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# **Explanatory Notes**

## **FOR**

### **Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP**

#### **Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018**

##### **Objectives of the Amendments**

At present, the *Uniform Civil Procedure Rules 1999* allow only questions of fact to be referred to a special referee and require a trial-like process.

The amendments, requested by the Chief Justice of Queensland and the Rules Committee established under the *Supreme Court of Queensland Act 1991*, are intended to facilitate the increased use of referees by the courts to assist in the effective and expeditious completion of court business.

Further to the amendments, court rules will need to be made detailing the procedures for referees. Without pre-empting that process, draft rules developed by the Rules Committee are broadly based on practice in New South Wales where –

- a court can refer any question (whether it is of fact or law or mixed fact and law) to a referee for inquiry and report, except those questions which must be tried by a jury;
- the referee is bound by the rules of natural justice but not the rules of evidence; and
- the court is able to adopt, vary or reject the referee's report, in whole or in part, and may decide any matter on the evidence taken before the referee, with or without additional evidence.

##### **Achievement of the Objectives**

The amendments will achieve these objectives by: allowing court rules to be made about the use of referees in proceedings; and providing a referee (and parties appearing, witnesses attending and documents produced before a referee) with the protection and immunity they would have if the matter were before the Supreme Court.

##### **Alternative Ways of Achieving Policy Objectives**

There is no alternative way for achieving this objective.

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## **Estimated Cost for Government Implementation**

There will be no costs for government in implementing the amendments.

## **Consistency with Fundamental Legislative Principles**

The amendment to the *Civil Proceedings Act 2011* to provide protection and immunity for referees (and parties appearing, witnesses attending and documents produced before them) raises whether the legislation has sufficient regard to the rights and liberties of individuals and whether there is adequate justification for the immunity conferred (section 4 (2)(a) and (3)(h) of the *Legislative Standards Act 1992*).

It is generally accepted that persons acting judicially or as part of the judicial process should be free from personal attack on the basis of illegal or negligent action when performing their roles or appearing as a party or witness in a hearing. The proposed protection and immunity will ensure that referees, parties and witnesses can act with appropriate confidence. The role of referee would be difficult to carry out if the referee could be the subject of allegations and litigation against them personally in relation to their actions in office.

Given the nature of the role of referees, their actions and decisions are subject to the supervision of the court.

Across the statute book, there are other examples where similar immunity is provided including to adjudicators, mediators and assessors.

## **Consultation**

The amendments are at the request of the Chief Justice of Queensland and the Rules Committee established under the *Supreme Court of Queensland Act 1991*. The Bar Association of Queensland and the Queensland Law Society have been consulted.

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## NOTES ON PROVISIONS

*Amendment 1* inserts new Part 1A which amends the *Civil Proceedings Act 2011*.

Clause 2A provides that the part amends the *Civil Proceedings Act 2011*.

Clause 2B amends the heading of part 12 (Assessors) to also refer to referees.

Clause 2C inserts a new division heading.

Clause 2D amends section 76 consequential upon clause 2C.

Clause 2E inserts new Division 2 (Referees). New section 79A provides that, in performing the functions of referee, a referee has the same protection and immunity as a Supreme Court judge. There are corresponding protections for parties appearing, witnesses attending and documents produced before a referee.

Clause 2F amends the definitions in the Schedule consequential upon clause 2C.

*Amendment 2* inserts new Part 6 which amends the *Supreme Court of Queensland Act 1991*.

Clause 47 provides that the part amends the *Supreme Court of Queensland Act 1991*.

Clause 48 amends schedule 1 (Subject matter for rules) to allow court rules to be made in relation to the “referees”.

*Amendments 3 and 4* are for consequential amendments to the long title of the Bill.