

State Penalties Enforcement and Other Legislation Amendment Bill 2009

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Cameron Dick MP Attorney-General and Minister for Industrial Relations

Title of the Bill

State Penalties Enforcement and Other Legislation Amendment Bill 2009.

Objectives of the Amendments

The objectives of the amendments are to:

- allow the State Penalties Enforcement Registry (SPER) to obtain and use information from the Queensland Police Service for the purposes of a risk assessment before executing an immobilisation warrant;
- enable conduct money for a person required to attend a proceeding under the *Queensland Civil and Administrative Tribunal Act 2009* to be paid at the time that a notice to attend is served or within a reasonable time before attendance under the notice is required;
- remove an unnecessary fetter on the ability of the Queensland Civil and Administrative Tribunal (QCAT) Rules Committee to develop a list of matters suitable for determination by adjudicators under the *Queensland Civil and Administrative Tribunal Act 2009*;
- remove a redundant reference to the Racing Appeals Tribunal from the *Racing Act 2002*;
- amend section 50 of the *Crime and Misconduct Act 2001* to omit the reference to ‘a charge is laid’ and insert ‘the start of a disciplinary proceeding for the official misconduct’ to reflect the terminology that is used regarding QCAT’s jurisdiction in respect of official misconduct matters;

- omit redundant amendments to the *Health and Other Legislation Amendment Act 2009*; and
- clarify the drafting of a provision in the *Land Tax Act 1915* which is intended to refer not only to ‘appeals’ but also ‘reviews’.

Achievement of the Objectives

The objectives are achieved by way of amendments to the *State Penalties Enforcement Act 1999*, the *Queensland Civil and Administrative Tribunal Act 2009*, the *Racing Act 2002*, the *Crime and Misconduct Act 2001* and the *Land Tax Act 1915* and by omission from the Bill of the amendments to the *Health and Other Legislation Amendment Act 2009*.

Estimated Cost for Government Implementation

There are no costs to government in implementing the amendments.

Consistency with Fundamental Legislative Principles

The provision of information from the Queensland Police Service files breaches the right to privacy of persons who are not subject to the immobilisation warrant. This can be justified because the information is required to protect the safety of enforcement officers executing immobilisation warrants. The information will be used to determine whether it is safe for an enforcement officer to attend a property to execute an immobilisation warrant. This will not prejudice either the debtor or other persons known to reside at the premises. The amendment requires the registrar to destroy the information after it is no longer needed to assess the risks associated with executing the immobilisation warrant.

The removal of the word ‘non-contentious’ from the description of the types of matters that may be stated by the QCAT Rules as matters that an adjudicator may determine, widens the types of matters that may be stated in the Rules. A rule may only be made with the consent of the QCAT Rules Committee. Accordingly, the discretion of the Committee is widened, as the Committee will be able to consent to matters of all types being determined by adjudicators, not just matters of a non-contentious nature, that are proposed to be included in the Rules for consideration by the Governor in Council. This widening of the Committee’s delegated power is justified on the basis that narrowing the types of matters to non-contentious matters was overly restrictive for the operation of the

tribunal. The Rules are subordinate legislation and must be tabled before, and may be disallowed by, the Legislative Assembly.

The amendment to the *Land Tax Act 1915* will clarify the drafting of a provision which is intended to prohibit not only appeals but also reviews against objections to tax assessments on the basis that the value issued under the *Valuation of Land Act 1944* is excessive. This amendment is consistent with fundamental legislative principles as appeals against valuations continue to be available to the Land Court under the *Valuation of Land Act 1944*. Taxpayers will have a choice of appealing against objections to land tax assessments to either the Supreme Court or QCAT.

No fundamental legislative principles issues are raised with respect to the other amendments.

Consultation

SPER, the Crime and Misconduct Commission, Queensland Treasury and Queensland Health were consulted about the amendments relevant to them and support the amendments relevant to them.

Notes on Provisions

Clause 1 amends clause 2 of the Bill, which provides for commencement of the Bill. The amendment provides for the commencement of new part 10A which is inserted by clause 9 of the amendments to be moved during consideration in detail.

Clause 2 amends section 151 of the *State Penalties Enforcement Act 1999* to allow the commissioner of police to provide information about residents of a property at which it is proposed to execute an immobilisation warrant. This information includes the criminal history and details of any warnings about the person that are in the possession of the Queensland Police Service. After the risk of executing the warrant has been assessed, the registrar of SPER must destroy the information.

Clause 3 amends the dictionary in schedule 2 of the *State Penalties Enforcement Act 1999* to define a 'good behaviour order' by referring to section 118(3) of the *State Penalties Enforcement Act 1999*. The term

‘good behaviour order’ is used in the new division 7A being inserted by clause 18 of the Bill. Therefore, the amendment will provide clarity.

Clause 4 inserts new section 71A into the Bill to amend section 97 of the *Queensland Civil and Administrative Tribunal Act 2009*. Section 97 of the Act provides that the tribunal may, by written notice, require a person to attend at a stated hearing of a proceeding to give evidence or produce a stated document or other thing to the tribunal. A person who attends a hearing or produces a document in compliance with a written notice is entitled to be paid the fees and allowances prescribed under a regulation. The Act restricts payment of the fees and allowances to after the person has complied with the notice. It is appropriate, and consistent with court practices, that at the time that a notice to attend is served or within a reasonable time before attendance under the notice is required, the party or parties responsible for paying the person fees and allowances under the Act must pay the money to the person.

Clause 5 inserts new section 75A into the Bill to amend section 195 of the *Queensland Civil and Administrative Tribunal Act 2009*. Section 195 provides that, if chosen by the President of QCAT to constitute the tribunal to hear a matter, an adjudicator may hear and decide matters from a list of four types of matters. These are: minor civil disputes; matters stated in the Act or an Act that confers jurisdiction on QCAT as a matter that may be determined by an adjudicator; matters that the President allocates on a case by case basis; or a non-contentious matter stated in the QCAT Rules as a matter that may be determined by an adjudicator.

In its effect the clause amends section 195 to omit the requirement that the matters stated in the QCAT Rules be ‘non-contentious’ matters. The amendment removes an unnecessary fetter on the ability of the QCAT Rules Committee to develop a list of matters suitable for determination by adjudicators. Very few matters before QCAT will be non-contentious in the ordinary meaning of the word.

Clause 6 inserts new section 100A into the Bill to insert new section 723A into the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. The effect of the amendment will be to amend the *Racing Act 2002* to remove a redundant reference to the Racing Appeals Tribunal. The Racing Appeals Tribunal is abolished and its jurisdiction transferred to QCAT from 1 December 2009 in accordance with other provisions of the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

Clause 7 inserts new section 129A into the Bill, which will commence immediately after the commencement of the *Queensland Civil and Administrative Tribunal Act 2009*, chapter 7.

New section 129A amends what will be section 50(4) of the *Crime and Misconduct Act 2001* (as a result of amendments made by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*) upon commencement of that Act to omit the reference to ‘a charge is laid’ and insert ‘the start of a disciplinary proceeding for the official misconduct’. This change reflects the terminology that will be used regarding QCAT’s jurisdiction in respect of official misconduct matters.

Clause 8 omits clauses 150 to 152 of the Bill, which amend sections 42 and 43 of the *Health and Other Legislation Amendment Act 2009*. The purpose of the clauses was to omit the reference to the Nursing Tribunal in sections 42 and 43, which in turn amend section 392 of the *Health Practitioners (Professional Standards) Act 1999*. The removal of the Nursing Tribunal reference was effected by amendments in consideration in detail to the *Health and Other Legislation Amendment Bill Act 2009*, therefore clauses 150 to 152 should be omitted.

Clause 9 inserts a new Part 10A into the Bill to amend the *Land Tax Act 1915* so that an application to QCAT for review of the commissioner’s decision on an objection to an assessment may not be made on the ground that the unimproved value issued under the *Valuation of Land Act 1944* is excessive.