

Queensland



# **RESIDENTIAL SERVICES (ACCREDITATION) ACT 2002**

**Reprinted as in force on 23 August 2002  
(Act not amended up to this date)**

**Reprint No. 1**

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# Queensland



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# **RESIDENTIAL SERVICES (ACCREDITATION) ACT 2002**

[reprinted as in force on 23 August 2002]

## **An Act to regulate the conduct of residential services**

### **PART 1—PRELIMINARY**

#### *Division 1—Introduction*

##### **1 Short title**

This Act may be cited as the *Residential Services (Accreditation) Act 2002*.

##### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### *Division 2—Interpretation*

##### **3 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

##### **4 Meaning of “residential service”**

(1) A service is a “residential service” if—

- (a) the main purpose of the service is to provide accommodation, in return for the payment of rent, in 1 or more rooms; and

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- (b) the room or rooms are occupied, or available for occupation, in the course of the service by at least 4 residents; and
- (c) in the course of the service, each of the residents—
  - (i) has a right to occupy 1 or more rooms; and
  - (ii) does not have a right to occupy the whole of the premises in which the rooms are situated; and
  - (iii) does not occupy a self-contained unit; and
  - (iv) shares other rooms, or facilities outside of the resident's room, with 1 or more of the other residents.

*Example for paragraph (c)—*

A service conducted in a boarding house in which each of the residents occupies a room and shares a bathroom, kitchen, dining room and common room with the other residents.

(2) Also, a service is a “**residential service**” if—

- (a) subsection (1)(a) and (b) apply to the service; and
- (b) in the course of the service, each of the residents—
  - (i) has a right to occupy 1 or more rooms; and
  - (ii) does not have a right to occupy the whole of the premises in which the rooms are situated; and
  - (iii) is provided with a food service or personal care service.

*Example for paragraph (b)—*

A service, providing rental accommodation to older persons, in which each of the residents occupies a self-contained unit and is provided with a food service or personal care service.

(3) Also, a service is a “**residential service**” if—

- (a) subsection (1)(a) and (b) apply to the service; and
- (b) the service is prescribed under a regulation to be a residential service.

(4) For subsection (1)(a), it is immaterial whether or not the rooms are in the same premises.

(5) Despite subsections (1) to (3), the following services are not residential services—

- (a) an aged care service conducted by an approved provider under the *Aged Care Act 1997* (Cwlth);

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- (b) an authorised mental health service under the *Mental Health Act 2000*;
- (c) a service conducted in a hostel or nursing home under a licence in force under the *Health Act 1937*, part 3, division 5;<sup>1</sup>
- (d) a service conducted in a private hospital under a licence in force under the *Private Health Facilities Act 1999*;
- (e) a service conducted as part of, or under an agreement with, a school or other educational institution mainly to provide accommodation to students or employees of the school or institution;
- (f) a service conducted with financial assistance from the education department mainly to provide accommodation to school students;
- (g) a service conducted mainly to provide accommodation to holiday makers, tourists or travellers;

*Example—*

Motel, bed and breakfast facility, backpackers' hostel.

- (h) a service conducted in licensed premises under the *Liquor Act 1992*;
- (i) a service to provide accommodation under the Supported Accommodation Assistance Program; or
- (j) a service conducted under funding given by, or in premises owned by, Aboriginal Hostels Limited ACN 008 504 587;
- (k) a service conducted—
  - (i) by the disability services department; or
  - (ii) under a grant of financial assistance under the *Disability Services Act 1992*;
- (l) a service conducted by, or with financial assistance from, the housing department or the Queensland Housing Commission;
- (m) another service prescribed under a regulation not to be a residential service.

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<sup>1</sup> *Health Act 1937*, part 3 (Prevention, notification and treatment of disease or disability), division 5 (Hostels and nursing homes)

## **5 Meaning of “resident”**

A “**resident**” in a service is a person—

- (a) who, in the course of the service, occupies 1 or more rooms as the person’s only or main residence; and
- (b) who is not—
  - (i) the service provider; or
  - (ii) a relative of the service provider; or
  - (iii) a person employed in the service by the service provider.

## **6 Meaning of “service provider”**

The “**service provider**” for a service is—

- (a) for a residential service registered under this Act—the person registered as the service provider for the service; or
- (b) for a service that is not registered under this Act—
  - (i) if the service is still being conducted—the person conducting the service; or
  - (ii) if the service is no longer being conducted—the person who was the service provider immediately before the service stopped.

### *Division 3—Application and object*

## **7 Act binds all persons**

(1) This Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

## **8 Object**

(1) The object of this Act is to regulate the conduct of residential services to—



- (a) protect the health, safety and basic freedoms of residents; and
  - (b) encourage service providers to continually improve the way they conduct residential services; and
  - (c) support fair trading in the residential service industry.
- (2) The object is to be achieved mainly by—
- (a) establishing a registration system, under which a residential service is registered only if—
    - (i) the service provider and associates are suitable; and
    - (ii) the premises in which the service is conducted are safe and otherwise suitable; and
  - (b) establishing an accreditation system, under which a residential service is accredited to provide a type of service only if that service is provided in a way that meets minimum standards.

## **PART 2—REGISTRATION**

### *Division 1—Requirement to be registered*

#### **9 Requirement to be registered**

- (1) A person must not conduct a residential service in premises unless—
- (a) the service is registered under this part; and
  - (b) the person is registered as the service provider for the service; and
  - (c) the premises are the registered premises for the service.

Maximum penalty—200 penalty units.

(2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—5 penalty units.

***Division 2—Registration process*****10 Application for registration**

(1) A person proposing to conduct a residential service in premises may apply to the chief executive for registration of the service.

(2) The application must—

- (a) be in the approved form; and
- (b) identify any associates of the applicant; and
- (c) include a signed consent by the applicant and by each associate to a criminal history check; and
- (d) be accompanied by—
  - (i) a building compliance notice for the premises issued within the previous 12 months; and
  - (ii) the prescribed fire safety document for the premises; and
- (e) be accompanied by the fee prescribed under a regulation.

(3) The applicant also must provide any other relevant information reasonably required by the chief executive to decide the application.

(4) The chief executive must decide the application by registering the service or refusing to register the service.<sup>2</sup>

(5) The chief executive must register the service if the application is made under this section and the chief executive is satisfied the applicant and each associate are suitable persons.<sup>3</sup>

**11 Due day for deciding application**

(1) The chief executive must decide an application made under section 10 as soon as practicable and, in any case, by the due day.

(2) The due day for deciding the application is the sixtieth day after the application is received by the chief executive, not including—

- (a) a day the chief executive asks for more information under section 10(3); or

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<sup>2</sup> See schedule 1 (Reviewable decisions).

<sup>3</sup> See division 4 (Suitability of service provider and associates).

- (b) the day the applicant complies with the request; or
- (c) any days between the days mentioned in paragraphs (a) and (b).

(3) However, the due day may be extended by agreement between the chief executive and the applicant.

(4) If the chief executive does not decide the application by the due day, the chief executive is taken to have decided the application, on the day after the due day, by refusing to register the service.

## **12 Registration certificate**

(1) Immediately after registering a residential service, the chief executive must give the service provider a registration certificate stating the following—

- (a) the service provider's name;
- (b) the address for the service of notices on the service provider;
- (c) the address of the registered premises;
- (d) the day of registration.

(2) If the service provider notifies the chief executive of a change in information recorded in the registration certificate, the chief executive may amend the registration certificate to record the correct information.<sup>4</sup>

## **13 Registration remains in force unless cancelled**

The registration of a residential service remains in force unless it is cancelled under this Act.

## **14 More than 1 service provider**

(1) Two or more persons may be registered as the service providers for a residential service.

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<sup>4</sup> See part 4 (Changes affecting registration or accreditation) for the process for changing the service provider or registered premises.

(2) A reference in this Act to the service provider for a residential service is, for a residential service with 2 or more service providers, a reference to each of the service providers.

(3) Subsection (2) applies subject to a contrary intention in this Act.

### *Division 3—Cancellation of registration*

#### **15 Cancellation of registration by chief executive**

(1) The chief executive may cancel the registration of a residential service at any time if the chief executive is satisfied—

- (a) the service provider or an associate of the service provider is not a suitable person;<sup>5</sup> or
- (b) the registered premises do not comply with the prescribed building requirements;<sup>6</sup> or
- (c) there is no fire safety management plan for the registered premises;<sup>7</sup> or
- (d) the service is not being conducted and has not been conducted for at least 3 months.

(2) Before cancelling the registration of a residential service, the chief executive must give the service provider a notice (a “**show cause notice**”) stating—

- (a) that the chief executive proposes to cancel the registration; and
- (b) the reasons for the proposed cancellation; and
- (c) that the service provider may, within a stated time of at least 30 days, give the chief executive a written response stating why the service provider considers the registration should not be cancelled.

(3) After considering any response from the service provider within the time stated in the show cause notice, the chief executive may, by notice given to the service provider, cancel the registration.<sup>8</sup>

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5 See division 4 (Suitability of service provider and associates).

6 See division 5 (Compliance with prescribed building requirements).

7 See division 6 (Fire safety requirements).

8 See schedule 1 (Reviewable decisions).

(4) The cancellation takes effect on the day stated in the notice given under subsection (3), at least 14 days after that notice is given.

(5) If the chief executive decides not to cancel the registration, the chief executive must give the service provider notice of the decision.

(6) Also, the chief executive may cancel the registration of a residential service if the service provider gives the chief executive a notice asking for the cancellation, agreeing to the cancellation or surrendering the registration.<sup>9</sup>

(7) Subsections (1) to (5) do not apply to cancellation under subsection (6).

## **16 Service provider must return registration certificate**

Within 14 days after the registration of a residential service is cancelled, the service provider must return the registration certificate to the chief executive.

Maximum penalty—50 penalty units.

### *Division 4—Suitability of service provider and associates*

#### *Subdivision 1—Preliminary*

## **17 Application of div 4**

This division applies to the chief executive in deciding if the service provider for a residential service, or an associate of the service provider, is a suitable person.

## **18 Definitions for div 4**

In this division—

“**applicant**” means—

- (a) an applicant for registration of a residential service; and

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<sup>9</sup> See section 67 (Service provider stops conducting or providing a service).

- (b) an applicant to become the service provider for a residential service that is already registered.

**“service provider”** includes an applicant.

## **19 Who is an associate**

**(1)** A person is an associate of a service provider if the person takes part in the management of a residential service for the service provider.

*Examples of associates of a service provider—*

1. A person employed by the service provider to negotiate and enter agreements with residents on the service provider’s behalf and make house rules for the premises in which the residential service is being conducted.
2. For a service provider that is a corporation, an executive officer of the corporation who takes part in the management of a residential service for the service provider.

**(2)** A person is not an associate of a service provider merely because the person collects rental payments or carries out caretaking duties for the service provider.

**(3)** A person is an associate of a service provider who is an applicant if the person proposes, on the granting of the relevant application, to take part in the management of a residential service for the service provider.

### ***Subdivision 2—Bases for deciding suitability***

## **20 Age**

A child is not a suitable person.

## **21 Qualifications**

**(1)** An individual is not a suitable person if the individual does not have the qualifications prescribed under a regulation.

**(2)** In this section—

**“qualifications”** includes knowledge, skills and experience.

**22 Financial matters**

(1) An individual is not a suitable person if the individual is bankrupt or, as a debtor, taking advantage of a law about bankrupt or insolvent debtors.

(2) A corporation is not a suitable person if the corporation—

- (a) has executed a deed of company arrangement under the Corporations Act that has not yet terminated; or
- (b) is the subject of a winding-up (whether voluntarily or under a court order) under that Act; or
- (c) is the subject of an appointment of an administrator, liquidator, receiver or receiver and manager under that Act.

**23 Criminal history**

(1) In deciding if a person is a suitable person, the chief executive may have regard to the person's criminal history including, in particular, any convictions of the person for an offence against a residential services Act or a similar law of another jurisdiction.

(2) If an individual has been convicted within the previous 5 years of a disqualifying offence, the chief executive must decide the individual is not a suitable person unless the chief executive is satisfied it would be reasonable to decide otherwise because of the exceptional circumstances of the case.

(3) If an individual refuses a request by the chief executive for a signed consent to a criminal history check of the individual, the chief executive must decide the individual is not a suitable person.

***Subdivision 3—Obtaining information about criminal history*****24 Obtaining criminal history report**

(1) This section applies to a person only if—

- (a) the person is registered as the service provider for a residential service; or
- (b) the person is an applicant; or

- (c) the chief executive reasonably considers the person is an associate of a service provider and the person has given the chief executive a signed consent to a criminal history check.

(2) On receiving a written request from the chief executive, the commissioner of the police service must give the chief executive a criminal history report about the person.

(3) The report must be prepared from information in the commissioner's possession or to which the commissioner has access.

## **25 Use of criminal history information**

(1) This section applies to the chief executive in considering information in a criminal history report about a person obtained under section 24 or given to the chief executive by a service provider.

(2) The information must not be used for any purpose other than deciding whether the person is a suitable person for this Act.

(3) When making the decision, the chief executive must have regard to the following matters about a conviction of a person for an offence—

- (a) when the offence was committed;
- (b) the nature of the offence and its relevance to the decision;
- (c) whether the person is a service provider or an associate.

## **26 Person must be advised of information used**

(1) This section applies to a criminal history report about a person obtained under section 24.

(2) Before using information in the report to decide whether the person is a suitable person, the chief executive must—

- (a) disclose the information to the person; and
- (b) allow the person a reasonable opportunity to make representations to the chief executive about the information.

## **27 Destruction of criminal history report**

(1) This section applies if the chief executive has obtained a criminal history report about a person under section 24 and the decision has been made about whether the person is a suitable person for this Act.



(2) The chief executive must destroy the report as soon as practicable after the later of the following—

- (a) for a conviction mentioned in the report—
  - (i) the end of the period to appeal against the conviction; or
  - (ii) the deciding or the ending of any appeal against the conviction and any appeal from that appeal;
- (b) the end of the period under this Act for appealing against the decision, about the residential service, to which the decision about the person’s suitability relates;
- (c) the deciding, or other ending, of an appeal mentioned in paragraph (b) and any appeal from that appeal.

### *Division 5—Compliance with prescribed building requirements*

## **28 Prescribed building requirements**

A regulation may provide for requirements (the “**prescribed building requirements**”), for premises in which a residential service is being, or is proposed to be, conducted, for ensuring the premises are safe and suitable for use in providing accommodation in the course of the residential service.

## **29 Notice of compliance with prescribed building requirements**

(1) A person conducting, or who proposes to conduct, a residential service in premises may make written application to the local government for the local government area in which the premises are situated for a notice stating whether the premises comply with the prescribed building requirements.

(2) The application must be—

- (a) in the form approved by the local government; and
- (b) accompanied by any fee fixed under subsection (5).

(3) Within 20 business days after receiving the application, the local government must—

- (a) decide if the premises comply with the prescribed building requirements; and
- (b) give the person notice of the decision.

(4) If the local government decides the premises do not comply with the prescribed building requirements, the notice must state—

- (a) the reasons for the decision; and
- (b) that the decision may be appealed to a tribunal under the *Integrated Planning Act 1997*; and
- (c) that, if an appeal is made, the appeal must be made within 20 business days after the person receives the notice; and
- (d) what must be done by the person to make the premises comply with the prescribed building requirements.

(5) A local government may, by local law or resolution, fix a reasonable fee for an application under this section.

### **30 Appeal**

(1) This section applies to an application under section 29 if—

- (a) the local government decides the premises do not comply with the prescribed building requirements; or
- (b) the local government does not decide the application within 20 business days after receiving it (the “**decision period**”).

(2) The applicant may appeal to a tribunal under the *Integrated Planning Act 1997*.

(3) The appeal must be started within 20 business days after—

- (a) notice of the decision is given to the person; or
- (b) if the application is not decided, the last day of the decision period.

### **31 Decision on appeal**

(1) This section applies if a tribunal decides an appeal by—

- (a) changing the decision appealed against; or
- (b) setting aside the decision appealed against and making a decision replacing the decision set aside; or
- (c) if section 30(1)(b) applies, deciding the application.

(2) The tribunal’s decision is taken, for this Act other than this division, to be the local government’s decision.

### **32 Late decision**

A decision on an application under section 29 is not invalid merely because it is made, or notice of it is given, more than 20 business days after the local government receives the application.

### ***Division 6—Fire safety requirements***

### **33 Prescribed fire safety document**

(1) This section states the prescribed fire safety document required for any of the following applications relating to a residential service conducted, or proposed to be conducted, in premises—

- (a) registration of the service;
- (b) renewal of level 1 accreditation of the service;
- (c) amendment of the registration of the service to show new premises as the registered premises for the service.<sup>10</sup>

(2) If—

- (a) the premises are a budget accommodation building; and
- (b) a development application for the building has been made; and
- (c) a fire safety management plan was a mandatory requirement for the application;<sup>11</sup> and
- (d) a decision notice for the application, stating that the application is approved (whether or not subject to conditions), was issued within the previous 12 months;

the prescribed fire safety document for the premises is a copy of the decision notice.

(3) If subsection (2) does not apply to the premises, the prescribed fire safety document for the premises is a fire safety management plan.

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10 Also, for a residential service that was being conducted immediately before the commencement of part 13 (Transitional), see section 198(b) (Compliance with building and fire safety requirements).

11 See *Building Act 1975*, section 12Q (Development approval for building work for budget accommodation buildings).

## **PART 3—ACCREDITATION**

### *Division 1—Preliminary*

#### **34 Explanation**

- (1) This part provides for the accreditation of residential services.
- (2) There are 3 levels of accreditation.
- (3) A residential service may be accredited at more than 1 level.
- (4) The level or levels of accreditation required depend on the services provided in the course of the residential service.
- (5) Under this part—
  - (a) all residential services are required to be accredited at level 1; and
  - (b) a residential service is also required to be accredited at level 2 if it includes the provision of a food service; and
  - (c) a residential service is also required to be accredited at level 3 if it includes the provision of a personal care service.

### *Division 2—Requirement for accreditation*

#### **35 Requirement to be accredited at level 1**

- (1) The due day for applying for the level 1 accreditation of a residential service (the “**due day**”) is—
  - (a) the day that is 6 months after the service is registered; or
  - (b) if an extension is granted under section 46,<sup>12</sup> the due day stated in the notice given under that section.
- (2) The registration of a residential service is automatically cancelled on the day following the due day unless, on the due day—
  - (a) the service is accredited at level 1; or

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12 Section 46 (Extension of due day for applying for accreditation)

(b) there is a current application for the level 1 accreditation of the service.

(3) After the due day, the registration of a residential service is automatically cancelled if—

(a) the level 1 accreditation of the service ends; or

(b) an application for level 1 accreditation is withdrawn or lapses.

(4) If the registration of a residential service is cancelled under subsection (2) or (3), the chief executive must give notice of the cancellation to the service provider.

(5) If, after the due day, an application for the level 1 accreditation of a residential service is refused, the registration of the service is cancelled on the day stated in the notice given under section 47(6).

### **36 Requirement to be accredited at level 2**

(1) The due day for applying for the level 2 accreditation of a residential service (the “**due day**”) is—

(a) the day that is 6 months after the service provider starts providing a food service in the course of the residential service; or

(b) if an extension is granted under section 46,<sup>13</sup> the due day stated in the notice given under that section.

(2) For subsection (1)(a), a food service is taken to continue during any break in the service of less than 30 days.

*Example—*

A service provider starts providing a food service on 1 January, stops providing the food service on 15 January and resumes providing the food service on 1 February. The food service is taken to have continued since 1 January, so the due day is 1 July.

(3) After the due day, a service provider must not provide a food service in the course of conducting a residential service unless the residential service is accredited at level 2.

Maximum penalty—200 penalty units.

(4) However, if an application for the level 2 accreditation of a residential service is current on the due day, subsection (3) does not apply to the service until—

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13 Section 46 (Extension of due day for applying for accreditation)

*Residential Services (Accreditation) Act 2002*

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- (a) if the application is withdrawn or lapses—the day of the withdrawal or lapse; or
- (b) if the chief executive decides the application by accrediting the service—the day the service is accredited; or
- (c) if the chief executive decides the application by refusing to accredit the service—the day stated in the notice given under section 47(6).

(5) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (3)—5 penalty units.

**37 Further application for level 2 accreditation**

(1) This section applies if—

- (a) a service provider starts providing a food service in the course of conducting a residential service; and
- (b) the service provider applies for the level 2 accreditation of the residential service; and
- (c) the application—
  - (i) is refused; or
  - (ii) is withdrawn or lapses after the due day under section 36; and
- (d) the service provider stops providing the food service.

(2) The service provider may start again providing a food service, in the course of conducting the residential service, for the purpose of a further application for the level 2 accreditation of the residential service.

(3) However, the service provider must not start again providing a food service in the course of conducting the residential service until at least 6 months after the day the service provider stopped providing the food service mentioned in subsection (1).

Maximum penalty—200 penalty units.

(4) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (3)—5 penalty units.

### **38 Requirement to be accredited at level 3**

(1) The due day for applying for the level 3 accreditation of a residential service (the “**due day**”) is—

- (a) the day that is 6 months after the service provider starts providing a personal care service in the course of the residential service; or
- (b) if an extension is granted under section 46,<sup>14</sup> the due day stated in the notice given under that section.

(2) For subsection (1)(a), a personal care service is taken to continue during any break in the service of less than 30 days.

*Example—*

A service provider starts providing a personal care service on 1 January, stops providing the personal care service on 15 January and resumes providing the personal care service on 1 February. The personal care service is taken to have continued since 1 January, so the due day is 1 July.

(3) After the due day, a service provider must not provide a personal care service in the course of conducting a residential service unless the residential service is accredited at level 3.

Maximum penalty—200 penalty units.

(4) However, if an application for the level 3 accreditation of a residential service is current on the due day, subsection (3) does not apply to the service until—

- (a) if the application is withdrawn or lapses—the day of the withdrawal or lapse; or
- (b) if the chief executive decides the application by accrediting the service—the day the service is accredited; or
- (c) if the chief executive decides the application by refusing to accredit the service—the day stated in the notice given under section 47(6).

(5) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

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14 Section 46 (Extension of due day for applying for accreditation)

Maximum penalty for each day the offence continues after a conviction against subsection (3)—5 penalty units.

### **39 Further application for level 3 accreditation**

(1) This section applies if—

- (a) a service provider starts providing a personal care service in the course of conducting a residential service; and
- (b) the service provider applies for the level 3 accreditation of the residential service; and
- (c) the application—
  - (i) is refused; or
  - (ii) is withdrawn or lapses after the due day under section 38; and
- (d) the service provider stops providing the personal care service.

(2) The service provider may start again providing a personal care service, in the course of conducting the residential service, for the purpose of a further application for the level 3 accreditation of the residential service.

(3) However, the service provider must not start again providing a personal care service in the course of conducting the residential service until at least 6 months after the day the service provider stopped providing the personal care service mentioned in subsection (1).

Maximum penalty—200 penalty units.

(4) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (3)—5 penalty units.

### **40 Contravening a condition of accreditation**

The service provider for an accredited service must not contravene a condition of the accreditation.

Maximum penalty—100 penalty units.



***Division 3—Accreditation decisions*****41 Meaning of “accreditation decision”**

The chief executive is making an “**accreditation decision**”, at a stated level, about a residential service if the chief executive is deciding—

- (a) whether to accredit the service at that level and, if so, for what period; or
- (b) the conditions that are to apply to the accreditation of the service at that level; or
- (c) whether to renew, cancel or amend the accreditation of the service at that level.

**42 Level 1 accreditation criteria**

When making a level 1 accreditation decision for a residential service, the chief executive must have regard to the following matters—

- (a) the extent to which the service provider recognises and observes the rights of each resident;
- (b) the standard of the registered premises and facilities in the registered premises;
- (c) the way the service is managed and otherwise conducted by staff of the service;
- (d) a matter, relevant to a consideration of a matter mentioned in paragraphs (a) to (c), provided for under a regulation.

**43 Level 2 accreditation criteria**

When making a level 2 accreditation decision for a residential service, the chief executive must have regard to the following matters concerning the food service provided in the course of the residential service—

- (a) the quantity, quality, variety and nutritional value of the food provided;
- (b) the preparation, delivery, service and storage of the food;
- (c) a matter, relevant to a consideration of a matter mentioned in paragraph (a) or (b), provided for under a regulation.

#### **44 Level 3 accreditation criteria**

When making a level 3 accreditation decision for a residential service, the chief executive must have regard to the following matters concerning the personal care service provided in the course of the residential service—

- (a) the extent to which the service provider provides the personal care service in a way that meets the individual needs of the residents to whom the service is provided, protects their interests and maintains and enhances their quality of life generally;
- (b) the suitability of the staff members providing the personal care service;
- (c) a matter, relevant to a consideration of a matter mentioned in paragraph (a) or (b), provided for under a regulation.

### *Division 4—Accreditation process*

#### **45 Self-assessment**

Before applying for accreditation of a residential service at a particular level, the service provider must—

- (a) obtain, from the chief executive, the self-assessment material relevant to accreditation at that level; and
- (b) start providing the accommodation, food service or personal care service to which the accreditation relates (the “**accreditation service**”); and<sup>15</sup>
- (c) using the self-assessment material, assess the way the accreditation service is being provided against the accreditation criteria for that level.

#### **46 Extension of due day for applying for accreditation**

(1) Division 2 states the due day for an application for accreditation according to the level of accreditation sought.

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<sup>15</sup> Under this part, the service provider may provide the accreditation service, without having applied for accreditation, until the due day for making the application.

(2) At a service provider's request made before the due day, the chief executive may give the service provider a notice extending, or further extending, the due day.

(3) In deciding whether to extend the due day for an application for accreditation, the chief executive must have regard to—

- (a) the extent of the service provider's preparations for making the application; and
- (b) the extent to which the service provider has improved the service to which the accreditation relates; and
- (c) any other relevant matter.

#### **47 Applying for accreditation**

(1) After complying with section 45, a service provider may apply to the chief executive for accreditation of the residential service.

(2) The application must—

- (a) be in the approved form; and
- (b) state the level or levels at which accreditation is sought; and
- (c) be signed by the service provider; and
- (d) be accompanied by the fee prescribed under a regulation.

(3) The service provider also must provide any other relevant information reasonably required by the chief executive to decide the application.

(4) The chief executive must decide the application, in relation to each level at which accreditation is sought, by accrediting the service at that level for a stated period or refusing to accredit the service at that level.<sup>16</sup>

(5) The chief executive may grant accreditation on conditions the chief executive considers appropriate, including, for example, a condition requiring—

- (a) that the service provider prepare, and give to the chief executive within a stated time of not less than 30 days, a quality improvement plan dealing with stated aspects of the residential service; or

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<sup>16</sup> See schedule 1 (Reviewable decisions).

- (b) that the service provider complete a stated training program within a stated time; or
- (c) that the service provider ensure that a stated associate of the service provider completes a stated training program within a stated time; or
- (d) that the service provider take, or refrain from taking, stated actions in the provision of the services to which the accreditation relates; or
- (e) that the service provider ensure that a stated associate of the service provider takes, or refrains from taking, stated actions in the provision of the services to which the accreditation relates.<sup>17</sup>

(6) If the chief executive decides the application by refusing to accredit the residential service, the chief executive must give the service provider a notice of the decision stating the day, not earlier than 7 days after the notice is given, by which the service provider must—

- (a) for an application for accreditation at level 1—stop conducting the residential service; or
- (b) for an application for accreditation at level 2—stop providing the food service; or
- (c) for an application for accreditation at level 3—stop providing the personal care service.

(7) In this section—

**“quality improvement plan”**, for a residential service, means a plan, containing steps to be taken over the period for which the service is currently accredited, for improving particular aspects of the service.

## **48 Accreditation certificate**

(1) If the chief executive accredits a residential service at level 1, the chief executive must give the service provider an accreditation certificate stating the following—

- (a) the service provider’s name;
- (b) the address of the registered premises;

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<sup>17</sup> See schedule 1 (Reviewable decisions).

- (c) that the service is accredited at level 1 and, if the service is also accredited at level 2 or 3, that the service is accredited at that level;
- (d) for each level at which the service is accredited—
  - (i) any conditions on which the accreditation is given; and
  - (ii) the day of accreditation; and
  - (iii) the day on which the accreditation is due to expire.

(2) If, after a residential service is accredited at level 1, the chief executive accredits the service at level 2 or 3, the chief executive must amend the accreditation certificate so that it states the matters mentioned in subsection (1)(c) and (d) for the new level of accreditation.

(3) If the level 2 or 3 accreditation of a residential service is cancelled, the chief executive must amend the accreditation certificate so that it no longer states that the service is accredited at that level.

(4) The chief executive may replace an accreditation certificate rather than amending it under subsection (2) or (3).

## **49 Period of accreditation**

(1) The accreditation of a residential service has effect for the period, not longer than 3 years, stated in the accreditation certificate.

(2) When deciding the period for which to accredit a residential service at level 2 or 3, the chief executive may have regard to the due day for expiry of another level at which the service is accredited.

*Example—*

A residential service is accredited at level 1. If the chief executive subsequently accredits the service at level 2, the chief executive may consider it most appropriate that the level 2 accreditation be given for a period ending on the same day as the level 1 accreditation is due to expire.

(3) Subsection (2) does not limit division 3.<sup>18</sup>

## **50 Renewal of accreditation**

(1) The service provider for an accredited service may apply to the chief executive for renewal of the accreditation.

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18 Division 3 (Accreditation decisions)

(2) The application must be made before the day the accreditation is due to expire (the “**expiry day**”) but may not be made more than 3 months before the expiry day.

(3) The application must be—

- (a) in the approved form; and
- (b) signed by the service provider; and
- (c) for an application for renewal of level 1 accreditation, accompanied by—
  - (i) a building compliance notice for the registered premises issued within the previous 12 months; and
  - (ii) the prescribed fire safety document for the registered premises; and
- (d) accompanied by the fee prescribed under a regulation.

(4) The service provider also must provide any other relevant information reasonably required by the chief executive to decide the application.

(5) The chief executive must decide the application by renewing the accreditation or refusing to renew the accreditation.<sup>19</sup>

(6) The accreditation may be renewed for a period ending not later than 3 years after the expiry day.

(7) If the application is still current on the expiry day, the accreditation does not end before the application is decided, or is withdrawn or lapses.

(8) If the chief executive decides the application by refusing to renew the accreditation—

- (a) the chief executive must give the service provider a notice of the decision stating the day, not before the expiry day and not earlier than 7 days after the notice is given, on which the accreditation ends; and
- (b) the accreditation continues in force until the stated day.

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<sup>19</sup> See schedule 1 (Reviewable decisions).

## **51 Extension of due day for applying for renewal**

(1) The service provider for an accredited service may ask the chief executive to extend the period of accreditation to enable the service provider to apply under section 50 for renewal of the accreditation.

(2) The request may be made, and the chief executive may grant the extension, only on or before the day the accreditation is due to expire.

(3) The chief executive may give the service provider a notice extending, or further extending, the period of accreditation if the chief executive considers it would be reasonable in all the circumstances.<sup>20</sup>

*Example—*

The service provider for an accredited service has prepared the material for an application for renewal of the accreditation, other than a building compliance notice. The service provider has applied for a notice under section 29 but the local government has decided the registered premises do not comply with the prescribed building requirements. The chief executive may extend the period of accreditation for the period necessary for an appeal under section 30 to be made and decided.

(4) The accreditation of a residential service continues to have effect during the period of any extension granted under this section.

## **52 Lapsing of application**

(1) This section applies if an application for accreditation, or renewal of accreditation, is made under this part.

(2) The chief executive may make a requirement under section 47(3) or 50(4), for information to decide the application, by giving the service provider a notice stating—

- (a) the required information; and
- (b) the time by which the information must be given to the chief executive; and
- (c) that, if the information is not given to the chief executive by the stated time, the application will lapse.

(3) The time stated must be reasonable and, in any case, at least 14 days after the requirement is made.

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<sup>20</sup> See schedule 1 (Reviewable decisions).

(4) The chief executive may give the service provider a further notice extending the stated time if the chief executive is satisfied it would be reasonable in all the circumstances to give the extension.

(5) If the service provider does not comply with the requirement within the stated time, or any extension, the application lapses.

### *Division 5—Dealings with accreditation*

#### **53 Amendment of accreditation on application of service provider**

(1) The service provider for a residential service that is accredited at a particular level may apply to the chief executive for an amendment of the accreditation at that level.

(2) The application must be in the approved form and accompanied by any fee prescribed under a regulation.

(3) The chief executive must decide the application by—

- (a) amending the accreditation in the way applied for; or
- (b) with the applicant's written agreement, amending the accreditation in another way; or
- (c) refusing to amend the accreditation.<sup>21</sup>

#### **54 Amendment of accreditation by chief executive**

(1) The chief executive may amend the accreditation of a residential service at any time, without receiving an application from the service provider for the amendment, if the chief executive is satisfied—

- (a) the accreditation was obtained because of incorrect or misleading information and, based on the correct information, the chief executive would grant the accreditation in the amended form; or
- (b) the service provider has contravened a residential services Act, or an undertaking given by the service provider under part 9, division 2, in a way, or to an extent, that justifies the amendment; or

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<sup>21</sup> See schedule 1 (Reviewable decisions).



- (c) the amendment is appropriate having regard to a change involving the service provider, an associate of the service provider or the registered premises; or
- (d) for another reason, having regard to the accreditation criteria, the accreditation should be amended.

(2) The chief executive must first give the service provider a notice (“**show cause notice**”) stating—

- (a) that the chief executive proposes to amend the accreditation; and
- (b) the proposed amendment; and
- (c) the reasons for the proposed amendment; and
- (d) that the service provider may, within a stated time of at least 28 days, give the chief executive a written response to the proposed amendment.

(3) After considering any response from the service provider within the time stated in the show cause notice, the chief executive may make some or all of the proposed amendment.<sup>22</sup>

(4) If the chief executive decides not to amend the accreditation, the chief executive must give the service provider a notice of the decision.

(5) At the service provider’s written request, or with the service provider’s written agreement, the chief executive may—

- (a) amend an accreditation without giving a show cause notice; or
- (b) amend an accreditation in a way that has not been stated in a show cause notice; or
- (c) amend an accreditation before the expiration of the time stated in a show cause notice for the service provider’s response to the proposed amendment.

## **55 Urgent amendment of accreditation by chief executive**

(1) This section applies if the chief executive is reasonably satisfied, in the interests of the wellbeing and safety of residents in an accredited service, it is necessary to immediately amend the accreditation.

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22 See schedule 1 (Reviewable decisions).

(2) The chief executive may, by notice given to the service provider, immediately amend the accreditation without complying with section 54.<sup>23</sup>

(3) The notice must state the reasons for the amendment.

(4) The amendment has effect for the period, not more than 90 days, stated in the notice.

## **56 When amendment of accreditation has effect**

An amendment of the accreditation of a residential service has effect when the chief executive gives notice of the amendment to the service provider or at any later time stated in the notice.

## **57 Cancellation of accreditation**

(1) The chief executive may cancel the accreditation of a residential service at any time if the chief executive is satisfied—

- (a) the accreditation was obtained because of incorrect or misleading information and, based on the correct information, the chief executive would not grant the accreditation; or
- (b) the service provider has contravened a residential services Act, or an undertaking given by the service provider under part 9, division 2, in a way, or to an extent, that justifies the cancellation; or
- (c) the cancellation is appropriate having regard to a change involving the service provider, an associate of the service provider or the registered premises; or
- (d) for level 2 or 3 accreditation—the service provider has stopped providing the service to which the accreditation relates and it is at least 1 month since the day of cessation; or
- (e) for another reason, having regard to the accreditation criteria, the accreditation should be cancelled.

(2) The chief executive must first give the service provider a notice (a “**show cause notice**”) stating—

- (a) that the chief executive proposes to cancel the accreditation; and

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23 See schedule 1 (Reviewable decisions).

- (b) the reasons for the proposed cancellation; and
- (c) that the service provider may, within a stated time of at least 28 days, give the chief executive a written response stating why the service provider considers the accreditation should not be cancelled.

(3) After considering any response from the service provider within the time stated in the show cause notice, the chief executive may, by notice given to the service provider, cancel the accreditation.<sup>24</sup>

(4) The cancellation takes effect on the day stated in the notice given under subsection (3).

(5) The stated day of cancellation must be at least 14 days after the notice is given.

(6) If the chief executive decides not to cancel the accreditation, the chief executive must give the service provider notice of the decision.

(7) At the service provider's written request, or with the service provider's written agreement, the chief executive may cancel the accreditation of a residential service without complying with subsections (1) to (5).

### *Division 6—Dealing with accreditation certificate*

#### **58 Service provider must return accreditation certificate**

(1) If the accreditation of a residential service is amended, the service provider must, on receiving a written request from the chief executive, return the accreditation certificate to the chief executive for notation of the amendment.

Maximum penalty—5 penalty units.

(2) Within 14 days after the accreditation of a residential service is cancelled, the service provider must return the accreditation certificate to the chief executive.

Maximum penalty—20 penalty units.

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<sup>24</sup> See schedule 1 (Reviewable decisions).

**59 Amendment of accreditation certificate to update details**

If the service provider for an accredited service notifies the chief executive of a change in any of the information stated on the accreditation certificate, the chief executive may amend the accreditation certificate to correct the information.

**60 Replacement accreditation certificate**

(1) The service provider for an accredited service may apply to the chief executive for a replacement accreditation certificate.

(2) The application must be in the approved form and accompanied by any fee prescribed under a regulation.

(3) The chief executive must grant the application if the chief executive is satisfied the accreditation certificate has been lost, stolen or destroyed, or damaged in a way or to an extent to require its replacement.<sup>25</sup>

**PART 4—CHANGES AFFECTING REGISTRATION OR ACCREDITATION***Division 1—Change of service provider***61 Becoming a service provider**

(1) A person may apply to the chief executive to be registered as the service provider for a registered service.

(2) The application must—

- (a) be in the approved form; and
- (b) state whether the applicant proposes to become the service provider as well as, or instead of, the current service provider; and
- (c) identify any associates of the applicant; and

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<sup>25</sup> See schedule 1 (Reviewable decisions).

- (d) include a signed consent by the applicant and by each associate to a criminal history check; and
- (e) be signed by the applicant and by the current service provider; and
- (f) be accompanied by the fee prescribed under a regulation.

(3) The applicant also must provide any other relevant information reasonably required by the chief executive to decide the application.

(4) The chief executive must decide the application by registering, or refusing to register, the applicant as the service provider for the registered service.<sup>26</sup>

(5) The chief executive must register the applicant as the service provider if the chief executive is satisfied the applicant and each associate are suitable persons.<sup>27</sup>

(6) If the chief executive decides the application by registering the applicant as the service provider, the chief executive must give the applicant a notice of the decision, stating the day on which the registration has effect.

(7) If the applicant and the current service provider have requested that the registration take effect on a stated day not later than 3 months after the application is made, and the application has been decided by that day, the notice under subsection (6) must state that day as the day on which the registration has effect.

## **62 Due day for deciding application**

(1) The chief executive must decide an application made under section 61 as soon as practicable and, in any case, by the due day.

(2) The due day for deciding the application is the thirtieth day after the application is made, not including—

- (a) a day the chief executive asks for more information under section 61(3); or
- (b) the day the applicant complies with the request; or
- (c) any days between the days mentioned in paragraphs (a) and (b).

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<sup>26</sup> See schedule 1 (Reviewable decisions).

<sup>27</sup> See part 2 (Registration), division 4 (Suitability of service provider and associates).

(3) However, the due day may be extended by agreement between the chief executive and the applicant.

(4) If the chief executive does not decide the application by the due day, the chief executive is taken to have decided the application, on the day after the due day, by refusing to register the applicant as the service provider for the registered service.

### **63 Person stops being service provider**

While a residential service remains registered, a person may stop being the service provider for the service—

- (a) by way of an application under section 61 by someone else to become the service provider instead of the person; or
- (b) if the person is not the only service provider for the service and there will continue to be a service provider for the service after the person stops being a service provider for the service—by giving notice to the chief executive stating a day, not earlier than 7 days after the notice is given, on which the cessation is to have effect.

### *Division 2—Change of registered premises*

### **64 Change of registered premises**

(1) If the service provider for a registered service proposes to conduct the service in premises other than the registered premises, the service provider may apply to the chief executive for an amendment of registration.

(2) The application must—

- (a) be in the approved form; and
- (b) state whether the service is proposed to be conducted in the new premises as well as, or instead of, the current registered premises; and
- (c) be signed by the service provider; and
- (d) be accompanied by—
  - (i) a building compliance notice for the new premises issued within the previous 12 months; and

(ii) the prescribed fire safety document for the new premises;  
and

(e) be accompanied by the fee prescribed under a regulation.

(3) The service provider also must provide any other relevant information reasonably required by the chief executive to decide the application.

(4) The chief executive must decide the application by amending, or refusing to amend, the registration to show the new premises as the registered premises.<sup>28</sup>

(5) If the application is made under this section, the chief executive must amend the registration to show the new premises as the registered premises.

(6) If the chief executive decides the application by amending the registration to show the new premises as the registered premises, the chief executive must give the service provider a notice of the decision, stating the day on which the registration has effect.

(7) If the service provider has requested that the registration take effect on a stated day not later than 3 months after the application is made, and the application has been decided by that day, the notice under subsection (6) must state that day as the day on which the registration has effect.

## **65 Due day for deciding application**

(1) The chief executive must decide an application made under section 64 as soon as practicable and, in any case, by the due day.

(2) The due day for deciding the application is the thirtieth day after the application is made, not including—

- (a) a day the chief executive asks for more information under section 64(3); or
- (b) the day the applicant complies with the request; or
- (c) any days between the days mentioned in paragraphs (a) and (b).

(3) However, the due day may be extended by agreement between the chief executive and the applicant.

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<sup>28</sup> See schedule 1 (Reviewable decisions).

(4) If the chief executive does not decide the application by the due day, the chief executive is taken to have decided the application, on the day after the due day, by refusing to amend the registration to show the new premises as the registered premises.

## **66 Premises stop being registered premises**

While a residential service remains registered, premises may stop being the registered premises for the service—

- (a) by way of an application under section 64 for new premises to become the registered premises instead of the premises; or
- (b) if the premises are not the only registered premises for the service or only form part of the registered premises for the service—by notice, given by the service provider to the chief executive, stating a day, not earlier than 7 days after the notice is given, on which the cessation is to have effect.

### *Division 3—Other changes*

## **67 Service provider stops conducting or providing a service**

(1) The service provider for a registered service must comply with this section, unless the service provider has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) At least 30 days before the service provider stops conducting the residential service, the service provider must give the chief executive a notice, in the approved form, surrendering the registration of the service.

(3) If the residential service is accredited at level 2, the service provider must give the chief executive a notice, in the approved form, at least 30 days before the service provider stops providing a food service in the course of the residential service.

(4) If the residential service is accredited at level 3, the service provider must give the chief executive a notice, in the approved form, at least 30 days before the service provider stops providing a personal care service in the course of the residential service.



**68 Change of associate**

(1) Within 30 days after a person becomes an associate of the service provider for a registered service, the service provider must give the chief executive a notice in the approved form about the person, unless the service provider has a reasonable excuse.

Maximum penalty—

- (a) if the service provider knows, or ought reasonably to know, the new associate has a conviction for a disqualifying offence—100 penalty units; or
- (b) otherwise—20 penalty units.

(2) Within 30 days after a person stops being an associate of the service provider for a registered service, the service provider must give the chief executive a notice, in the approved form, about the person, unless the service provider has a reasonable excuse.

Maximum penalty—10 penalty units.

**69 Notice of other changes**

(1) The service provider for a registered service must give the chief executive a notice, in the approved form, within 30 days after becoming aware that any of the following has happened, unless the service provider has a reasonable excuse—

- (a) there is a change in the criminal history of the service provider or an associate of the service provider;
- (b) the registered premises are, or a part of the registered premises is—
  - (i) destroyed; or
  - (ii) damaged, renovated or otherwise changed, in a significant way;
- (c) there is a change in another matter previously notified to the chief executive that the service provider knows, or ought reasonably to know, is relevant to the continued registration or accreditation of the residential service;
- (d) a matter provided for under a regulation.

Maximum penalty—

- (a) for subsection (1)(a), if the change is a conviction for a disqualifying offence—100 penalty units; or
- (b) otherwise—20 penalty units.

(2) Subsection (1)(a) does not apply to a change merely because a conviction has stopped being part of the criminal history.

(3) It is a reasonable excuse for an individual to fail to comply with a requirement under subsection (1)(c) or (d) that complying with the requirement might tend to incriminate the individual.

### *Division 4—Death of service provider*

#### **70 Death of sole service provider**

(1) This section applies if an individual is the only service provider for a registered service and the individual dies.

(2) The personal representative of the individual’s estate is taken to be registered as the service provider for 6 months from the date of death (the “**transitional registration period**”).

(3) Subsection (2) applies subject to—

- (a) any earlier change of the person registered as the service provider, or cancellation of the registration, under this Act; and
- (b) any extension, or earlier ending, of the transitional registration period under this section.

(4) The personal representative may apply in writing to the chief executive for an extension of the transitional registration period.

(5) On receiving the application, the chief executive may extend the transitional registration period by the further period, of not more than 6 months, that the chief executive considers appropriate in all the circumstances.<sup>29</sup>

*Example—*

The chief executive may extend the transitional registration period for the period necessary for an application under section 61<sup>30</sup> to be made and decided.

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<sup>29</sup> See schedule 1 (Reviewable decisions).

<sup>30</sup> Section 61 (Becoming a service provider)

(6) Without limiting section 61, a person who is taken to be registered as the service provider for a residential service under this section in the person's capacity as personal representative may apply under section 61 to be registered, in his or her personal capacity, as the service provider for the service.

## **71 Dealings with registration or accreditation in first 30 days of the transitional registration period**

(1) This section applies during the first 30 days of the transitional registration period of a residential service.

(2) The personal representative may, by giving a notice to the chief executive, surrender the registration or accreditation of the residential service without complying with section 67.<sup>31</sup>

(3) If the chief executive is satisfied it is necessary to do so to ensure the health and safety of the residents, the chief executive may amend the accreditation of the residential service, by giving a notice to the personal representative, without first giving a show cause notice under section 54.

(4) The notice must state the reasons for the amendment.

(5) The amendment has effect for the period, not more than 90 days, stated in the notice.

## **72 Death of service provider if more than 1 service provider**

(1) This section applies if there is more than 1 service provider for a registered service.

(2) If 1 of the service providers is an individual who dies, each of the surviving service providers continues as service provider.

(3) If 2 or more of the service providers are individuals and they die at the same time—

- (a) if there are any surviving service providers, each of them continues as service provider; or
- (b) if there are no surviving service providers, sections 70 and 71 apply, with all necessary changes, to the personal representatives of the estates of the service providers who have died.

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31 Section 67 (Service provider stops conducting or providing a service)

***Division 5—Notation of changes*****73 Return of certificates for notation of change**

If a change mentioned in this part happens to a registered service, the service provider must, on receiving a written request from the chief executive, return the registration certificate or accreditation certificate to the chief executive for notation of the change, unless the service provider has a reasonable excuse.

Maximum penalty—5 penalty units.

**PART 5—OTHER MATTERS ABOUT CONDUCT OF RESIDENTIAL SERVICE*****Division 1—Fire safety management plan*****74 Non-application to budget accommodation building**

This division does not apply to premises that are a budget accommodation building.

**75 Requirement for plan**

A person must not start conducting a residential service in premises unless there is a plan for the premises complying with the requirements prescribed under a regulation (a “**fire safety management plan**”).

Maximum penalty—100 penalty units.

**76 Maintenance, implementation and accessibility of plan**

(1) This section applies to the service provider for a residential service in relation to the fire safety management plan for the premises in which the service is conducted.

(2) The service provider must ensure the plan is updated as soon as practicable, but not later than 1 month, after a change in circumstances

affecting the plan's compliance with the requirements prescribed under section 75.

Maximum penalty—100 penalty units.

(3) A change in circumstances mentioned in subsection (2) includes, for example, a change in the requirements prescribed under section 75.

(4) The service provider must ensure the current fire safety management plan is implemented.

Maximum penalty—100 penalty units.

(5) The service provider must ensure a copy of the current fire safety management plan is kept in the premises and is available for inspection, free of charge, by the residents.

Maximum penalty—20 penalty units.

### *Division 2—Records*

#### **77 Service provider for registered service must keep records**

The service provider for a registered service must make, and keep for at least the time prescribed under a regulation, the records prescribed under a regulation.

Maximum penalty—10 penalty units.

#### **78 Access to records about a resident**

(1) This section applies to a record about a resident in a residential service kept by the service provider including, for a registered service, a record about a resident kept under section 77.

(2) If asked by the resident, the service provider must, within the time stated in subsection (3), give the resident or another person access to the record to enable the resident or other person to inspect the record or take a copy.

Maximum penalty—10 penalty units.

(3) The time for giving the access is—

- (a) for a record needed by the resident or other person in an emergency—immediately; or

- (b) otherwise—
  - (i) for a record containing medical information about the resident—within 24 hours after the request is made; or
  - (ii) for another record—within a reasonable time after the request is made.

## **79 Confidentiality of records about a resident**

(1) The service provider for a residential service must ensure that the service's records, so far as they contain personal information about a resident, are kept in a way that ensures no-one has access to them other than an authorised person for the service or the resident.

Maximum penalty—20 penalty units.

(2) A person who, as an authorised person for a residential service, obtains personal information about a resident from the service's records must not disclose the information to anyone other than another authorised person for the service or the resident.

Maximum penalty—20 penalty units.

(3) Subsections (1) and (2) do not apply to the giving of access to a record, or the disclosure of information, about a resident—

- (a) for a purpose of this Act; or
- (b) with the resident's consent; or
- (c) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- (d) as expressly permitted or required by another Act.

(4) In this section—

**“authorised person”**, for a residential service, means the service provider or a person employed in the service by the service provider.

**“personal information”**, about a resident, means—

- (a) information about the resident's health; or
- (b) information about the resident's financial affairs; or
- (c) other information, relating to the resident, provided for under a regulation.

“**records**”, of a residential service, means the records kept by the service provider that relate to the conduct of the service including, for a registered service, the records kept under section 77.<sup>32</sup>

### **80 Services that are no longer registered and persons who are no longer residents**

(1) A reference in this division to a residential service includes a service that is no longer being conducted.

(2) A reference in this division to a registered service includes a service that is no longer registered.

(3) A reference in this division to a resident in a residential service includes a person who is no longer a resident in the service.

(4) However—

- (a) subsection (2) does not apply to section 77 so far as that section requires a service provider to make a record for a registered service; and
- (b) subsection (3) does not apply to section 77 so far as that section requires a service provider to make a record about a resident.

### *Division 3—Other matters*

### **81 Payment for movement of residents between premises**

The service provider for a residential service must not pay an amount to, or receive an amount from, the service provider for another residential service for helping or allowing a resident to change accommodation between the premises in which the services are conducted.

Maximum penalty—100 penalty units.

### **82 Power of attorney**

The service provider for a residential service must not exercise, or purport to exercise, a power conferred on, or exercisable by, the service

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32 Section 77 (Service provider for registered service must keep records)

provider under a power of attorney given by a resident in the service in favour of the service provider.

Maximum penalty—100 penalty units.

### **83 Display of certificates**

The service provider for a registered service must display, at a place at the registered premises where they are likely to be seen by residents, the registration certificate and any accreditation certificate that is in force for the service.

Maximum penalty—5 penalty units.

## **PART 6—APPOINTMENT OF ADMINISTRATOR**

### *Division 1—Appointment*

#### **84 Appointment**

The Queensland Building Tribunal may, by order, appoint a person as administrator to a registered service under this part.

#### **85 Application to tribunal and basis for appointment**

(1) The chief executive may apply to the Queensland Building Tribunal for an order appointing a stated person as administrator to a registered service.

(2) On the filing of the application, the tribunal must fix a time for hearing the application as soon as possible.

(3) The tribunal may make the order if it is satisfied—

- (a) the appointment is reasonably necessary to protect the health or safety of the residents in the service; and
- (b) the proposed appointee is suitable and eligible for appointment under section 86.



(4) In deciding whether the appointment is reasonably necessary, the tribunal must have regard to the following matters—

- (a) the services usually provided to the residents in the course of the registered service;
- (b) whether it appears the service provider is unwilling or unable to provide the services, or provide the services properly, because, for example, the service provider can not be located, is unwell or is in financial difficulties;
- (c) the likely consequences for the residents if the services are not provided or are not provided properly, having regard, in particular, to the capacity of the residents to safeguard their own interests;
- (d) the likely consequences of the appointment, of which the tribunal is aware, for the service provider and anyone else likely to be affected.

(5) Before making the application, the chief executive—

- (a) must consider whether it would be more appropriate to take steps other than applying for the appointment, or not to take any steps; and
- (b) may consult with the service provider, the residents, the disability services department or another entity.

## **86 Suitability and eligibility of proposed appointee**

(1) In deciding whether a person is suitable for appointment as administrator to a registered service, the Queensland Building Tribunal must have regard to the following matters—

- (a) the nature of the registered service;
- (b) the reason for the appointment;
- (c) the services the person is to provide as administrator;
- (d) whether the person has a criminal history that would make the person unsuitable for appointment;
- (e) the person's expertise or experience relevant to the appointment;
- (f) any conflict of interest that may arise in the course of the person acting as administrator;

(g) any other relevant matter.

(2) The following persons are ineligible for appointment—

- (a) a corporation;
- (b) a child;
- (c) an officer or employee of the department;
- (d) a person who is bankrupt or, as a debtor, taking advantage of a law about bankrupt or insolvent debtors;
- (e) a person who has been convicted within the previous 5 years of a disqualifying offence.

(3) A person who has agreed to a proposed appointment must advise the tribunal, before the tribunal makes an order appointing the person—

- (a) whether the person is aware of a conflict of interest that may arise in the course of the person acting as administrator; and
- (b) whether the person is a person mentioned in subsection (2)(b) to (d); and
- (c) whether the person has a criminal history and, if so, what the criminal history is.

Maximum penalty—

- (a) for an offence involving paragraph (c)—100 penalty units; or
- (b) otherwise—20 penalty units.

(4) The person must give the advice by statutory declaration or on oath or affirmation if required by the tribunal.

## **87 Terms of appointment**

(1) This section applies if the Queensland Building Tribunal decides to make an order appointing a person as administrator to a registered service.

(2) The appointment must state the following matters—

- (a) the administrator's name;
- (b) the details of the registered service;
- (c) the services the administrator is to provide;
- (d) the period of the appointment;

- (e) any conditions of the appointment;
- (f) anything else the tribunal considers appropriate.

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

Immediately after the Queensland Building Tribunal makes an order appointing a person as administrator to a registered service, the chief executive must give a copy of the order to the service provider, unless the chief executive knows that the service provider already has a copy.

### **89 Informing residents about appointment**

Before an administrator to a registered service exercises a power under this part, the chief executive must ensure the residents are informed about the appointment, for example, by—

- (a) giving a notice of the appointment to the residents or to their attorneys, administrators or agents; or
- (b) posting a notice of the appointment at a place at the registered premises where it is likely to be seen by residents; or
- (c) directing the administrator to inform the residents about the appointment in an appropriate way.

### **90 Period of appointment**

(1) An administrator may be appointed for a period of not more than 3 months.

(2) After an administrator starts to carry out the administrator's function, the chief executive may apply to the Queensland Building Tribunal for an extension of the appointment.

(3) The tribunal may, by order, extend the period of appointment by a further period of not more than 3 months if it is satisfied the extended appointment is reasonably necessary in all the circumstances.

(4) If an administrator's period of appointment is extended, the chief executive must ensure the service provider and residents are informed about the extension.

***Division 2—Function and powers*****91 Administrator’s function**

(1) The function of an administrator appointed to a registered service is to provide services to residents, under the terms of the appointment, that the service provider has agreed to provide in the course of the registered service.

(2) The appointment must state—

- (a) the services to be provided; and
- (b) the way in which, or extent to which, the services are to be provided.

**92 Administrator’s powers**

So far as is necessary to carry out his or her function, an administrator appointed to a registered service—

- (a) may enter any part of the registered premises other than a resident’s room; and
- (b) may use the facilities in the premises; and
- (c) may use food or other goods at the premises that it appears are intended for use, or are ordinarily used, to provide the relevant services; and
- (d) may exercise the right of entry to a resident’s room that the administrator would have under the accommodation Act, part 7,<sup>33</sup> if the administrator were the service provider, including any right of entry to a resident’s room that the service provider has under an agreement with the resident.

**93 Rental payments**

(1) The administrator appointed to a registered service may give to a resident a notice, in the approved form, requiring the resident to pay to the administrator a rental payment due to the service provider under the accommodation agreement.

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33 The accommodation Act, part 7 (Entry to residents’ rooms)

*Residential Services (Accreditation) Act 2002*

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(2) On the making of a requirement under subsection (1), a requirement under the accommodation agreement to make the rental payment to the service provider is taken to be a requirement to make the payment to the administrator.

(3) If the resident breaches the accommodation agreement by failing to make the rental payment to the administrator, the accommodation Act, sections 75(3), 77, 78 and 116<sup>34</sup> apply to the breach as if a reference in those provisions to the service provider were a reference to the administrator.

(4) The administrator may require the payment of amounts under subsection (1) only to the extent the administrator reasonably requires to carry out the administrator's function.

(5) For each payment received from a resident under this section, the administrator must—

- (a) give to the resident a receipt complying with the accommodation Act, section 18; and
- (b) make a copy of the receipt or make another appropriate written record of the payment.

(6) The administrator may apply an amount received under this section only in carrying out the administrator's function.

(7) If the administrator stops being satisfied an amount received under this section is needed to carry out the administrator's function, the administrator must immediately pay the amount to the service provider.

(8) At the end of the administrator's appointment, the administrator must give to the service provider any remaining amount received under this section.

(9) Subsections (7) and (8) apply subject to section 98.

(10) In this section—

**“accommodation agreement”**, for a resident, means the resident's agreement with the service provider for the provision of accommodation in the course of the registered service.

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34 The accommodation Act, sections 75 (Ending of agreement), 77 (Notice to remedy breach), 78 (Notice to leave because of failure to remedy breach) and 116 (Dispute about service provider's notice)

**94 Direction by chief executive**

An administrator is subject to the chief executive's direction in performing the administrator's function and exercising the powers given under this part.

**95 Production of instrument of appointment for inspection**

(1) This section applies if—

- (a) an administrator is exercising, or proposes to exercise, a power given under this part; and
- (b) a person at the registered premises asks the administrator to produce the administrator's instrument of appointment for the person's inspection.

(2) The administrator must comply with the request.

**96 Obstruction**

(1) A person must not obstruct an administrator in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(2) If a person has obstructed an administrator and the administrator decides to proceed with the exercise of the power, the administrator must warn the person that—

- (a) it is an offence to obstruct the administrator, unless the person has a reasonable excuse; and
- (b) the administrator considers the person's conduct an obstruction.

(3) In this section—

**“obstruct”** includes hinder and attempt to obstruct.

*Division 3—Other matters***97 Remuneration**

An administrator is entitled to be paid the reasonable amount of remuneration agreed with the chief executive.

**98 Service provider liable for remuneration and other costs**

(1) If an administrator is appointed to a registered service, the chief executive may give the service provider a written demand for the amount of an administration cost.

(2) The chief executive may recover the amount as a debt owed to the State.

(3) At any time during or after the appointment, the chief executive may recover an administration cost from an amount held by the administrator under section 93.

(4) In this section—

**“administration cost”** means the remuneration paid to an administrator and any other reasonable cost incurred in carrying out an administrator’s function.

**99 Accounts and reports**

(1) An administrator appointed to a registered service must give to the chief executive—

- (a) a record of all receipts and payments under section 93; and
- (b) the other reports about the administration that the chief executive requires.

(2) The chief executive must give a copy of each record or report to the service provider for the registered service.

**100 Compensation**

(1) A person may claim compensation from the chief executive if the person incurs loss or damage because of the exercise or purported exercise of a power under this part.

(2) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.

(3) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

**101 Service provider who can not be located**

(1) This section applies to—

- (a) a requirement under this part that the chief executive or an administrator give information to a service provider; or
- (b) a requirement under the *Queensland Building Tribunal Act 2000* that the chief executive serve a document on a service provider.

(2) The requirement does not apply if the chief executive or administrator can not locate the service provider after making reasonable enquiries.

**PART 7—ASSOCIATED ACCREDITATION OFFICERS****102 Appointment**

The chief executive may appoint a person as an associated accreditation officer if—

- (a) the chief executive is satisfied the person has the necessary expertise or experience to be an associated accreditation officer; or
- (b) the person has satisfactorily completed the training approved by the chief executive.

**103 Function**

An associated accreditation officer has the function of helping the chief executive to make accreditation decisions.

**104 Conflict of interest**

(1) If an associated accreditation officer who is helping the chief executive make an accreditation decision relating to a person becomes aware the officer has an interest, financial or otherwise, that could conflict with the proper performance of the officer's function, the officer must disclose the interest to the chief executive.



(2) On receiving the disclosure, the chief executive must ensure the officer does not take part, or take further part, in helping the chief executive make the accreditation decision, unless the chief executive is satisfied the interest does not conflict with the proper performance of the officer's function.

(3) Also, if an associated accreditation officer carries out activities from time to time in order to represent the interests of service providers generally or residents generally, the officer must disclose the nature of the activities to the chief executive.

(4) A person who has an interest that could conflict with the proper performance of the function of helping the chief executive make an accreditation decision relating to anyone, or who carries out activities mentioned in subsection (3), must disclose the interest or the nature of the activities to the chief executive before being appointed as an associated accreditation officer.

## **PART 8—INVESTIGATION AND ENFORCEMENT**

### *Division 1—Authorised officers*

#### **105 Purpose**

The purpose of this part is to provide for monitoring and enforcing compliance with this Act.

#### **106 Appointment**

The chief executive may appoint a person as an authorised officer if the chief executive is satisfied the person has the necessary expertise or experience to be an authorised officer.

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

(1) An authorised officer holds office on any conditions stated in—

- (a) the officer's instrument of appointment; or
- (b) a signed notice given to the officer; or

(c) a regulation.

(2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the officer's powers under this Act.

(3) In this section—

**“signed notice”** means a notice signed by the chief executive.

### **108 When authorised officer stops holding office**

(1) An authorised officer stops holding office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the officer stops holding office;
- (c) the officer's resignation under section 109 takes effect.

(2) Subsection (1) does not limit the ways an authorised officer may stop holding office.

(3) In this section—

**“condition of office”** means a condition on which the authorised officer holds office.

### **109 Resignation**

(1) An authorised officer may resign by signed notice given to the chief executive.

(2) However, if holding office as an authorised officer is a condition of the officer holding another office, the officer may not resign as an authorised officer without resigning from the other office.

### **110 Issue of identity card**

(1) The chief executive must issue an identity card to each authorised officer.

(2) The identity card must—

- (a) contain a recent photo of the authorised officer; and
- (b) contain a copy of the officer's signature; and

- (c) identify the person as an authorised officer under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **111 Return of identity card**

A person who stops being an authorised officer must return the person's identity card to the chief executive within 21 days after the person stops being an authorised officer unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **112 Production or display of identity card**

(1) In exercising a power under this Act in relation to a person, an authorised officer must—

- (a) produce the officer's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 113(1)(b) or (3).

## *Division 2—Powers of authorised officers*

### *Subdivision 1—Entry of places*

### **113 Power to enter places**

- (1) An authorised officer may enter a place if—
- (a) its occupier consents to the entry; or

- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant.

(2) For subsection (1)(a), the service provider for registered premises is taken to be the occupier of all parts of the premises other than a room in the premises occupied by a person as their place of residence.

(3) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

### *Subdivision 2—Procedure for entry*

#### **114 Entry with consent**

(1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another authorised officer entering the place under section 113(1)(a).

(2) Before asking for the consent, the authorised officer must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) that the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) that the occupier gives the authorised officer consent to enter the place and exercise the powers under this division; and

(d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.

(6) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

(b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **115 Application for warrant**

(1) An authorised officer may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **116 Issue of warrant**

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and

(b) the evidence is at the place, or may be at the place within the next 7 days.

(2) The warrant must state the following—

(a) that a stated authorised officer may, with necessary and reasonable help and force—

- (i) enter the place and any other place necessary for the entry;  
and
- (ii) exercise the officer's powers under this division;
- (b) the offence for which the warrant is sought;
- (c) the evidence that may be seized under the warrant;
- (d) the hours of the day or night when the place may be entered;
- (e) the date, within 14 days after its issue, the warrant ends.

### **117 Special warrants**

(1) An authorised officer may apply for a warrant (a **“special warrant”**) by phone, fax, radio or another form of communication if the officer considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances including, for example, the officer's remote location.

(2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised officer may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must promptly fax a copy (a **“facsimile warrant”**) to the authorised officer if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised officer—

- (a) the magistrate must tell the officer—
  - (i) what the terms of the special warrant are; and
  - (ii) the date and time the special warrant is issued; and
- (b) the officer must complete a form of warrant (a **“warrant form”**) and write on it—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the special warrant;  
and

(iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

### **118 Warrants—procedure before entry**

(1) This section applies if an authorised officer named in a warrant issued under this division for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised officer's identity card or other document evidencing the authorised officer's appointment;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 117(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the officer is permitted by the warrant to enter the place;

- (d) give the person an opportunity to allow the officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the officer reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

### *Subdivision 3—Powers after entry*

#### **119 General powers after entering a place**

(1) This section applies to an authorised officer who enters a place.

(2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to the officer only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the authorised officer may do any of the following—

- (a) search any part of the place;
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
- (c) take a thing, or a sample of or from a thing, at the place for analysis or testing;
- (d) copy a document at the place;
- (e) take into or onto the place any person, equipment and materials the officer reasonably requires for the exercise of a power under this division;
- (f) require the occupier of the place, or a person at the place, to give the officer—
  - (i) reasonable help to exercise the officer's powers under paragraphs (a) to (e); or
  - (ii) information to help the officer find out whether this Act is being complied with.



**120 Preserving privacy after entering private residence**

(1) When entering a private residence, or exercising a power or performing a function in a private residence, an authorised officer must preserve, as far as practicable, the privacy of anyone living at the residence.

(2) In this section—

“**private residence**” includes a room in registered premises occupied by a person as the person’s place of residence.

**121 Failure to help authorised officer**

A person required to give reasonable help, or information, under section 119(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

*Subdivision 4—Power to seize evidence***122 Definition for sdiv 4**

In this subdivision—

“**owner**”, of a seized thing, includes the person entitled to possession of it.

**123 Seizing evidence after entry without consent or warrant**

An authorised officer who enters a place that may be entered under this division without the occupier’s consent and without a warrant may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against this Act.

**124 Seizing evidence after entry with consent or warrant**

(1) This section applies if an authorised officer—

- (a) is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
- (b) enters the place after obtaining the necessary consent or warrant.

(2) If the authorised officer enters the place with the occupier's consent, the officer may seize a thing at the place if—

- (a) the officer reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(3) If the authorised officer enters the place with a warrant, the officer may seize the evidence for which the warrant was issued.

(4) The authorised officer may seize anything else at the place if the officer reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence.

(5) Also, the authorised officer may seize a thing at the place if the officer reasonably believes it has just been used in committing an offence against this Act.

## **125 Securing seized thing**

Having seized a thing, an authorised officer may do 1 or more of the following—

- (a) move the thing from the place where it was seized (the “**place of seizure**”);
- (b) leave the thing at the place of seizure but take reasonable steps to restrict access to it;

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

- (c) make the thing inoperable if it is equipment.

*Example of making equipment inoperable—*

Dismantling equipment or removing a component of equipment without which the equipment is not capable of being used.

**126 Tampering with seized thing**

(1) If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—50 penalty units.

(2) If an authorised officer makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without an authorised officer's approval.

Maximum penalty—50 penalty units.

**127 Powers to support seizure**

(1) To enable a thing to be seized, an authorised officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

(2) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

(3) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—50 penalty units.

**128 Receipts for seized things**

(1) As soon as practicable after seizing a thing, an authorised officer must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable, or would be unreasonable, to give the receipt, having regard to the thing's nature, condition and value.

### **129 Forfeiture of seized things**

(1) A thing that has been seized under this division is forfeited to the State if the authorised officer who seized the thing—

- (a) can not find its owner, after making the inquiries (if any) that are reasonable in all the circumstances; or
- (b) can not return it to its owner, after making the efforts (if any) that are reasonable in all the circumstances.

*Example for paragraph (b)—*

It may be unreasonable for an authorised officer to make an effort to return a seized thing to its owner if the owner has migrated to another country.

(2) Regard must be had to a thing's nature, condition and value in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

(3) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(4) Without limiting subsection (3), the chief executive may destroy or dispose of the thing.

(5) Despite subsection (3), the chief executive must not deal with the thing in a way that could prejudice the outcome of—

- (a) an appeal to the Queensland Building Tribunal under this Act; or
- (b) another appeal, relevant to the thing, of which the chief executive is aware.

**130 Return of seized things**

(1) If a seized thing is not forfeited, the authorised officer must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), unless the thing is forfeited, the authorised officer must immediately return it to its owner if the officer stops being satisfied—

- (a) its continued retention as evidence is necessary; or
- (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, the offence.

**131 Access to seized things**

(1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable, or would be unreasonable, to allow the inspection or copying.

***Subdivision 5—Power to obtain information*****132 Power to require name and address**

(1) This section applies if—

- (a) an authorised officer finds a person committing an offence against this Act; or
- (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person is committing, or has just committed, an offence against this Act.

(2) The authorised officer may require the person to state the person's name and residential address.

(3) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the officer reasonably suspects the stated name or address to be false.

(4) A person of whom a requirement is made under this section must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(5) A person does not commit an offence against subsection (4) if—

- (a) the person was required, by an authorised officer who suspected the person was committing, or had committed, an offence against this Act, to state the person's name and residential address or to give evidence of the correctness of the stated name or residential address; and
- (b) the person is not proved to have committed the offence.

### **133 Power to require information**

(1) This section applies if an authorised officer reasonably believes—

- (a) an offence against this Act is being committed or has been committed; and
- (b) a person may be able to give information about the offence.

(2) The authorised officer may, by notice given to the person, require the person to give information about the offence to the officer at a stated reasonable place and at a stated reasonable time.

(3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—50 penalty units.

### **134 Power to require production of documents**

(1) An authorised officer may require the service provider for a registered service to make available for inspection by an authorised officer, or produce to an authorised officer for inspection, at a reasonable time and place nominated by the officer—

- (a) a document required to be kept by the service provider under this Act; or
- (b) a document issued to the service provider under this Act.

(2) The authorised officer may keep the document to copy it.

(3) If the authorised officer copies a document mentioned in subsection (1)(a), or an entry in the document, the officer may require the service provider to certify the copy as a true copy of the document or entry.

(4) The authorised officer must return the document to the service provider as soon as practicable after copying it.

(5) However, if a requirement is made of a service provider under subsection (3), the authorised officer may keep the document until the service provider complies with the requirement.

### **135 Failure to produce documents**

(1) A service provider required to make available, or produce, for inspection a document under section 134(1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) Despite section 136, it is not a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

## ***Division 3—Miscellaneous***

### **136 Self incrimination and warning**

(1) This section applies if—

- (a) an authorised officer makes a requirement of an individual; and
- (b) under a provision of this part, it is an offence for the individual to fail to comply with the requirement unless the individual has a reasonable excuse.

(2) The individual does not commit an offence against the provision unless, when making the requirement, the authorised officer warns the individual it is an offence to fail to comply with the requirement unless the individual has a reasonable excuse.

(3) It is a reasonable excuse for the individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual.

### **137 Notice of damage**

(1) This section applies if—

- (a) an authorised officer damages property when exercising or purporting to exercise a power; or
- (b) a person (the **“other person”**) acting under the direction or authority of an authorised officer damages property.

(2) The authorised officer must, as soon as practicable, give notice of particulars of the damage to the person who appears to the authorised officer to be the owner of the property.

(3) The notice must state that the person may be entitled to claim compensation from the chief executive under section 138.

(4) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer’s or other person’s control, the authorised officer may state the belief in the notice.

(5) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(6) This section does not apply to damage the authorised officer reasonably believes is trivial.

(7) In this section—

**“owner”**, of property, includes the person in possession or control of it.

### **138 Compensation**

(1) A person may claim compensation from the chief executive if the person incurs loss or damage because of the exercise or purported exercise of a power under this part.

(2) Without limiting subsection (1), compensation may be claimed for loss or damage incurred in complying with a requirement made of the person under this part.

(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or



- (b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

### **139 Alteration of certificates**

A person must not alter a current registration certificate or accreditation certificate without the chief executive's written authorisation.

Maximum penalty—10 penalty units.

### **140 False or misleading statements**

A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

### **141 False or misleading documents**

(1) A person must not give an authorised officer a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **142 Obstructing an authorised officer**

(1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If a person has obstructed an authorised officer and the officer decides to proceed with the exercise of the power, the officer must warn the person that—

- (a) it is an offence to obstruct the officer, unless the person has a reasonable excuse; and
- (b) the officer considers the person’s conduct an obstruction.

(3) In this section—

“**obstruct**” includes hinder and attempt to obstruct.

### **143 Impersonation of an authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—80 penalty units.

## **PART 9—COMPLIANCE PROCESSES**

### *Division 1—Injunctions*

#### **144 Grant of injunction**

(1) The chief executive may apply to the District Court for an injunction.

(2) The court may grant an injunction under this division against a person at any time.

#### **145 Grounds for injunction**

The District Court may grant an injunction if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) contravening this Act; or
- (b) attempting to contravene this Act; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Act; or

- (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
- (e) being, in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) conspiring with others to contravene this Act.

### **146 Court's powers for injunctions**

(1) The District Court's power to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

(2) The District Court's power to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and
- (b) whether or not the person has previously failed to do the act or thing.

(3) An interim injunction may be granted under this division until the application is finally decided.

(4) The District Court may rescind or vary an injunction at any time.

### **147 Terms of injunction**

(1) The District Court may grant an injunction in the terms the court considers appropriate.

(2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a person from conducting a residential service (whether or not the person is a service provider or the residential service is conducted, or is to be conducted, as part of, or incidental to, the carrying on of another activity or business)—

- (a) for a stated period; or
- (b) except on stated terms and conditions.

(3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's contravention of this Act.

### **148 Undertaking as to costs**

If the chief executive applies for an injunction under this division, no undertaking as to damages or costs may be required or paid.

## *Division 2—Undertakings*

### **149 Chief executive may seek undertaking after contravention**

If the chief executive reasonably believes the service provider for a residential service has contravened this Act, the chief executive may, by notice given to the service provider—

- (a) state the act or omission the chief executive believes is the contravention; and
- (b) ask the service provider to give the chief executive a written undertaking that the service provider will not continue or repeat the act or omission.

### **150 Effect of undertaking**

(1) This section applies if—

- (a) the service provider gives the undertaking and, if the contravention is conduct consisting of a series of acts or omissions, the service provider stops the conduct; and
- (b) the chief executive accepts the undertaking.

(2) The chief executive can not start an offence proceeding against the service provider for the contravention, unless the undertaking is withdrawn under section 151.<sup>35</sup>

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<sup>35</sup> For some possible effects of contravening an undertaking, see sections 54 (Amendment of accreditation by chief executive) and 57 (Cancellation of accreditation).

**151 Variation and withdrawal of undertaking**

- (1) This section applies if the chief executive accepts the undertaking.
- (2) The service provider may vary or withdraw the undertaking at any time, but only if the chief executive agrees to the variation or withdrawal.
- (3) The chief executive may vary or withdraw the undertaking at any time if the chief executive reasonably believes that—
  - (a) before it was accepted, the service provider contravened this Act in a way unknown to the chief executive; and
  - (b) had the chief executive known about the contravention, the chief executive would not have accepted the undertaking or would not have accepted it unless its terms were changed.
- (4) The chief executive may also withdraw the undertaking if the chief executive reasonably believes it is no longer necessary.
- (5) If the chief executive varies or withdraws the undertaking, or agrees to the variation or withdrawal of the undertaking, the chief executive must give the service provider a notice of the variation or withdrawal.
- (6) The variation or withdrawal takes effect when the service provider receives the notice.

**152 Register of undertakings**

- (1) The chief executive must keep a register containing a copy of each undertaking given to the chief executive under this division.
- (2) A person may inspect the register on payment of the fee prescribed under a regulation.

***Division 3—Compliance notice*****153 Compliance notice**

- (1) This section applies if the chief executive reasonably believes the service provider for a residential service—
  - (a) is contravening a provision of this Act; or
  - (b) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated.

(2) The chief executive may give the service provider a notice (a “**compliance notice**”) requiring the service provider to remedy the contravention.

(3) The compliance notice must state the following—

- (a) that the chief executive reasonably believes the service provider—
  - (i) is contravening a provision of this Act; or
  - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated;
- (b) the provision the chief executive believes is being, or has been, contravened (the “**relevant provision**”);
- (c) briefly, how it is believed the relevant provision is being, or has been, contravened;
- (d) that the service provider must remedy the contravention within a stated reasonable time;
- (e) that it is an offence to fail to comply with the compliance notice unless the service provider has a reasonable excuse.

(4) The compliance notice may also state the steps that the chief executive reasonably believes are necessary to remedy the contravention, or avoid further contravention, of the relevant provision.

(5) The service provider must comply with the compliance notice unless the service provider has a reasonable excuse.

Maximum penalty—the maximum penalty for contravening the relevant provision.

(6) The service provider can not be prosecuted for an offence against the relevant provision unless the service provider fails to comply with the compliance notice and does not have a reasonable excuse for the noncompliance.

(7) The compliance notice may state other matters the chief executive considers appropriate.

*Example—*

The compliance notice may refer to the chief executive’s powers under this Act to amend or cancel accreditation of the service.

## PART 10—REVIEWS AND APPEALS

### *Division 1—Reviewable decisions*

#### **154 Reviewable decisions**

Schedule 1 states—

- (a) the decisions of the chief executive under this Act that are reviewable decisions; and
- (b) for each reviewable decision, the person who may seek to have the decision reviewed under this part (the “**interested person**”).

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

(1) Immediately after making a reviewable decision, the chief executive must give to the interested person a notice stating—

- (a) the reasons for the decision; and
- (b) that, within 28 days after receiving the notice, the interested person may apply to the chief executive for a review of the decision; and
- (c) how the interested person may apply for the review; and
- (d) that, if the interested person applies for a review of the decision and the matter is not resolved on the review, the interested person may appeal against the decision on review to the Queensland Building Tribunal.

(2) The chief executive may give a notice for the purpose of complying with subsection (1) and for another purpose.

*Example—*

If the chief executive decides an application for the level 2 accreditation of a residential service by refusing to accredit the service at that level, the chief executive may give the applicant a notice stating—

- (a) the matters required to be stated under subsection (1) about the decision; and
- (b) for section 47(6)(b), the day by which the applicant must stop providing the food service.

(3) Subsection (1) does not apply if the chief executive can not locate the interested person after making reasonable enquiries.

***Division 2—Review of decision*****156 Application for review**

(1) This section applies to the interested person for a reviewable decision.

(2) Within 28 days after the interested person receives a notice under section 155 about the decision, the interested person may apply to the chief executive to review the decision.

(3) The chief executive may extend the time for applying for the review.

(4) Also, the interested person may apply to the chief executive to review the decision if the chief executive has not given the interested person a notice under section 155 about the decision.

(5) The application must be in the approved form and supported by enough information to enable the chief executive to decide the application.

**157 Stay of operation of original decision**

(1) An application under section 156 for review of a decision does not stay the decision.

(2) However, before the decision takes effect, the chief executive may give the interested person a notice staying the operation of the decision for a stated period.

(3) The stay may be granted on conditions the chief executive considers appropriate.

(4) Also, whether or not the applicant has asked the chief executive to stay the operation of the decision, the applicant may apply to the Queensland Building Tribunal for a stay of the decision.

(5) The tribunal may stay the decision to secure the effectiveness of the review and any later appeal to the tribunal.

(6) The stay may be granted on conditions the tribunal considers appropriate and has effect for the period stated by the tribunal.

(7) The period of the stay must not extend past the time when the chief executive makes the review decision and any later period the tribunal allows to enable the applicant to appeal against the review decision.



**158 Review decision**

(1) This section applies to an application under section 156 for review of a decision.

(2) Unless the chief executive made the original decision personally, the chief executive must ensure the application is not dealt with by—

- (a) the person who made the original decision; or
- (b) a person in a less senior office than the person who made the original decision.

(3) Within 28 days after receiving the application, the chief executive must review the original decision and make a decision (the “**review decision**”)—

- (a) confirming the original decision; or
- (b) amending the original decision; or
- (c) substituting another decision for the original decision.

(4) Immediately after deciding the application, the chief executive must give the interested person a notice stating—

- (a) the review decision; and
- (b) the reasons for the review decision; and
- (c) that, within 28 days after receiving the notice, the interested person may appeal against the review decision to the Queensland Building Tribunal; and
- (d) how the interested person may appeal.

(5) If the chief executive does not decide the application within 28 days after receiving it, the chief executive is taken to have made a review decision confirming the original decision.

### ***Division 3—Appeal against decision***

#### **159 Appeal against review decision**

(1) Within 28 days after receiving a decision notice for a review decision, the interested person for the decision may appeal against the decision to the Queensland Building Tribunal.<sup>36</sup>

(2) Also, if the chief executive has made a review decision but has not given the interested person a decision notice for the decision, the interested person for the decision may appeal against the decision to the tribunal.

(3) If the interested person has received a decision notice for the review decision, the application filed in the tribunal to start the appeal must be accompanied by a copy of the decision notice.

(4) In this section—

“**decision notice**”, for a review decision, means a notice under section 158(4) about the decision.

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

(1) The appeal to the Queensland Building Tribunal is by way of rehearing on the evidence that was before the chief executive.

(2) However, the tribunal may give leave to the interested person to adduce fresh, additional or substituted evidence (the “**new evidence**”) if the tribunal is satisfied—

- (a) the interested person did not know, or could not reasonably be expected to have known, of the existence of the new evidence on or before the day the review decision was made; or
- (b) in the special circumstances of the case, it would be unfair not to allow the interested person to adduce the new evidence.

(3) If the tribunal gives leave under subsection (2), the tribunal may—

- (a) adjourn the proceeding to allow the chief executive to reconsider the review decision together with the new evidence; or
- (b) continue with the appeal by way of rehearing on the evidence that was before the chief executive and on the new evidence.

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<sup>36</sup> See *Queensland Building Tribunal Act 2000*, section 29 (Start of proceedings).

(4) However, if the chief executive asks the tribunal for an adjournment to allow the chief executive to reconsider the review decision together with the new evidence, the tribunal must adjourn the proceeding for a stated reasonable time.

### **161 Deciding the appeal**

(1) The Queensland Building Tribunal may—

- (a) confirm, vary or reverse the review decision; or
- (b) set aside the review decision, wholly or partly, and return the matter, wholly or partly, to the chief executive with the directions it considers appropriate.

(2) The tribunal may also make consequential orders and directions.

### **162 Stay of operation of review decision**

(1) The Queensland Building Tribunal may make an order staying the operation of the review decision.

(2) The stay may be granted on conditions the tribunal considers appropriate and has effect for the period stated by the tribunal.

(3) The period of the stay must not extend past the time when the tribunal decides the appeal.

(4) The appeal does not affect the operation of the review decision unless the tribunal stays the decision.

### **163 Effect of decision**

If the Queensland Building Tribunal amends the review decision or substitutes another decision for the review decision, the amended or substituted decision is, for this Act (other than this part) taken to be the chief executive's decision.

## **PART 11—PROCEEDINGS**

### *Division 1—Evidence*

#### **164 Application of div 1**

This division applies to a proceeding under this Act.

#### **165 Appointments and authority**

It is not necessary to prove the appointment of the chief executive, an associated accreditation officer or an authorised officer, or the authority of the chief executive or an authorised officer to do anything under this Act, unless a party, by reasonable notice, requires proof of the appointment or authority.

#### **166 Signatures**

A signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

#### **167 Other evidentiary aids**

A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

- (a) a stated document is one of the following things made, given, issued or kept under this Act—
  - (i) an appointment, approval or decision;
  - (ii) a notice, direction or requirement;
  - (iii) a registration certificate;
  - (iv) an accreditation certificate;
  - (v) a record or an extract from a record;
  - (vi) the register of residential services or an extract from the register;
- (b) a stated document is a copy of a document mentioned in paragraph (a);

- (c) on a stated day, or during a stated period—
  - (i) a residential service was or was not registered; or
  - (ii) a stated person was or was not registered as the service provider for a registered service; or
  - (iii) premises were or were not the registered premises, or part of the registered premises, for a registered service; or
  - (iv) the registration of a continuing service under part 13<sup>37</sup> was or was not subject to a stated condition; or
  - (v) a residential service was or was not accredited at a stated level; or
  - (vi) the accreditation of a residential service at a stated level was or was not subject to a stated condition;
- (d) on a stated day, the registration of a residential service was cancelled;
- (e) on a stated day, the accreditation of a residential service at a stated level was cancelled;
- (f) on a stated day, or during a stated period, an appointment as an administrator to a residential service, associated accreditation officer or authorised officer was, or was not, in force for a stated person;
- (g) on a stated day, a stated person was given a stated notice or direction under this Act;
- (h) on a stated day, a stated requirement was made of a stated person.

### *Division 2—Offence proceedings*

#### **168 Summary proceedings for offences**

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) The proceeding must start—

- (a) within 1 year after the offence is committed; or

- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

### **169 Statement of complainant's knowledge**

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

### **170 False or misleading information or statements**

In a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading statement, it is enough for a charge to state that the information or statement was, without specifying which, 'false or misleading'.

### **171 Responsibility for acts or omissions of representatives**

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

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

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

**“representative”** means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

**“state of mind”**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

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

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) otherwise, the officer was not in a position to influence the conduct of the corporation in relation to the offence.

## **PART 12—MISCELLANEOUS**

### *Division 1—Reprisals*

#### **173 Reprisal and grounds for reprisals**

(1) A person must not cause, or attempt or conspire to cause, detriment to another person in retaliation because, or in the belief that—

- (a) anybody has made, or may make, a complaint to the chief executive about the conduct of a residential service; or
- (b) anybody has given, or may give, information to the chief executive about the conduct of a residential service; or
- (c) anybody has provided information about an alleged offence against this Act to a person for the purpose of having the alleged offence investigated or prosecuted; or
- (d) anybody has given, or may give, evidence to a court in proceedings for an offence against this Act.

(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

### **174 Offence for taking reprisal**

A person who takes a reprisal commits an offence.

Maximum penalty—100 penalty units.

### **175 Damages entitlement for reprisal**

(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.

(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.

(3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.



***Division 2—Reporting matters of concern to other entities*****176 Reporting a matter relating to the accommodation Act**

(1) This section applies if, in the course of carrying out a function or exercising a power under this Act, a public service officer becomes aware of a matter that the officer reasonably believes is a contravention of the accommodation Act.

(2) The officer must report the matter to the chief executive officer unless—

- (a) the officer knows, or reasonably supposes, that the chief executive officer is aware of the matter; or
- (b) the officer reasonably believes the contravention is trivial.

**177 Matters arising under other Acts**

(1) This section applies if, in the course of carrying out a function or exercising a power under a prescribed Act, a public service officer becomes aware of a matter that the officer reasonably believes—

- (a) is a contravention of this Act; or
- (b) concerns the conduct of a residential service and is adversely affecting the health, safety or wellbeing of a resident in the service.

(2) The officer must report the matter to the chief executive, unless the officer knows, or reasonably supposes, that the chief executive is aware of the matter.

(3) In this section—

**“prescribed Act”** means—

- (a) the *Guardianship and Administration Act 2000*; or
- (b) the *Health Rights Commission Act 1991*; or
- (c) the *Powers of Attorney Act 1998*; or
- (d) the *Public Trustee Act 1978*.

**178 Corresponding laws**

(1) This section applies if, in the course of carrying out a function or exercising a power under this Act, the chief executive gains information that the chief executive reasonably believes is relevant to the administration of a law of another State about the conduct of residential services.

(2) The chief executive may give the information to the chief executive of the department in which that law is administered.

***Division 3—Other matters*****179 Register of residential services**

(1) The chief executive must keep a register of residential services.

(2) The register must show—

(a) for each registered service—

- (i) the particulars shown on the registration certificate; and
- (ii) the particulars shown on any accreditation certificate; and
- (iii) for any application for accreditation of the service that has been made but not decided—
  - (A) the date of the application; and
  - (B) the level of accreditation applied for; and

(b) for each residential service that is no longer registered—

- (i) the day the service stopped being registered; and
- (ii) the particulars shown on the registration certificate in force immediately before the cessation; and
- (iii) the particulars shown on any accreditation certificate in force immediately before the cessation.

(3) The register may be kept in any way the chief executive considers appropriate.

(4) On payment of the fee prescribed under a regulation, a person may—

- (a) inspect the register; or
- (b) obtain a certificate from the chief executive stating information shown in the register.

**180 Confidentiality**

(1) This section applies to a person—

- (a) who is, or has been, the chief executive, a public service employee in the department, an administrator, an associated accreditation officer or an authorised officer; and
- (b) who, in the course of administering this Act or because of opportunity provided by involvement in administering this Act—
  - (i) acquired confidential information about someone else; or
  - (ii) gained access to a document containing confidential information about someone else.

(2) The person must not make a record of the information, disclose the information to anyone else or give access to the document containing the information to anyone else, other than—

- (a) for a purpose of this Act; or
- (b) with the consent of the person to whom the information relates; or
- (c) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- (d) as expressly permitted or required by another Act.

Maximum penalty—50 penalty units.

(3) In this section—

**“confidential information”** means information about a person’s affairs, including the person’s criminal history, but does not include—

- (a) information that is publicly available; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom it relates.

**181 Delegation by chief executive**

(1) The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified public service officer.

(2) A delegation of a power may permit the subdelegation of the power to an appropriately qualified public service officer.

(3) In this section—

**“appropriately qualified”** includes having qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person’s classification level in the public service.

### **182 Protection from liability**

(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

**“official”** means—

- (a) the chief executive; or
- (b) an administrator; or
- (c) an associated accreditation officer; or
- (d) an authorised officer; or
- (e) a person acting under the direction of the chief executive or an authorised officer.

### **183 Approved forms**

The chief executive may approve forms for use under this Act.

### **184 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may do any of the following—

- (a) impose a fee;
- (b) prescribe requirements, relating to premises in which a residential service is being, or is proposed to be, conducted, for ensuring all the occupants of the premises may be safely evacuated in the event of a fire;

- (c) prescribe other requirements relating to a residential service for protecting the health, safety or other interests of residents;
- (d) impose a penalty of not more than 20 penalty units for a contravention of a regulation.

## **PART 13—TRANSITIONAL**

### *Division 1—Preliminary*

#### **185 Definitions for pt 13**

In this part—

**“apply for accreditation”**, of a continuing service, means apply under part 3 for accreditation of the service.

**“apply for registration”**, of a continuing service, means apply under part 2 for registration of the service.

**“commencement day”** means the day this part commences.

**“continuing service”** means a residential service that was being conducted immediately before the commencement day.

**“due day”**—

- (a) for applying for registration of a continuing service, see section 186; or
- (b) for applying for accreditation of a continuing service, see division 3.

### *Division 2—Registration of continuing services*

#### **186 Due day for applying for registration**

The due day for applying for registration of a continuing service is—

- (a) if, in the course of the continuing service, a personal care service was being provided immediately before the commencement day and a personal care service is being provided 1 year after the

commencement day—the day that is 1 year after the commencement day; or

- (b) otherwise—the day that is 2 years after the commencement day.

### **187 Requirement for continuing service to be registered**

(1) Section 9<sup>38</sup> does not apply to a continuing service before the day following the due day.

(2) If an application to register the service is current on the due day, section 9 does not apply to the service until—

- (a) if the application is withdrawn or lapses after the due day—the day the application is withdrawn or lapses; or
- (b) if the chief executive decides the application by registering the service—the day the service is registered; or
- (c) if the chief executive decides the application by refusing to register the service—the day, stated in the notice given under section 191,<sup>39</sup> by which the service provider must stop conducting the service.

### **188 Lapsing of application**

(1) This section applies if an application to register a continuing service is made on or before the due day.

(2) The chief executive may make a requirement under section 10(3),<sup>40</sup> for information to decide the application, by giving the applicant a notice stating—

- (a) the required information; and
- (b) the time by which the information must be given to the chief executive; and
- (c) that, if the information is not given to the chief executive by the stated time, the application will lapse.

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38 Section 9 (Requirement to be registered)

39 Section 191 (Notice of refusal to register continuing service)

40 Section 10 (Application for registration)

(3) The time stated must be reasonable and, in any case, at least 14 days after the requirement is made.

(4) The chief executive may give the applicant a further notice extending the stated time if the chief executive is satisfied it would be reasonable in all the circumstances to give the extension.

(5) If the applicant does not comply with the requirement within the stated time, or any extension, the application lapses.

### **189 Compliance with building and fire safety requirements**

(1) This section applies to an application to register a continuing service made on or before the due day.

(2) The applicant need not comply with section 10(2)(d)(i).

(3) However, if the application is not accompanied by a building compliance notice for the premises issued within the previous 12 months—

- (a) the application must be accompanied by a notice from the local government for the local government area in which the premises are situated, issued within the previous 12 months, stating the extent to which the premises comply with the prescribed building requirements; and
- (b) the chief executive must not register the service unless the chief executive is satisfied the premises are safe and substantially comply with the prescribed building requirements.

### **190 Registration on conditions**

(1) This section applies if the chief executive is not satisfied the premises fully comply with the prescribed building requirements.

(2) The chief executive may register the continuing service on conditions the chief executive considers appropriate to ensure the premises are improved to a level that fully complies with the prescribed building requirements within a reasonable time.<sup>41</sup>

*Example—*

A condition that stated building work in the registered premises be completed by a stated date.

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<sup>41</sup> See schedule 1 (Reviewable decisions).

(3) The registration certificate for the service must state any conditions applying to the registration.

(4) While the service is registered under this section on 1 or more conditions, the chief executive may cancel the registration, impose a new condition, amend a condition or omit a condition under part 3, division 5<sup>42</sup> and, for that purpose, part 3, division 5 applies to the registration, with all necessary changes, as if—

- (a) a reference to accreditation were a reference to registration; and
- (b) a reference to the accreditation criteria were a reference to the prescribed building requirements.

(5) The service provider for a continuing service must not contravene a condition on which the service is registered.

Maximum penalty for subsection (5)—100 penalty units.

### **191 Notice of refusal to register continuing service**

(1) This section applies if an application to register a continuing service is made on or before the due day.

(2) If the chief executive decides the application by refusing to register the service, the chief executive must give the applicant a notice of the decision stating the day, not earlier than 14 days after the notice is given, by which the service provider must stop conducting the service.

### **192 Register**

(1) This section applies to each application for registration of a continuing service made within 2 years after the commencement day.

(2) The chief executive must record on the register of residential services the following particulars of the application—

- (a) the applicant's name;
- (b) the address of the premises to which the application relates;
- (c) the date of the application;
- (d) once the application is decided, the decision.

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42 Part 3 (Accreditation), division 5 (Dealings with accreditation)



(3) The particulars must remain on the register until the later of the following days—

- (a) the day that is 2 years after the commencement day;
- (b) the day that is 1 month after the application is decided.

### *Division 3—Accreditation of continuing services*

#### **193 Application of div 3**

This division applies to the accreditation of a continuing service.

#### **194 Continuing service with no food service or personal care service**

(1) This section applies if, immediately before the commencement day, neither a food service nor a personal care service was being provided in the course of the continuing service.

(2) For section 35,<sup>43</sup> the due day for applying for the level 1 accreditation of the service is the day that is 4 years after the commencement day.

#### **195 Continuing service with food service only**

(1) This section applies if, immediately before the commencement day, a food service but not a personal care service was being provided in the course of the continuing service.

(2) For section 35, the due day for applying for the level 1 accreditation of the service is the day that is 3 years after the commencement day.

(3) For section 36,<sup>44</sup> the due day for applying for the level 2 accreditation of the service is the day that is 3 years after the commencement day.

#### **196 Continuing service with personal care service only**

(1) This section applies if, immediately before the commencement day, a personal care service but not a food service was being provided in the course of the continuing service.

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<sup>43</sup> Section 35 (Requirement to be accredited at level 1)

<sup>44</sup> Section 36 (Requirement to be accredited at level 2)

(2) For section 35, the due day for applying for the level 1 accreditation of the service is the day that is 2 years after the commencement day.

(3) For section 38,<sup>45</sup> the due day for applying for the level 3 accreditation of the service is the day that is 2 years after the commencement day.

### **197 Continuing service with food service and personal care service**

(1) This section applies if, immediately before the commencement day, a food service and a personal care service were being provided in the course of the continuing service.

(2) For section 35, the due day for applying for the level 1 accreditation of the service is the day that is 2 years after the commencement day.

(3) For section 36, the due day for applying for the level 2 accreditation of the service is the day that is 2 years after the commencement day.

(4) For section 38, the due day for applying for the level 3 accreditation of the service is the day that is 2 years after the commencement day.

### **198 Compliance with building and fire safety requirements**

An application for the level 1 accreditation of a continuing service must be accompanied by—

- (a) a building compliance notice for the registered premises issued within the previous 12 months; and
- (b) the prescribed fire safety document for the registered premises.

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<sup>45</sup> Section 38 (Requirement to be accredited at level 3)

**SCHEDULE 1****REVIEWABLE DECISIONS**

section 154

<b>interested person</b>	<b>reviewable decision</b>
applicant for registration of a residential service	<ul style="list-style-type: none"> <li>• to refuse to register the service (s 10(4))</li> </ul>
service provider for a residential service	<ul style="list-style-type: none"> <li>• to cancel registration of the service (s 15(3))</li> <li>• to refuse to accredit the service (s 47(4))</li> <li>• to accredit the service on a condition (s 47(5))</li> <li>• to refuse to renew the accreditation of the service (s 50(5))</li> <li>• to refuse to extend the period of accreditation (s 51(3))</li> <li>• to refuse to amend the accreditation of the service in a way the service provider has applied for (s 53(3))</li> <li>• to amend the accreditation of the service other than in a way the service provider has applied for (s 54(3) or 55(2))</li> <li>• to cancel the accreditation of the service (s 57(3))</li> <li>• to refuse an application for a replacement accreditation certificate (s 60(3))</li> <li>• to refuse an application to amend the registration of the service to show new premises as the registered premises (s 64(4))</li> </ul>

## SCHEDULE 1 (continued)

<b>interested person</b>	<b>reviewable decision</b>
applicant for registration as the service provider for a registered service	<ul style="list-style-type: none"> <li>to refuse to register the applicant as the service provider for the service (s 61(4))</li> </ul>
personal representative of the estate of a service provider who has died	<ul style="list-style-type: none"> <li>to refuse to extend the transitional registration period (s 70(5))</li> </ul>
applicant for registration of a continuing service under part 13 <sup>a</sup>	<ul style="list-style-type: none"> <li>to register the service on a condition (s 190(2))</li> </ul>

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a Part 13 (Transitional)

**SCHEDULE 2****DICTIONARY**

section 3

**“accommodation Act”** means the *Residential Services (Accommodation) Act 2002*.

**“accreditation criteria”** means level 1, 2 or 3 accreditation criteria.

**“accreditation decision”** see section 41.

**“accredited service”** means a residential service that is accredited under this Act.

**“applicant”**, for part 2, division 4,<sup>46</sup> see section 18.

**“approved form”** means a form approved under section 183.

**“associate”**, of a service provider or applicant, means a person who is an associate of the service provider or applicant under section 19.

**“associated accreditation officer”** means a person appointed as an associated accreditation officer under section 102.

**“authorised officer”** means a person appointed as an authorised officer under section 106.

**“budget accommodation building”** see the *Building Act 1975*, section 12B.

**“building compliance notice”**, for premises, means a notice, issued by the local government for the local government area in which the premises are situated, stating that the premises comply with the prescribed building requirements.

**“chief executive officer”** means the chief executive officer of the Residential Tenancies Authority established under the *Residential Tenancies Act 1994*.

**“conviction”** means a conviction other than a spent conviction.

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<sup>46</sup> Part 2 (Registration), division 4 (Suitability of service provider and associates)

## SCHEDULE 2 (continued)

**“criminal history”**, of a person, means the convictions recorded against the person for offences, in Queensland or elsewhere, whether before or after the commencement of this Act.

**“current”**—

An application is **“current”** if it has been made under this Act and has not been decided, has not been withdrawn and has not lapsed.

**“decision notice”** see the *Integrated Planning Act 1997*, section 3.5.15.

**“development application”** see the *Integrated Planning Act 1997*, schedule 10.

**“disability services department”** means the department in which the *Disability Services Act 1992* is administered.

**“disqualifying offence”** means any of the following offences—

- (a) an offence, punishable by 3 or more years imprisonment, involving fraud or dishonesty;
- (b) an offence against the Criminal Code, part 4 or 5;<sup>47</sup>
- (c) an act or omission committed outside Queensland that, if committed in Queensland, would be an offence mentioned in paragraph (a) or (b).

**“education department”** means the department in which the *Education (General Provisions) Act 1989* is administered.

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“facilities”** includes furniture and equipment.

**“fire safety management plan”** means—

- (a) for premises that are a budget accommodation building—see the *Fire and Rescue Service Act 1990*, section 104FC; or
- (b) for other premises—see section 75.

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<sup>47</sup> Criminal Code, part 4 (Acts injurious to the public in general) or 5 (Offences against the person and relating to marriage and parental rights and duties)

## SCHEDULE 2 (continued)

**“food service”** means a service of regularly providing meals to a resident.

**“house rules”**, for premises in which a residential service is being conducted, means the rules in force for the premises under the accommodation Act, part 6.

**“housing department”** means the department in which the *State Housing Act 1945* is administered.

**“information”** includes a document.

**“interested person”**, for a reviewable decision, see section 154.

**“level 1 accreditation criteria”** means the matters under section 42.

**“level 2 accreditation criteria”** means the matters under section 43.

**“level 3 accreditation criteria”** means the matters under section 44.

**“notice”** means a written notice.

**“owner”**, for part 8, division 2, subdivision 4,<sup>48</sup> see section 122.

**“personal care service”** means a service of regularly providing a resident with—

(a) help in—

(i) bathing, toileting or another activity related to personal hygiene; or

(ii) dressing or undressing; or

(iii) consuming a meal; or

(iv) meeting a mobility problem of the resident; or

(v) taking medication; or

(b) help in managing the resident’s financial affairs.

**“premises”** include a part of premises.

**“prescribed building requirements”** see section 28.

**“prescribed fire safety document”**, for premises, means the prescribed fire safety document for the premises under section 33.

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<sup>48</sup> Part 8 (Investigation and enforcement), division 2 (Powers of authorised officers), subdivision 4 (Power to seize evidence)

## SCHEDULE 2 (continued)

**“Queensland Building Tribunal”** means the Queensland Building Tribunal established under the *Queensland Building Tribunal Act 2000*.

**“registered premises”** means premises registered under this Act as premises in which a residential service is conducted.

**“registered service”** means a residential service registered under this Act.

**“register of residential services”** means the register kept under section 179.

**“relative”** of a person—

- (a) means the person’s spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, cousin, niece, nephew, parent-in-law, daughter-in-law, son-in-law, sister-in-law or brother-in-law; and
- (b) for an Aboriginal person—includes a person who, under Aboriginal tradition, is regarded as a relative of the Aboriginal person; and
- (c) for a Torres Strait Islander person—includes a person who, under Island custom, is regarded as a relative of the Torres Strait Islander person.

**“rent”** means an amount of money, or other consideration, given in return for the provision of accommodation by a person and any related services provided by the person.

**“resident”** see section 5.

**“residential service”** see section 4.

**“residential services Act”** means this Act or the accommodation Act.

**“reviewable decision”** means a decision stated in schedule 1.

**“review decision”** see section 158(3).

**“school”** means—

- (a) a State school within the meaning of the *Education (General Provisions) Act 1989*; or
- (b) a school that is accredited, or provisionally accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*.



## SCHEDULE 2 (continued)

**“self-contained unit”** means a part of a building, forming a self-contained residence, that is under the exclusive possession of the occupier and includes kitchen, bathroom and toilet facilities.

**“service provider”** see section 6 and, for part 2, division 4,<sup>49</sup> see section 18.

**“spent conviction”** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

**“staff”**, of a residential service, includes a volunteer and a resident who participates in the conduct of the service.

**“Supported Accommodation Assistance Program”** means the program, conducted under an agreement between the Commonwealth and the State, known as the ‘Supported Accommodation Assistance Program’ or, if the program is continued under another name, the program as continued under the other name.

**“takes a reprisal”** see section 173.

**“transitional registration period”** see section 70(2).

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<sup>49</sup> Part 2 (Registration), division 4 (Suitability of service provider and associates)

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Residential Services (Accreditation) Act 2002 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## **4 List of legislation**

### **Residential Services (Accreditation) Act 2002 No. 18**

date of assent 17 May 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 23 August 2002 (2002 SL No. 214)