (3) is omitted. This is a consequential amendment to remove the cross reference to subsection (2).

Clause 1359 amends section 263F to remove reference to the ADT. The QCAT Rules will provide for addresses for service.

Clause 1360 amends section 263G to remove reference to the ADT in order to limit the operation of this section to the Commissioner. The QCAT Act provides general power for QCAT to do anything necessary and convenient for exercising its jurisdiction.

Clause 1361 amends section 264(1)(a) to replace the references to the ADT with the former ADT. These amendments are consequential to the transfer of jurisdiction from the ADT to QCAT. This ensures that the prohibition against communication of official information to a court continues to apply to former members, officers and other staff of the ADT as provided in this section. For matters before QCAT, the confidentiality provisions and

limitations on disclosure of information to a court as provided in the QCAT Act will apply.

Clause 1362 amends section 265 (1)(b) – (e) to replace the references to the ADT with the former ADT. This consequential amendment ensures that protection from civil actions continues for former officers of the ADT and other persons as provided in this section. For matters before QCAT, protection from civil liability is provided by the QCAT Act.

Clause 1363 amends section 266 to replace reference to the ADT with reference to the former ADT. The effect of this amendment is that the protection from civil actions will continue for matters before the Commissioner and the former ADT under section 266. The protections previously provided in section 266 of the Act regarding submissions, information or evidence given to the ADT will continue to apply to QCAT as a result of the immunity and protection from liability provisions in the QCAT Act sections 237 and 238.

Clause 1364 omits section 266A. The protection and immunity previously provided under section 266A will continue due to the operation of the *Acts Interpretation Act 1954*, section 20(2)(c). Protection and immunity regarding matters before QCAT is set out in the QCAT Act, chapter 5, part 3, division 4.

Clause 1365 amends section 267 to remove the power to make regulations regarding the ADT. The ADT is abolished by this Act and its functions are conferred on QCAT. The QCAT Act contains a regulation-making power that includes the power to make regulations about QCAT procedures, witness fees and expenses.

Clause 1366 amends the schedule dictionary to remove the definitions of ‘member’, ‘registrar’ and ‘tribunal’ and insert the definition ‘former Anti-Discrimination Tribunal’ due to abolition of the ADT. New definitions of ‘registrar’ and ‘tribunal’ are inserted to provide consistency with the meaning of these terms in the QCAT Act.

Part 3 Repeal of Anti-Discrimination Tribunal Rule 2005

Clause 1367 repeals the *Anti-Discrimination Tribunal Rule 2005* as a result of the abolition of the Anti-Discrimination Tribunal and the transfer of jurisdiction to QCAT. Matters previously addressed in the *Anti-Discrimination Tribunal Rule 2005* will be included in the QCAT Rules or where appropriate, have been inserted into the *Anti-Discrimination Act 1991*.

Part 4 Amendment of Births, Deaths and Marriages Registration Act 2003

Clause 1368 states that this part amends the *Births, Deaths and Marriages Registration Act 2003*.

Clause 1369 amends section 11(2) by replacing the reference to an appeal to the District Court under section 49 with a reference to an application to QCAT under section 49 for a review of a decision of the registrar. This amendment is consequential to the amendment of section 49 to provide that the registrar's decisions are reviewed by QCAT instead of the District Court.

Clause 1370 amends section 31(2) by replacing the reference to an appeal to the District Court under section 49 with a reference to an application to QCAT under section 49 for a review of a decision of the registrar. This amendment is consequential to the amendment of section 49 to provide that the registrar's decisions are reviewed by QCAT instead of the District Court.

Clause 1371 amends section 42, which provides when the registrar must correct the register. Currently the registrar must correct the register on the order of a Queensland court or on the application of the chief executive (corrective services) under the *Corrective Services Act 2006*. The section is amended to also require the registrar to correct the register on the order of QCAT. This amendment is consequential to the amendment of section

49 to provide that the registrar's decisions are reviewed by QCAT instead of the District Court.

Clause 1372 replaces section 49. The replacement section 49 establishes the right to apply to QCAT for a review of a decision of the registrar. Previously, the Act provided that decisions of the registrar were appealable to the District Court. Given the large number of decisions made by the registrar, the replacement section 49 provides that the registrar is required to give a person a written notice complying with section 157 of the QCAT Act for a decision only if the decision is made on the application of the person and the decision is not the decision sought by the person.

Clause 1373 amends part 9, divisions 1 to 3 headings. The amendments are minor amendments made to reflect current drafting practice.

Clause 1374 inserts new part 9, division 4, which comprises a new section 62. Sections 11(2) and 31(2), as amended, provide that a person must not apply for an order relating to particular matters if the person has applied to QCAT under section 49 for a review of a decision of the registrar in relation to the same matter. New section 62 provides that, for applying sections 11(2) and 31(2), a reference in the subsections to the person having applied to QCAT under section 49 for a review of a decision of the registrar includes a reference to the person having appealed to the District Court under previous section 49 before the commencement of section 62. This new provision recognises that a decision of the registrar was appealable to the District Court before the commencement.

Part 5 Amendment of Classification of Computer Games and Images Act 1995

Clause 1375 states that this part amends the *Classification of Computer Games and Images Act 1995*.

Clause 1376 amends section 8 (Review by CCT of classification decision) by replacing references to the CCT and *Commercial and Consumer Tribunal Act 2003* (CCT Act) with QCAT and QCAT Act. This reflects that QCAT will have the jurisdiction to review decisions by the computer games classification officer to classify a computer game.

A new subsection (2) is inserted which provides that a QCAT information notice does not apply to the decision. The requirement to give a QCAT information notice does not apply because a classification decision may affect a wide number and class of persons and it is difficult to identify each affected person and give them a QCAT information notice. However, this does not affect the rights of an affected person to obtain a statement of reasons under the QCAT Act or to apply for a review of the decision.

Clause 1377 amends the heading of part 7, division 3 (Review by CCT of decision about approval of entity and exemption) by replacing CCT with QCAT.

Clause 1378 replaces section 60 with a new section 60 which gives QCAT the power to review decisions of the computer games classification officer to:

- Refuse to approve an entity under section 56 or
- Revoke the approval of an entity under section 56 or
- Refuse to give an exemption under section 58 or 59

The computer games classification officer is also required to give a QCAT information notice for a decision about the approval of an entity or the giving of an exemption. A definition of 'QCAT information notice' is provided in the new subsection (4). It is a notice that complies with section 157(2) QCAT Act.

Clause 1379 omits the definitions of 'CCT' and 'CCT Act' from Schedule 2 (Dictionary).

Part 6 Repeal of Classification of Computer Games and Images Regulation 2005

Clause 1380 repeals the *Classification of Computer Games and Images Regulation 2005*. The Regulation only provides for the establishment and procedure of the Computer Games and Images Appeals Tribunal. This tribunal was abolished in 2008 by the *Justice Legislation Amendment Act 2008* which gave the CCT power to hear reviews. As this power is now being conferred to QCAT, the Regulation is no longer required.

Part 7 **Amendment of Classification of Films Act 1991**

Clause 1381 states that this part amends the *Classification of Films Act 1991*.

Clause 1382 replaces section 59 with a new section 59 that gives QCAT the power to review decisions of the films classification officer to:

- Refuse to approve an organisation under section 56 or
- Revoke the approval of an organisation under section 56 or
- Refuse to give an exemption under section 58.

The films classification officer is also required to give a QCAT information notice for a decision about the approval of an entity or the giving of an exemption. A definition of 'QCAT information notice' is provided for in the new subsection (4). This is a notice that complies with section 157(2) QCAT Act.

Part 8 **Repeal of Classification of Films Regulation 1992**

Clause 1383 repeals the *Classification of Films Regulation 1992*. The Regulation only provides for the establishment and procedure of the Films Appeals Tribunal. This tribunal was abolished in 2008 by the *Justice Legislation Amendment Act 2008* which gave the CCT power to hear reviews. As this power is now being conferred to QCAT, the Regulation is no longer required.

Part 9 **Amendment of Classification of Publications Act 1991**

Clause 1384 states that this part amends the *Classification of Publications Act 1991*.

Clause 1385 omits the definitions of ‘CCT’ and ‘CCT Act’ from section 3 (Definitions) and inserts a definition of ‘QCAT information notice’.

Clause 1386 amends section 11 by replacing references to the CCT and CCT Act with QCAT and QCAT Act. This reflects that QCAT will have the jurisdiction to review a decision of the publication classifications officer to classify a publication.

A new subsection (2) is inserted which provides that a QCAT information notice does not apply to the decision. The requirement to serve a QCAT information notice does not apply because a classification decision may affect a wide number and class of persons and it is difficult to identify each affected person and give them a QCAT information notice. However, this does not affect the rights of an affected person to obtain a statement of reasons under the QCAT Act or to apply for a review of the decision.

Clause 1387 amends section 11C by replacing references to the CCT and CCT Act with references to QCAT and QCAT Act in order to give QCAT the power to review a display order decision.

Clause 1388 amends section 11D by replacing the requirement to give written reasons for a refusal to lift a display order in subsection (5) with a requirement to give a QCAT information notice. This reflects that QCAT may review a decision of the chief executive to refuse an application to lift a display order.

A new subsection (7) is inserted which provides that a QCAT information notice does not apply to a decision of the publication classification officer to make a display order. The requirement to give a QCAT information notice does not apply because a decision to make a display order may affect a wide number and class of persons and it is difficult to identify each affected person and give them a QCAT information notice. However, this does not affect the rights of an affected person to obtain a statement of reasons under the QCAT Act or to apply for a review of the decision.

Clause 1389 amends section 37 to provide for a QCAT information notice for a decision about an exemption to be given and that an application for a

review of the decision may be made to QCAT. This reflects that QCAT will have jurisdiction to review a decision of the publication classifications officer to refuse an application for an exemption under this section, or to revoke an exemption.

Part 10 Repeal of Classification of Publications Regulation 1992

Clause 1390 repeals the *Classification of Publications Regulation 1992*. The Regulation only provides for the establishment and procedure of the Publications Appeals Tribunal. This tribunal was abolished in 2008 by the *Justice Legislation Amendment Act 2008* which gave the CCT power to hear reviews. As this power is now being conferred to QCAT, the Regulation is no longer required.

Part 11 Amendment of Commercial and Consumer Tribunal Act 2003

Clause 1391 states that this part amends the *Commercial and Consumer Tribunal Act 2003*.

The purpose of amending this Act and the Commercial and Consumer Tribunal Regulation 2003 is to facilitate the transition of the registry for various tribunals and other entities into the registry for the CCT prior to the commencement of QCAT. Upon commencement of QCAT these tribunals and other entities will no longer exist and the QCAT registry will be the registry for proceedings under the relevant enabling Acts. This earlier transition of the registries is necessary to enable the gradual transition of registry functions to the physical location where the QCAT registry will eventually be located.

These amendments to this Act and the Commercial and Consumer Tribunal Regulation 2003 will commence on assent.

Clause 1392 amends section 20 to replace the reference to ‘other tribunal’ with ‘other entity’. This section establishes the CCT registry and enables

the registry to be the registry for other tribunals prescribed in the regulation. The replacement of tribunal with entity is necessary so that administrative decision making bodies other than tribunals can also be included in the regulation.

Clause 1393 inserts a new part 9, division 4 ‘Transitional provisions for Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009’.

New section 170 provides relevant definitions for new division 4.

New section 171 provides for any persons who may be appointed as registrars under the *Fire and Rescue Service Act 1990*, the *Misconduct Tribunals Act 1997*, the *Nursing Act 1992* or the *Veterinary Surgeons Act 1936* to stop being a registrar at the commencement of this section.

All staff employed under section 40(2) of the *Misconduct Tribunals Act 1997* will also stop being that registrar’s staff.

New section 172 is a transitional provision for anything done by or in relation to a former registrar. It provides that –

- anything done by a former registrar continues in effect and is taken to have been done by the director of the CCT
- any application made to a former registrar that had not been decided at the commencement of this section is taken to have been made to the director of the CCT
- any document or other thing given to or lodged with a former registrar is taken to have been given or lodged with the director of the CCT.

This provision also creates an obligation on former registrars to facilitate the transfer of registry functions to the CCT and to give all documents or other things given to or lodged with the former registrar to the director as soon as practicable after commencement.

New section 173 is a transitional provision for references to a former registrar in an Act or document. From commencement this reference, if the context permits, will be taken to be a reference to the director of the CCT.

Part 12 **Amendment of Commercial and Consumer Tribunal Regulation 2003**

Clause 1394 states that this part amends the *Commercial and Consumer Tribunal Regulation 2003*.

Clause 1395 amends section 9 to replace the reference to tribunals with entities for the reasons described in the notes to clause 1392.

Clause 1396 amends schedule 3 to replace the reference to tribunals with entities and insert several new entities into schedule 3. This means that until the commencement of QCAT, the CCT Registry will operate as the registry for the following entities:

- a misconduct tribunal
- the Nursing Tribunal
- a Panel of Referees convened under the *Fire and Rescue Service Act 1990* and
- the Veterinary Tribunal of Queensland.

The Racing Appeals Tribunal is already prescribed under schedule 3.

Part 13 **Amendment of Crime and Misconduct Act 2001**

Clause 1397 states that this part amends the *Crime and Misconduct Act 2001*.

Clause 1398 amends section 49(3) to provide separately for the taking of disciplinary proceedings from the bringing of criminal charges. It inserts two new subsections that provide that a report prepared by the Crime and Misconduct Commission (CMC), if it investigates or takes over the investigation of a complaint, must contain all relevant information that supports the start of disciplinary proceedings in QCAT or a defence that may be available to any person subject to disciplinary proceedings in QCAT.

This amendment is consequential to the overall objective to change the terminology in this Act in relation to disciplinary proceedings for prescribed persons, to reflect that these proceedings are administrative rather than criminal in nature. Terms that refer to the decision to start disciplinary proceedings as a ‘charge’ or ‘prosecution’ will be removed as the use of these words can equate disciplinary proceedings with criminal prosecutions. The nature of these two types of proceedings is different and this distinction will be reflected in the terminology used in the new provisions inserted in this Act.

Clause 1399 amends section 50(1) to replace the reference to ‘charge of a disciplinary nature of official misconduct’ with ‘the start of a disciplinary proceeding for official misconduct’. This reflects the intention to change the terminology in the Act as described in the note to clause 1398. Subsections (2) and (3) are omitted, removing the reference to a ‘charge of misconduct’ and a new subsection (2) is inserted providing that the CMC may apply to QCAT for an order in QCAT’s original jurisdiction. Under new section 219I QCAT exercising its original jurisdiction may on a finding of misconduct make a number of orders set out in that section. Subsections (3) and (4) are amended to reflect that it will be QCAT rather than the misconduct tribunal that will deal with disciplinary proceedings for misconduct against a prescribed person.

Clause 1400 omits section 75(9). This section prohibits the CMC from issuing a notice to discover to a person who may be a witness in or the subject of a disciplinary proceeding. It is omitted because it currently conflicts with the CMC’s unique role in investigating matters the subject of misconduct allegations and potentially with various statutory provisions supporting this role. New section 219K provides QCAT with the power to direct the CMC to undertake investigations in relation to a particular matter. Section 331 of this Act provides the commission, as an independent investigative body, with a unique power to continue to investigate matters where the matters being investigated are the subject of proceedings before the tribunal or a court.

Clause 1401 replaces the definition of ‘prosecution’ in section 109 for part 5 of the Act. The new definition reflects the change in terminology so that ‘bringing a charge of a disciplinary nature of official misconduct’ is replaced with ‘starting a disciplinary proceeding for official misconduct before QCAT’.

Clause 1402 replaces the term ‘disciplinary charge’ in section 202(2)(e) with ‘disciplinary proceedings’ reflecting the change in terminology in the Act as explained in the notes to clause 1398.

Clause 1403 replaces the heading for chapter 5 of the Act. A new heading is inserted ‘Offences and disciplinary proceedings relating to misconduct’ to reflect the inclusion of a new part in chapter 5 ‘Disciplinary proceedings relating to misconduct’. The *Misconduct Tribunals Act 1997* will be repealed by the QCAT Act. The relevant provisions for disciplinary proceedings for prescribed persons will now be replicated in this Act. There will now be two parts to chapter 5 – Part 1 Offences and Part 2 Disciplinary proceedings relating to misconduct.

Clause 1404 inserts a new chapter 5, part 1 heading ‘Offences’.

Clause 1405 inserts a new part 2 into chapter 5 – ‘Disciplinary proceedings relating to misconduct’.

Division 1 Preliminary

New section 219A clarifies the policy purpose of disciplinary proceedings and distinguishes these proceedings from criminal prosecutions. The purposes of providing for disciplinary proceedings are:

- to protect the public
- to uphold ethical standards within units of public administration and the police service and
- to promote and maintain public confidence in the public sector.

New section 219B inserts several new definitions for the new part 2 - disciplinary proceedings relating to misconduct.

A ‘disciplinary proceeding’ means:

- a proceeding under section 219F for official misconduct alleged to have been committed by a prescribed person or
- a proceeding under section 219G for a reviewable decision.

An ‘industrial matter’ means an industrial matter within the meaning of the *Industrial Relations Act 1999*.

An ‘officer’ means a police officer within the meaning of the *Police Service Administration Act 1990*, and includes a police recruit within the meaning of that Act.

A ‘reviewable decision’ means either:

- A decision in relation to an allegation of misconduct against a prescribed person, other than a decision made by a court or QCAT or
- A finding mentioned in the *Police Service Administration Act 1990*, section 7.4(2A)(b) that misconduct is proved against an officer.

It should be noted that a decision in relation to an allegation of misconduct brought against an officer under section 7.4(2A)(a) *Police Service Administration Act 1990* will be included under the definition of a 'reviewable decision' under the first limb of the definition.

Division 2 QCAT's Jurisdiction

New section 219C states that QCAT has jurisdiction to conduct disciplinary proceedings.

With the commencement of the QCAT Act the *Misconduct Tribunals Act 2007* will be repealed and QCAT will have the jurisdiction to conduct disciplinary proceedings previously held by misconduct tribunals. QCAT will have the jurisdiction to conduct proceedings in both its original jurisdiction (a proceeding in relation to official misconduct alleged to have been committed by a prescribed person) and in its review jurisdiction (reviewing reviewable decisions made in relation to an allegation of misconduct against a prescribed person or a finding mention in the *Police Service Administration Act 1990* section 7.4(2A)(b) that misconduct is proved against an officer).

New section 219D provides that QCAT has exclusive jurisdiction to hear and decide an allegation of official misconduct against a prescribed person. This is subject to the right of appeal from a decision of QCAT.

New section 219E clarifies that that the Industrial Court and the Industrial Relations Commission do not have jurisdiction in relation to a matter that QCAT may decide under this Act even though it may be, or be about, or arise out of, an industrial matter.

Division 3 Proceedings

New section 219F provides that proceedings in QCAT's original jurisdiction may be commenced by the commission or the chief executive officer of a unit of public administration (including the commissioner of the police service).

New section 219G provides that proceedings in QCAT's review jurisdiction may be commenced by the commission or a prescribed person against whom a reviewable decision has been made. Section 219G also sets out

time frames in which the proceeding must be started and who are the parties to the proceeding.

New section 219H provides that if QCAT is exercising its review jurisdiction it will conduct the review by way of a rehearing on the evidence given before the original decision-maker. Limitations are placed on the introduction at the review of evidence which was available at the time of the original hearing.

Division 4 QCAT's Powers

New section 219I provides for the orders QCAT can make in QCAT's original jurisdiction upon a finding of official misconduct being proved against a person.

New section 219J provides for the additional powers QCAT can exercise in QCAT's review jurisdiction. Section 24 of the QCAT Act provides that in a proceeding for a reviewable decision the tribunal may-

- Confirm or vary the decision or
- Set aside the decision and substitute its own decision or
- Set aside the decision and return the matter for reconsideration to the decision-maker for the decision with the directions the tribunal considers appropriate.

In addition, new section 219J provides that if after reviewing the reviewable decision QCAT finds misconduct has been proved against a person and sets aside the decision and substitutes a new decision, QCAT may exercise any of the powers in its original jurisdiction (section 219I), even though the original decision-maker may not have had these powers.

New section 219K gives QCAT the power to refer a matter for investigation or further investigation with a view to the taking of criminal proceedings or for another purpose.

New section 219L provides that QCAT may suspend orders made by QCAT in its original or review jurisdiction or discipline imposed on a prescribed person by a decision maker of a reviewable decision for a defined period. Section 219K(4) provides that if the prescribed person subject to the order or discipline is found to have committed an act of misconduct or to have contravened a condition during the operational period the suspension is revoked and the order or discipline has immediate effect.

Division 5 Appeals

New section 219M sets out who is entitled to appeal against a decision of QCAT exercising original jurisdiction under this part.

Clause 1406 amends section 318(9)(b) to replace ‘a disciplinary action brought’ with ‘a disciplinary proceeding started’.

Clause 1407 amends the schedule 2 Dictionary inserting several new definitions relevant for the new disciplinary proceedings part.

Part 14 Amendment of Dangerous Goods Safety Management Act 2001

Clause 1408 provides that part 14 amends the *Dangerous Goods Safety Management Act 2001*.

Clause 1409 renumbers the reference in section 31 (2) from a reference to section 32(5) to section 32(4) as a result of section 32(4) being deleted as outlined in the amendment to section 32.

Clause 1410 replaces the reference to the notice required to be given in section 32(3) by the chief executive to the occupier of a facility of the decision regarding the classification of the facility as a major hazard facility with a reference to a QCAT information notice for the decision. The clause also deletes subsection (4), which specifies matters that are to be included in the notice.

Clause 1411 renumbers the reference in section 37(1)(b) from a reference to section 32(5) to a reference to section 32(4) as a result of section 32(4) being deleted as outlined in the amendment to section 32.

Clause 1412 replaces the heading of part 9.

Clause 1413 replaces division 1 of part 9 with a new provision regarding the right of the occupier of a facility who is aggrieved by the chief executive’s decision regarding the classification of a facility as a major hazard facility to apply to QCAT for a review of the decision.

Clause 1414 re-enacts in division 1A of part 9 those provisions regarding appeals that were removed from division 1.

Part 15 **Amendment of Dangerous Goods Safety Management Regulation 2001**

Clause 1415 provides that part 15 amends the *Dangerous Goods Safety Management Regulation 2001*.

Clause 1416 amends section 89(4) to replace the current reference to an appeal with a reference to internal review in order provide consistency with terms applied under the QCAT Act by referring to ‘review’ of decisions rather than ‘appeals and review’.

Clause 1417 replaces the part 4, division 9 heading.

Clause 1418 amends section 111 to replace all reference to appeals from internal review decisions to applications for external review.

Clause 1419 amends section 112 to clarify that it will apply to internal review only.

Clause 1420 amends section 113 to clarify that it will apply to internal review only.

Clause 1421 amends section 114 to clarify that it will apply to internal review only, and that if the internal review decision is not the decision sought by the applicant, the internal review notice in that case must be a QCAT information notice for the decision. The clause also replaces references to appeals with references to an application for external review, to provide consistency with the terms used in the QCAT Act.

Clause 1422 amends section 115 to provide that an applicant for internal review may apply immediately to QCAT, instead of the Magistrates Court, for a stay of the decision pending outcome of the review.

Clause 1423 replaces the heading of subdivision 2 of division 9 of part 4 with a new heading relating to external review by QCAT instead of appeals to the Magistrates Court. This clause also deletes the existing sections 116 to 122, which deal with appeals and replaces them with a single section setting out the entitlement of a person who is given a QCAT information notice about a decision to apply to QCAT for a review of that decision.

Clause 1424 inserts into the dictionary in schedule 5 the definition of a QCAT information notice.

Part 16 **Amendment of Dispute Resolution Centres Act 1990**

Clause 1425 provides that this part amends the *Dispute Resolution Centres Act 1990*.

Clause 1426 amends section 2 to insert a definition for ‘QCAT principal registrar’ and to include in the definition of ‘referring order’ an order made by QCAT or the QCAT principal registrar referring a dispute for mediation.

Part 17 **Amendment of Dividing Fences Act 1953**

Clause 1427 states that this part amends the *Dividing Fences Act 1953*.

Clause 1428 amends section 6(1) to remove the definition of Small Claims Tribunal from the definitions for the Act. The amendment is consequential to the transfer of the jurisdiction conferred on a Small Claims Tribunal by the Act to QCAT.

Clause 1429 amends section 9(1), (1A) and (4) to substitute references to the Small Claims Tribunal with references to QCAT. The effect of these amendments is that QCAT will now have jurisdiction for proceedings consequent to the service of a notice to fence (in conjunction with a Magistrates Court). The amendment to section 9(1) also removes reference to ‘having jurisdiction as in this Act provided’ to make the provision consistent with section 49A of the *Acts Interpretation Act 1954*.

Clause 1430 amends section 10 to substitute a reference to orders to fence made by a Small Claims Tribunal with a reference to QCAT orders to fence, consequential to the transfer of the jurisdiction conferred on a Small Claims Tribunal by the Act to QCAT.

Clause 1431 amends section 11(1) and (3) to remove references to ‘having jurisdiction as in this Act provided’ in order to make the provision consistent with section 49A of the *Acts Interpretation Act 1954*.

Clause 1432 amends section 14 to replace a reference to Small Claims Tribunal with QCAT. The amendment is consequential to the transfer of the jurisdiction conferred on a Small Claims Tribunal by the Act to QCAT.

Clause 1433 amends section 16 by replacing references to Small Claims Tribunal with QCAT. The effect of these amendments is that QCAT will now have jurisdiction for proceedings consequent to the service of a notice to repair (in conjunction with a Magistrates Court). The clause also omits references to ‘having jurisdiction as in this Act provided’ to make the provision consistent with section 49A of the *Acts Interpretation Act 1954*.

Clause 1434 amends section 18 to replace references to the Small Claims Tribunal with QCAT. The clause also removes in sections 18(1) and (2) the reference to the express conferral of jurisdiction to hear and determine applications in order to make the provision consistent with section 49A of the *Acts Interpretation Act 1954*.

Clause 1435 amends section 19(2) to remove a reference to the Small Claims Tribunal, consequential to transfer of the jurisdiction of a Small Claims Tribunal under the Act to QCAT. The QCAT Act provides for enforcement of monetary decisions by QCAT.

Clause 1436 amends section 23 to replace references to the Small Claims Tribunal with QCAT. The clause also omits a reference to ‘having jurisdiction as in this Act provided’ to make the provision consistent with section 49A of the *Acts Interpretation Act 1954*.

Part 18 Amendment of Guardianship and Administration Act 2000

Clause 1437 provides that this part amends the *Guardianship and Administration Act 2000*.

Clause 1438 amends the long title of the *Guardianship and Administration Act 2000* (the Act) to delete references to the Guardianship and Administration Tribunal which will be abolished and instead confers jurisdiction on QCAT for particular purposes.

Clause 1439 amends section 7 to confer jurisdiction on QCAT as a way of achieving the Act’s purpose and therefore omits the reference to the Guardianship and Administration Tribunal being established.

Clause 1440 ensures that QCAT, instead of the Guardianship and Administration Tribunal, is listed as one of the entities that can authorise the exercise of power for an adult with impaired capacity under the Act.

Clause 1441 amends the references to the sections of the Act that apply to chapter 5A applications and proceedings under part 3, as a result of the renumbering of the sections by this Bill. This clause maintains the effect of the existing provisions to ensure that the members constituting the tribunal for these matters are those as specified in the amendments to section 80F, and that adult evidence orders (made under new section 106) cannot be made for these matters. The cross reference to the relevant clause for appeals in the second last dot point is changed to reflect the equivalent renumbered provision in this Bill. The reference to part 10 in the last dot point is omitted because those provisions have been deleted from the Act. The enforcement provisions under the QCAT Act apply instead.

Clause 1442 retains the requirement that at a hearing of a chapter 5A application the tribunal must be constituted by three members of QCAT. Members who exercise functions under this Act are to be appointed under the QCAT Act. However, the special requirements for the qualifications of those members who hear Chapter 5A matters are retained, but reflect the equivalent positions in QCAT with necessary amendments.

Clause 1443 amends the provision enabling the president or presiding member of the tribunal to direct that the period of notice for a hearing of a Chapter 5A application be reduced to refer to the relevant power under the QCAT Act rather than this Act.

Clause 1444 amends the references to sections of the Act that apply to chapter 5B applications, deleting references to sections omitted by this Bill because the generic procedures under QCAT Act apply instead. Part 4A is omitted because those provisions have been deleted from the Act. The alternative dispute resolution provisions under the QCAT Act apply instead. Part 7 is omitted because those provisions have been deleted from the Act. Reviews of the registrar's decision will be dealt with under the QCAT Act general provisions. The reference to part 10 in the last dot point is omitted because those provisions have been deleted from the Act. The enforcement provisions under the QCAT Act apply instead.

Clause 1445 omits chapter 6 entirely because the Guardianship and Administration Tribunal is to be abolished. New section 81 replicates the current functions of the Guardianship and Administration Tribunal, and confers those functions on QCAT. New section 82 ensures that QCAT has

the same jurisdiction as the former Guardianship and Administration Tribunal. Annual reports for matters heard under this Act will be addressed as part of the general QCAT annual report. However new section 83 ensures that the current requirements to provide specific information about limitation orders and restrictive practices are continued to be required to be included in the QCAT annual report.

Clause 1446 omits chapter 7, part 1 entirely and replaces it with a new part 1 for chapter 7, retaining only those provisions that are not dealt with under the QCAT Act or those provisions that are to override the generic provisions of the QCAT Act.

New section 99 replicates the specific definitions required for this chapter in the former section 99A.

New section 100 replicates the provisions in the former section 99B, setting out the types of limitation orders that can be made under this Act.

New section 101 makes it clear which provisions in the QCAT Act are not to apply to proceedings under chapter 7. Both the QCAT Act and this Act enable QCAT to make non-publication orders. New section 101(a) makes it clear that the only non-publication order that can be made about proceedings under this chapter are the orders made under new section 108 of this Act.

New section 101(b) makes it clear that the only circumstances in which QCAT can close hearings are when it makes an adult evidence order or a closure order under this Act. Section 99 of the QCAT Act allows QCAT to close or restrict access in proceedings involving special witnesses. New section 101(c) makes it clear that the restrictions on people accessing QCAT proceedings can only occur when the tribunal makes a closure order or an adult evidence order under this Act.

New section 101(d) and (e) makes it clear which provisions of the QCAT Act do not apply when QCAT orders costs in proceedings under chapter 7. The general test as to whether and in what circumstances costs should be awarded is to be determined under the provisions of this Act, not the QCAT Act and therefore sections 100 and 102 of the QCAT Act do not apply. However, costs can be awarded against a representative of a party under section 103 of the QCAT Act for proceedings under chapter 7, and the test to be applied is as set out in section 102(3)(a) of the QCAT Act.

New section 101(f) ensures that a party does not have to apply for leave to appeal decisions that are not the final decision of QCAT. This retains the

current requirements that do not require a party to apply for leave to appeal a decision about a limitation order.

New section 101(g) makes it clear that prohibitions or restrictions about publication or disclosures are made under this Act, rather than the QCAT Act, for proceedings under this chapter.

Members who hear matters under this chapter will be appointed under the QCAT Act. However, new section 102 retains the current requirement that for proceedings under this chapter the tribunal must be constituted by three members unless the president considers it appropriate for the proceeding to be heard by the tribunal constituted for two members or a single member.

New section 103 retains the current requirements about active parties' access to documents or other information that was formerly contained in section 108(2) to (7). The requirement that QCAT observe the rules of procedural fairness is omitted as section 28 of the QCAT Act replicates that requirement.

New section 104 replicates the former section 109A in this Act.

New section 105 replicates the former section 109 requiring hearings to be in public except if the tribunal makes an adult evidence order or a closure order. The new section 101(b) makes it clear that the only circumstances in which QCAT can close hearings or restrict a person's access to hearings are when it makes an adult evidence order or a closure order under this Act as sections 90 and 99 of the QCAT Act do not apply.

New sections 106 and 107 replicate the former 109B and 109C respectively in this Act.

New section 108 replicates the former 109D in this Act, and amends the cross reference to refer to section 114A which replaces the former section 112. The note at the end of this section ensures it is clear the only non-publication order that can be made about proceedings under this chapter are the orders made under this section, and not the non-publication orders made under section 66 of the QCAT Act.

New section 109 replicates the former 109E in this Act.

New section 110 replicates the former section 109F, and amends the cross references to sections 111 and 113 which replace the former sections 109G and 109I respectively.

New section 111 replicates the former section 109G in this Act setting who out has standing to be heard in relation to the making of a limitation order.

The former section 109G(2) is omitted as the right of a person to appeal against a decision to make a limitation order is now set out under new section 163.

New section 112 replicates the former section 109H in this Act, with an amendment to subsection (5) of the former section 109H. New subsection (5) of section 112 changes the time within which QCAT must give the public advocate information about limitation orders from 28 days to 45 days. This ensures consistency with the period required for the provision of reasons for limitation orders and reasons for other decisions made under this chapter, which have both been changed to be required within 45 days instead of 28 days.

New section 112 also amends the cross reference to section 114A which replaces the former section 112.

New section 113 replicates the former section 109I in this Act, but changes the period within which written reasons for decisions about limitation orders are to be provided to 45 days instead of 28 days, to be consistent with the timeframe for giving written reasons for other decisions for matters heard under this chapter. Sections 121 and 122 of the QCAT Act do not apply to decisions and reasons under this section because the people who are entitled to the decision and reasons are set out in new sections 112 and 113 of this Act. This also means that the president cannot extend the period within which the written reasons must be provided, as can occur for other QCAT decisions.

New section 114 replicates certain parts of the former section 110 in this Act, but omits the provisions that duplicate equivalent provisions in the QCAT Act. The powers retained in this section are not available under the QCAT Act. The tribunal, under this section, can direct a person to undergo examination by a doctor or psychologist as defined in this section, or direct a person the subject of a proceeding to be brought before the tribunal. The section enables the tribunal to change or revoke those directions, and requires that a person comply with the direction unless the person has a reasonable excuse, and gives the tribunal the power to direct that a party pay for the examination directed by the tribunal. Non-compliance with this provision is dealt with as an offence under section 213 of the QCAT Act.

New section 114A replicates the former section 112 in this Act and inserts an additional provision to make clear that section 125 of the QCAT Act does not apply for the purposes of this section. Section 125 of the QCAT

Act allows QCAT to publish decisions, with or without reasons, subject to the terms of a non-publication order. New section 114A(7) ensures that the circumstances in which information about guardianship proceedings may be published occurs in accordance with the factors set out in this section, not section 125 of the QCAT Act.

New section 114B replicates the former section 114 in this Act and maintains the provision that no fee is payable for a matter heard by QCAT in its original jurisdiction. However, fees are payable to QCAT when an eligible person appeals a decision of QCAT to the QCAT appeal tribunal under the QCAT Act.

Clause 1447 amends section 115 to make it clear that the application processes set out in the QCAT Act apply to applications under this Act or the *Powers of Attorney Act 1998*.

Clause 1448 removes sections 116 and 117 as the processes by which a person applies to QCAT and the information to be contained in the applications is set out in the QCAT Act and the QCAT rules.

Clause 1449 retains section 118 as the people who are notified of a hearing, and the processes by which the tribunal notifies those people, are set out under this section, not the QCAT Act. Section 37 of the QCAT Act therefore does not apply. The direction to dispense with notice or reduce the time for the notice is given under section 62 of the QCAT Act.

Clause 1450 replicates the former section 122, enabling QCAT to give leave to an applicant to withdraw the application under section 46 of the QCAT Act. However, section 46(2) of the QCAT Act does not apply. The applicant therefore does not have to apply for leave to make another application relating to the same facts or circumstances, maintaining the current position under the former section 122.

Clause 1451 deletes the provision allowing corporations to appear through an officer of the corporation, as this will now be dealt with under the QCAT rules.

Clause 1452 retains the general rule that each party is to bear their own costs under section 127(1). The test as to when costs can be awarded continues to apply under section 127(2). Section 127(3) makes it clear which sections of the QCAT Act apply to proceedings under this Act. Costs can never be ordered against a child (section 101 of the QCAT Act). Costs against representatives can be ordered (section 103 of the QCAT Act) and costs can be made against intervening parties (section 104 of the QCAT

Act). The other procedural provisions relating to how costs are ordered as set out in sections 105 to 109 of the QCAT Act also apply. New section 101 of this Act sets out which provisions of the QCAT Act do not apply to decisions about costs.

Clause 1453 provides that only a legal member can renew an interim order. The amendment retains the test under section 129 as to when an interim order can be made. Under the QCAT Act, the president of QCAT determines the composition of the tribunal for making an interim order in the first instance.

Clause 1454 deletes the sections enabling the tribunal to proceed in the absence of a party and adjourn proceedings as these powers are now provided for under the QCAT Act.

Clause 1455 deletes the section enabling witnesses to give evidence as this is provided for under the QCAT Act.

Clause 1456 enables the tribunal to make an order as to fees and expenses paid to witnesses and retains the current requirement that a witness is entitled to fees and expenses only if the tribunal makes an order under subsection 1, overriding the provisions in the QCAT Act that entitles witnesses to fees and allowances.

Clause 1457 deletes the general witness offence provisions as these are now provided for under the QCAT Act. However, the derivative use immunity provisions are retained to prevent the use of information in civil or criminal proceedings against the person, other than in certain proceedings identified in section 137.

Clause 1458 clarifies that section 213(1) of the QCAT Act applies for disobeying a direction of the tribunal as the equivalent provision in this Act has been deleted.

Clause 1459 clarifies that section 213(1) of the QCAT Act applies for disobeying a direction of the tribunal as the equivalent provision in this Act has been deleted.

Clause 1460 replicates the former section 138A in this Act with an amendment to clarify that the requirement under section 49(2) of the QCAT Act to obtain leave of the tribunal before making another application of the same kind relating to the same matter does not apply.

Clause 1461 deletes sections 139 to 145 as they replicate equivalent provisions in the QCAT Act.

Clause 1462 deletes part 4A relating to dispute resolution as these provisions replicate equivalent provisions in the QCAT Act.

Clause 1463 ensures an accurate cross reference to the relevant section in this Act as section 116 has been deleted.

Clause 1464 omits chapter 7 part 6 and inserts new sections for making and notifying decisions that are consistent with the requirements under the QCAT Act.

New section 156(1) replicates the former section 156(1) by stating that the section does not apply to the making of limitation orders, as those requirements are set out in section 112.

New section 156(2) replicates the former section 156(3) by providing that the relevant people as defined in this section are notified of the decision and are given a copy of the decision.

New section 156(3) and (4) replicates the former section 156(4) and (5) respectively, requiring the tribunal to give a copy of the decision to anyone else who requests a copy and ensuring that the safeguards in new section 114A continue to apply.

New section 156(5) requires the tribunal to give each relevant person as defined in this section, a notice that the relevant person can request written reasons for the decision. Section 122 of the QCAT applies so that the tribunal must comply with the request to provide the reasons within 45 days after the request is made or, if the president extends the period, the extended period. A person no longer has to satisfy the tribunal that they are aggrieved by the decision in order to obtain written reasons.

New section 156(6) ensures that the ability to request reasons is not limited to parties as it is under section 122 of the QCAT Act, and that the people entitled to request reasons are relevant persons as defined in section 156(7) of this Act.

New section 157 replicates the former section 157 with no amendments.

New section 158 sets out who the tribunal must give a copy of the written reasons to if it does give reasons, replicating the categories of people set out in the former section 158A of this Act.

New section 158(1) retains the provision in the former section 158A that these requirements do not apply for decisions about limitation orders, as the requirements for reasons for limitation orders are set out in section 113.

Clause 1465 omits part 7 of chapter 7 as the processes to apply for a review of the registrar's decision are now provided for under the QCAT Act.

Clause 1466 deletes the appeal provisions as a person now appeals to QCAT in the way provided under the QCAT Act about decisions in a proceeding. Appeals are no longer to the Supreme Court and will be to the appeal tribunal in QCAT or to the Court of Appeal if the tribunal was constituted by a judicial member in the first instance.

New section 163 enables an eligible person to appeal against a tribunal decision, except those decisions defined in this section as 'non-appellable decisions'. A non-appellable decision is defined as a decision to make a non-publication order or a confidentiality order before the hearing of the proceeding starts under section 110. This maintains the current position that a person cannot appeal against a decision about a non-publication order or a confidentiality order before the hearing of the proceeding.

An eligible person is defined in section 163(3) to include all categories of people formerly listed under section 164(3), with the necessary change in section 163(3)(a)(viii) to refer to a person appealing to QCAT, not to the Supreme Court. Section 163(3)(b) ensures that the people who were formerly eligible to appeal decisions about limitation orders under former section 109G(2) is maintained.

The reference to section 101 in the note to this provision makes clear which provisions of the QCAT Act do not apply to proceedings, and in particular the reference in section 101(f) that a party does not have to apply for leave to appeal a decision that is not the final decision of QCAT. This retains the current requirement that a party does not have to apply for leave to appeal a decision about a limitation order (which may not be a final decision of QCAT).

The tribunal's power to stay a decision pending the outcome of the appeal is set out in the QCAT Act, and the former section 163 is therefore omitted.

The notice of appeal is filed in accordance with the QCAT Act. However, the former 164A(2), setting out the appeal period if the tribunal has made an order under section 157 postponing the notification or provision of the decision is retained and replicated in new section 164.

Decisions as to costs on the appeal are provided for under the QCAT Act, and the former section 165 is therefore omitted.

Clause 1467 omits part 10 of chapter 7 because the enforcement of orders is provided for under the QCAT Act.

Clause 1468 amends the definition of relevant tribunal person to reflect the equivalent positions in QCAT, not the Guardianship and Administration Tribunal.

Clause 1469 amends the definition of official to reflect the equivalent positions in QCAT, not the Guardianship and Administration Tribunal

Clause 1470 amends the definitions to ensure that the former president, deputy president, members, registry staff and tribunal experts for the Guardianship and Administration Tribunal retain their protection from liability if honest and not negligent. The protection from liability for current QCAT members performing functions under this Act is provided under the QCAT Act. The definitions retain the existing protection for other people not affected by the QCAT amalgamation process, for example the adult guardian.

Clause 1471 amends definitions in the dictionary in schedule 4 of this Act.

Part 19 Repeal of Guardianship and Administration Tribunal Rule 2004

Clause 1472 deletes the rule made under the *Guardianship and Administration Act 2000* as the rules for proceedings under that Act will be made under the QCAT Act.

Part 20 Amendment of Judicial Review Act 1991

Clause 1473 provides that this part amends the *Judicial Review Act 1991*.

Clause 1474 amends schedule 1, part 1, which lists enactments that provide for non-review or limited review under the *Judicial Review Act 1991*, to omit references to the *Retail Shop Leases Act 1994*, section 88 and the *Small Claims Tribunals Act 1973*, section 19 as these provisions will be repealed by this Bill and the QCAT Bill.

Clause 1475 makes a consequential amendment to section 3(2) of schedule 2 which sets out the decisions for which reasons are not required to be given under the *Judicial Review Act 1991* by replacing the reference to ‘a Misconduct Tribunal’ with a reference to QCAT under the *Crime and Misconduct Act 2001*. This will replicate the current situation so that reasons for decisions in relation to the initiation of matters in the original jurisdiction of QCAT under the *Crime and Misconduct Act 2001* are not required to be given.

Part 21 Amendment of Legal Profession Act 2007

Clause 1476 states that this part amends the *Legal Profession Act 2007*.

Clause 1477 amends section 10 which defines what an information notice is for the purpose of the Act. Section 10 is amended to include information notices under the QCAT Act and to include reference to applying for review of a decision to QCAT.

Clause 1478 amends section 13(2) to clarify that the Supreme Court’s inherent jurisdiction and power may be exercised by making any order a disciplinary body could make under this Act or the QCAT Act and any other order QCAT can make in exercising its jurisdiction under this Act.

Clause 1479 amends section 15 to remove reference to the tribunal. The QCAT Act provisions enabling QCAT to extend time for making an application for review will apply.

Clause 1480 amends section 26 to replace a person’s right to appeal to the Supreme Court from a decision of the Queensland Law Society (Law Society) not to approve or to impose conditions on an approval of a lay person as an associate in a law practice with a right to apply to QCAT for review of the decision.

Clause 1481 amends section 32(3)(b) to replace a reference to the Supreme Court with a reference to QCAT. The effect of the amendment is that the admissions board may refer an application by a person seeking to be admitted to practice for an early declaration of suitability to QCAT for a direction instead of the Supreme Court. However if the board refuses to make the declaration, appeals from this decision remain with the Supreme

Court. This is because the Supreme Court remains the ultimate decision maker in relation to admissions to the legal profession.

Clause 1482 amends section 33 by replacing the heading to include reference to QCAT and by replacing references to the Supreme Court with references to QCAT in subsection (1).

Clause 1483 amends section 35 by omitting subsection (5). Under amended section 32, these referrals will be made to QCAT. However, the Supreme Court, under section 13 retains inherent power to make any order that QCAT can make when exercising its jurisdiction under this Act.

Clause 1484 amends section 51 by replacing subsection (9). The effect of the amendment is that an applicant for the granting or renewal of a local practising certificate may apply for review of a decision by the Law Society or Bar Association to refuse the application or impose conditions on the certificate to QCAT instead of the Supreme Court.

Clause 1485 amends section 54 by replacing paragraphs (2)(b) and (4)(b). The effect of the amendments is to transfer jurisdiction for deciding appeals from decisions of the Law Society and the Bar Association about conditions placed on local practising certificates from the Supreme Court to QCAT. The amendments will enable applicants dissatisfied with decisions of the Law Society or the Bar Association to impose or to refuse to revoke conditions on local practising certificates to apply to QCAT for review of those decisions.

Clause 1486 amends section 61 by replacing paragraph (3)(b). The effect of the amendment is to transfer jurisdiction from the Supreme Court to QCAT for deciding applications for review of decisions of the Law Society and the Bar Association about the amendment, suspension or cancellation of a local practising certificate.

Clause 1487 amends section 62(3)(a) to replace the reference to the Supreme Court with a reference to the tribunal. The effect of the amendment is that a person whose local practising certificate has been amended, suspended or cancelled because the person has been convicted of an offence may apply to QCAT for an order that the amendment, suspension or cancellation be stayed until the end of the time to appeal the conviction or until the appeal is finally dealt with.

Clause 1488 amends section 63 by replacing section 63(9), the effect of which is to replace the Supreme Court with QCAT as the body to which the Law Society or Bar Association may apply for an order to extend the

period of an amendment or suspension of a local practising certificate under subsections (2) or (3).

Clause 1489 amends section 69 by replacing paragraph (3)(b), the effect of which is to replace the Supreme Court with QCAT as the body which decides applications for review of a decision of the Law Society or Bar Association to refuse to grant or renew or to amend, suspend or cancel a local practising certificate because of a show cause event under sections 67 and 68.

Clause 1490 amends section 70 to replace the Supreme Court with QCAT as the body to which an applicant whose application for the grant or renewal of a local practising certificate has been refused or a certificate holder whose local practising certificate has been cancelled may apply for a review of a decision of the Law Society or Bar Association that the applicant or certificate holder is not entitled to re-apply for a practising certificate for a period up to five years.

Clause 1491 amends section 76 by replacing paragraph (3)(b), the effect of which is to replace the Supreme Court with QCAT as the body to which an interstate legal practitioner may apply for review of a decision of the Law Society or Bar Association to impose a condition on the interstate legal practitioner practising in Queensland.

Clause 1492 amends section 87 by replacing subsection 87(5), the effect of which is to replace the Supreme Court with QCAT as the body to which a person may apply for review of a decision of the Law Society or Bar Association that the person is required to undergo a health assessment.

Clause 1493 makes consequential amendments to section 91 by adding a reference to an application for review to reflect the terminology used in the QCAT Act. Any reference to appeals from an administrative decision in an enabling Act which will confer review jurisdiction on QCAT will be changed to make it consistent with the QCAT Act which describes these matters as reviews of reviewable decisions.

Clause 1494 makes consequential amendments to section 98 to change references to appeals to references to applying for review under the QCAT Act.

Clause 1495 amends section 183 by replacing paragraph (4)(b). The effect of this amendment is to replace the Supreme Court with QCAT as the body to which a foreign lawyer may apply for review of a decision of the Law

Society not to grant or renew registration as a foreign lawyer in Queensland or to impose a condition on registration.

Clause 1496 amends section 185 by replacing paragraph (7)(b). The effect of this amendment is to replace the Supreme Court with QCAT as the body to which a foreign lawyer may apply for review of a decision of the Law Society to refuse to grant or renew an application for registration as a locally registered foreign lawyer.

Clause 1497 amends section 188 by replacing paragraphs (3)(a) and (b). The effect of the amendment is to replace the Supreme Court with QCAT as the body to which a foreign lawyer may apply for review of a decision of the Law Society to amend, suspend or cancel the lawyer's registration as a foreign lawyer.

Clause 1498 amends section 189(3)(a) to replace the reference to the Supreme Court with a reference to the tribunal. The effect of the amendment is that a foreign lawyer whose registration has been amended, suspended or cancelled because the person has been convicted of an offence may apply to QCAT for an order that the amendment, suspension or cancellation be stayed until the end of the time to appeal the conviction or until the appeal is finally dealt with.

Clause 1499 amends section 194 by replacing paragraph (3)(b). The effect of the amendment is to replace the Supreme Court with QCAT as the body to which a locally registered foreign lawyer may apply for review of a decision of the Law Society to amend, suspend or cancel the registration for failure to show cause.

Clause 1500 amends section 195 by replacing paragraph (3)(b). The effect of the amendment is to replace the Supreme Court with QCAT as the body to which a foreign lawyer whose registration has been cancelled under division 7 may apply for review of a decision of the Law Society that the foreign lawyer is not entitled to re-apply for a practising certificate for a period up to five years.

Clause 1501 amends section 197 by replacing subsection (8). The effect of the amendment is to replace the Supreme Court with QCAT as the body to which the Law Society may apply for an order extending the period of suspension of the registration of a foreign lawyer under subsection (2).

Clause 1502 amends section 208 by replacing paragraph (4)(b). The effect of the amendment is to replace the Supreme Court with QCAT as the body to which an interstate-registered foreign lawyer may apply for review of a

decision of the Law Society to impose a condition on the lawyer's practice of foreign law in Queensland.

Clause 1503 amends section 278, the effect of which is to replace the District Court with QCAT as the body to which a person may apply for review of a decision of the Law Society to disqualify the person as an external examiner.

Clause 1504 amends section 328 to enable a client to elect the forum in which to seek an order that a costs agreement be set aside. A client may choose to bring the application either in the Supreme Court or in QCAT. While under section 13, the Supreme Court's inherent jurisdiction and powers include the making of any orders the Legal Practice Committee or QCAT may make under this Act, it was considered important, because of the court's inherent jurisdiction in relation to costs, to clarify in this provision that a client may apply to either body.

Clause 1505 amends section 375 by replacing paragraph (1)(c) and amending subsection (2). The effect of the amendments is to replace the Supreme Court with QCAT as the body to which a person who wishes to make a claim against the Fidelity Fund may apply for a review of a decision of the Law Society to refuse to allow a further period for the claim to be made.

Clause 1506 amends section 377 by replacing paragraph (2)(c) and amending subsection (4). The effect of the amendments is to replace the Supreme Court with QCAT as the body to which a person who wishes to make a claim against the Fidelity Fund may apply for a review of a decision of the Law Society to refuse to allow a further period for the claim to be made after it has fixed a final date for claims by publishing a notice under section 376.

Clause 1507 amends the heading of chapter 3, part 3.6, division 7, by replacing the reference to appeals with a reference to review.

Clause 1508 replaces sections 392 and 393. The effect of new section 392 is to replace the Supreme Court with QCAT for deciding applications for reviews of decisions by the Law Society to wholly or partly disallow a claim on the Fidelity Fund or to reduce the amount allowed for a claim. Subsections (2), (4), (5), (6) and (7) have been omitted as the provisions in the QCAT Act relating to the time in which an application for review must be made, the way in which a decision is reviewed, the orders QCAT can make on review and costs will apply.

The effect of new section 393 is to replace the Supreme Court with QCAT for reviewing a failure of the Law Society to decide a claim on the Fidelity Fund after one year after the claim was made.

Clause 1509 amends section 394 to replace a reference to appeal in the heading with a reference to review and to replace a reference in the section to a court with a reference to the tribunal.

Clause 1510 amends section 396 to add a reference to application for review in subsection (5) to the reference to ‘appeal or otherwise’.

Clause 1511 makes a consequential amendment to section 451.

Clause 1512 amends section 454 to change the reference to a disciplinary body to a reference to the Legal Practice Committee only. This Bill repeals provisions establishing the Legal Practice Tribunal. The functions of this tribunal will be transferred to QCAT. The QCAT Act contains a provision about the joinder of parties which will apply to disciplinary proceedings before QCAT under this Act.

Clause 1513 amends section 455 to delete the requirement for an application to vary a discipline application to be made by the Legal Services Commissioner. This will provide flexibility for the Legal Practice Committee and QCAT to vary a discipline application on its own initiative and is consistent with the powers of QCAT under the QCAT Act.

Clause 1514 amends section 456 to make the terminology relating to disciplinary matters less like terminology in criminal proceedings. This approach is being taken consistently across all legislation which confers disciplinary jurisdiction on QCAT. The primary purpose of professional disciplinary proceedings is to maintain public confidence in the integrity and competence of the particular profession by protecting the public from incompetent or dishonest practitioners. Removal of references to finding a person guilty or not guilty reflects the fact that disciplinary proceedings are not criminal prosecutions.

Clause 1515 replaces section 457. The effect of the amendment is to provide for enforcement of disciplinary orders made by QCAT under section 456 or 462 or part 4.10 or an order of QCAT made on review of a disciplinary decision of the Legal Practice Committee under section 469. The new section 457 achieves this by replacing references to the Brisbane registrar (that is the registrar under the *Supreme Court of Queensland Act 1991* for the Brisbane Supreme Court district) with references to the principal registrar of QCAT. The new section also enables a complainant in

whose favour a compensation order is made by QCAT to enforce the order in a court of competent jurisdiction rather than requiring the order to be enforced through the Supreme Court, thereby reducing the costs of enforcement for some complainants.

Clause 1516 amends section 458 to change the terminology from ‘guilty’ of certain conduct to ‘has engaged in’ certain conduct to reflect the fact that disciplinary proceedings are not criminal proceedings.

Clause 1517 amends section 459(3) to refer to an application for review under the QCAT Act rather than an appeal to the Supreme Court. The QCAT Act provision setting out the time for making an application for review applies to review applications under this Act.

Clause 1518 amends section 462 to change the terminology to reflect the fact that disciplinary proceedings are not criminal proceedings. Section 462 sets out the powers of the Legal Practice Committee and QCAT to order costs in disciplinary proceedings. This section applies to the ordering of costs in disciplinary proceedings under this Act and prevails over the equivalent costs provisions in the QCAT Act other than sections 103 (Costs against representative in interests of justice) and 104 (Costs against intervening parties) of that Act.

Clause 1519 inserts new section 462A into the Act. This amendment relocates current section 615 as the new section 462A. It provides that the Legal Services Commissioner may bring a proceeding for the imposition or enforcement of a penalty.

Clause 1520 amends section 468 by omitting subsection (4). Section 468 provides for appeals from disciplinary decisions of QCAT to the Court of Appeal. This section applies to these appeals rather than the generic appeal provisions in the QCAT Act. This is because appeals to the Court of Appeal from the decision of a judicial member of QCAT is on a question of law and otherwise with leave of the Court of Appeal which is different to the nature of the appeal under this Act which is by way of rehearing. It is not intended to change the nature of the appeal for these matters. A new subsection (4) is inserted to clarify this.

Clause 1521 replaces section 469. The effect of the amendment is to enable parties to disciplinary proceedings before the Legal Practice Committee to apply to QCAT for review of a final decision of the Committee. Previously, final decisions of the Committee could be appealed to the Legal Practice Tribunal. The QCAT Act provides for the way and time in which a party may apply for review and the orders QCAT can make on review. The

amendment clarifies that the Committee is not a party to the QCAT review proceeding and that the Legal Services Commissioner is a party to the QCAT review proceeding.

Clause 1522 amends the definition of ‘disciplinary action’ in section 471 to change the terminology to reflect the fact that disciplinary proceedings are not criminal proceedings.

Clause 1523 amends section 477(1)(c) to clarify that the section applies to QCAT’s jurisdiction other than its disciplinary jurisdiction. Section 477 provides that part 4.11 which deals with publicising disciplinary action is subject to any order made by a disciplinary body, a corresponding disciplinary body in another jurisdiction or a court or tribunal in Queensland or another jurisdiction that regulates the disclosure of information.

Clause 1524 amends section 491 to replace a reference to part 7.2 of this Act with a reference to the QCAT Act. Part 7.2 establishes the Legal Practice Tribunal. This Bill will repeal these provisions in part 7.2.

Clause 1525 replaces chapter 7, part 7.2, divisions 1 and 2 and the heading of division 3. The current division 1, which is omitted by this clause, sets out that the purpose of part 7.2 division 2, which is also omitted by this clause, is to establish the Legal Practice Tribunal. The provisions of division 1 and 2 are replaced with a provision requiring QCAT to be constituted for hearing and deciding matters under this Act by a judicial member. It also clarifies that, if the tribunal has not yet been constituted for a matter, the powers under sections 47 and 48 under the QCAT Act (provisions for ending proceedings early) may only be exercised by a judicial member. Also the powers of the tribunal to give directions, make an interim or interlocutory order or a settlement order at compulsory conference may only be exercised by a legally qualified member. New division 2 re-enacts section 614(2),(3) and (4) as new section 599 to continue to provide for QCAT, when hearing and deciding a discipline application, to be assisted by two panel members, one of whom must be a lay panel member and the other must be a barrister or a solicitor member of the practitioner panel.

Clause 1526 amends section 607 by omitting subsections (3) and (4). The content of these subsections are now included in the new section 599.

Clause 1527 omits chapter 7, part 7.2, divisions 4 to 6. Most of the sections in these divisions either relate to the functioning of the Legal Practice Tribunal which is being abolished or deal with matters that are dealt with in

the QCAT Act (for example, contempt of the tribunal and protection of members). The clause re-enacts certain provisions which are required in relation to panel members assisting the tribunal. New section 612 deals with disclosure of interests by panel members which was previously included in section 613. New section 613 provides that a panel member has, in the performance of his or her duties as a panel member, the same protection and immunity as a Supreme Court judge. This protection was previously provided in section 618 which has been omitted.

Clause 1528 amends section 640 by replacing the reference to tribunal rules in subsection (1) with a reference to a regulation. Section 640(1) provides that the Legal Practice Committee's procedure may be dealt with by directions under section 640, to the extent that it is not provided for in this Act or in the tribunal rules. Currently, tribunal rules are made under section 603 which is omitted by clause 1525. This Bill also repeals the *Legal Profession (Tribunal and Committee) Rule 2007* which was made under section 603. Rules for the procedure of the Legal Practice Committee will be included in a regulation under this Act.

Clause 1529 amends section 641 by replacing a reference in subsection (6) to tribunal rules with a reference to rules under the QCAT Act.

Clause 1530 replaces the headings of chapter 7, part 7.4 and the heading of chapter 7, part 7.4, division 1 so that the headings only refer to the Legal Practice Committee.

Clause 1531 amends section 643 to replace references to disciplinary body with references to the Legal Practice Committee only. The relevant QCAT Act provisions about parties in proceedings before QCAT will apply to disciplinary proceedings before QCAT under this Act. Subsection (3) providing for the complainant's right to appear before the tribunal is retained in new section 656B inserted by clause 1544.

Clause 1532 amends section 644 to replace references to disciplinary body with references to the Legal Practice Committee only. The relevant QCAT Act provisions will apply to disciplinary proceedings before QCAT under this Act.

Clause 1533 amends section 645 to replace references to disciplinary body with references to the Legal Practice Committee only. The relevant QCAT Act provisions will apply to disciplinary proceedings before QCAT under this Act.

Clause 1534 amends section 646 to replace a reference to disciplinary body with a reference to the Legal Practice Committee only.

Clause 1535 amends section 647 to replace references to disciplinary body with references to the Legal Practice Committee only. The relevant QCAT Act provisions will apply to disciplinary proceedings before QCAT under the *Legal Profession Act 2007*.

Clause 1536 amends section 648 to replace references to disciplinary body with references to the Legal Practice Committee only. The relevant QCAT Act provisions will apply to disciplinary proceedings before QCAT under this Act. Paragraph (b)(i) is also amended to replace a reference to the tribunal rules with a reference to the regulation.

Clause 1537 amends section 649 to replace references to disciplinary body with references to the Legal Practice Committee only. The statement about the standard of proof required for disciplinary matters is retained for QCAT by clause 1544 which includes the provision in new part 7.4A as new section 656C.

Clause 1538 amends section 650 so that the power to make an order prohibiting publication of stated information and the offence for breaching the order applies to the Legal Practice Committee only. QCAT's power to make this order and the offence is retained by clause 1544 as new section 656D.

Clause 1539 amends the heading of division 3 of part 7.4 of chapter 7 by replacing the reference to disciplinary body with a reference to the Legal Practice Committee.

Clause 1540 amends section 651 to replace references to disciplinary body with references to the Legal Practice Committee only. This provision as it applies to QCAT is retained by clause 1544 as new section 656E.

Clause 1541 amends section 652 to replace references to disciplinary body with references to the Legal Practice Committee only. The clause also replaces subsection (3) to replace a reference to the tribunal rules and practice directions under section 604 (which has been omitted) with a reference to the regulation. The relevant QCAT Act provisions relating to the giving of directions will apply to disciplinary proceedings before QCAT under this Act.

Clause 1542 amends section 653 to replace references to disciplinary body with references to the Legal Practice Committee only. The relevant QCAT

Act provisions about notices to attend and offences by witnesses will apply to disciplinary proceedings before QCAT under this Act.

Clause 1543 replaces section 654 so that the section only refers to the Legal Practice Committee.

Clause 1544 inserts a new part 7.4A into chapter 7. The new part sets out the provisions that apply to QCAT for discipline applications under this Act. New section 656A provides that part 7.4A applies to a disciplinary proceeding before the tribunal. A note to the section states that the QCAT Act also applies. Clause 6(7) of the QCAT Bill provides that an enabling Act may provide for requirements about applications or referrals or the conduct of proceedings, including practices and procedures, and the tribunal's powers or the enforcement of tribunal decisions. These provisions may add to or differ from the analogous QCAT Act provisions. Clause 7 of the QCAT Bill provides that a modifying provision in an enabling Act prevails over the QCAT Act provisions to the extent of any inconsistency.

New section 656B re-enacts section 643(3), which is amended by clause 1531 so that it only applied to the Legal Practice Committee, to enable the complainant to appear at the hearing of a discipline application in QCAT.

New section 656C applies the same standard of proof in relation to disciplinary proceedings before QCAT as applies currently to the Legal Practice Tribunal and the Legal Practice Committee. This requirement was contained in section 649 which is amended by clause 1537 so that it only applies to the Legal Practice Committee.

New section 656D empowers QCAT to make an order prohibiting the publication of information stated in the order. It is an offence to contravene the order or to publish a question, or an answer to a question, disallowed by the tribunal at the hearing. It also empowers the QCAT to make an order prohibiting the issue or publication of a copy of the record of the proceeding. It is an offence to contravene this order. This new section is a re-enactment of the current powers and offences set out in section 650 which is amended by clause 1538 so that that provision only applies to the Legal Practice Committee. This provision is inconsistent with the provision in the QCAT Act enabling the tribunal to make a non-publication order and the offence in the QCAT Act for contravention of a QCAT order in that the test for exercising the power and the penalties are different. It is intended that this provision applies to disciplinary matters under this Act rather than the comparable provisions in the QCAT Act. The QCAT Act defines

non-publication order to include an order made under this section so that other provisions in the QCAT Act relating to non-publication orders will apply in relation to orders made under this section.

New section 656E empowers QCAT to disregard a failure by the Legal Services Commissioner to observe a procedural requirement in relation to a complaint, investigation or discipline application if the tribunal is satisfied the parties would not be prejudiced by the failure. This power does not limit QCAT's power to disregard a failure by another person to comply with a procedural requirement. This new section re-enacts section 651 which is amended by clause 1540 so that it only applies to the Legal Practice Committee. This power is in addition to QCAT's general power under the QCAT Act to waive procedural requirements.

Clause 1545 amends section 704 to include the principal registrar of QCAT as an entity for the purpose of disclosure of information under this section.

Clause 1546 amends section 707 (4)(b) to replace references to disciplinary body with references to the Legal Practice Committee, a member of the Committee or a panel member. The QCAT Act provisions providing immunity to members and protection against civil liability for the principal registrar of QCAT will apply instead.

Clause 1547 amends section 711 by omitting paragraph (d) which refers to a Legal Practice Tribunal member. The equivalent QCAT Act provision will apply.

Clause 1548 amends section 714(2) by omitting paragraph (b) which refers to the Legal Practice Tribunal. Forms for QCAT will be made under the QCAT rules.

Clause 1549 amends section 715 to include a power to make a regulation for the practice and procedure of the Legal Practice Committee. This is necessary as the *Legal Profession (Tribunal and Committee) Rule 2007* will be repealed by this Bill.

Clause 1550 omits the part 9.9 heading in chapter 9 as this part is now redundant.

Clause 1551 replaces the heading of chapter 10 to reflect the content of the chapter.

Clause 1552 inserts a new chapter 10, part 2 into this Act to provide for transitional arrangements for this Act, in addition to the transitional provisions in the QCAT Act.

New section 771 provides for the automatic expiry of the heading for part 1 in line with the expiry provisions in section 770.

New section 772 defines terms used in part 2.

New section 773 provides that the part does not limit section 20 of the *Acts Interpretation Act 1954* which provides for the effect of the repeal or amendment of an Act.

New section 774 preserves the operation of an order of the Supreme Court under sections 62 or 189 that an amendment, suspension or cancellation of a practising certificate made by a regulatory authority because of a conviction for an offence be stayed until the end of the time to appeal against the conviction or until any appeal is finalised. It also preserves the operation of an order of the Supreme Court under sections 63 or 197 to extend a period of amendment or suspension of a practising certificate.

New section 775 states that if, after commencement, the Supreme Court decides an appeal from a decision of the Law Society or the Bar Association to refuse to grant or renew a local practising certificate or to suspend or cancel a local practising certificate in favour of the lawyer, the subsections 98(2) and (3) as in force before commencement continue to apply. The effect of this is that the regulatory authority is still required to give written notice of the result of the appeal to corresponding authorities in other jurisdictions.

New section 776 states that an order made under the unamended section 650(1) by the Legal Practice Tribunal is taken to be an order of QCAT under new section 656D(1) and that section 656D applies to the order. New section 656D is inserted by clause 1544 and replicates the unamended section 650 in relation to QCAT. Continuation of the offence provision in section 650(3) is provided for in the transitional provisions of the QCAT Act. Orders of the Legal Practice Tribunal under section 650(4) are also taken to be orders of QCAT under new section 656D(4).

New section 777 provides that the unamended section 654 continues to apply documents relating to a proceeding before the Legal Practice Tribunal and to documents issued by that Tribunal.

Clause 1553 amends definitions in the dictionary in schedule 2 of the *Legal Profession Act 2007*.

Part 22 **Repeal of Legal Profession (Tribunal and Committee) Rule 2007**

Clause 1554 repeals the *Legal Profession (Tribunal and Committee) Rule 2007*. Rules for proceedings in QCAT will be set out in the QCAT Rules. Rules for procedure and practice of the Legal Practice Committee will be included in a regulation made under the *Legal Profession Act 2007*.

Part 23 **Amendment of Magistrates Act 1991**

Clause 1555 provides that this part amends the *Magistrates Act 1991*.

Clause 1556 makes a consequential amendment to section 53J by omitting section 53J(1)(b) and (c) which refer to minor debt claims under the *Magistrates Court Act 1921* and small claims under the *Small Claims Tribunals Act 1973*. As these jurisdictions will become part of the jurisdiction of QCAT, they will no longer need to be referred to in section 53J. Paragraphs (d) and (e) are renumbered as a consequence.

Clause 1557 amends section 53K(2) to change the reference to section 53J(1)(e) to section 53J(1)(c) as a result of the renumbering of these paragraphs.

Clause 1558 amends section 53L by omitting paragraph (b) which refers to the *Small Claims Tribunals Act 1973* and by renumbering paragraphs (c) and (d) as (b) and (c).

Part 24 **Amendment of Magistrates Courts Act 1921**

Clause 1559 provides that this part amends the *Magistrates Court Act 1921*.

Clause 1560 amends section 2 by omitting the definitions of ‘minor claim’ and ‘minor debt claim’. Because the minor debt claim jurisdiction will become part of QCAT’s jurisdiction, the simplified procedures for minor debt claims will no longer be available in the Magistrates Court. However, simplified procedures under the *Uniform Civil Procedure Rules 1999* will still be retained as an option for parties to agree to adopt for minor claims other than claims that currently fall within the definition of ‘minor debt claim’.

Clause 1561 amends section 45A by replacing the reference to minor debt claim in the heading with a reference to simplified procedures. Subsection (1) is omitted because it refers to minor debt claims.

Clause 1562 omits section 52 which is about the publication of particulars of minor debt claims.

Part 25 Amendment of Misconduct Tribunals Act 1997

Clause 1563 states that this part amends the *Misconduct Tribunals Act 1997*.

Clause 1564 amends sections 11, 17, 18 and 19 to replace the reference to registrar with director.

Clause 1565 omits section 40 of the Act that provides for the appointment of a registrar and tribunal staff.

Clause 1566 amends section 44 to ensure that the confidentiality provisions under this Act apply to both a former registrar and the director and other staff of the CCT registry.

Clause 1567 amends the schedule dictionary to omit the definition of registrar and insert a definition of ‘director’.

Part 26 **Amendment of Powers of Attorney Act 1998**

Clause 1568 provides that this part amends the *Powers of Attorney Act 1998*.

Clause 1569 amends the heading to section 109A to omit a reference to the Guardianship and Administration Tribunal which will be abolished and instead refers to QCAT which will have the jurisdiction of the former Guardianship and Administration Tribunal.

Clause 1570 amends the definition of ‘tribunal’ in the dictionary in schedule 3 of this Act to mean QCAT.

Part 27 **Amendment of Retail Shop Leases Act 1994**

Clause 1571 states that this part amends the *Retail Shop Leases Act 1994*.

Clause 1572 amends section 14, which specifies the provisions of the *Retail Shop Leases Act 1984* (the former Act) which continue to apply to existing retail shop leases (as defined in the dictionary). The amendment provides that for the purposes of applying a provision of the former Act to an existing retail shop lease, a reference in the provision to a retail shop leases tribunal or tribunal is now a reference to QCAT (instead of a reference to a tribunal under this Act). This amendment reflects that retail tenancy disputes heard by a retail shop leases tribunal (RSLT) will now be heard by QCAT.

Clause 1573 amends section 22E, which provides that if the disclosure requirements of sections 22A-22D are not complied with, the tribunal may be asked to make orders directing the provision of the relevant documents. The amendment provides that, instead of asking the tribunal for an order, the relevant person may apply to QCAT for an order.

Clause 1574 amends section 26(2)(b)(v) to replace the words ‘a mediator or tribunal under this Act’ with ‘a mediator under this Act or QCAT’. This amendment reflects that retail tenancy disputes heard by a RSLT will now be heard by QCAT.

Clause 1575 amends section 32, which provides for when a specialist retail valuer determining current market rent must give the valuer's determination to the lessor and lessee. The amendment replaces paragraph (e) to reflect that retail tenancy disputes heard by a RSLT under this Act will now be heard by QCAT.

Clause 1576 amends section 46B, which deals with matters a RSLT may have regard to in deciding whether a party to a retail tenancy dispute has engaged in unconscionable conduct in connection with the retail shop lease. The amendment replaces references to the tribunal with references to QCAT, consequential to the transfer of jurisdiction for the hearing of retail tenancy disputes from a RSLT to QCAT.

Clause 1577 amends section 57, which provides that a party must conduct its own case at mediation unless otherwise approved by the mediator. Consequential to the omission of the definition of approved agent from the dictionary by this Bill, this amendment replaces the reference to 'approved agent' with 'agent approved by the mediator'.

Clause 1578 replaces the part 8, division 3 heading. The new heading, 'Reference of retail tenancy disputes and applications to QCAT', reflects the transfer of jurisdiction for the hearing of retail tenancy disputes from a RSLT to QCAT.

Clause 1579 amends section 63, which provides the circumstances under which a dispute may be referred by a mediator to the chief executive (for referral to a RSLT). The amendment provides for the mediator to refer the dispute to QCAT rather than to the chief executive. This means that QCAT will now hear retail tenancy disputes in place of a RSLT. The clause also inserts a new subsection (3) clarifying that the party who lodged the notice of the dispute under section 55 is the applicant in the proceeding before QCAT for the dispute.

Clause 1580 replaces section 64 of the Act, which provides the circumstances under which a party to a retail tenancy dispute may refer a dispute to the chief executive (for referral to a RSLT). The replacement section 64 provides a party may apply to QCAT for an order resolving the dispute in the circumstances set out in the section instead of referring the dispute to the chief executive. This means that QCAT will now hear retail tenancy disputes in place of a RSLT.

Clause 1581 omits part 8, division 4 which details matters for retail tenancy disputes hearings by a RSLT. The division is no longer required because jurisdiction for hearing a retail tenancy dispute has been

transferred to QCAT and the QCAT Act provides for the matters detailed in this division.

Clause 1582 replaces the part 8, division 5 heading so that it refers to QCAT orders instead of tribunal orders, reflecting the transfer of jurisdiction for hearing retail tenancy disputes from a RSLT to QCAT.

Clause 1583 amends section 83, which grants a RSLT power to make orders that it considers to be just to resolve a dispute. The amendment replaces references to the tribunal with references to QCAT, consequential to the transfer of jurisdiction for hearing retail tenancy disputes from a RSLT to QCAT. The amendment also omits subsections (4) and (5), which provide that an order may specify a time for compliance with it and that the chief executive must serve a copy of an order on a person against whom the order is made if the person is not present when the order is made. These subsections are no longer required because the QCAT Act provides for these matters.

Clause 1584 omits sections 84 to 88A and part 8, division 6, which are provisions about orders of a RSLT, including the enforcement of orders. These provisions are no longer required because QCAT will hear retail tenancy disputes in place of a RSLT and the QCAT Act sets out matters for orders of QCAT. The clause also renumbers the part 8, division 7 heading as part 8, division 5, consequential to the omission of preceding divisions in the part.

Clause 1585 replaces sections 91 to 93. The amendment omits existing sections 91, 91A and 92, which provide for costs and witness allowances relating to a RSLT hearing. These provisions are no longer required because retail tenancy disputes will now be heard by QCAT in place of a RSLT and the QCAT Act provides for these matters.

The clause also omits section 93, which deals with the withdrawal of disputes, and inserts a new section 91 dealing with the withdrawal of disputes. The new section 91 provides for the withdrawal of disputes other than a retail tenancy dispute which a mediator has referred to QCAT under section 63(2) or about which a person has made an application to QCAT under section 64. The QCAT Act provides for the withdrawal of these referrals and applications.

Clause 1586 amends section 94, which prevents any dispute from being heard by arbitration or by any court once it has been lodged as a dispute under the Act except in the circumstances mentioned in subsection (2). The amendments reflect that the jurisdiction to hear retail tenancy disputes

has been transferred to QCAT, and to reflect the new arrangements for the withdrawal of disputes under section 91 and the QCAT Act.

Clause 1587 amends section 97, which sets out the jurisdiction of a mediator to mediate retail tenancy disputes. The amendment replaces section 97(1)(c), so that the exclusion of a retail tenancy dispute under a retail shop lease for the carrying on of the business of a service station from the jurisdiction of a mediator now reflects the repeal of the *Petroleum Retail Marketing Franchise Act 1980* (Cwlth) and the commencement of the *Trade Practices (Industry Codes—Oilcode) Regulation 2006* (Cwlth).

Clause 1588 replaces part 9, division 2, which deals with the appointment, composition, functions, jurisdiction and powers of RSLTs. New part 9, division 2 sets out provisions for QCAT proceedings. New section 102 provides that for a proceeding for a retail shop lease dispute, QCAT is to be constituted by the following QCAT members: a legally qualified member; a person representing lessors under retail shop leases; and a person representing lessees under retail shop leases. However, if the amount, value or damages in dispute is less than the QCAT prescribed amount, QCAT may be constituted by a legally qualified member or a QCAT adjudicator.

New section 103 sets out the jurisdiction of QCAT. The jurisdiction of QCAT is equivalent to the jurisdiction of a RSLT prior to the commencement of this Bill. However, the exclusion of a retail tenancy dispute under a retail shop lease for the carrying on of the business of a service station from the jurisdiction of QCAT now reflects the repeal of the *Petroleum Retail Marketing Franchise Act 1980* (Cwlth) and the commencement of the *Trade Practices (Industry Codes—Oilcode) Regulation 2006* (Cwlth).

Clause 1589 amends section 113, which prevents mediators and tribunal members from disclosing information coming to their knowledge during the dispute resolution process, unless the parties otherwise agree or on other grounds specified in the section. Consequential to the transfer of jurisdiction for the hearing of a retail tenancy dispute from a RSLT to QCAT, section 113 is amended so that it will only apply to mediators and to former tribunal members. The QCAT Act confidentiality provision will apply to QCAT members for proceedings before QCAT. The reference to former tribunal members is retained to ensure that a former tribunal member remains under an obligation to not disclose information that came to their knowledge during a dispute resolution process before the commencement of this Bill.

Clause 1590 amends section 114, which gives mediators and tribunal members the same protection and immunity as a Supreme Court judge, and gives to parties (or a party's agent) and witnesses the same protection and immunity that the person would have had if the dispute were in the Supreme Court. Section 114 also provides that a document produced at, or used for, a dispute resolution process has the same protection during the process it would have if produced at the Supreme Court.

The amendments to section 114 are consequential to the transfer of jurisdiction for hearing retail tenancy disputes from a RTSL to QCAT. The protection and immunity afforded to mediators and tribunal members will now only apply to mediators, as the QCAT Act immunity provision applies to QCAT members. The protection and immunity afforded to a party or the party's agent and a witness appearing at a dispute resolution process (which includes a mediation, or a hearing, of a retail tenancy dispute) will now only apply to a party or the party's agent and a witness appearing at a mediation process. The QCAT Act immunity provision applies to parties, parties' representatives and witnesses in a QCAT proceeding. The protection afforded to a document produced at, or used for, a dispute resolution process will now only apply to a document produced at, or used for, a mediation process. The QCAT Act provides for the protection of a document produced at, or used for, a hearing before QCAT.

Clause 1591 amends section 115, which prevents anything said in a mediation conference from being admissible before any Court or tribunal hearing, and prevents anything said in a tribunal hearing being admissible before any Court hearing. The amendment to the section removes the provision that evidence of anything said in a tribunal hearing is not admissible in any Court hearing, so that QCAT hearings are treated consistently across all jurisdictions.

Clause 1592 amends section 116, which requires the chief executive to keep a register of mediators, tribunal panel members and retail tenancy disputes. Consequential to the transfer of jurisdiction for the hearing of retail tenancy disputes from a RSLT to QCAT, the section has been amended to remove the requirement for the chief executive to keep a register of tribunal panel members. The section is also amended so that the register of retail tenancy disputes no longer must include the results of the tribunal's hearing, including any tribunal order, as the QCAT Act provides the principal registrar to keep a register of QCAT proceedings. Subsections (3) and (4) have been replaced so that the register must now be available at

a place reasonably accessible to the public rather than the department's head office.

Clause 1593 amends section 117, which enables the Minister and the chief executive to delegate their powers under this Act to an officer of the public service. The amendment provides that the chief executive may also delegate the chief executive's functions under this Act to an officer of the public service. For example, this will enable the chief executive to delegate the chief executive's register functions under section 116 to an officer of the public service, such as the principal registrar of QCAT.

Clause 1594 amends section 119, which outlines the chief executive's responsibilities under the Act. The amendment removes the chief executive's responsibility for ensuring lessors and lessees under retail shop leases are advised about the practice and procedures of tribunals, consequential to the transfer of jurisdiction for hearing retail tenancy disputes from a RSLT to QCAT.

Clause 1595 amends section 120, which specifies the evidentiary provisions for a proceeding for an offence against the Act. The amendment omits subsection (3) providing that a certificate purporting to be signed by the chief executive about a tribunal's order is evidence of the matters stated in it. Consequential to the transfer of jurisdiction for hearing retail tenancy disputes from a RSLT to QCAT, the chief executive will not have a role in certifying orders.

Clause 1596 amends section 121, which enables the Governor-in-Council to make regulations under the Act, including a regulation about the practices and procedures of the dispute resolution process. The amendment replaces the reference to dispute resolution process with mediation process, consequential to the transfer of jurisdiction for hearing retail tenancy disputes from a RSLT to QCAT. The QCAT Act contains a regulation-making power for matters relating to QCAT hearings and also enables the making of rules.

Clause 1597 amends the headings for part 12, divisions 1 to 3, which contain transitional provisions for Acts that have amended this Act. The headings will now refer to the Act number and year rather than the Act name.

Clause 1598 inserts a new part 12, division 4, which contains transitional provisions for this Bill. The new division comprises sections 130 to 133.

New section 130 contains definitions for the division.

New section 131 is a transitional provision that provides that if, before the commencement, a mediator refused to refer a retail tenancy dispute to the chief executive because the mediator was of the opinion that the dispute was not within a tribunal's jurisdiction, section 64 applies to the dispute as if the mediator refused to refer the dispute to QCAT. New section 131 also provides that if, before the commencement, a court ordered that a proceeding started in the court for the dispute be removed to a tribunal, section 64 applies to the dispute as if the court ordered that the proceeding be removed to QCAT. These amendments provide continuity for retail tenancy disputes subsequent to the transfer of the jurisdiction to hear a retail tenancy dispute from a RSLT to QCAT.

New section 132 provides transitional arrangements for existing referrals of, and applications about, retail tenancy disputes to the chief executive.

Under previous section 63(2) and previous section 64(2), a dispute could be referred to the chief executive and, under previous section 65(1), the chief executive was required to refer the dispute to a tribunal legal member. If, before the commencement, a dispute was referred to the chief executive, but the chief executive had not yet referred the dispute to a former tribunal legal member and the dispute had not been withdrawn, new section 132 provides the chief executive must refer the dispute to QCAT. The party who lodged the notice of dispute under section 55 is the applicant in the proceeding before QCAT for the dispute.

Under previous section 89(2), if a tribunal order for a retail tenancy dispute is not complied with, the person in whose favour the order is made may apply to renew the dispute. Under previous section 90, the chief executive was required to renew the dispute within 14 days of the application being made. If, before the commencement, an application was made to the chief executive for the renewal of a dispute, but the dispute had not been renewed or withdrawn, new section 132 provides the chief executive must refer the dispute to QCAT. The party who made the application under previous section 89(2) is the applicant in the proceeding before QCAT for the dispute.

New section 133 provides transitional arrangements for existing referrals of retail tenancy disputes by the chief executive to a former tribunal legal member under previous section 65 that have not been withdrawn, struck out or otherwise disposed of. Under previous sections 65 and 66, the tribunal legal member must hold a direction hearing and, if the dispute is to proceed to a tribunal hearing after the direction hearing, the member must give the chief executive written notice that a tribunal hearing is required.

Under previous section 66A, the chief executive then must appoint a tribunal to hear the dispute. New section 133 provides that, from the commencement, the retail tenancy dispute is taken to be an existing tribunal proceeding for applying the provisions of chapter 7 (Transitional provisions) of the QCAT Act prescribed in the section. The party who lodged the notice of the dispute under section 55 is the applicant in the proceeding before QCAT for the dispute.

Clause 1599 amends the dictionary schedule. Definitions relating to a RSLT are omitted consequential to the omission of provisions of the Act relating to a RSLT. Also, the definition of dispute resolution process is amended to reflect the transfer of the jurisdiction of a RSLT for hearing retail tenancy disputes to QCAT.

Part 28 Amendment of Supreme Court of Queensland Act 1991

Clause 1600 provides that this part amends the *Supreme Court Act 1991*.

Clause 1601 makes a consequential amendment to schedule 1, section 13(h) to remove a reference to minor debt claims.

Clause 1602 amends the dictionary in schedule 2 to omit the definitions of ‘minor claim’ and ‘minor debt claim’.

Chapter 10 Department of Police

Part 1 Amendment of Police Service Administration Act 1990

Clause 1603 states that this part amends the *Police Service Administration Act 1990*.

Clause 1604 amends section 4.5(3) to insert ‘the following’ after ‘office are’ and to insert a new subsection (3)(c).

The new subsection (3)(c) reflects that QCAT will now have the jurisdiction previously held by a misconduct tribunal to hear proceedings to determine if official misconduct has been committed by a prescribed person under the *Crime and Misconduct Act 2001*. If QCAT finds that an allegation of official misconduct is proved against the Police Commissioner, QCAT may order the Commissioner’s dismissal.

The amendment to subsection (3)(c) is also made to change the terminology in this Act in relation to disciplinary proceedings for misconduct in QCAT to be consistent with the terminology of the new provisions inserted in the *Crime and Misconduct Act 2001* by this Bill. The terminology in the *Crime and Misconduct Act 2001* in relation to disciplinary proceedings for prescribed persons (including police officers) will be changed to reflect that these proceedings are administrative rather than criminal in nature. Terms such as ‘guilty’ will be removed as the use of these words can equate disciplinary proceedings with criminal prosecutions.

Clause 1605 replaces section 7.4(2A) with a new subsection so that the terminology is consistent with the approach described in clause 1596 for disciplinary proceedings in QCAT. The amendment of section 7.4(2A) also provides that a QCAT information notice must be given to the officer and the Crime and Misconduct Commission about the decision or the finding in section 7.4(2A). The new definition in subsection (1) defines a QCAT information notice as a notice that complies with section 157(2) QCAT Act.

This amendment reflects the fact that, with the commencement of the QCAT Act, the *Misconduct Tribunals Act 2007* will be repealed and QCAT will have the jurisdiction to conduct disciplinary proceedings previously held by the misconduct tribunals including jurisdiction to review:

- a decision in relation to an allegation of misconduct brought against an officer or
- a finding that misconduct is proved against an officer when deciding an allegation of breach of discipline.

The new subsection (5) also clarifies that a reference in the QCAT Act section 157(2) to a decision includes a reference to a finding.

Clause 1606 replaces the reference to ‘a right of appeal’ in section 9.1. Instead the right is ‘a right to seek a review of the decision in question under the *Crime and Misconduct Act 2001*, section 219G’.

While the previous provision referred to the process of applying for a review of the decision as an ‘appeal’, under the QCAT Act and the *Crime and Misconduct Act 2001* this will be known as a review of a reviewable decision.

Part 2 Amendment of Prostitution Act 1999

Clause 1607 states that this part amends the *Prostitution Act 1999*.

Clause 1608 replaces part 4, divisions 3 to 8 with a new division 3.

New section 64A (1) provides that the section applies if an assessment manager decides that a development application requires code assessment under the *Integrated Planning Act 1997*.

New section 64A(2) sets out the types of decisions made by the assessment manager for which an applicant for a development application may apply to QCAT for review.

New section 64A(3) provides the method for working out the period within which the application for review must be made under section 33 of the QCAT Act. The applicant is taken to have been notified of the decision when the following is given to the applicant under the *Integrated Planning Act 1997*—

- (a) the decision notice for the decision;
- (b) if a negotiated decision notice is also given to the applicant—the negotiated decision notice.

The note to the provision explains that under section 157 of the QCAT Act, the assessment manager is required to give the applicant an information notice complying with that section about each decision mentioned in section 64A(2).

New section 64A(4) provides that if an appeal is made to the Planning and Environment Court about a decision mentioned in subsection (2), the court must not hear or decide the appeal.

New section 64A(5) provides that this section does not prevent the making of an application under the *Integrated Planning Act 1997*, section 4.1.21 for a declaration about the meaning, effect or enforcement of a condition of a development approval.

New section 64B(1) provides that an acknowledgment notice under the *Integrated Planning Act* for a development application may contain a statement that an aspect of the development applied for requires impact assessment.

New section 64B(2) provides that an applicant for the development application may apply, under the QCAT Act, to QCAT for a review of the assessment manager's decision that the aspect requires impact assessment.

New section 64B(3) provides that for the purpose of working out the period within which an application for review must be made under section 33 of the QCAT Act, the applicant is taken to have been notified of the decision when the applicant is given the acknowledgement notice.

The note to the provision explains that under section 157 of the QCAT Act, the assessment manager is required to give the applicant a notice about the decision that complies with that section.

New section 64B(4) provides that if an appeal is made to the Planning and Environment Court about a decision mentioned in subsection (2) the court must not hear or decide the appeal.

New section 64B(5) provides that this section does not prevent the making of an application under the *Integrated Planning Act 1997*, section 4.1.21 for a declaration about the meaning, effect or enforcement of a condition of a development approval.

New section 64C(1) provides for the review procedures to be applied if, under section 64A or 64B, an applicant for a development application applies to QCAT for a review of a decision of the assessment manager.

New section 64C(2) provides that the applicant's obligation under the section 37 of the QCAT Act, to give a copy of the application to the assessment manager must be complied with within 5 business days after the day the application for review is made.

New section 64C(3) provides that the obligation imposed on the assessment manager, under the QCAT Act, section 21(2), to give a statement of reasons, and documents and other things to QCAT must be complied with within 10 business days after the day the assessment manager is notified of the making of the application for review.

New section 64C(4) provides that within 10 business days after receiving material from the assessment manager under the QCAT Act, section 21(2), QCAT must—

- (a) make a preliminary assessment of the decision of the assessment manager that is the subject of the review; and
- (b) give a copy of the preliminary assessment and the reasons for the preliminary assessment to the parties to the review.

New section 64C(5) provides that QCAT must give the parties to the review 10 business days after receiving the preliminary assessment to make written submissions about the assessment.

New section 64C(6) provides that QCAT must decide the review within 5 business days after the end of the period for making written submissions, unless the period for deciding the review is extended under subsection (7).

New section 64C(7) provides that if QCAT considers it appropriate, QCAT may extend the period for deciding the review to the extent necessary.

The example in the provision explains that an extension of the period for deciding the review may be necessary to allow parties to make oral submissions to QCAT or because the review is complex.

New section 64D(1) provides that the section applies to a QCAT decision in a proceeding for a review under this division that, under the QCAT Act, section 24(2), is taken to be a decision of an assessment manager.

New section 64D(2) provides that the decision is not subject to appeal under the Integrated Planning Act. The note to the provision explains that a person can appeal under the QCAT Act, chapter 2, part 8 (Appeals etc.) a QCAT decision in the proceeding for the review.

New section 64E provides that a development approval is suspended until the end of any period for applying to QCAT for a review of a decision about any matter stated in the approval and any proceeding started because of the review.

Clause 1609 removes the term the independent assessor from section 132 as the position will not continue under QCAT.

Clause 1610(1) amends section 133(3) to provide that an official includes a person who was an official.

Clause 1610(2) amends the definition of ‘official’ in section 133(3)(d) to make it clear that the independent assessor under this Act, as in force

before the commencement of the QCAT Act, chapter 7 continues to be captured by section 133 after the commencement of the QCAT Act.

Clause 1610(3) amends the definition of ‘official’ in section 133(3)(f) to make it clear that the independent assessor’s registrar under this Act, as in force before the commencement of the QCAT Act, chapter 7 continues to be captured by section 133 after the commencement of the QCAT Act.

Clause 1611 removes the reference to the independent assessor from the definition of ‘official’ in section 134(3) (d) as the office of the independent assessor will cease at the commencement of QCAT. It also renumbers paragraphs (e) and (f) as a consequence of removing paragraph (d).

Clause 1612(1) removes the heading for part 9, division 1 and replaces it with the new division heading.

Clause 1612(2) removes the heading for part 9, division 2 and replaces it with the new division heading.

Clause 1612(3) removes the heading for part 9, division 3 and replaces it with the new division heading.

Clause 1612(4) removes the heading for part 9, division 4 and replaces it with the new division heading.

Clause 1613 inserts a new part 9, division 5 to provide for the transitional arrangements for the independent assessor.

New section 152 inserts a definition of commencement for the division that provides it commences when section 153 commences.

New section 153 inserts a new provision that on the commencement of section 153 the independent assessor ceases to exist.

New section 154(1) provides that on the commencement of section 153 certain transitional provisions of the QCAT Act apply in relation to the former independent assessor as if the former independent assessor were a former tribunal under that Act.

New section 154(2) provides that for the purposes of ensuring that section 275 of the QCAT transitional provisions can apply in relation to the former independent assessor, a reference in the section to a former Act is taken to be a reference to the *Prostitution Act 1999*.

New section 154(3) provides that, for the purposes of ensuring that section 254(1)(d) of the QCAT transitional provisions applies in relation to the

former independent assessor registrar, the reference to a former registrar is to be taken as a reference to the former assessor's registrar.

New section 154(4) provides that on the commencement of section 153, the following definitions apply:

- 'former assessor's registrar' means the person holding appointment as the assessor's registrar under the *Prostitution Act 1999* immediately before the commencement.
- 'former independent assessor' means the person holding appointment as an independent assessor for the *Prostitution Act 1999* immediately before the commencement.'

Clause 1614 removes the definitions of 'assessor's registrar' and 'independent assessor' from the dictionary in schedule 4 as these positions will no longer exist when QCAT commences.

Part 3 Amendment of Prostitution Regulation 2000

Clause 1615 states that this part amends the *Prostitution Regulation 2000*.

Clause 1616 removes the fee from item 19 of Schedule 2 as the fees for applications will be provided for under the QCAT Act.

Part 4 Amendment of Weapons Act 1990

Clause 1617 states that this part amends the *Weapons Act 1990*.

Clause 1618 amends the wording of the heading of the part in order provide consistency with terms used under the QCAT Act which refers to 'reviews' of decisions rather than 'appeals'.

Clause 1619 amends the heading for section 142 to provide consistency with terms used under the QCAT Act which refers to reviews of decisions rather than appeals from decisions. The clause also removes the reference

to the procedure for applying to a Magistrates Court and inserts the new procedure whereby a person aggrieved by a reviewable decision may apply to QCAT for review of the decision as provided for under the QCAT Act.

Clause 1620 inserts new section 142AA to require the giving of a QCAT information notice under section 35 of the QCAT Act for decisions made under section 142(1).

Clause 1621 replaces the heading for section 142A with a new heading of 'Confidentiality of criminal intelligence'. The clause omits the existing section 142A(1) and inserts a new section 142A(1) to make it clear that the prohibition on disclosing criminal intelligence in section 142A(2) applies to a review under the QCAT Act of a relevant decision, a review under the *Judicial Review Act 1991* of a relevant decision, or an appeal under the QCAT Act in relation to a relevant decision. The clause removes from section 142A(1) the reference to the term 'appeal' to clarify that relevant decisions may be 'reviewed' under QCAT, in order provide consistency with terms applied under the QCAT Act. The clause inserts in section 142A(2) the term 'tribunal' to ensure the confidentiality requirements of this provision apply to QCAT as well as a court. The definition of review in section 142A(3) is deleted as it is no longer necessary.

Clause 1622 removes sections 143 and 144 as the procedures to apply for a review are contained in the QCAT Act.

Clause 1623 inserts a new heading for section 145 to reflect the QCAT review process. The clause removes references to the term 'appeals against' and replaces it with 'applies for the review of' to be consistent with the terms used in the QCAT Act. The reference to the term 'appeal' is also omitted and replaced with the term 'review' to be consistent with the terms used in the QCAT Act.

Clause 1624 removes sections 146 to 149 as the procedures to apply for a review are contained in the QCAT Act.

Clause 1625 amends the schedule 2 dictionary to insert a definition of a 'QCAT information notice' which is a notice that complies with section 157(2) of the QCAT Act.

Chapter 11 Department of the Premier and Cabinet

Part 1 Amendment of Public Sector Ethics Act 1994

Clause 1626 states that this part amends the *Public Sector Ethics Act 1994*.

Clause 1627 amends the definition of tribunal to include a specific reference to QCAT, as well as other tribunals constituted by a person acting judicially. This clause also removes the reference to the former misconduct tribunal.

Part 2 Amendment of Public Service Act 2008

Clause 1628 states that this part amends the *Public Service Act 2008*.

Clause 1629 amends a list of statutory officer holders who are not term appointees for the purposes of section 140(3)(b), to include a member of QCAT and to omit references to former tribunal members who are now members of QCAT. This is to ensure that a member of QCAT is not considered a term appointee for the purposes of chapter 5, part 4, division 2 (Removal of statutory office holders who are term appointees).

Part 3 Amendment of South Bank Corporation Act 1989

Clause 1630 states that this part amends the *South Bank Corporation Act 1989*.

Clause 1631 amends section 7(b) by inserting the words ‘or tribunal’ after ‘jurisdiction’. This is to ensure that the corporation will be capable in law of compounding or proving in any court or tribunal of competent jurisdiction all debts or sums of money due to it.

Clause 1632 inserts new subsections (7) and (8). New section 83(7) provides that a written notice mentioned in subsection (5), must comply with the QCAT Act, section 157(2). This means that where a security officer gives written notice to a person, directing that person to leave the South Bank site and not re-enter the site for a stated period of not more than 10 days, the written notice must comply with the requirements in the QCAT Act, section 157(2).

New subsection (8) provides that for the purposes of the QCAT Act, a decision made by a security officer under subsection (5) is taken to have been made by the corporation. This is to ensure that the corporation is responsible for those functions of the decision-maker under the QCAT Act, not security officers.

Clause 1633 inserts a new section 87(1) which specifies that a person who is given a reviewable exclusion direction may apply, as provided under the QCAT Act, to QCAT to review the reasonableness of the direction.

Prior to these amendments, the South Bank Act conferred jurisdiction on a Magistrate’s Court (or in the case of a child, the Childrens Court) to review the reasonableness of an exclusion direction or order, excluding a person from the part of the South Bank Corporation area declared under a by-law to be the site. This amendment ensures that where an application for review of a reviewable exclusion direction is made, the application must be made to QCAT to review the reasonableness of the direction.

Clause 1633 also amends section 87(2) by omitting the word ‘The’ and inserting the words ‘However, the’.

Further, clause 1633 amends section 87(3) by omitting the words ‘registrar or clerk of the court’ and inserting ‘principal registrar of QCAT’ to provide that the principal registrar of QCAT must immediately give the corporation a copy of the application, when an application is made for review of a reviewable exclusion direction.

Clause 1634 omits section 89 and inserts a new section, which provides that for section 94(1)(b) of the QCAT Act, the review of a reviewable exclusion direction is a matter for which an expedited hearing may be conducted.

The original section 89 was omitted as the general review provisions in the QCAT Act will now apply to the review of reviewable exclusion directions under the South Bank Act. However, given the short timeframe for which a reviewable exclusion direction can be given under the South Bank Act (a person can be excluded from the site, or a part of the site, for longer than 24 hours, but not more than 10 days), it is important that the ability to conduct an expedited hearing be retained by QCAT.

Clause 1635 omits section 90 and inserts a new section, which provides that QCAT, on the review of a reviewable exclusion direction, can not make a decision requiring a person to pay an amount to someone else. The original section 90 was omitted as the general review provisions in the QCAT Act will now apply to the review of reviewable exclusion directions under the South Bank Act. However, the power not to make a decision requiring a person to pay an amount to someone else is a specific power under the South Bank Act, and so has been retained.

Part 4 Amendment of Whistleblowers Protection Act 1994

Clause 1636 states that this part amends the *Whistleblowers Protection Act 1994*.

Clause 1637 inserts a new definition of ‘public officer’, for the purposes of section 55, to ensure that the preservation of confidentiality provisions under section 55 continue to apply to a former member of the former misconduct tribunal.

Clause 1638 amends the definition of ‘tribunal’ to include a specific reference to QCAT, as well as other tribunals constituted by a person acting judicially. This clause also removes the reference to the former misconduct tribunal.

Chapter 12 Department of Public Works

Part 1 Amendment of Architects Act 2002

Clause 1639 states that this part amends the *Architects Act 2002*.

Clause 1640 amends the definition of tribunal department in section 106(2) so that it means the department in which the QCAT Act is administered.

Clause 1641 omits part 8, division 1 as the application of the QCAT Act to reviews and disciplinary proceedings for architects is provided for under sections 121 and 126 respectively.

Clause 1642 renumbers part 8, division 2 consequential to the omission of part 8, division 1 by clause 1641.

Clause 1643 amends section 121 to provide that a person may apply, as provided under the QCAT Act, to the tribunal for a review of a decision of the Board of Architects of Queensland (the board).

Clause 1644 omits section 123, which provides for the stay of operation by the tribunal of particular board decisions. This section is no longer required because reviews of board decisions will now be heard by QCAT and the QCAT Act provides for the stay of decisions.

Clause 1645 renumbers part 8, division 3 consequential to the omission of part 8, division 1 by clause 1641.

Clause 1646 amends the definitions of ‘information notice’ and ‘tribunal’ in the schedule 2 dictionary. The definition of tribunal now provides that tribunal means QCAT instead of the CCT. The effect of this amendment is that disciplinary proceedings and reviews of board decisions will be heard by QCAT instead of the CCT. Consequential to the transfer of jurisdiction for hearing these matters to QCAT, the definition of information notice has been amended to require that information notices given for board decisions under the Act must comply with the QCAT Act. The clause also omits the definition of Tribunal Act as all references to the term in the Act are omitted by this Bill.

Part 2 **Amendment of Building and Construction Industry Payments Act 2004**

Clause 1647 states that this part amends the *Building and Construction Industry Payments Act 2004*.

Clause 1648 amends section 95 (Review decision) by omitting section 95(3). The omitted provision specified the matters which must be contained in a notice of a review decision issued by the adjudication registrar. The new section 95(3) provides that a review notice must comply with the QCAT Act section 157(2). This amendment reflects that QCAT will have jurisdiction to review a review decision under part 4. Previously jurisdiction was conferred on the CCT.

Clause 1649 amends section 96 (Stay of operation of decision) to provide that a stay must be made in the way provided under the QCAT Act. This amendment reflects that QCAT is to take over the jurisdiction of the CCT. A power to stay an original decision is an additional power conferred on the tribunal. Under the QCAT Act the tribunal only has power to stay a decision the subject of a review application to the tribunal.

Clause 1650 omits the heading of part 5, division 2 (Review by tribunal) and inserts a new heading for the division. The new heading refers to external review of decisions to distinguish the review from an internal review of an original decision by the adjudication registrar.

Clause 1651 amends the heading of section 97 (Who may apply to tribunal for a review) to replace the term review with the term external review to for the reasons discussed in the note to clause 1650.

This clause also amends section 97 to provide that applications for the review of a review decision must be made in the way provided under the QCAT Act.

Clause 1652 omits section 98 (Stay of operation of decision). This section is no longer necessary as an equivalent provision has been inserted into the QCAT Act.

Clause 1653 amends the schedule 2 (Dictionary) definition of ‘tribunal’ to refer to QCAT.

Part 3 **Amendment of Domestic Building Contracts Act 2000**

Clause 1654 states that this part amends the *Domestic Building Contracts Act 2000*.

Clause 1655 amends section 18 (Effective completion date or period) to provide that an application under section 18(6) must be made in the way provided under the QCAT Act. This amendment reflects that QCAT will have jurisdiction to give approval to the adjustment of a contract under this section to take into account any additional days required to carry out the subject work. Previously this jurisdiction was conferred on the CCT.

Clause 1656 amends section 55 (Cost plus contracts) to provide that an application must be made in the way provided by the QCAT Act. This amendment reflects that QCAT will have the jurisdiction to award the building contractor the cost of providing the contracted services under this section plus a reasonable profit if the tribunal considers it would not be unfair to the building owner to make the award. Previously this jurisdiction was conferred on the CCT.

Clause 1657 amends section 60 (Effect of improper statements) to provide that application must be made in the way provided by the QCAT Act. This amendment reflects that QCAT will have the jurisdiction to reduce the building owner's liability for the item or contracted services to which the stated amount or sum relates, under this section, to the extent the tribunal considers appropriate. Previously this jurisdiction was conferred on the CCT.

Clause 1658 amends section 84 (Right of building contractor to recover amount for variation) to provide for the procedures contained in the QCAT Act. This amendment reflects that QCAT is to take over the jurisdiction of the CCT.

Clause 1659 amends the schedule 2 (Dictionary) definition of 'tribunal' to refer to QCAT.

Part 4 **Amendment of Professional Engineers Act 2002**

Clause 1660 states that this part amends the *Professional Engineers Act 2002*.

Clause 1661 amends the definition of ‘tribunal department’ in section 106(2) so that it means the department in which the QCAT Act is administered.

Clause 1662 omits part 8, division 1 as the application of the QCAT Act to reviews and disciplinary proceedings for professional engineers is provided for under sections 122 and 127 respectively.

Clause 1663 renumbers part 8, division 2 consequential to the omission of part 8, division 1 by clause 1662.

Clause 1664 amends section 122 to provide that a person may apply, as provided under the QCAT Act, to the tribunal for a review of a decision of the Board of Professional Engineers of Queensland (the board).

Clause 1665 omits section 124, which provides for the stay of operation by the tribunal of particular board decisions. This section is no longer required because reviews of board decisions will now be heard by QCAT and the QCAT Act provides for the stay of decisions.

Clause 1666 renumbers part 8, division 3 consequential to the omission of part 8, division 1 by clause 1662.

Clause 1667 omits section 128 which deals with starting a disciplinary proceeding. This section is no longer required because the process of starting proceedings is provided for in the QCAT Act.

Clause 1668 amends the definitions of ‘information notice’ and ‘tribunal’ in the schedule 2 dictionary. The definition of tribunal now provides that tribunal means QCAT instead of the CCT. The effect of this amendment is that disciplinary proceedings and reviews of board decisions will be heard by QCAT instead of the CCT. Consequential to the transfer of jurisdiction for hearing these matters to QCAT, the definition of information notice has been amended to require that information notices given for board decisions under the Act must comply with the QCAT Act. The clause also omits the definition of Tribunal Act as all references to the term in the Act are omitted by this Bill.

Part 5 **Amendment of Queensland Building Services Authority Act 1991**

Clause 1669 states that this part amends the *Queensland Building Services Authority Act 1991*.

Clause 1670 amends section 44H (Procedure for cancellation or suspension) to provide that a notice of cancellation or suspension must comply with section 157 of the QCAT Act. This amendment reflects that QCAT will have jurisdiction to review decisions to cancel or suspend an owner builder permit. Previously, this jurisdiction was conferred on the CCT.

Clause 1671 amends section 49 (Procedure for cancellation or suspension) to provide that any notice of cancellation or suspension must comply with the procedures contained within section 157(2) of the QCAT Act. This amendment reflects that QCAT will have jurisdiction to review a decision to cancel or suspend a licence under this section. Previously, this jurisdiction was conferred on the CCT.

Clause 1672 amends section 49A (Immediate suspension of licence) by omitting provisions that are duplicated in section 157(2) of the QCAT Act. The section inserts provisions requiring the Queensland Building Services Authority (BSA) to state the licensee may make written representations and must also briefly explain how the suspension could lapse under subsection (3). This clause reflects that QCAT will have jurisdiction to review a decision to suspend a licence under this section.

Clause 1673 amends section 67 (Notice that not a fit and proper person to individual who is not a licensee) and inserts two new provisions to expand the notice obligations of the BSA. Specifically, the BSA must state by written notice under section 67:

- how, and the period within which, the individual may apply for a review by the tribunal and
- inform of any right the individual has to have the operation of the BSA's decision stayed.

This reflects that QCAT will have the jurisdiction to review decisions of the BSA that an individual is not a fit and proper person for part 3C, division 2. Previously, this jurisdiction was conferred on the CCT.

Clause 1674 amends section 67AH (Notice of cancellation and that not a fit and proper person to individual who is a licensee) and inserts two new provisions to expand the notice obligations of the BSA. Specifically, the BSA must state by written notice under section 67AH:

- how, and the period within which, the individual may apply for a review by the tribunal and
- inform of any right the individual has to have the operation of the BSA's decision stayed.

This reflects that QCAT will have the jurisdiction to review a decision of the BSA to cancel an individual's licence under this section. Previously, this jurisdiction was conferred on the CCT.

Clause 1675 amends section 67AI (Notice that not a fit and proper person to individual who is not a licensee) and inserts two new provisions to expand the notice obligations of the BSA. Specifically, the BSA must state by written notice under section 67AI:

- how, and the period within which, the individual may apply for a review by the tribunal and
- inform of any right the individual has to have the operation of the BSA's decision stayed.

This reflects that QCAT will have the jurisdiction to review a decision of the BSA that an individual is not a fit and proper person for part 3D, division 2. Previously, this jurisdiction was conferred on the CCT.

Clause 1676 amends section 67AL (Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee) and inserts two new provisions to expand the notice obligations of the BSA. Specifically, the BSA must state by written notice under section 67AL:

- how, and the period within which, the individual may apply for a review by the tribunal and
- inform of any right the individual has to have the operation of the BSA's decision stayed.

This reflects that QCAT will have the jurisdiction to review a decision of the BSA to cancel the director's, secretary's, influential person's or nominee's licence under this section. Previously, this jurisdiction was conferred on the CCT.

Clause 1677 amends section 67AM (Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee) and inserts two new provisions to expand the notice obligations of the BSA. Specifically, the BSA must state by written notice under section 67AM:

- how, and the period within which, the individual may apply for a review by the tribunal and
- inform of any right the individual has to have the operation of the BSA's decision stayed.

This reflects that QCAT will have the jurisdiction to review a decision of the BSA that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3D, division 2. Previously, this jurisdiction was conferred on the CCT.

Clause 1678 amends section 67AP (Relationship of this part with part 7, division 4) to omit an editor's note which is no longer relevant due to the transfer of jurisdiction from the CCT to QCAT for disciplinary proceedings.

Clause 1679 amends section 67AQ (Definitions for pt 3E) definition of 'Tribunal Act' to refer to the QCAT Act.

Clause 1680 amends section 67AZF (Notice of cancellation and that not a fit and proper person to individual who is a licensee) and inserts two new provisions to expand the notice obligations of the BSA. Specifically, the BSA must state by written notice under section 67AZF:

- how, and the period within which, the individual may apply for a review by the tribunal and
- inform of any right the individual has to have the operation of the BSA's decision stayed.

This reflects that QCAT will have the jurisdiction to review a decision of the BSA to cancel the individual's licence. Previously this jurisdiction was conferred on the CCT.

Clause 1681 amends section 67AZG (Notice that not a fit and proper person to individual who is not a licensee) and inserts two new provisions to expand the notice obligations of the BSA. Specifically, the BSA must state by written notice under section 67AZG:

- how, and the period within which, the individual may apply for a review by the tribunal and

- inform of any right the individual has to have the operation of the BSA's decision stayed.

This reflects that QCAT will have the jurisdiction to review a decision of the BSA that the individual is not a fit and proper person for part 3E, division 3. Previously this jurisdiction was conferred on the CCT.

Clause 1682 amends section 67AZJ (Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee) and inserts two new provisions to expand the notice obligations of the BSA. Specifically, the BSA must state by written notice under section 67AZJ:

- how, and the period within which, the individual may apply for a review by the tribunal and
- inform of any right the individual has to have the operation of the BSA's decision stayed.

This reflects that QCAT will have the jurisdiction to review a decision of the BSA to cancel the director's, secretary's, influential person's or nominee's licence. Previously this jurisdiction was conferred on the CCT.

Clause 1683 amends section 67AZK (Notice that not a fit and proper person to director, secretary, influential person or nominee is not a licensee) and inserts two new provisions to expand the notice obligations of the BSA. Specifically, the BSA must state by written notice under section 67AZK:

- how, and the period within which, the individual may apply for a review by the tribunal and
- inform of any right the individual has to have the operation of the BSA's decision stayed.

This reflects that QCAT will have the jurisdiction to review a decision of the BSA that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3E, division 3. Previously this jurisdiction was conferred on the CCT.

Clause 1684 amends section 77 (Tribunal may decide building dispute) to more accurately reflect that parties must apply to the tribunal in the way provided for in the QCAT Act. This amendment reflects that QCAT will have jurisdiction to hear and decide building disputes. Previously this jurisdiction was conferred on the CCT. The affect of this amendment will

also provide that QCAT may exercise a range of additional powers set out in this section to resolve the dispute.

Clause 1685 amends section 84 (Tribunal to decide about rectification or completion work) to reflect that parties must apply to the tribunal in the way provided for in the QCAT Act. This amendment reflects that QCAT will have jurisdiction to consider and decide applications by the BSA for tribunal work to be rectified or completed. Previously this jurisdiction was conferred on the CCT.

Clause 1686 amends section 87 (Application for review) to reflect that parties must apply to the tribunal in the way provided for in the QCAT Act. This amendment reflects that QCAT may review a reviewable decision under the Act. Previously this jurisdiction was conferred on the CCT.

Clause 1687 amends section 88 (Tribunal has jurisdiction to conduct disciplinary proceeding) to state that QCAT has jurisdiction to conduct disciplinary proceedings. Previously this jurisdiction was conferred on the CCT.

Clause 1688 omits section 91 (Orders for disciplinary action) and replaces it with an expanded provision. The expanded provision contains equivalent provisions to the repealed section 91 and also inserts equivalent provisions contained within section 107 (Orders for disciplinary action) of the CCT Act. These amendments do not represent a policy change in the types of orders that can be made for disciplinary proceedings under this Act. The additional provision was originally in the CCT Act that will be repealed by the QCAT Act.

Clause 1689 inserts a new section 92A (Procedure before public examination starts). The new section provides for the procedures for a public examination prior to its commencement. Previously, this provision was in the CCT Act and gave the CCT the power to conduct public examinations. As the CCT Act will be repealed by the QCAT Act, the new section is now inserted into this Act .

New section 92A provides for the procedure that must be followed before a public examination starts, including the issue of attendance notices and the content of those notices.

Clause 1690 omits part 7, division 7 (Transfer of proceedings). This part consisted of a single section, section 94 (Transfer of proceedings between tribunal and courts).

A new part 7, division 7 (Tribunal Proceedings) is inserted. The new part comprises section 93A (Representation of parties) and section 94 (Transfer of proceedings between tribunal and courts). Section 93A provides that a party to a proceeding before the tribunal may be represented by a lawyer if the proceeding relates to recovery of a debt arising from the statutory insurance scheme, or a public examination. Equivalent rights to legal representation are contained in section 76 of the CCT Act which is to be repealed by the QCAT Act. The right to representation in new section 93A is in addition to the rights in section 43 QCAT Act.

The new section 94 is identical to the section 94 omitted by this clause. For drafting convenience, the section has essentially been omitted and reinserted. This amendment reflects that QCAT is to take over the jurisdiction of the CCT.

Clause 1691 omits the heading of part 7, division 8 (Expedited hearings).

Clause 1692 amends section 95 (Expedited hearing of domestic building disputes) to state that parties must apply to the tribunal in the way provided for in the QCAT Act. It empowers QCAT to conduct expedited hearings under section 95 of the QCAT Act.

Clause 1693 omits section 97 (Judicial Review excluded for minor domestic building disputes). Section 97 provided that the exercise by the CCT of its powers in a proceeding relating to minor domestic building disputes is not subject to the *Judicial Review Act 1991*, except in the limited circumstances prescribed in the section. The rights of review in relation to proceedings for minor domestic building disputes for the tribunal are exclusively provided for in the QCAT Act. Section 97 is therefore no longer necessary.

Clause 1694 inserts a new heading for part 7 division 8 (Other powers of the Tribunal) and new sections 97 (Entry and inspection of property by member of tribunal), 97A (Procedure before entry), 97B (Stop orders) and 97C (Suspension orders) into the part. The inserted sections reflect equivalent sections of the CCT Act (sections 83, 84, 108 and 109 respectively) that were in the CCT Act that will be repealed by the QCAT Act.

New section 97 allows a member of the tribunal, and persons authorised by the tribunal, to enter and inspect a building or land relevant to the proceeding.

New section 97A provides for the procedure that must be followed by the tribunal member or a person authorised to enter, prior to entering the building or land.

New section 97B allows the tribunal to order a person to stop something that is in contravention of the Act. It is an additional power for QCAT. While it is similar to an injunctive power, it can be exercised upon application by the BSA prior to other proceedings in either QCAT's original or review jurisdiction being started. The person the subject of a stop order may show cause why the order should not continue in force and the order may be rescinded if the tribunal is not satisfied that it should remain.

New section 97C empowers the tribunal to suspend a licence. It is an additional power for QCAT. It can be exercised by the tribunal upon application by the BSA prior to other proceedings in either QCAT's original or review jurisdiction being started. The person the subject of a suspension may show cause why the order should not continue in force and the order may be rescinded if the tribunal is not satisfied that it should remain.

Clause 1695 makes a consequential amendment to section 99 (Licensee register) to update section references.

Clause 1696 amends section 107 (Power to enter and inspect building site) to more adequately reflect the new processes under the QCAT Act.

Clause 1697 makes consequential amendments to the schedule 2 (Dictionary) definitions of 'registrar', 'tribunal' and 'Tribunal Act'.

Chapter 13 Department of Transport and Main Roads

Part 1 Amendment of Adult Proof of Age Card Act 2008

Clause 1698 states this part amends the *Adult Proof of Age Card Act 2008*.

Clause 1699 amends the heading in part 6 so that the heading reads ‘Review of decisions’.

Clause 1700 amends section 39(3)(b)(ii) so that that the original decision may be stayed by the person by applying to QCAT.

Clause 1701 replaces the title of section 40 of the Act with a new title ‘External review of decisions’, and amends the section to provide that if a reviewed decision is not the decision sought by the applicant for the review, the chief executive must give the applicant a QCAT information notice for the reviewed decision. The applicant will be able to apply to QCAT for a review of the reviewed decision. The section defines a ‘QCAT information notice’ and a ‘reviewed decision’.

Clause 1702 amends section 49(2)(c) so that a regulation made under this Act may also provide for the review of decisions made under the regulation.

Clause 1703 amends the definition of ‘information notice’, for a decision, means a notice stating the following:

- a) the decision;
- b) the reasons for the decision;
- c) that the person to whom the notice is given may, under section 39, ask for the decision to be reviewed by the chief executive; apply to QCAT for the decision to be stayed under the *Transport Planning and Coordination Act 1994*, part 5, division 2, apply to QCAT for the decision to be stayed; under section 40, ask for the chief executive’s decision on the review (the reviewed decision) to be reviewed by QCAT; and under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1703 also removes the definition of ‘review and appeal information’ from the dictionary.

Part 2 Amendment of Tow Truck Act 1973

Clause 1704 states that this part amends the *Tow Truck Act 1973*.

Clause 1705 deletes the existing section 21B(4)(c) to (e) and replaces these provisions with a single section 21B(4)(c). Section 21(4) provides for what must be stated in a notice of immediate suspension. The new section 21B(4)(c) provides that such a notice must state that the authority holder may under section 28 ask for the decision to be reviewed by the chief executive; under the *Transport Planning and Coordination Act 1994*, part 5, division 2, apply to QCAT for the decision to be stayed; under section 29, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and under the QCAT Act apply for the reviewed decision to be stayed.

Clause 1706 deletes the existing section 21D(7)(b) and (c) and replaces these provisions with a single section 21D(7)(b). Section 21D(7) provides for what must be stated in a notice where the chief executive decides to take action under section 21D(4) of the Act. The new section 21D(7)(b) provides that such a notice must state that the person may, under section 28, ask for the decision to be reviewed by the chief executive; under the *Transport Planning and Coordination Act 1994*, part 5, division 2, apply to QCAT for the decision to be stayed; under section 29, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and under the QCAT Act apply for the reviewed decision to be stayed.

Clause 1707 amends the heading of part 6 to read 'Review of decisions'.

Clause 1708 replaces section 28 with new sections 28 and 29.

Section 28 deals with internal review of decisions. Section 28(1) provides that a person whose interests are affected by a decision described in schedule 1 of the Act (the original decision) may ask the chief executive to review the decision. Section 28(2) provides for when the person is entitled to receive a statement of reasons for the original decision. Section 28(3) stipulates that the *Transport Planning and Coordination Act 1994*, part 5, division 2 applies to the review; and provides:

- a) for the procedure for applying for the review and the way it is to be carried out; and
- b) the person may apply to QCAT to have the original decision stayed.

Section 29 deals with external review of decisions. Section 29(1) states that if a reviewed decision is not the decision sought by the applicant for the review, the chief executive must give the applicant a QCAT information notice.

Section 29(2) provides that a person may apply to QCAT, under the QCAT Act, to review the reviewed decision. Section 29(3) defines ‘QCAT information notice’ and a ‘reviewed decision’ for the purposes of section 29.

Clause 1709 removes paragraph (u) from section 43(2). The clause also renumbers paragraph (v) of section 43(2), as paragraph (u).

Clause 1710 amends schedule 2 (Dictionary) by inserting a definition of ‘prescribed review information’.

Part 3 Amendment of Traffic Regulation 1962

Clause 1711 states that this part amends the *Traffic Regulation 1962*.

Clause 1712 provides for a consequential amendment to sections 104A(2)(b)(ii) and (3)(c)(ii), 117(6)(b)(ii) and 134A(8)(b)(ii) so that there is consistency with the changes made by clause 1789 of this Bill.

Clause 1713 provides for a consequential amendment to section 134C(7) so that there is consistency with the changes made by clause 1789 of this Bill.

Part 4 Amendment of Transport Infrastructure Act 1994

Clause 1714 states that this part amends the *Transport Infrastructure Act 1994*.

Clause 1715 replaces the current section 56 with a new section 56 (Information in section 54 gazette notice about a declaration) to provide that a gazette notice under section 54(1) must state the reasons for the declaration and that any person whose interests are affected by the declaration may under:

- (a) section 485, ask for the decision to make the declaration (the original decision) to be reviewed by the chief executive; and
- (b) the *Transport Planning and Coordination Act*, part 5 division 2 apply to QCAT for the original decision to be stayed; and
- (c) the *Transport Planning and Coordination Act 1994*, part 5 division 3 appeal against the chief executive's decision on the review (the reviewed decision) to the court stated in schedule 3 for the decision, and apply for the reviewed decision to be stayed.

Clause 1716 amends section 57(1)(f)(i) and (ii) to provide that a gazette notice under section 54 (Declaring part or all of a State-controlled road to be a limited access road) must also state that any person whose interests are affected by a policy, or, if the policy is a replacement policy, any change of the policy being replaced, may:

- a) under section 485, ask for the decision to make the declaration (the original decision) to be reviewed by the chief executive; and
- b) under the *Transport Planning and Coordination Act 1994*, part 5 division 2 apply for the original decision to be stayed; and
- c) under the *Transport Planning and Coordination Act*, part 5, division 3 appeal against the chief executive's decision on the review (the reviewed decision) to the court stated in schedule 3 for the decision; and apply for the reviewed decision to be stayed.

Clause 1717 amends section 58 (Amendment of policy for a limited access road in limited circumstances) to insert a new section 58(2) to provide that the written notice mentioned in section 58(1)(b) must:

- a) state the notice is given under this section;
- b) state the reasons for the decision; and
- c) be accompanied by an information notice for the decision.

Clause 1718 amends section 67 (Notice of decision under section 62(1)) to omit section 67(2)(e), renumber current section 67(2)(f) as section 67(2)(e) and insert a new section 67(2A) to provide that if the chief executive's decision under section 62(1) is not a decision sought by the person to whom the written notice is given, the written notice must be accompanied by an information notice for the decision.

Clause 1719 amends section 289F to provide that a written notice must also state that the applicant or approval holder may:

- a) under section 289G, ask for the decision (the original decision) to be reviewed by the port authority; and
- b) under the *Transport Planning and Coordination Act 1994*, apply for the original decision to be stayed; and
- c) under section 289GA, ask for the port authority's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1720 replaces section 289G with sections 289G and 289GA. Section 289G will deal with internal review of decisions. This section will provide that where a person whose interests are affected by a decision mentioned in section 289F(1) (the original decision) may ask the port authority to review a decision. This section also provides that the *Transport Planning and Coordination Act 1994*, part 5, division 2:

- a) applies to the review as if a reference in the division to the chief executive were a reference to the port authority that made the decision; and
- b) provides:
 - for the procedure for applying for the review and the way it is carried out; and
 - that a person may apply to QCAT to have the original decision stayed.

Clause 1720 also creates a new section 289GA that deals with external review of decisions. This provision provides that if a reviewed decision is not the decision sought by the applicant for the review, the port authority that made the reviewed decision must give the applicant a QCAT information notice for the reviewed decision. The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision. In this section a reviewed decision means the port authority's decision on a review under sections 289G.

Clause 1721 replaces section 485 and provides for internal review of decisions listed in schedule 3 of the Act. A person whose interests are affected by a decision described in schedule 3 (the original decision) may ask the chief executive to review the decision.

This provision provides that a person is entitled to receive a statement of reasons for the original decision whether or not the provision under which

the decision is made requires that the person be given a statement of reasons for the decision.

The *Transport Planning and Coordination Act 1994*, part 5, division 2 applies to the review; and provides:

- for the procedure for applying for the review and the way it is to be carried out; and
- that a person may apply to QCAT to have the original decision stayed.

Clause 1721 also creates a new section 485A that provides for external review of decisions and applies in relation to an original decision if QCAT is stated in schedule 3 for the decision. If the reviewed decision is not the decision sought by the applicant for the review, the chief executive is required to give the applicant a QCAT information notice for the reviewed decision. The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision.

Clause 1721 also creates a new section 485B that applies in relation to an original decision if a court (the appeal court) is stated in schedule 3 for the decision. If the reviewed decision is not the decision sought by the applicant for the review, the applicant may appeal against the reviewed decision to the appeal court. The section states that the *Transport Planning and Coordination Act 1994*, part 5, division 3:

- a) applies to the appeal; and
- b) provides:
 - (i) for the procedure for the appeal and the way it is to be disposed of; and
 - (ii) that the person may apply to the appeal court to have the original decision stayed.

Clause 1722 amends schedule 3 to show that the sections in schedule 3 may be reviewed or appealed under sections 485, 485A or 485B. Clause 1722 also amends schedule 3 to show that the sections could be heard by the relevant court or tribunal. The words 'District', 'District or Magistrates' or 'Magistrates' in third column in schedule 3 will be removed and replaced by 'QCAT'. This will show that matters previously heard by the Magistrates and District Courts will now be reviewed by QCAT. Schedule 3 will be further amended by removing the paragraph after section 489, as appeals will not be made to the Magistrates or District Courts.

Clause 1723 amends schedule 6 by replacing the definitions of ‘information notice’ and ‘reviewed decision’ with new definitions for ‘information notice.’ An ‘information notice’ means a written notice that that a person may:

- a) ask for the decision to be reviewed by the chief executive;
- b) apply for the decision to be stayed under the *Transport Planning and Coordination Act 1994*.
- c) if section 485A applies in relation to the reviewed decision ask for the reviewed decision to be reviewed by QCAT and under the QCAT Act apply for the reviewed decision to be stayed; or
- d) if section 485B applies in relation to the reviewed decision, under the *Transport and Planning Coordination Act 1994*, part 5, division 3:
 - appeal against the reviewed decision to the court stated in schedule 3 for the decision; and
 - apply for the reviewed decision to be stayed.

This section states that a ‘QCAT information notice’ means a notice that complies with section 157(2) of the QCAT Act.

Part 5 Amendment of Transport Infrastructure (Dangerous Goods by Rail) Regulation 2008

Clause 1724 states that this part amends the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2008*.

Clause 1725 amends the heading to read ‘Review of decisions’.

Clause 1726 replaces section 177 with sections 177 and 177A.

Section 177 deals with internal review of decisions and allows a person whose interests are affected by a decision mentioned in schedule 1 (the original decision) to ask the chief executive to review the decision. This section also provides that the *Transport Planning and Coordination Act 1994*, part 5, division 2:

- a) applies to the review; and
- b) provides:
 - for the procedure for applying for the review and the way it is carried out; and
 - that a person may apply to QCAT to have the original decision stayed.

Section 177A deals with external review of decisions and provides that if a reviewed decision is not the decision sought by the applicant for the review, the chief executive that made the reviewed decision must give the applicant a QCAT information notice for the reviewed decision. The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision. In this section, reviewed decision means the chief executive's decision on a review under section 177.

Clause 1727 amends schedule 3 (Dictionary) by changing the definition of 'information notice' to clarify the internal and external review process as a result of the insertion of sections 177 and 177A.

Part 6 Amendment of Transport Infrastructure (Gold Coast Waterways) Management Plan 2000

Clause 1728 states this part amends the *Transport Infrastructure (Gold Coast Waterways) Management Plan 2000*.

Clause 1729 amends section 18 (Take off and landing approval) to insert a new section 18(7) to provide that a notice under section 18(5) or (6) must also state the prescribed review information for the decision.

Clause 1730 amends section 20 (Procedure for amending suspending or cancelling approval) to omit a new section 20(5)(b) and (c) and insert a new section 20(5)(b) to provide that if the chief executive decides to amend, suspend or cancel the approval, the notice must in addition to the reason for the decision include the prescribed review information for the decision.

Clause 1731 amends section 21 (Procedure for urgent suspension of approval) by omitting section 21(2)(b) and (c) to insert a new section 21(2)(b) and (c) to provide that if the chief executive considers it is necessary for public safety, the chief executive may, by written notice to the approval holder, immediately suspend the approval and provide a notice that, in addition to the reasons for the decision, must also state the prescribed review information for the decision..

Clause 1732 omits the current section 22 (Section 196 of Act applies for review and appeal) to insert a new section 22. New section 22(1) provides that sections 485 and 485A of the Act apply to decisions as if the decision were mentioned in schedule 3 of the Act; and QCAT were stated opposite the decision in that schedule. Section 22(2) states that for the purpose of section 22(1) the decisions are as follows:

- a) a decision to grant a take off and landing approval on conditions;
- b) a decision to refuse to grant a take off and landing approval;
- c) a decision to amend, suspend or cancel a take off and landing approval.

Clause 1733 amends schedule 6 (Dictionary) to insert a definition of prescribed review information, for the decision, to mean information that a person to whom a notice about the decision is given under section 18(5) or (6), 20(4) or 21(1) may:

- a) ask for the decision to be reviewed by the chief executive under section 485 of the Act, as applied under section 22; and
- b) under the *Transport Planning and Coordination Act 1994*, part 5, division 2, apply to QCAT for the decision to be stayed; and
- c) under section 485A of the Act, as applied under section 22, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1734 provides that the regulation amended in this part is the *Transport Infrastructure (Public Marine Facilities) Regulation 2000*.

Clause 1735 amends section 41 (Procedure if approval refused or granted on condition) by omitting the current section 41(3) and inserting a new section 41(3). The new section provides that a notice under subsection 2 must also state the applicant may:

- a) under section 485 of the Act, as applied under section 44(2), ask for the decision to be reviewed by the chief executive.
- b) apply to QCAT under part 5, division 2 of the *Transport Planning and Coordination Act 1994* to have the decision stayed; and
- c) under section 485A of the Act, as applied under section 44(2), ask for the chief executive's decision of the review (known as the *reviewed decision*) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1736 amends part 3, division 6, heading (Amending, suspending or cancelling approvals and review or appeal) by omitting 'review or appeal' and inserting 'reviews'.

Clause 1737 amends section 43 (Amending, suspending or cancelling approval without application) by omitting current section 43(4) (b) and inserting a new 43(4) (b) to establish that a person may:

- a) under section 485 of the Act, as applied under section 44(2), ask the chief executive to review the decision; and
- b) apply to QCAT for the decision to be stayed under part 5, division 2 of the *Transport Planning and Coordination Act 1994*; and
- c) under section 485A of the Act as applied under section 44(2), ask for the chief executive's decision on the review (known as the *reviewed decision*) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1738 replaces part 3, division 6, subdivision 2 heading (Review and appeal) and inserts a new heading 'Subdivision 2 Internal and external review'.

Clause 1739 amends section 44 (Review of an appeal against decisions) by omitting the current heading and inserting a new heading, ‘Internal and external review of decisions. It also amends the current sections 44(2) and (3) by omitting them and inserting a new subsection (2) which provides that sections 485 and 485A of the Act apply to decisions mentioned in subsection (1) as if the decision were mentioned in schedule 3 of the Act, and QCAT were stated opposite the decision in that schedule.

Clause 1740 amends schedule 4 (Dictionary) by inserting a definition of ‘prescribed review information’.

Part 8 Amendment of Transport Infrastructure (Sunshine Coast Waterways) Management Plan 2000

Clause 1741 provides that the management plan amended in this part is the *Transport Infrastructure (Sunshine Coast Waterways) Management Plan 2000*.

Clause 1742 amends section 23 (Granting or refusing application for approval). Section 23(6) is omitted and a new section 23(6) is inserted to provide that a notice under section 23(3) or (4) (the refusal to grant an application or the granting of an application for an approval on conditions) must also state the prescribed review information for the decision.

Clause 1743 amends section 25 (Procedure for amending, suspending or cancelling approval). The amendment omits current sections 25(5) (b) and (c) and inserts a new section 25(5) (b) to provide that a notice, in addition to stating the reasons for the decision, must also state the prescribed review information for the decision.

Clause 1744 amends section 26 (Procedure for urgent suspension of approval of take off and landing approval). Current sections 26(2)(b) and (c) are omitted and a new section 26(2)(b) is inserted to provide that any notice, in addition to the reasons for the decision, must also state the prescribed review information for the decision.

Clause 1745 replaces section 27 (Section 196 of Act applied for review and appeal) with a new section 27. The new section 27(Act, sections 485 and

485A apply for reviews), states that sections 485 and 485A apply to a decision mentioned in section 27(2) (2) as if the decision were mentioned in schedule 3 of the Act, and as if QCAT were stated opposite the decision in that schedule. Section 22(2) states for the purposes of section 27(1)) the decisions are as follows:

- a) a decision to grant an approval on conditions;
- b) a decision to refuse an application for an approval; and
- c) a decision to amend, suspend or cancel and approval.

Clause 1746 amends schedule 5 (Dictionary) to insert a definition of 'prescribed review information' for the decision, to mean information that a person to whom a notice about the decision is given under section 23(3) or (4), 25(4) or 26(1) may:

- a) ask for the decision to be reviewed by the chief executive under section 485 of the Act, as applied under section 22; and
- b) under the *Transport Planning and Coordination Act 1994*, part 5, division 2, apply to QCAT for the decision to be stayed; and
- c) under section 485A of the Act, as applied under section 22, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Part 9 **Amendment of Transport Operations (Marine Pollution) Act 1995**

Clause 1747 provides that the Act amended in part 9 is the *Transport Operations (Marine Pollution) Act 1995*.

Clause 1748 amends section 115 (Recovery of discharge expenses) by inserting information relating to QCAT information notices.

Clause 1749 replaces section 116 (Appeals) with ‘External review of decisions under section 115’. The new provision allows a person who is affected by a decision under section 115 to apply to QCAT for a review of the decision.

Clause 1750 omits section 117 (Hearing procedures).

Clause 1751 inserts new part 13B (Review of decisions) and includes new sections 117M (Internal review of decisions) and 117N (External review of decisions).

Section 117M applies in situations where the general manager refuses, amends, suspends or cancels an approval or an authorised officer refuses an application for an approval under section 63 (Night operation restriction). The section provides that an applicant can ask the chief executive to review the original decision. It is also clarified in the section that part 5, division 2 of the *Transport Planning and Coordination Act 1994* applies to the review as if the reference in the division to the chief executive were a reference to the general manager or an authorised officer, and provides for the procedure for the review and that a person may apply to QCAT for the original decision to be stayed. The section also establishes a definition for applicant and approval.

Section 117N provides that if the reviewed decision is not the decision sought by the applicant for the review or an affected person, the chief executive must give the applicant a QCAT information notice for the reviewed decision. An applicant or affected person may also apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision. This section also establishes a definition for affected person and reviewed decision.

Clause 1752 amends the Dictionary by inserting a definition of ‘QCAT information notice’.

Part 10 **Amendment of Transport Operations (Marine Pollution) Regulation 2008**

Clause 1753 provides that the Regulation amended in part 9 is the *Transport Operations (Marine Pollution) Regulation 2008*.

Clause 1754 removes part 12, division 1, subdivision 4 as the regulation no longer requires provisions providing for reviews of and appeals against decisions made under the Act, as these issues are now dealt with in the Act.

Part 11 **Amendment of Transport Operations (Marine Safety) Act 1994**

Clause 1755 provides that the Act amended in part 11 is the *Transport Operations (Marine Safety) Act 1994*.

Clause 1756 amends section 203 (Definitions for part 16) by omitting the definition for ‘appropriate appeal court’ and by amending the definition for ‘original decision’ to include reference to ‘reviewed decision.’ Amendments are also made to the definition of delegate to correct the spelling of the word ‘manager’.

Clause 1757 amends section 203A (Main purposes of part 16) by omitting ‘and appeals from the decisions made on review’ from section 203A (a).

Clause 1758 amends section 203B (Review of original decision) by renaming the section as ‘Internal review of decisions’, omitting section 203B(2)(b)(ii) and inserting new section 203B(b)(ii) stating that the person may apply to QCAT to have the original decision stayed. Clause 1758 also amends section 203B(3) to correct the spelling of the word ‘manager’.

Clause 1759 replaces section 203C (Appeal against reviewed decision) with a new section 203C (External review of decisions). If the reviewed decision is not the decision sought by the applicant for the review or an affected person, the chief executive must give the applicant a QCAT information notice for the reviewed decision. An applicant or affected

person may also apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision. A note is included to the effect that QCAT may stay the operation of the reviewed decision under section 22(3) of the QCAT Act, either on application by a person or on its own initiative. This section also establishes a definition for ‘chief executive’ and ‘reviewed decision.’

Clause 1760 omits section 203E (Appropriate appeal court).

Clause 1761 amends the Dictionary to omit the definition of ‘appropriate appeal court’ and amend the definition of ‘reviewed decision’ by replacing the reference to 203C(1) with a reference to 203.

Part 12 Amendment of Transport Operations (Marine Safety) Regulation 2004

Clause 1762 provides that the regulation amended in part 12 is the *Transport Operations (Marine Safety) Regulation 2004*.

Clause 1763 amends section 154 (Refusal of application for authority) by omitting the current section 154(3)(b) and inserting a new section 154(3)(b). The new section establishes that under section 203B of the Act, a person may ask for the decision to be reviewed by the administering agency. It also establishes that under part 5, division 2 of the *Transport Planning and Coordination Act 1994*, a person may apply to QCAT for the decision to be stayed. The section also provides that under section 203C of the Act a person may ask for the administering agency’s decision on the reviewed (referred to as the reviewed decision) to be reviewed by QCAT and that a person may under the QCAT Act apply to QCAT for the decision to be stayed.

Clause 1764 amends section 164 (Procedure for suspension or cancellation). Current section 164(5)(b) is omitted and a new section 164(5)(b) establishes that under section 203B of the Act, a person may ask for the decision to be reviewed by the administering agency. It also establishes that under part 5, division 2 of the *Transport Planning and Coordination Act 1994*, a person may apply to QCAT for the decision to be stayed. The section also provides that under section 203C of the Act a

person may ask for the administering agency's decision on the reviewed (referred to as the reviewed decision) to be reviewed by QCAT and that a person may under the QCAT Act apply to QCAT for the decision to be stayed.

This is consistent with the amendment made to section 154(3)(b) of the Act.

Clause 1765 amends section 165 (Action by general manager after marine incident) by omitting the current section 165(3)(e) and inserting a new section 165(3)(e). The new section establishes that under section 203B of the Act, a person may ask for the decision to be reviewed by the administering agency. It also establishes that under part 5, division 2 of the *Transport Planning and Coordination Act 1994*, a person may apply to QCAT for the decision to be stayed. The section also provides that under section 203C of the Act a person may ask for the administering agency's decision on the reviewed (referred to as the reviewed decision) to be reviewed by QCAT and that a person may under the QCAT Act apply to QCAT for the decision to be stayed. This is consistent with the amendments made to sections 154(3)(b) and 164(5)(b).

Clause 1766 amends section 215 (Removal of buoy mooring on expiry, cancellation or surrender of approval). The amendment omits the current subsections 215(3)(b) and (c) and inserts new subsections 215(3)(b) and (c). Section 215(3) provides that a buoy, its mooring apparatus and its mooring block must be removed and subsection (b) and (c) establish the timeframes. The new subsections maintain the current 14 day period for a buoy, its mooring apparatus and its mooring block to be removed after expiry or surrender of a buoy mooring, but insert references to QCAT applications instead of appeals to a court.

Clause 1767 amends schedule 15 (Dictionary) to insert a definition of 'prescribed review information'.

Part 13 **Amendment of Transport Operations (Passenger Transport) Act 1994**

Clause 1768 states that this part amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 1769 amends the heading of chapter 10 to read ‘Review of decisions’.

Clause 1770 replaces section 102 with new sections 102, 103 and 104.

New section 102 deals with internal review of decisions and allows a person whose interests are affected by a decision mentioned in schedule 2 (the original decision) to ask the chief executive to review the decision. This section also provides that the *Transport Planning and Coordination Act 1994*, part 5, division 2:

- a) applies to the review; and
- b) provides:
 - for the procedure for applying for the review and the way it is carried out; and
 - that a person may apply to QCAT to have the original decision stayed.

New section 103 deals with external review of decisions and provides that if a reviewed decision is not the decision sought by the applicant for the review, the chief executive that made the reviewed decision must give the applicant a QCAT information notice for the reviewed decision. The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision. In this section, a reviewed decision means the chief executive’s decision on a review under section 102.

New section 104 ensures that the Commissioner for Children and Young People and Child Guardian is a party to the proceeding if the proceeding before QCAT concerns a decision of the chief executive on the review of a driver authorisation and a driver disqualifying offence involving a child was relevant to the driver authorisation decision.

Clause 1771 amends section 126NA(2)(e) so that where a dangerous situation notice is given to a person, the notice must state the person may:

- a) under section 102, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994* to QCAT for the decision to be stayed; and
- c) under section 103, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1772 replaces schedule 2 with a new schedule 2. The replacement schedule removes any reference to the court as QCAT substitutes the appeal process.

Clause 1773 amends schedule 3 (Dictionary) to further define the term 'information notice' to clarify the internal and external review process as a result of the insertion of sections 102 and 103.

Part 14 Amendment of Transport Operations (Passenger Transport) Regulation 2005

Clause 1774 states that this part amends the *Transport Operations (Passenger Transport) Regulation 2005*.

Clause 1775 amends the heading of part 10 to read 'Review of decisions not provided for under Act, chapter 10'.

Clause 1776 replaces section 134 to ensure that sections 102 and 103 of the *Transport Operations (Passenger Transport) Act 1994* apply to a decision described in schedule 7 as if the decision were described in schedule 2 of *Transport Operations (Passenger Transport) Act 1994*.

Clause 1777 replaces schedule 7 to remove any reference to the court (that is, Magistrates or District) as QCAT now reviews decisions formerly heard in the Magistrates or District courts.

Part 15

Amendment of Transport Operations (Road Use Management) Act 1995

Clause 1778 states that this part amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 1779 inserts a new subsections 19(3) to (7) to recognise the revised arrangements for review of decisions with the creation of the QCAT. Section 19 of the Act outlines the procedure the chief executive must follow to amend, suspend or cancel an approval. ‘Approval’ is defined in section 17A of the Act.

New section 19(3) provides that the chief executive must give the holder (of an approval) a written notice about the decision. This notice is defined as a ‘subsection (3) notice’. New section 19(4) outlines when the chief executive’s decision takes effect.

New section 19(5) provides the manner by which the chief executive may, despite subsection (1), immediately suspend an approval. New section 19(5) also defines the term ‘immediate suspension notice’. New section 19(6) provides for the information that must be stated in a ‘subsection (3) notice’ or ‘immediate suspension notice’. New section 19(7) provides for an extra requirement for a subsection (3) notice where the notice is given about a decision to suspend an approval on the condition mentioned in section 19(2)(c)(ii).

Clause 1780 amends section 19A(3). Under the revised section 19A(3) the notice must state the reasons for the decision to cancel the approval; and that the holder may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive’s decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) apply under the QCAT Act for the reviewed decision to be stayed.

Clause 1781 amends section 43(4)(b)(i) and (ii). Section 43(4) provides for what must be stated in a notice, required by subsection (2), where the chief executive or commissioner decides to forfeit a thing under subsection (1)(c). The revised section 43(4)(b) provides that such a notice must state the owner may:

- a) under section 65, ask for the decision to be reviewed by the chief executive or commissioner; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive's or commissioner's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1782 amends the heading of chapter 4 to read 'Review of decisions'.

Clause 1783 replaces section 65 with new sections 65 and 65A. The new section 65 deals with internal review of a decision under the Act. Section 65(1) states that a person whose interests are affected by a decision described in schedule 3 of the Act (the original decision) may ask the chief executive to review the decision. Section 65(2) sets out the person's entitlement to a statement of reasons for the original decision. Section 65(3) provides that the *Transport Planning and Coordination Act 1994*, part 5, division 2:

- a) applies to the review; and
- b) provides for the procedure for applying for the review and the way it is carried out; and for the original decision to be stayed by a person applying to QCAT.

Section 65(4) defines the term 'chief executive' for the purposes of section 65.

The clause also provides for a new section 65A dealing with external review of reviewed decisions. Section 65A(1) provides for when the chief executive must provide an applicant with a QCAT information notice for the reviewed decision. Section 65A(2) states that the applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision. Section 65A(3) stipulates that if the decision is a 'prescribed decision', QCAT can not make an order staying the operation of the

decision, despite the QCAT Act. Finally, section 65A(4) defines the terms ‘chief executive’, ‘prescribed authority decision’, ‘QCAT information notice’ and ‘reviewed decision’ for the purposes of section 65A.

Clause 1784 amends section 80(22C) to exclude a person seeking a review by QCAT in respect of a suspension of a driver licence under section 80(22AA) of the Act, maintaining the current requirement that the decisions are final. The clause amends the existing reference of ‘appeal’ to read ‘review or appeal’.

Clause 1785 amends section 87(5B)(a) to also exclude a suspension, cancellation or disqualification that was set aside on a review to QCAT. The clause amends section 87(5B)(a) so that the existing reference to ‘appeal’ will now read ‘review or appeal’.

Clause 1786 amends section 122E(3)(b). Section 122E(3) outlines what must be stated in a notice referred to in subsection (2). The amended section 122E(3)(b) provides that such a notice must state that the person may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive’s decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1787 amends section 122L(2)(b)(i) and (ii). Section 122L(2) provides for what must be stated in a notice to a crossing supervisor referred to in subsection (1). The new section 122L(2)(b) provides that such a notice must state that the crossing supervisor may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive’s decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1788 amends section 122N(2)(c)(i) and (ii). Section 122(2) provides for what must be stated in a notice, referred to section 122M(1), where the chief executive immediately suspends an authority for a crossing supervisor. The new section 122N(2)(c) provides that such a notice must state that the crossing supervisor may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1789 makes various amendments to section 131 of the Act. Clause 1789(1) amends the heading of the section to read 'Review and appeals with respect to issue of licences etc.'

Clause 1789 also amends section 131(1AA) so that a person, in the circumstances set out in the section, may now apply, as provided under the QCAT Act, to QCAT for a review of the refusal, suspension, cancellation or imposition of a condition in respect of a driver licence. Previously section 131(1AA) referred to an appeal to the court.

Clause 1789 also deletes the existing subsections (1A) and (1B), and inserts new subsections (1A), (1B), (1BA) and (1BB). Section 131(1A) states that despite the QCAT Act, the decision of QCAT on the review is final and binding and without further appeal, maintaining the current requirement that the decisions are final.

Section 131(1B) states that subsection (1BA) applies if the chief executive or commissioner suspends or cancels the applicant's licence, unless the reason, or one of the reasons, for the suspension or cancellation is the mental or physical incapacity of the applicant.

Section 131(1BA) provides that on the making of the application for review, the cancellation or suspension is suspended pending the finalisation of the review but, subject to QCAT's decision on the review, the cancellation or suspension takes effect from the date of the finalisation of the review for the part of the period for which it was made that had not expired when the review commenced.

Section 131(1BB) provides that to remove any doubt, it is declared that if the reason, or one of the reasons, for the suspension or cancellation of the licence is the licence holder's mental or physical incapacity, QCAT can not make an order staying the operation of the suspension or cancellation. This prohibition on making an order staying the operation of the suspension or cancellation will apply despite any provision in the QCAT Act.

Clauses 1789(4) and (5) make consequential amendments to section 131(1C) to ensure consistency with the amendments made by clauses 1789(1) to (3).

Clause 1790 amends the existing section 153(5)(c)(i) and (ii) of the Act. Section 153(5) provides for what must be stated in a notice, to each unsuccessful applicant, where an application is made for an exemption and the chief executive does not grant the exemption. The amended section 153(5)(c) provides that a notice must state that the person may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1791 amends the existing section 153E(3)(c)(i) and (ii) of the Act. Section 153E(3) provides for what must be stated in a notice, under subsection (2), where the chief executive decides to amend, suspend or cancel the exemption. The amended section 153E(3)(c) provides that a notice must state that the holder may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1792 amends the existing section 153G(3)(b)(i) and (ii) of the Act. Section 153G(3) provides for what must be stated in a notice, under subsection (2), where the chief executive considers it is necessary in the public interest to immediately suspend an exemption. The amended section 153G(3)(b) provides that a notice must state that the holder may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1793 amends the existing section 153H(3)(b)(i) and (ii) of the Act. Section 153H(3) provides for what must be stated in a notice, under subsection (2), where the chief executive cancels an exemption because the circumstances in subsection (1) apply. The amended section 153H(3)(b) provides that a notice must state that the holder may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1794 amends the existing section 161B(4)(d)(i) and (ii) of the Act. Section 161B(4) provides for what must be stated in an improvement notice under subsection (2). The amended section 161B(4)(d) provides that an improvement notice must state that the person may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and

- c) under section 65A, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1795 amends the existing section 161H(2)(e)(i) and (ii) of the Act. Section 161H(2) provides for what must be stated in a dangerous situation notice that is given to a person. The amended section 161H(2)(e) provides that a notice must state the person may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1796 amends the existing section 168AA(7)(c)(i) and (ii) of the Act.

Section 168AA(7) provides that the chief executive must give the person, to whom the corresponding decision relates, written notice of the chief executive's decision under this section. Section 168AA(7) also provides for what that written notice should state.

The amended section 168AA(7)(c) provides that if the decision is that the corresponding decision is not to have effect in Queensland, or the decision is that the corresponding decision is to have effect in Queensland subject to conditions imposed or varied under subsection (4), the notice must state that the person may:

- a) under section 65, ask for the decision to be reviewed by the chief executive; and
- b) apply under the *Transport Planning and Coordination Act 1994*, part 5, division 2, to QCAT for the decision to be stayed; and
- c) under section 65A, ask for the chief executive's decision on the review (the reviewed decision) to be reviewed by QCAT; and
- d) under the QCAT Act, apply for the reviewed decision to be stayed.

Clause 1797 amends schedule 3 listing the decisions that may be reviewed under section 65 of the Act.

Clause 1798 amends schedule 4 to add a definition for the term ‘original decision’ and ‘prescribed review information’.

Part 16 Amendment of Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2005

Clause 1799 states that this part amends the *Transport Operations (Road Use Management-Accreditation and Other Provisions) Regulation 2005*.

Clause 1800 amends section 7(3) and (4) of the regulation. Clause 1800(1) deletes the words ‘written notice of’ in section 7(3) and replaces it with ‘an information notice for’. This amendment ensures consistency with a number of similar sections in the regulation. Clause 1800(2) deletes section 7(4) in its entirety, as an ‘information notice’ already provides for this information. ‘Information notice’ is defined in the schedule 9 dictionary of the regulation.

Clause 1801 amends section 41 to clarify that the imposition of a condition on an accreditation is a ‘decision’ by the chief executive and that the chief executive must provide an information notice for that decision.

Clauses 1802 to 1804 amends sections 43, 73 and 74 respectively to make clear that the information notice to be given to an applicant relates to the decision of the chief executive made under the relevant section.

Clause 1805 deletes the existing section 112 of the regulation. The clause then inserts a new section 112 that states that section 65 and 65A of the Act apply to a schedule 7 decision as if a reference to an original decision in the sections were a reference to the schedule 7 decision. The new section also defines the term ‘schedule 7 decision’ for the purposes of the section.

Clause 1806 amends schedule 7 of the regulation listing the decisions that may be reviewed under section 112 of the regulation.

Clause 1807 amends the definition of ‘information notice’ in schedule 9 of the regulation.

Part 17 Amendment of Transport Operations (Road Use Management—Dangerous Goods) Regulation 2008

Clause 1808 states that this part amends the *Transport Operations (Road Use Management - Dangerous Goods) Regulation 2008*.

Clause 1809 amends the part 19 heading to read ‘Review of decisions’.

Clause 1810 deletes the existing section 220 of the regulation. The clause then inserts a new section 220 that states that section 65 and 65A of the Act apply to a schedule 1 decision as if a reference to an original decision in the sections were a reference to the schedule 1 decision. The new section also defines the term ‘schedule 1 decision’ for the purposes of the section.

Clause 1811 amends the definition of ‘information notice’ in schedule 4 of the regulation.

Part 18 Amendment of Transport Operations (Road Use Management—Driver Licensing) Regulation 1999

Clause 1812 states that this part amends the *Transport Operations (Road Use Management - Driver Licensing) Regulation 1999*.

Clause 1813 makes an amendment to section 14AJ(2)(b) to recognise that a decision, mentioned in paragraph (a) of section 14AJ(2), may also be set aside by QCAT.

Clause 1814 makes consequential amendments to sections 16(4)(c)(ii), 33(6)(b)(ii) and 33A(3)(b)(ii) so there is consistency with the changes made by clause 1789 of this Bill.

Clause 1815 amends section 30G(3)(e) to provide that the reference, in subsection 2(c)(i), to a suspension, cancellation or disqualification does not include a suspension, cancellation or disqualification that was set aside on a review by QCAT.

Clause 1816 amends section 30U(3) to insert a new paragraph (h) that provides that the reference to a suspension or cancellation, in subsection (2)(a), does not include a suspension or cancellation that was set aside on a review by QCAT.

Clause 1817 replaces the existing section 38(2) to (7) of the regulation.

New section 38(2) states that the person may apply, in the approved form, to the chief executive to reconsider the original decision. The term ‘original decision’ is defined in the new section 38(7).

New section 38(3) provides for when an application, under subsection (2), must be made.

New section 38(4) provides that after reconsidering the original decision, the chief executive may either confirm the decision or set aside the decision and substitute another decision.

New section 38(5) provides that the chief executive must give the person a notice stating the reconsidered decision and provides for what that notice must contain.

New section 38(6) provides that if the original decision is a decision mentioned in subsection (1)(e), (g), (h), (i), (j) or (k), section 65A of the Act applies to the reconsidered decision as if it were a reviewed decision mentioned in that section.

Finally, new section 38(7) prescribes definitions for ‘original decision’, ‘prescribed authority decision’, ‘prescribed licence decision’ and ‘reconsidered decision’ for the purposes of section 38.

Part 19 **Amendment of Transport Operations (Road Use Management—Fatigue Management) Regulation 2008**

Clause 1818 states that this part amends the *Transport Operations (Road Use Management - Fatigue Management) Regulation 2008*.

Clause 1819 makes a number of minor consequential amendments to section 155 of the regulation to ensure consistency with the changes made by clause 1789 of this Bill.

Clause 1820 amends the heading of part 7, division 4, to read ‘Internal and external review of decisions.’

Clause 1821 amends the heading in section 185 to read ‘Internal review of decisions’. The clause also makes a consequential amendment to section 185(3)(b)(ii) to ensure consistency with the changes made to the *Transport Planning and Coordination Act 1994* by clause 1832 of this Bill.

Clause 1822 replaces the existing section 186 of the regulation.

New section 186(1) provides for when the chief executive is required to give the applicant a QCAT information notice for the reviewed decision. ‘QCAT information notice’ is defined in the new section 186(3).

New section 186(2) provides that the applicant may apply, as provided for under the QCAT Act, to QCAT for a review of the reviewed decision.

New section 186(3) prescribes definitions for ‘QCAT information notice’ and ‘reviewed decision’ for the purposes of section 186.

Clause 1823 amends the heading in schedule 4 to read ‘Schedule 4 Reviewable Decisions’.

Clause 1824 amends the definition of *information notice* in schedule 6 of the regulation.

Part 20 **Amendment of Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999**

Clause 1825 states this part amends the *Transport Operations (Road Use Management -Vehicle Registration) Regulation 1999*.

Clause 1826 replaces the existing section 66 of the regulation. Section 66(1) provides that sections 65 and 65A of the Act apply to a division 4 decision as if a reference to an original decision in the sections were a reference to the division 4 decision. Sections 65 and 65A of the Act provide for internal and external review of decisions. Section 66(2) provides a definition for ‘division 4 decision’ for the purposes of section 66.

Part 21 **Amendment of Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 1999**

Clause 1827 states that this part amends the *Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 1999*.

Clause 1828 replaces the existing section 44 of the regulation. Section 44(1) provides that section 65 and 65A of the Act apply to an approval decision as if a reference to an original decision in the sections were a reference to the approval decision. Sections 65 and 65A of the Act provide for internal and external review of decisions. Section 44(2) provides a definition for ‘approval decision’ for the purposes of section 66.

Part 22 **Amendment of Transport Planning and Coordination Act 1994**

Clause 1829 states that this part amends the *Transport Planning and Coordination Act 1994*.

Clause 1830 amends section 29 (What part applies to) to show that part 5 applies if a transport Act states that this part applies to:

- a) a review by the chief executive of a decision (the original decision) under the transport Act; or
- b) an appeal to a court stated in the transport Act (the appeal court) against a reviewed decision.

Clause 1831 amends section 30 (Definitions) to ensure the definitions of ‘appeal court’ and ‘original decision’ are correctly referenced in the Act.

Clause 1832 amends section 32 (Stay of operations of original decision) in 32(1) and (2) and inserts a new section 32(7) to provide that a person may apply for a review of a decision to the relevant entity, whether that be a court or QCAT. Section 32(9) inserts a definition of a ‘relevant entity’.

Clause 1833 amends section 34 (Decision on review) to omit section 34(4) and insert a new section 34(4) to provide that if the reviewed decision is not the decision sought by the applicant for the review, the decision notice:

- a) for a reviewed decision that may be reviewed by QCAT, must comply with the QCAT Act.
- b) for a reviewed decision that may be appealed to the appeal court, must state:
 - (i) the reasons for the reviewed decision; and
 - (ii) that the applicant may, within 28 days, appeal against the reviewed decision to the appeal court.

Section 34(6) is also amended to provide that if a person is applying to QCAT for a review or appealing to an appeal court, the decision that is subject to review or appeal is the reviewed decision and not the original decision.

Clause 1834 inserts a new section 34A (Application of division 3) to state that the division does not apply to a reviewed decision if, under the transport Act providing for the review, a person may apply to QCAT for a review of the reviewed decision.

Clause 1835 omits section 36DA (Commissioner for Children and Young People and Child Guardian).

Chapter 14 Department of Treasury

Part 1 Amendment of Community Ambulance Cover Act 2003

Clause 1836 confirms the Act amended is the *Community Ambulance Cover Act 2003*.

Clause 1837 confirms that a relevant electricity retailer must treat a power card arrangement to which section 92B applies as an exempt power card arrangement to the extent provided for in a written notice given to it by the commissioner following a QCAT review of the commissioner's decision regarding the extent of the exemption.

Clause 1838 confirms that the commissioner must give written notice of the commissioner's decision on objection that meets the requirements of section 157(2) of the QCAT Act.

Clause 1839 omits part 9, division 2 of the *Community Ambulance Cover Act 2003*, which provides for an electricity customer who is dissatisfied with a commissioner's decision on objection to appeal to the Magistrates Court, and inserts sections 132 – 134 of the *Community Ambulance Cover Act 2003*. Section 132 allows an electricity customer who is dissatisfied with a commissioner's decision on objection to apply to QCAT for a review of the decision. The application must be made within 60 days after receiving notice of the commissioner's decision. Section 133 provides that the review will be by way of rehearing and the onus of proof will be on the applicant. The review will be limited to the grounds and evidence given in

the objection unless QCAT orders otherwise. The same law will apply as applied to the making of the original decision, not the law existing at the time of the review. Any reopening of the review will be similarly limited. Section 134 confirms that a party to a proceeding before QCAT relating to an objection decision under the *Community Ambulance Cover Act 2003* may be represented by a lawyer.

Clause 1840 confirms that a non-reviewable decision under the Act is not subject to objection, appeal or QCAT review.

Clause 1841 confirms that, for an appeal against or QCAT review of a decision on objection, production of a document signed by the commissioner purporting to be a copy of a statement of levy liability or a notice of a shortfall amount is evidence that the amount and all particulars of the liability are correct.

Part 2 Amendment of Debits Tax Repeal Act 2005

Clause 1892 confirms the Act amended is the *Debits Tax Repeal Act 2005*.

Clause 1843 amends section 5 of the *Debits Tax Repeal Act 2005* to allow a person who is dissatisfied with a commissioner's decision on objection to either: request that the commissioner refer the commissioner's decision on objection to the Supreme Court, consistent with the current arrangements or; apply to QCAT for a review of the decision. The application for review must be made within 60 days after receiving notice of the commissioner's objection decision. A person must pay the tax payable before applying for a review.

Clause 1844 inserts new sections 8, 9 and 10. Section 8 sets out the right of an applicant to continue or withdraw a review application, following a reassessment. These provisions ensure that no greater rights of review are available on a review of the reassessment than if the person had first lodged an objection against the reassessment. Section 9 is inserted to provide that the 60 day time period for applying for a review cannot be extended. A review will be by way of rehearing and will be limited to the evidence and grounds of objection unless QCAT orders otherwise. The same law will apply as applied to the making of the original decision, not the law existing at the time of the review. Any reopening of the review will be similarly

limited. The onus of proving the applicant's case is on the applicant. A party to a proceeding before QCAT relating to an objection decision under the *Debts Tax Act 1990* may be represented by a lawyer. New section 10 makes it clear that, despite section 268(4) of the QCAT Act, the court may not transfer a proceeding to QCAT without the consent of the applicant for the proceeding.

Part 3 Amendment of Duties Act 2001

Clause 1845 confirms the Act amended is the *Duties Act 2001*.

Clause 1846 confirms that the *Taxation Administration Act 2001* contains provisions dealing with objections against assessments of duty, and both appeals against and QCAT reviews of objection decisions.

Clause 1847 amends section 411(4)(d) of the *Duties Act 2001* to clarify that the commissioner will not be bound by a private ruling on an application for exemption under the corporate reconstruction provisions, where a decision of QCAT is given after the ruling and that decision would have materially affected the ruling made by the commissioner.

Clause 1848 inserts a new heading for chapter 13.

Clause 1849 amends the heading for chapter 13, part 1.

Clause 1850 amends section 474(2) of the *Duties Act 2001* to confirm that the commissioner's written notice of a decision on an internal review must meet the requirements of section 157(2) of the QCAT Act.

Clause 1851 omits chapter 13, part 2 of the *Duties Act 2001*, which provides for an appeal to the Magistrates Court, and inserts sections 475 – 477 of the *Duties Act 2001*. Section 475 provides for an applicant for the review of an original decision who is dissatisfied with the review decision to apply to QCAT for an external review of the decision. Section 476 confirms that the review by QCAT will be by way of rehearing and will be limited to the grounds and evidence given in the objection unless QCAT orders otherwise. The same law will apply as applied to the making of the original decision, not the law existing at the time of the review or reopening. Any reopening of the review decision will be similarly limited. Section 477 confirms that a party to a proceeding before QCAT relating to

a review decision under the *Duties Act 2001* may be represented by a lawyer.

Part 4 Amendment of Financial Intermediaries Act 1996

Clause 1852 states that the purpose of the part is to amend the *Financial Intermediaries Act 1996*.

Clause 1853 replaces the heading ‘Review of decisions and appeals’ for part 12 with ‘Review of decisions’, in order to provide consistency with terms applied under the QCAT Act by referring to review of decisions rather than appeals and review.

Clause 1854 replaces the heading ‘Review of decisions’ for part 12, division 1 with ‘Review of decisions by registrar’.

Clause 1855 replaces the heading ‘Affected persons may apply for review’ for section 203 with ‘Affected person may apply for review by registrar’.

Clause 1856 amends section 205(3) by replacing that subsection with ‘(3) The notice must comply with the QCAT Act, section 157(2)’.

Clause 1857 omits part 12, division 2 of the *Financial Intermediaries Act 1996*, which provides for appeals to the Magistrates Court, and inserts sections 206 – 208 of the *Financial Intermediaries Act 1996*. Section 206 provides for a person whose interests are affected by the review of an original decision to apply to QCAT for an external review of the decision. Section 207 confirms that the review by QCAT will be by way of rehearing and will be limited to the grounds and evidence given in the objection. Any reopening of the review decision will also be limited. The same law will apply as applied to the making of the original decision, not the law existing at the time of the review or reopening. Section 208 confirms that QCAT may grant leave to a party to a proceeding to present new evidence to the tribunal, where the party did not know, or could not reasonably be expected to have known of the existence of the new evidence and, in the circumstances, it would be unfair not to allow the party to present the new evidence.

Part 5 **Amendment of First Home Owner Grant Act 2000**

Clause 1858 confirms the Act amended is the *First Home Owner Grant Act 2000*.

Clause 1859 amends section 50 of the *First Home Owner Grant Act 2000* to clarify that the writing off, for the purposes of the *Financial Administration and Audit Act 1997*, of an applicant's liability to pay a grant or penalty amount including costs ordered by QCAT, does not extinguish the applicant's liability or the commissioner's rights in relation to those amounts.

Clause 1860 amends the heading to part 5, so that it refers to reviews instead of appeals in order to provide consistency with terms applied under the QCAT Act.

Clause 1861 amends section 58 of the *First Home Owner Grant Act 2000* to confirm that the commissioner's written notice of a decision on an objection must meet the requirements of section 157(2) of the QCAT Act.

Clause 1862 omits part 5, division 2, which provides for an objector who is dissatisfied with the commissioner's objection decision to appeal to the Magistrates Court, and inserts sections 59 – 61 of the *First Home Owner Grant Act 2000*. Section 59 provides for an objector who is dissatisfied with the commissioner's objection decision to apply to QCAT for a review of the decision. The application must be made within 60 days after receiving notice of the commissioner's decision. Section 60 confirms that the review by QCAT and any reopening of the review decision will be by way of rehearing and will be limited to the grounds and evidence given in the objection unless QCAT orders otherwise. The same law will apply as applied to the making of the original decision, not the law existing at the time of the review. Any reopening of the review will be similarly limited. Section 61 confirms that a party to a proceeding before QCAT relating to an objection decision under the *First Home Owner Grant Act 2000* may be represented by a lawyer.

Clause 1863 amends section 68(5), to confirm that a person subject to a confidentiality obligation in relation to confidential information under the *First Home Owner Grant Act 2000* may only be compelled to disclose that information to QCAT in proceedings under the *First Home Owner Grant Act 2000*.

Part 6 **Amendment of Fuel Subsidy Act 1997**

Clause 1864 confirms the Act amended is the *Fuel Subsidy Act 1997*.

Clause 1865 amends the heading for chapter 5, part 4.

Clause 1866 inserts a new heading for chapter 5, part 4, division 2.

Clause 1867 omits the definition of court in section 117 of the *Fuel Subsidy Act 1997*.

Clause 1868 amends the heading for section 120.

Clause 1869 amends section 122 of the *Fuel Subsidy Act 1997* to confirm that, if a review decision by the commissioner is not the decision that was sought by a person who sought the review, the commissioner's written notice of the decision must meet the requirements of section 157(2) of the QCAT Act.

Clause 1870 omits chapter 5, part 4, division 2, subdivision 3 of the *Fuel Subsidy Act 1997*, which provides for an appeal to the Magistrates Court or the Supreme Court in specified cases, and inserts sections 123 – 127 of the *Fuel Subsidy Act 1997*. Section 123 provides for an applicant for the review of an original decision listed in Schedule 1 to the Act who is dissatisfied with the review decision to apply to QCAT for an external review of the decision. Section 124 confirms that QCAT must not grant a stay of the operation of the internal review decision. Section 125 provides that the review will be by way of rehearing and the review will be limited to the grounds and evidence given in the objection unless QCAT otherwise orders. The same law will apply, as applied to the making of the original decision, and not the law existing at the time of the review. Any reopening of the review will be similarly limited. Section 126 confirms that a party to a proceeding before QCAT relating to a review decision under the *Fuel Subsidy Act 1997* may be represented by a lawyer.

Clause 1871 amends section 141A(2), to confirm that a person subject to a confidentiality obligation in relation to confidential information under the *Fuel Subsidy Act 1997* may only be compelled to disclose that information to QCAT in proceedings under the *Fuel Subsidy Act 1997*.

Clause 1872 amends schedule 1 of the *Fuel Subsidy Act 1997* to specify the decisions that will be subject to external review by QCAT.

Part 7 **Amendment of Motor Accident Insurance Act 1994**

Clause 1873 provides that part 7 amends the *Motor Accident Insurance Act 1994*.

Clause 1874 amends section 68 of the *Motor Accident Insurance Act 1994* to confer jurisdiction on QCAT to review a decision made by the Motor Accident Insurance Commission to withdraw or suspend an insurer's licence (formerly dealt with by application to the Supreme Court).

This section also requires that QCAT must be constituted by at least one (1) judicial member as defined in the QCAT Act recognising the magnitude and likely complex issues of law concerning such a decision. This provision overrides the general provision in the QCAT Act that allows the President to determine how the tribunal must be constituted for a particular matter.

The application processes for these matters are in accordance with the application processes set out in the QCAT Act.

Part 8 **Amendment of Pay-roll Tax Act 1971**

Clause 1875 confirms the Act amended is the *Pay-roll Tax Act 1971*.

Clause 1876 confirms that the *Taxation Administration Act 2001* contains provisions dealing with objections against assessments of tax, and both appeals against and QCAT reviews of objection decisions.

Clause 1877 omits section 104(3)(d) of the *Pay-roll Tax Act 1971*, so as to apply the provisions of the *Taxation Administration Act 2001* prospectively to objections and appeals in relation to pay-roll tax liabilities arising prior to the commencement of the *Pay-roll Tax Administration Amendment Act 2004*.

Clause 1878 amends the scheduled definition of prescribed pay-roll tax liability to refer to costs awarded by QCAT.

Part 9 **Amendment of Taxation Administration Act 2001**

Clause 1879 confirms the Act amended is the *Taxation Administration Act 2001*.

Clause 1880 amends section 17 of the *Taxation Administration Act 2001* to confirm that the commissioner may reassess a taxpayer's liability to tax, if a QCAT review of the commissioner's decision on an objection against the taxpayer's assessment has started but not been decided.

Clause 1881 amends the heading for section 19 of the *Taxation Administration Act 2001*, and amends section 19 to confirm when the commissioner must make a reassessment to give effect to a QCAT decision.

Clause 1882 amends section 20 of the *Taxation Administration Act 2001* to confirm that if an appeal is made against a QCAT decision, the commissioner may in certain cases make reassessments in accordance with the QCAT decision, pending the outcome of the appeal.

Clause 1883 confirms that if a QCAT review of the commissioner's decision on an objection against a taxpayer's assessment has started but not been decided, the commissioner may reassess a taxpayer's liability to tax after the limitation period with the consent of the taxpayer.

Clause 1884 amends section 61 to confirm that if a taxpayer is entitled to a refund because of a reassessment to give effect to a QCAT review decision, QCAT may order the commissioner to pay the taxpayer interest on the overpaid amount.

Clause 1885 amends the heading for part 6.

Clause 1886 amends section 68(2) of the *Taxation Administration Act* to provide that if an objection is wholly or partly disallowed, the commissioner's written notice of a decision on an objection must meet the requirements of section 157(2) of the QCAT Act.

Clause 1887 omits part 6, division 2 and inserts new sections 69 – 73. Section 69 provides for an objector who is dissatisfied with the commissioner's objection decision, and who had paid the whole amount of tax and unpaid tax interest under the assessment to which the decision relates, to either appeal to the Supreme Court, or to apply to QCAT for a review of the decision. The application must be made within 60 days after receiving notice of the commissioner's decision. This application period

may not be extended. Section 69A sets out the right of an applicant to continue or withdraw a review or appeal application, following a reassessment. These provisions ensure that no greater rights of review are available on a review of the reassessment than if the person had first lodged an objection against the reassessment. Section 70 restates the current provisions relating to an appeal to the Supreme Court. Section 70A provides that in the appeal to the Supreme Court, the appellant has the onus of proof. Section 70B sets out the rules for the Supreme Court in considering new evidence. Section 70C sets out what decisions the Supreme Court can make. Section 71 provides that a QCAT review will be by way of rehearing and will be limited to the grounds and evidence given in the objection unless ordered otherwise. The same law will apply as applied to the making of the original decision, not the law existing at the time of the review. Any reopening of the review decision will be similarly limited. Section 72 confirms that a party to a proceeding before QCAT relating to an objection decision under the *Taxation Administration Act 2001* may be represented by a lawyer. Section 73 provides that on a QCAT review, the onus of proving the applicant's case is on the applicant.

Clause 1888 amends section 76 to confirm a non-reviewable decision under the Act is not subject to objection, appeal or QCAT review.

Clause 1889 amends section 113 to confirm that a person subject to a confidentiality obligation in relation to confidential information under the *Taxation Administration Act 2001* may only be compelled to disclose that information in proceedings under the *Taxation Administration Act 2001*.

Clause 1890 amends section 132 to confirm that, for an appeal against or QCAT review of a decision on objection, production of a document signed by the commissioner purporting to be a copy of an assessment notice is evidence that the amount and all particulars of the assessment are correct.

Clause 1891 amends section 157(2) to provide that the appeal and review rights under the *Taxation Administration Act 2001* apply prospectively to any objections made under the repealed *Stamp Act 1894*.

Clause 1892 inserts transitional provisions, which provide that the Supreme Court may only transfer a proceeding to QCAT with the consent of the applicant. The transitional provisions in Chapter 7 of the QCAT Act otherwise apply.

Part 10 **Amendment of Taxation Administration Regulation 2002**

Clause 1893 confirms that part 12 amends the *Taxation Administration Regulation 2002*.

Clause 1894 amends section 11 of the *Taxation Administration Regulation 2002* to confirm that section 147(1) of the *Taxation Administration Act 2001* does not apply to a taxpayer if the taxpayer is not required to pay the tax for an instrument, transaction or matter under either a Court order or a QCAT decision.

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