RESIDENTIAL SERVICES (ACCREDITATION) BILL 2002

EXPLANATORY NOTES

General Outline

Objectives of the Legislation

The principal policy objectives of the Bill are to regulate the conduct of residential services to:

- protect the health, safety and basic freedoms of residents;
- encourage service providers to continually improve the way they conduct residential services; and
- support fair trading in the residential services industry.

Reasons for Proposed Legislation

The residents of the residential services sector are some of the most vulnerable people in the Queensland community. As such they are more susceptible to exploitation than most other groups in the community and often are unable to exercise the consumer choices that might otherwise allow them to avoid situations of long-term exploitation or abuse. With few exceptions, they have limited incomes and many experience a range of disadvantages (including intellectual and/or psychiatric disability, drug and alcohol problems, brain injury, problems associated with ageing, social, economic disadvantage, and social isolation).

In most cases residents surrender a high percentage of their relevant pension to service providers, the amount of which does not always reflect the level of quality or range of services provided to them and they are not accorded protection under residential services or similar legislation.

The proposed regulation of the residential services sector is in response to immediate concerns regarding the safety and well being of residents and follows a number of well publicised instances of abuse of residents. It also responds to the needs and expressed wishes of reputable service providers

to improve the image of the industry and raise substandard operating practices to acceptable levels.

This Bill is one component of a reform package that has been developed by the Hostel Industry Taskforce (established in 2000) and other agencies in response to poor conditions and standards currently evidenced in the residential services industry. The *Residential Services (Accommodation Bill) 2002* is another component of the response to the problems in this area. It addresses concerns relating to tenancy issues. The residential services industry is one of the few industries within the broader residential rental market that remains without consumer protection legislation.

Alternatives to the Bill

There are no alternatives considered appropriate for achieving these policy objectives.

How the Policy Objectives will be Achieved

The objects of the legislation are primarily achieved through establishing standards for the provision of residential services and providing for and encouraging continuous improvement in the delivery of residential services. The objectives will be further achieved through establishing a registration system ensuring that service providers and associates are suitable and that the premises involved are safe and suitable. The accreditation system established by the Act will ensure that minimum standards of care are met.

Estimated Cost of Implementation

The scheme proposed in the legislation will involve administrative costs in connection with registration, accreditation, compliance and tribunal functions.

Implementation of the accreditation scheme will be done as a staged process for approximately 502 supported accommodation hostels and boarding houses and 32 aged rental complexes. Additional staff will be required in the Accreditation Unit to be established in the Office of Fair Trading and in the existing Investigations Unit of the Office of Fair Trading.

There will be minimal cost recovery by payment of application fees by service providers for registration and accreditation.

It is anticipated that the costs of implementation of the legislation will be:

2002/3—$0.800m
2003/4—$0.950m
2004/5—$1.080m

Consistency with Fundamental Legislative Principles

Disclosure of criminal histories

The Bill provides that, in deciding a person's suitability to be the provider of a residential service, the chief executive may have regard to the person's criminal history. Particular regard may be had to convictions under a residential services Act or similar law of another jurisdiction. A residential services Act includes this Act or the *Residential Services (Accommodation) Act 2002*.

Criminal history is defined as being convictions, other than spent convictions, recorded against a person before or after the commencement of the Act.

The Bill further provides for automatic disqualification as a suitable person for a person convicted in the last 5 years of certain disqualifying offences, unless the chief executive is satisfied it would be reasonable to decide otherwise in the exceptional circumstances of the case.

It may be suggested that this provision does not have sufficient regard to the rights and liberties of the individual. However, this legislation is designed to protect a vulnerable group in society and it is considered that the public interest in meeting this objective outweighs any infringement of this principle. Additionally, the scheme is appropriately limited and controlled.

The provisions contain safeguards for the use of information obtained regarding a person's criminal history to ensure that overall the provisions represent a balanced approach.

It has already been noted that the chief executive has discretion with regard to automatic disqualification.

The Bill specifically restricts the use of criminal history information. It must not be used for any other purpose other than the purpose for which it was obtained. The Bill also requires the chief executive to have regard to when the offence was committed, the nature of the offence and its

relevance to the decision and whether a person is a service provider or an associate.

Further, the Bill ensures that a person is given a reasonable opportunity to be heard before the chief executive uses any information in a criminal history report. This allows a person to make representations about an offence that may be relevant to the decision.

Criminal history reports must be destroyed after the expiry of all appeal periods. This safeguards the privacy of individuals.

Appointment of Administrator

Part 6 of the Bill provides for the appointment of an administrator to a registered service by the Queensland Building Tribunal. The powers of an administrator to take over the premises of the service provider, to receive rental payments and to enter a resident's room may be considered to not have sufficient regard to the rights and liberties of individuals.

Again it is considered that the scheme provided in the legislation is appropriately limited and controlled and that the overriding public interest in protecting vulnerable residents is paramount.

The Bill provides for the appointment of an administrator in limited circumstances and by the tribunal, an independent body. Such an appointment may only be made where it is necessary to protect the health or safety of residents of a service. Appropriate limitations on the exercise of the discretion to appoint are outlined in Part 6. Only in the rarest of circumstances would such criteria be met. One possible case is where a service provider who is a sole operator simply fails to provide the service and cannot be located. Depending on the nature of the particular residents and the type of services usually provided there may be an urgent need to empower someone to continue to provide those services.

The Bill limits the term of an administrator's appointment.

Executive officers of corporation ensuring corporation complies with Act and responsibility for acts and omissions of representatives

The Bill effectively provides that an act or omission of a person's representative (relating to a proceeding for an offence under the Act) is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. The person will therefore be taken to have committed the relevant offence unless the person can prove that they could not, by the exercise of reasonable diligence, have prevented the act or omission.

The Bill further provides that, if a corporation is convicted of an offence, each executive officer of the corporation is taken to have committed the offence of failing to ensure that the corporation complies with that provision. This clause therefore presumes an executive officer of the corporation to be guilty until the officer can prove that the officer took all reasonable steps to ensure the corporation complied with the provision; or the officer was not in a position to influence the conduct of the corporation in relation to the offence.

These provisions effectively provide for the reversal of the onus of proof. However, it should be noted that the matters to be proved by the defendant are not elements of the offence. The facts that support the defence will usually be entirely within the defendant's knowledge and impossible for the prosecutor to prove in the negative. Given that the legislative scheme introduced by this Bill is designed to protect the health, safety and welfare of a vulnerable section of the community, it is appropriate that:

- persons be required to oversee the conduct of their representatives and, in doing so, make reasonable efforts to ensure that their employees and agents comply with the requirements of the legislation;
- an executive officer who is in a position to influence the conduct of a corporate licensee, be required to ensure that the corporation complies with the legislation; and
- an executive officer, who is responsible for a contravention of the legislation, be accountable for his or actions and not be able to "hide" behind the corporation.

The provisions are therefore warranted to ensure that there is effective accountability at a corporate level.

CONSULTATION

Community

The Hostel Industry Development Unit consulted extensively with all key stakeholder groups including residents/consumers, industry and community groups.

The Hostel Industry Development Unit Joint Advisory Council comprised representation from relevant government agencies, industry, peak disability organisations, Boarding House Action Group, Disability

Housing Coalition, Commerce Queensland, Brisbane City Council and the Community Services and Health Industry Training Council.

Government

Through the Hostel Industry Task Force there have been extensive consultations with Government Agencies including:

Department of Premier and Cabinet
Department of Tourism, Racing and Fair Trading
Department of Families
Department of Health
Department of Housing
Department of Local Government and Planning
Queensland Treasury
Disability Services Queensland
Residential Tenancies Authority
Emergency Services
Department of Justice and Attorney General
Queensland Police Service

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Division 1—Introduction

Clause 1 sets out the short title of the Act.

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

Division 2—Interpretation

Clause3 specifies that the dictionary in Schedule 2 defines particular words used in the Act.

Clause 4 specifies the meaning of "residential service". Providing accommodation in return for rent in one or more rooms is a key element of a residential service. The premises must be able to accommodate 4 or more persons to come within the meaning of this definition and therefore to be subject to this Act. A shared facility, such as bathroom, kitchen, common or dining rooms is another characteristic of a residential service. Each individual resident does not have a right to occupy the whole of the premises. It is not intended that shared tenancy arrangements, such as a group of students sharing a house, be included in this definition.

Subclause (2) provides for the type of service where residents may be provided with self contained units but a food or personal care service is provided. This arrangement commonly exists for older residents and persons in supported accommodation.

Subclause (3) allows further categories of services to be included in the definition under a regulation provided any such service meets the two fundamental criteria of 4 or more residents and accommodation being the main purpose of the service.

Subclause (4) specifies that the rooms of a residential service do not have to be in the same premises.

Subclause (5) specifically excludes certain types of services such as those that are already covered by other legislation or accreditation schemes.

Paragraph (f) excludes services run by non-profit organisations where the risk to residents is much lower. The Bill is primarily directed at private operators.

Clause 5 specifies the meaning of "resident". To be a resident in a residential service a person must occupy the room as their only or main residence. The term does not include the service provider, relatives or employees of the provider.

Clause 6 specifies the meaning of "service provider". The service provider for a service is the person registered as the provider or who was registered. Otherwise the person conducting the service is the service provider.

Division 3—Application and object

Clause 7 provides that the Act binds all persons including the State and the Commonwealth as far as possible. The State and Commonwealth are not made liable for an offence under the Act.

Clause 8 provides for the object of the Act and the way the object is to be achieved.

PART 2—REGISTRATION

Division 1—Requirement to be registered

Clause 9 specifies that a person must not conduct a residential service in premises unless the service is registered under the Act and the person is the service provider for the service and the premises are the registered premises for the service. This clause provides for a maximum penalty of 200 penalty units ($15,000).

Subclause (2) makes an offence against subclause (1) a continuing offence and provides that a person may be charged in one or more complaints for periods the offence continues. The maximum penalty for each day the offence continues after a conviction against subclause (1) is 5 penalty units ($375).

Division 2—Registration process

Clause 10 sets out the application process for a person proposing to conduct a residential service. An application may be made to the chief executive for registration of the service. The application must be in the approved form and accompanied by:

- a signed consent from the applicant and his/her associates that a criminal history check be undertaken by the chief executive;
- a building compliance notice and a fire safety document; and
- the fee prescribed under a regulation.

The applicant must provide any other relevant information and documents reasonably required by the chief executive to decide the application.

Subclause (4) specifies that the chief executive must decide the application by registering the service or refusing to register the service. This decision is a reviewable decision and the Act provides for a system of review and appeal in Part 10.

Subclause (5) sets out some parameters for the exercise of the chief executive's discretion. If the chief executive is satisfied that the applicant and each associate are suitable persons and the premises comply with the requirements relating to safety and suitability prescribed under a regulation he or she must register the service.

Clause 11 provides that the chief executive must decide an application as soon as practicable and sets a limit of 60 days as an outside timeframe. The 60 days run from the day the application is made but can be extended in situations where the chief executive asks for more information or documents. The due day for deciding applications may be extended by agreement between the chief executive and the applicant.

A failure to decide the application by the due day means that the chief executive is deemed to have refused to register the service on the day after the due day.

Clause 12 requires the chief executive to give the service provider a registration certificate stating specified details immediately after registering a residential service.

Clause 13 provides that the registration of a residential service continues until it is cancelled under the Act.

Clause 14 provides that two or more persons may be registered as the service providers for a residential service.

Subclause (2) specifically provides that a reference in the bill to the service provider for a residential service where there are two or more service providers is a reference to each of those providers.

Subclause (3) provides that subclause (2) applies subject to a contrary intention in the Act.

Division 3—Cancellation of registration

Clause 15 sets out the circumstances in which the chief executive may cancel the registration of a residential service. If the chief executive is satisfied that the service provider or an associate is not a suitable person or the premises do not comply with the prescribed building requirements; there is no fire safety management plan or the service has ceased to be conducted for at least 3 months, registration may be cancelled.

Subclause (2) provides for a show cause notice to be given to the service provider where the chief executive is proposing to cancel the registration. Notice must include the reasons for the proposed cancellation and allow the service provider at least 30 days to give a written response stating why the provider considers the registration should not be cancelled.

Subclause (3) provides that the chief executive must consider any response from the service provider and may then by notice given to the service provider cancel the registration.

Subclause (4) provides that such a cancellation takes effect on the day stated in the notice but it must be at least 14 days after the notice is given.

Subclause (5) in cases where the chief executive decides not to cancel the registration, the service provider must be given notice of the decision.

Subclause (6) provides that the registration may be cancelled without complying with subclauses (1), (2) and (4) at the service provider's written request or written agreement.

Clause 16 requires a service provider whose registration has been cancelled to return the registration certificate to the chief executive within 14 days of the cancellation. Failure to do so constitutes an offence with a maximum penalty of 50 penalty units ($3,750).

Division 4—Suitability of service provider and associates

Subdivision 1—Preliminary

Clause 17 provides that this division applies to the chief executive in deciding if a service provider or an associate of a service provider is a suitable person.

Clause 18 provides that for the purposes of this division "applicant" means an applicant for registration of a residential service and an applicant to become the service provider of an existing residential service. Service provider includes an applicant.

Clause 19 specifies who is an associate of a service provider. A person who takes part in the management of the residential service for the service provider is an associate. Two examples are given in the Act. The key element is that the associate is involved in the management of the service for the service provider.

Subclause (2) specifies that merely collecting rental payments or carrying out care taking duties for the service provider does not make a person an associate.

Subclause (3) ensures that prospective associates of applicants are considered where possible.

Subdivision 2—Bases for deciding suitability

Clause 20 provides that a child is not a suitable person.

Clause 21 specifies that an individual is only suitable if they have the qualifications prescribed under a regulation.

Clause 22 provides that an individual is not a suitable person if that individual is an undischarged bankrupt or taking advantage of a law about bankrupt or insolvent debtors. Similar provisions apply to corporations.

Clause 23 allows the chief executive, when considering suitability, to have regard to a person's criminal history with particular stress on any conviction for an offence against a residential services Act or a similar law in another jurisdiction.

If a person has been convicted within the previous 5 years of a disqualifying offence the chief executive is obliged to determine that 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. A disqualifying offence is defined in Schedule 2 as meaning a variety of offences including an offence involving fraud or dishonesty and punishable by three or more years imprisonment; an offence against Part 4 or 5 of the Criminal Code or offences outside Queensland which would be offences under Part 4 or 5 of the Criminal Code if committed in Queensland.

Subclause (3) specifies that if a person refuses to consent to the chief executive conducting a criminal history check, the chief executive must decide the individual is not a suitable person.

Subdivision 3—Obtaining information about criminal history

Clause 24 requires the commissioner of the police service to provide the chief executive with a criminal history report about service providers, associates and applicants upon receipt of a written request from the chief executive.

Subclause (1) requires that the associate has given the chief executive written consent to the criminal history check being performed.

Subclause (3) specifies that the commissioner must prepare the report from information in the commissioner's possession or to which the commissioner has access. The commissioner may be able to access national databases which indicate whether other police services hold relevent history about a person.

Clause 25 specifies that the information contained in the criminal history report obtained from the commissioner of police service must not be used for a purpose other than deciding whether the person is a suitable person under the Act.

When making such a decision the chief executive must have regard to specified matters such as when the offence was committed; the nature of the offence and its relevance to the decision; and whether the person is a service provider or an associate.

Clause 26 requires that the chief executive before using information in a criminal history report disclose the information to the person and allow them a reasonable opportunity to make representation about the information.

Clause 27 provides for the destruction of criminal history reports in certain circumstances. It specifies that the chief executive must destroy the report as soon as practicable after the latest of three things:

- for a conviction mentioned in the report—the end of the period to appeal against the conviction or the finalisation of an appeal against the conviction and any appeal from that appeal;
- the end of the appeal period under the Act;

- the final determination of any appeal taken or any appeal from that appeal.

Division 5—Compliance with prescribed building requirements

Clause 28 provides that a regulation may prescribe the requirements for the premises in which a residential service is or will be conducted to ensure that the premises are safe and suitable. It is necessary to make such provision in this Act to ensure that appropriate protections are in place for a vulnerable section of the community. The general legislation relating to building requirements does not apply the stringent safeguards to some of the smaller premises that are considered necessary in the case of a residential service.

Clause 29 requires local governments to certify whether premises comply with the prescribed building requirements and requires that notification be given of any decision made. The section authorises local governments to charge a reasonable fee for this service.

Clause 30 applies to an appeal under the previous section and establishes an appeal mechanism from decisions of the local government regarding compliance with building requirements. An applicant may appeal an adverse decision or a failure to make a decision within the specified period of 20 days to a tribunal under the *Integrated Planning Act 1997*.

Clause 31 specifies that where the tribunal makes a decision on an appeal that decision becomes, for the purposes of this Act, the decision of the local government.

Clause 32 ensures that a decision of a local government is not invalid merely because it was made outside the 20 day time limit or notification is outside the time limit.

Division 6—Fire safety requirements

Clause 33 states the prescribed fire safety document required for registration of a residential service, renewal of level 1 accreditation or amendment of the registration of a service where new premises are involved.

Subclause (2) provides that in the specific case of premises that are a budget accommodation building and a development application has been made which required a fire safety management plan and a decision notice, stating that the application was approved, was issued in the last 12 months, the prescribed fire safety document is a copy of the decision notice. This provision ensures that there is no duplication of existing requirements under other legislation relating to standards of premises. It ensures that owners of premises have one standard to meet to satisfy fire safety concerns.

Subclause (3) makes provision for those cases where no other legislation requires compliance to a fire safety standard. In such cases, the prescribed safety document for the premises is a fire safety management plan. "Fire safety management plan" is defined in schedule 2 as meaning for premises that are a budget accommodation building—see the *Fire and Rescue Service Act 1990,* section 104FC. For other premises, section 72 of this Act requires a person operating a residential service to have a plan complying with the requirements prescribed under a regulation.

PART 3—ACCREDITATION

Division 1—Preliminary

Clause 34 gives a broad explanation of the accreditation scheme for residential services. There are 3 levels of accreditation and a residential service may be accredited at more than 1 level. The levels of accreditation required depend on the services provided. All residential services must be accredited at level 1. Level 2 accreditation is required where the service provided includes the provision of a food service. If a personal care service is to be provided, level 3 accreditation is required. A definition of "personal care service" is provided in the dictionary in schedule 2.

Division 2—Requirement for accreditation

Clause 35 requires a person must not conduct a residential service unless it is accredited at level 1. An application for accreditation must be made

within 6 months of registration or such time as is granted by an extension under Section 46—the due day.

Registration of a residential service is automatically cancelled after the due day unless the service is accredited or there is a current application for accreditation.

Where registration is cancelled the chief executive must give written notice to the service provider.

Clause 36 sets out the requirements for a service provider applying to be accredited at level 2. The due day is 6 months after a food service begins to be provided or as extended under section 46.

Subclause (2) provides that a food service is taken to continue during any break in the services of less then 30 days. This ensures that minor breaks in service that may occur in a business operation do not require new applications for accreditation to be made.

Subclause (3) prevents a service provider from providing a food service after the due date unless accredited at level 2. To do so is an offence with a maximum penalty of 200 penalty units ($15,000).

Subclause (4) provides that an offence is not committed where there is a current application for accreditation on the due day.

Upon this application being withdrawn, lapsing or being granted subsection (3) applies. Where the application is refused, subclause (3) applies on the day stated in the notice given under section 47(6).

An offence against subsection (3) is a continuing offence. The maximum penalty for each day the offence continues after a conviction is 5 penalty units ($375).

Clause 37 makes special provision for a case where a service provider has been providing a food service, applies for accreditation and fails to receive it, ceases to provide the food service and then wishes to commence providing the service some time in the future. The provider must not start providing a food service until at least 6 months after the day of cessation, maximum penalty 200 penalty units ($15,000). An offence against the section is a continuing offence with 5 penalty units applicable for each day the offence continues after a conviction.

Clause 38 sets out the due day for a service provider applying to be accredited at level 3. The due day is 6 months after a personal care service begins to be provided or as extended under Section 46.

Clause 39 makes special provision for a case where a service provider has been providing a personal care service, applies for accreditation and fails to receive it, ceases to provide the personal care service and then wishes to commence providing the service some time in the future. The provider must not start providing a personal care service until at least 6 months after the day of cessation. A breach of this provision carries a penalty of 200 penalty units ($15,000). An offence against the section is a continuing offence with 5 penalty units applicable for each day the offence continues after a conviction.

Clause 40 it is an offence for a service provider of an accredited service to contravene a condition of the accreditation. The offence carries a maximum penalty of 100 penalty points ($7,500).

Division 3—Accreditation Decisions

Clause 41 specifies the meaning of "accreditation decision". Such a decision includes 3 elements—

- whether to accredit the service at the particular level and if so for what period;
- or the conditions that apply; or
- whether to renew, revoke or amend the accreditation of the service.

Clause 42 specifies the criteria the chief executive must have regard to when making a level 1 accreditation decision. The criteria address such things as the extent which the service provider recognises and observes residents' rights, the standard of registered premises and facilities, the way the service is managed and conducted and any other matter relevant to the first three criteria that is prescribed under the regulations.

Clause 43 specifies the relevant criteria when making a level 2 accreditation decision. The criteria in this case relates to a quantity, quality, variety and the nutritional value of the food provided; the preparation, delivery, service and storage of the food and any other relevant matter prescribed under the regulations.

Clause 44 specifies the relevant criteria when making a level 3 accreditation decision as including the extent to which the service provider provides the personal care service in a way that meets the individual needs of the residents, protects their interests and maintains and enhances their

quality of life generally. Again, a matter relevant to such considerations can be prescribed under the regulations.

Division 4—Accreditation Process

Clause 45 establishes a self-assessment scheme for service providers applying for accreditation of a residential service. The chief executive supplies such a provider with self-assessment material relevant to the particular level of accreditation being sought. The provider commences to provide the accommodation, food service or personal care service and uses the self-assessment material to assess the way the service is being provided against the criteria for that accreditation level.

Clause 46 provides for the due day for applying for accreditation. Division 2 sets out the due day for an application for accreditation according to the level of accreditation sought. Subclause (2) provides that the chief executive may extend the due day for an application for accreditation at the service provider's request. Such extension must be by way of written notice. When making such decisions the chief executive must have regards to factors such as the extent of the service provider's preparations for making the application; the extent to which the service provider has improved the service to which the accreditation relates and any other relevant matter.

Clause 47 sets out the requirements for applying for accreditation. Once a service provider has completed the self-assessment material an application may be made to the chief executive for accreditation of the residential service.

The application must meet the criteria set out in subclause (2). The service provider must also provide any other relevant information and documents reasonably required by the chief executive to decide the application as required by subclause (3).

Subclause (4*)* requires the chief executive to make a decision to either grant the application or refuse to accredit the service.

Subclause (5) gives the chief executive the power to grant accreditation on conditions that the chief executive considers appropriate. Examples of appropriate conditions are given in subclause (5).

Subclause (6) specifies what occurs where the chief executive decides to refuse to accredit the residential service. In that case, the chief executive must give the service provider a written notice of the decision stating a day

on which the service provider must cease conducting or providing the particular service. This must be no sooner than seven days after the notice is given.

Clause 48 requires the chief executive to give the service provider an accreditation certificate where a residential service has been accredited at level 1. The certificate must state certain matters which are set forth in subclause (1).

Subclause (2) allows the chief executive to amend the certificate if a residential service is subsequently accredited at level 2 or 3.

Subclause (3) requires the chief executive to amend the accreditation certificate where the level 2 or 3 accreditation is cancelled.

Subclause (4) allows the chief executive to replace an accreditation certificate rather than amending it under the earlier subsections.

Clause 49 specifies that accreditation of a residential service does not have affect for a period longer than 3 years. A service can be accredited for less than 3 years.

When deciding a 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.

This provision does not limit division 3 which relates to accreditation decisions.

Clause 50 allows a service provider to apply to the chief executive for renewal of the accreditation of the service.

Subclause (2) specifies that such an application must be made before the accreditation is due to expire, but no earlier than 3 months before the expiry date.

Subclause (3) specifies the form and other particulars that such an application must comply with.

Subclause (4) allows the chief executive to require a service provider to provide any other relevant information and documents where it is reasonable to do so.

Subclause (5) requires the chief executive to decide an application for renewal by either renewing the accreditation or refusing to renew the accreditation. Such decisions are reviewable decisions under the Act.

Subclause (6) specifies that accreditation may be renewed for no longer than 3 years after the expiry date.

Subclause (7) allows accreditation to continue in the case where an application is still current on the expiry day. Accreditation continues until the application is decided, withdrawn or lapses.

Subclause (8) if renewal of accreditation is to be refused the service provider must be given written notice of the decision stating the day on which the accreditation ends. This must be no sooner than 7 days after the notice is given. The accreditation continues in force until that day.

Clause 51 allows the service provider to request an extension of the accreditation period in order to make an application for renewal of the accreditation. If the chief executive is satisfied that it would be reasonable in all the circumstances to do so, the application may be granted. Such a decision must be made before the expiry of the accreditation period.

Clause 52 sets out circumstances in which an application may lapse. Subclause (1) provides that this section applies in the case of an application for accreditation or renewal of accreditation.

Subclause (2) specifies the way in which the chief executive may make a requirement under Section 47(3) or 50(4) for information to decide an application. The chief executive must give the service provider a notice stating the required information; the time by which the information is required and the notice must state that if the information is not given to the chief executive by the stated time, the application will lapse.

Subclause (3) requires the time stated be reasonable and at least 14 days after the requirement is made.

Subclause (4) allows the chief executive to give the service provider an extension of time where the chief executive is satisfied it would be reasonable in all the circumstances to do so.

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

"Information" is defined in the dictionary as including a document.

Division 5—Dealings with accreditation

Clause 53 provides that the service provider may apply to the chief executive for an amendment of the accreditation. The application must be in the approved form and accompanied by any fee prescribed. The chief executive must either amend their accreditation in the way applied for; or

amend the accreditation in another way with the applicant's written agreement; or refuse to amend the accreditation.

A residential service provider may not use an application for amendment to gain accreditation at a different level. This can only be done by an application for accreditation at the new level.

Clause 54 specifies that the chief executive may amend the accreditation of a residential service at any time without receiving an application from the service provider if satisfied as to the matters set out in paragraphs (a) – (d) of subclause (1).

Subclause (2) provides that before amending the accreditation of a residential service in such circumstances the chief executive must give the service provider a notice stating various matters set out in the subsections. A service provider must be fully informed about the proposed amendment, the reasons for the amendment and be given a stated time of at least 28 days to give the chief executive a written response.

Subclause (3) provides that after considering any response from the service provider the chief executive may make some or all of the proposed amendment. Such a decision is a reviewable decision under the Act.

Subclause (4) provides that where the chief executive decides to not amend the accreditation notice must be given to the service provider.

Subclause (5) if the service provider requests in writing or agrees in writing, the chief executive may amend an accreditation without giving a show cause notice, or may amend an accreditation in a way that has not been stated in the show cause notice, or 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.

Clause 55 provides for the urgent amendment of accreditation if necessary for the interests or wellbeing of the residents in an accredited service.

Clause 56 provides that any amendment of the accreditation of a residential service takes effect when the chief executive gives written notice to the service provider or at a time stated in the notice.

Clause 57 sets out the circumstances in which the chief executive may cancel the accreditation of a residential service. The section makes provision for the chief executive to give the service provider a show cause notice stating the relevant information before cancelling any accreditation. The chief executive is required to consider any response given by a service provider.

This section also allows the chief executive to cancel the accreditation of a residential service without complying with the normal notification provisions in cases where the service provider requests the cancellation in writing.

Division 6—Dealing with accreditation certificate

Clause 58 provides that where an accreditation is amended the service provider must upon receipt of a written request from the chief executive return the accreditation certificate to the chief executive for notation of the amendment. Failure to do so constitutes an offence with a maximum penalty of 5 penalty units ($375).

Where accreditation is cancelled the accreditation certificate must be returned within 14 days. Failure in this instance carries a maximum penalty of 20 penalty units ($1500).

Clause 59 allows the chief executive to amend the information on the certificate upon notification from a service provider as to a change in details.

Clause 60 allows a service provider to apply to the chief executive for a replacement accreditation certificate. Where the chief executive is satisfied that the certificate has been lost, stolen, destroyed or damaged in a way or to an extent to require its replacement, the chief executive must grant the application.

PART 4—CHANGES AFFECTING REGISTRATION OR ACCREDITATION

Division 1—Change of service provider

Clause 61 makes provision for becoming a service provider. Subclause (1) states that a person may apply to the chief executive to be registered as a service provider for a registered service.

Subclause (2) states the requirements for an application including details of the existing service provider and a signed consent by the applicants to a

criminal history check. Part 2 of the Act requires that service providers and their associates be suitable persons. Criminal history is a factor that may be considered in making this assessment.

Subclause (3) allows the chief executive to require the provision of other relevant information and documents.

Subclause (4) requires the chief executive to decide an application by either registering, or refusing to register the applicant. Such a decision is a reviewable decision under the Act.

Subclause (5) requires the chief executive to register the applicant as the service provider where the chief executive is satisfied the applicant and his or associates are suitable persons. The criteria for determining suitability are set out in Division 4.

Subclause (6) requires the chief executive to give notice to the applicant of a decision to register the applicant stating the day on which the registration has effect.

Subclause (7) provides that where the applicant and the existing service provider have requested a particular day for the registration to take effect, if the application has been decided by that day the notice under subsection (6) must specify that day as the day on which the registration has effect.

Clause 62 places an obligation on the chief executive to decide applications as soon as practicable in the first instance by the 30th day after an application is made. This day, the due day, may be extended where the chief executive asks for more information or documents. It is extended by the period within which it takes the applicant to comply with the request.

The due day may also be extended by agreement between the chief executive and applicant.

Where the chief executive does not decide an application by the due day it is presumed that on the day after that day, the chief executive has refused to register the applicant. This deeming provision will allow the applicant to exercise review rights under the Act.

Clause 63 sets out circumstances where a residential service may remain registered but a person may cease to be the service provider for that service. This may occur where someone else applies to become the service provider or the person is not the only service provider for the service. In the latter case written notice must be given to the chief executive at least 7 days prior to the cessation.

Division 2—Change of registered premises

Clause 64 establishes the application procedure where a service provider proposes to conduct the service in premises other than the registered premises. An application may be made to the chief executive for amendment of registration.

Subclause (2) sets out the requirements for an application, including details as to whether the service will be conducted in the new and the old premises or just the new premises. In the case of new premises a building compliance notice and a fire safety document are required.

Subclause (3) allows the chief executive to require the production of any other relevant information and documents.

Subclause (4) requires the chief executive to decide an application by amending, or refusing to amend the registration, to show the new premises as the registered premises. This is a reviewable decision under the Act.

Subclause (5) provides that the chief executive must amend the registration to show the new premises if satisfied that the application is made correctly and complies with subsection (2).

Subclause (6) requires the chief executive to notify the service provider in cases where the application is granted on the day in which the registration has affect.

Subclause (7) again requires the chief executive to comply with a request that the registration takes effect on a stated day where possible.

Clause 65 deals with the due day for deciding applications under this division. Again the chief executive has 30 days in the first instance. Where further information or documents are requested this time is extended. Again the due day may be extended by agreement between the chief executive and the applicant. Failing to make a decision by the due day results in a deemed refusal to amend the registration.

Clause 66 sets out the circumstances in which premises may cease to be registered premises for the service. This occurs either by an application under section 64 for new premises to become the registered premises, or if the premises are not the only registered premises, by written notice given by the service provider to the chief executive at least 7 days prior to those premises ceasing to be registered premises.

Division 3—Other changes

Clause 67(1) requires the service provider for a residential service to comply with this section unless the service provider has a reasonable excuse. A failure to do so carries a maximum penalty of 50 penalty units ($3,750).

Subclause (2) requires the service provider to give the chief executive a written notice in the approved form at least 30 days before ceasing to conduct the residential service.

Subclauses (3) and (4) make the same provision with respect to cessation of services related to accreditation at level 2 and 3 that is a food service or a personal care service.

Clause 68 makes provision about changes in the associates of a service provider. Within 30 days of a person becoming an associate of a service provider, the service provider must give the chief executive a notice about that person unless the service provider has a reasonable excuse. Two separate penalties are set out for an offence under this section. If a service provider knew, or ought reasonably to have known, that the new associate had a conviction for a disqualifying offence the maximum penalty is 100 penalty units ($7,500), in any other case the maximum penalty is 20 penalty units ($1,500).

Subclause (2) requires service providers to notify the chief executive where an associate ceases to be an associate of a service provider. Again, a reasonable excuse is allowed for by the provision. The maximum penalty for a breach of this provision is 10 penalty units ($750).

Clause 69 requires a service provider give the chief executive notification about other changes. Such changes include a change in the criminal history of the service provider or an associate of the service provider; obstruction, damage, renovation or other significant changes to the registered premises. This section also places an obligation on the service provider to notify the chief executive about changes in any matter relevant to the continued registration or accreditation of the service.

Where a breach of this section relates to a change in the criminal history of the service provider or an associate of the service provider, and the change is a conviction for a disqualifying offence the maximum penalty applicable is 100 penalty units ($7,500). In any other case the maximum penalty is 20 penalty units ($1,500).

Subclause (2) provides that a failure to notify the chief executive when a conviction ceases to be part of a criminal history is not a change for the purposes of subsection (1)(a).

Subclause (3) provides protection from self-incrimination for service providers.

Division 4—Death of service provider

Clause 70 makes provision for where the individual is the only service provider for a registered service and that individual dies.

In such cases, 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). This period may be extended upon written application of the personal representative for a further period of 6 months.

Subclause (6) allows a person who is registered under this section in their capacity as personal representative to apply under section 61 to be registered in his or her personal capacity as the service provider for the service.

Clause 71 makes provision for matters that may occur in the first 30 days of the transitional registration period. In this period, the personal representative may by written notice surrender the registration or accreditation of the residential service without complying with section 67.

If the chief executive is satisfied that 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 written notice without the requirement to give a show cause notice under section 54.

Clause 72 provides for the situation where a service provider dies and there is more than one service provider. In such cases, surviving service providers continue as service providers.

Division 5—Notation of changes

Clause 73 provides for the registration certificate or accreditation certificate to be returned to the chief executive for notation of a change that has occurred under Part 4 of the Act. The maximum penalty for a breach of this section is 5 penalty units ($375).

PART 5—OTHER MATTERS ABOUT CONDUCT OF RESIDENTIAL SERVICE

Division 1—Fire safety management plan

Clause 74 provides that this division does not apply to premises that are a budget accommodation building as defined by the *Building Act 1975*. Such premises are adequately covered by other legislation.

Clause 75 requires that a person have a fire safety management plan complying with requirements in the regulation for premises where a residential service is being conducted. Failure to do so is an offence with a maximum penalty of 100 penalty units ($7500).

Clause 76 requires that the fire safety management plan for a premises be updated as soon as practicable, but not later than 1 month, after a change affecting compliance with the regulation. A failure to do so is an offence with a maximum penalty of 100 penalty units ($7500).

The section also makes it an offence for a service provider to fail to ensure that the current fire safety management plan is implemented. The maximum penalty is 100 penalty units ($7500).

A copy of the plan must be kept at the premises and be available for inspection (free of charge) to the residents. The maximum penalty for a breach of this section is 20 penalty units ($1500).

Division 2—Records

Clause 77 requires the service provider for a residential service to keep the records prescribed under a regulation for the time prescribed under a regulation. The maximum penalty for a breach of this provision is 10 penalty units ($750).

Clause 78 provides for residents to be given access to records about themselves either personally or by authorising another person, or to take a copy of the record. Subclause (3) sets out the time in which residents must be given access to their records. Again the maximum penalty for a breach of this provision is 10 penalty units ($750).

Clause 79 ensures the confidentiality of records kept about residents. If records contain personal information about a resident they must be kept in

a way that ensures that no one has access to them other than an authorised person for the service, or the residents. The maximum penalty for a breach of this provision is 20 penalty units or ($1,500).

Subclause (2) prevents an authorised person for a residential service who has access to personal information about residents, from disclosing any information to anyone other than another authorised person or the resident. Again the maximum penalty is 20 penalty units ($1,500).

Subclause (3) provides that subsections (1) and (2) do not apply to the giving of access to a record or the disclosure of information about a resident for a purpose of this Act or with the resident's consent or as permitted or required by another Act.

Authorised person for the purposes of this section means the service provider or a person employed in the service by the service provider.

Personal information about a resident means information about the resident's health or financial affairs or such other information as is prescribed under a regulation.

"Records of a residential service" is also defined.

Clause 80 ensures that services that are no longer registered and persons who are no longer residents are covered by the provisions relating to confidentiality and access to records.

Division 3—Other matters

Clause 81 specifies that a service provider must not pay an amount to or receive an amount from another service provider for helping or allowing a resident to change accommodation between the registered premises. The maximum penalty for a breach of this section is 100 penalty units or ($7,500).

Clause 82 prevents service providers from exercising or purporting to exercise powers under a power of attorney given by a resident in the service in favour of the service provider. The maximum penalty for a breach of this section is 100 penalty units or ($7,500).

Clause 83 requires a service provider to display at a place likely to be seen by residents the registration certificate and accreditation certificates in force for the service.

The maximum penalty for a breach of this offence is 5 penalty units ($375).

PART 6—APPOINTMENT OF ADMINISTRATOR

Division 1—Appointment

Clause 84 provides that the Queensland Building Tribunal may appoint a person as administrator to a registered service.

Clause 85 sets out the criteria the tribunal must consider before appointing an administrator and the process for commencing such a procedure. The chief executive may apply to the tribunal for an order appointing a stated person to a registered service.

The tribunal must be satisfied that the order is necessary to protect the health or safety of the residents in the service and the proposed appointee is suitable and eligible for appointment under section 86

.Subclause (4) sets out the matters the tribunal must have regard to in making its decision. It is clear from the matters listed that the primary objective of the appointment is to protect residents who couldn't otherwise look after themselves.

Clause 86 sets out the criteria the tribunal must consider when determining if an administrator is a suitable and eligible person for appointment.

Subclause (2) specifies the types of persons ineligible for appointment as an administrator.

Subclause (3) requires a proposed appointee to disclose to the tribunal any conflicts of interest, criminal history and whether or not they are ineligible for appointment. The maximum penalty for failing to disclose a criminal history is 100 penalty units ($7,500). In any other case the maximum penalty is 20 penalty units ($1500).

Clause 87 deals with the terms of appointment and sets out the matters that must be contained in the appointment.

Clause 88 provides that when the tribunal appoints an administrator, the chief executive must give a copy of the order to the service provider, unless the chief executive knows that the service provider has a copy already.

Clause 89 ensures that the chief executive keeps residents informed about the appointment of an administrator and gives examples of the ways in which this may occur.

Clause 90 provides that an administrator may be appointed for a period of not more than 3 months, which may be extended for a further 3 months if the Tribunal is satisfied that it is necessary. Residents must be informed about any extension of an administrator's period of appointment.

Division 2—Function and powers

Clause 91 sets out the function of an administrator. The function is basically to provide services to residents, under the terms of appointment, that the service provider has agreed to provide in the course of a residential service. The provision requires that the instrument of appointment state the services to be provided and the way in which or the extent to which those services are to be provided.

Clause 92 gives the administrator the powers to carry out his or her function including the power to enter any part of the registered premises, other than a resident's room; the same right of entry to a resident's room that the service provider has under Part 7 of the accommodation Act; to use the facilities in the premises and to use food or other goods of the premises that are intended for use or are ordinarily used to provide the relevant services.

Clause 93 authorises the administrator to give written notices to residents regarding payment of rental due to the service provider under the accommodation agreement.

When an administrator requires a resident to make a rental payment under this section, it is taken that a requirement in the accommodation agreement to pay the service provider becomes a requirement to pay the administrator.

Subclause (3) provides for the action that an administrator may take if a resident fails to pay rent.

Subclause (4) limits the administrator to requiring amounts that are reasonably required to carry out his or her functions.

Subclause (5) requires the administrator to give residents receipts and to make a copy of the receipt or other record of payment.

Subclause (6) specifies that the administrator may only use any money collected under this section to carry out the administrator's functions.

Subclause (7) requires the administrator to immediately pay any amount that is not needed to carry out the administrator's function to the service provider.

Subclause (8) requires the administrator to pay the service provider any remaining amount received under this section that is left at the end of the administrator's appointment.

Subclause (9) specifies that subsections (7) and (8) apply subject to section 98. Section 98 allows the chief executive to recover the cost of appointing an administrator from the service provider.

Subclause (10) defines "accommodation agreement".

Clause 94 provides an administrator is subject to the chief executive's direction in performing the administrator's function and exercising the powers given under this part.

Clause 95 requires an administrator to comply with a request to produce the instrument of appointment before exercising or proposing to exercise a power under this part.

Clause 96 makes it an offence for a person to obstruct an administrator in the exercise of a power without reasonable excuse. The maximum penalty for a breach of this provision is 10 penalty units ($750).

Subclause (2) provides that where a person has obstructed the administrator and the administrator wishes to proceed with the exercise of the power, the administrator must warn the person that it is an offence to obstruct the administrator without reasonable excuse and that their conduct is considered an obstruction.

Subclause (3) specifies that obstruct includes hinder and attempt to obstruct.

Division 3—Other matters

Clause 97 establishes that an administrator is entitled to be paid the reasonable amount of remuneration agreed with the chief executive.

Clause 98 makes the service provider liable for remuneration and other costs where an administrator is appointed.

Subclause (1) provides that the chief executive may give the service provider a written demand for the amount of an administration cost.

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

Subclause (3) allows the chief executive to recover such cost at any time during or after the appointment from an amount held by the administrator under section 93.

Subclause (4) defines "administration costs" as meaning the remuneration paid to the administrator and any other reasonable cost incurred in carrying out the administrator's function.

Clause 99 requires an administrator to give the chief executive a record of all receipt and payments under section 93 and such other reports that the chief executive requires. In turn, the chief executive must give a copy of each record or report to the service provider.

Clause 100 gives a person a right to claim compensation from the chief executive, if that person incurs loss or damage because of the exercise or purported exercise under this Act. The jurisdiction in which compensation may be claimed is determined by the amount of compensation being claimed. The court may order compensation only if satisfied it is just to make the order in the circumstances of the particular case.

Clause 101 provides that where a service provider can not be located after making reasonable inquiries, any requirement on the chief executive, an administrator or under the *Queensland Building Tribunal Act 2000* to give to or serve a document on that service provider does not apply.

PART 7—ASSOCIATED ACCREDITATION OFFICERS

Clause 102 allows the chief executive to appoint associated accreditation officers. Before doing so the chief executive must be satisfied that the person has the necessary expertise or experience to be an associated accreditation officer or that the person has satisfactorily completed the training approved by the chief executive.

Clause 103 specifies that an associated accreditation officer has the function of helping the chief executive to make accreditation decisions. It is anticipated that associated accreditation officers will be industry or community representatives and that their inclusion in the assessment process will help foster a culture of continuous improvement within the industry.

Clause 104 requires associated accreditation officers to disclose any interests, financial or otherwise that could conflict with the proper performance of their duties to the chief executive.

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

Subclause (3) requires associated accreditation officers who carry out activities from time to time to represent the interests of service providers generally or residents generally to disclose the nature of these activities to the chief executive.

Subclause (4) requires a person who has an interest of the nature outlined in the earlier subsections to 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

Clause 105 provides that the purpose of this part is to provide for monitoring and enforcing compliance with the Act.

Clause 106 allows the chief executive to appoint a person as an authorised officer where the chief executive is satisfied the person has the necessary expertise or experience.

Clause 107 provides that an authorised officer holds office on the conditions stated in the officer's instrument of appointment, or a signed notice given to the officer or a regulation.

Subclause (2) specifies that the conditions, however imposed, may limit the officer's powers under this Act.

Subclause (3) specifies that a signed notice is a notice signed by the chief executive.

Clause 108 specifies when an authorised officer ceases to hold office. Subclause (1) sets out these specific circumstances in which an authorised officer may cease to hold office. However subclause (2) specifies that this does not limit the ways an authorised officer may cease to hold office.

Clause 109 provides that an authorised officer may resign by signed notice given to the chief executive.

Subclause (2) provides that if the officer resigning holds another office which is conditional upon his or her appointment as an authorised officer, then he or she must also resign from that other office.

Clause 110 provides that the chief executive must issue an identity card to each authorised officer. The card must contain a recent photo of the officer, a copy of the officer's signature and identify the person as an authorised officer under this Act and state an expiry date for the card. This section specifies that a single identity card may be issued to a person for this Act and for other purposes.

Clause 111 deals with the return of an identity card where a person ceases to be an authorised officer within a specified time unless the person has a reasonable excuse. A breach of this section carries a maximum penalty of 10 penalty units or ($750).

Clause 112 is the provision that requires an authorised officer to produce their identity card before exercising a power under the Act. Alternatively the authorised officer can have the identity card displayed so it is clearly visible when exercising a power under the Act.

Subclause (2) allows the production of the identity card at the first reasonable opportunity where it is not practicable to comply with the previously outlined requirements.

Subclause (3) specifies that an authorised officer is not exercising a power in relation to a person merely because the officer has entered a place as mentioned in section 113(1)(b) or (3). These provisions allow entry to a place where it is a public place and the entry is made when it is open to the public or in circumstances where the officer has entered a place for the purpose of seeking the occupiers consent to enter that place.

Division 2—Powers of authorised officers

Subdivision 1—Entry of places

Clause 113 sets out the circumstances in which an authorised officer may enter a place. Entry may occur where the occupier of the place consents to the entry; or it is a public place and the entry is made when it is open to the public; or the entry is authorised by a warrant.

Subclause (2) deems the service provider for registered premises to be the occupier for all parts of the premises other than a room occupied by a person as their place of residence.

Subclause (3) allows an authorised officer to enter certain places without the occupier's consent or a warrant, where they are doing so for the purpose of asking the occupier for consent to enter. In such cases, an officer may enter land around a building to the extent that is necessary to contact the occupier or the part of the place that 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

Clause 114 sets out the procedure for entry where an authorised officer intends to ask an occupier of a place to consent to that entry.

Subclause (2) provides that the officer must tell the occupier the purpose of the entry and the fact that the occupier is not required to consent before asking for that consent.

Subclause (3) allows the authorised officer to ask the occupier to sign an acknowledgment of the consent in cases where consent is given.

Subclause (4) specifies the matters that must be set forth in such an acknowledgment.

Subclause (5) requires that in cases where the occupier signs the acknowledgment the authorised officer must immediately give a copy to the occupier.

Subclause (6) provides that where an issue arises in a proceeding about consent and an acknowledgment from the occupier 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 that the occupier consented.

Clause 115 allows an authorised officer to apply to a magistrate for a warrant for a place. Subclause (2) provides that the application must be sworn and state the grounds on which the warrant is sought. Subclause (3) states that the magistrate may refuse to consider an application that does not contain all the information about the application in the way that the magistrate requires that information.

Clause 116 provides that the magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting there is a particular thing or activity (the "evidence") that may provide evidence of an offence against this Act and the evidence is at the place or may be at the place within the next 7 days.

Subclause (2) specifies the matters that must be stated in the warrant.

Clause 117 relates to special warrants. In urgent or special circumstances, which may be for example, the officer's remote location, an authorised officer may apply for a special warrant by phone, fax, radio or other form of communication. Subclause (2) provides that before applying for the special warrant the authorised officer must prepare and application stating the grounds on which the warrant is sought.

Subclause (3) allows the authorised officer to apply for the special warrant before the application is sworn. This provision takes into account the difficulties of having documents sworn in remote locations.

Subclause (4) requires the magistrate to promptly fax a copy of the special warrant to the authorised officer where reasonably practicable if it is issued.

Subclause (5) outlines what a magistrate must do where it is not reasonably practicable to fax a copy to the authorised officer. The provision also outlines what the authorised officer must do in such cases. The procedure ensures that the terms of the special warrant are recorded and that the date and time the warrant is issued is also recorded.

Subclause (6) allows an authorised officer to rely on the authority of a warrant that has been faxed or where a warrant form has been properly completed under the previous sections.

Subclause (7) requires the authorised officer at the first reasonable opportunity to send to the magistrate the sworn application and in cases where a warrant form has been completed—the completed warrant form.

On receiving the documents the magistrate must attach them to the special warrant.

Subclause (9) places the onus of proof on the person relying on the lawfulness of the exercise of the power to prove a special warrant where the warrant is not produced in evidence.

Clause 118 provides the procedure where an authorised officer named in a warrant is intending to enter a place under the warrant. Before entering the place, the authorised officer must do or make a reasonable attempt to do specified things—

- produce or display an identity card or other evidence of his or her appointment as an authorised officer;
- give the person a copy of the warrant, facsimile warrant or warrant form as the case may be;
- tell the person the officer is permitted by the warrant to enter the place;
- give the person an opportunity to allow the officer immediate entry without using force.

Subclause (3) allows an authorised officer to enter immediately where he or she believes that the effective execution of the warrant will be frustrated if the procedures outlined in subclause (2) are followed.

Subdivision 3—Powers after entry

Clause 119 sets out the general powers an authorised officer may exercise after entering a place.

Subclause (2) specifies that an authorised officer may not exercise the powers under this section where the officer is only entering a place to get the occupier's consent.

Subclause (3) sets out the things that an authorised officer may do for monitoring or enforcing compliance with this Act. In addition to outlining the physical actions and things that an officer may do, the section requires the occupier of the place or a person at the place give the officer reasonable help in exercising the officer's powers or information to help the officer find out whether the Act is being complied with.

Clause 120 ensures that the privacy of residents at registered premises is preserved as far as practicable.

Clause 121 makes it an offence for a person who does not give reasonable help or information when required to do so, unless the person has a reasonable excuse. The maximum penalty for such an offence is 50 penalty units or ($3,750).

Subdivision 4—Power to seize evidence

Clause 122 provides that the owner of a seized thing includes the person entitled to possession of it for the purposes of this division.

Clause 123 provides that where an authorised officer enters a place that may be entered without the occupier's consent and without a warrant, the officer may seize a thing if the officer reasonably believes that thing is evidence of an offence against this Act. This provision allows an officer who has entered a public place that is open to the public to seize evidence.

Clause 124 applies where an officer is entering a place pursuant to the consent of an occupier or a warrant. Where the authorised officer enters the place with the occupier's consent, the officer may seize a thing at the place if he or she reasonably believes the thing is evidence of an offence against this Act and seizure is consistent with the purpose of entry as told to the occupier when asking for consent. Subclause (3) specifies that where an officer enters the place with the warrant the officer may seize the evidence for which the warrant was issued. Subclause (4) specifies that in either case, the authorised officer may seize anything at the place where he or she reasonably believes the thing is evidence of an offence against the Act, and the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence.

Subclause (5) allows an authorised officer to seize a thing where the officer reasonably believes it has just been used in committing an offence against this Act.

Clause 125 specifies what an authorised officer may do with an item that has been seized and how it must be secured.

Clause 126 makes it an offence for a person to tamper with a seized thing.

Clause 127 sets out powers to support seizure.

Clause 128 sets out the requirements for an authorised officer who has seized things to leave receipts. A receipt must be given either to the person

from whom it was seized or if that is not practicable be left at the place of seizure in a conspicuous position and in a reasonably secure way.

Receipts given under this section must describe generally each thing seized, and its condition. Where it is not practicable or unreasonable having regard to the thing's nature, condition and value to give a receipt, it does not have to be given.

Clause 129 provides that a thing that has been seized under this part is forfeited to the State in certain circumstances. A thing would be seized where the authorised officer could not find its owner. An authorised officer is required to make inquiries that are reasonable in all the circumstances.

The section envisages that there may be circumstances where it is not reasonable to to make such inquiries. It may also be unreasonable to return a thing to its owner in all circumstances. An example of such circumstances is given in this section. Subclause (2) states that regard must be had to the thing's nature, condition and value in deciding whether it is reasonable to make inquiries or efforts and what inquiries or efforts including the period over which they are made are reasonable. It is clear from both subsections that there will be cases where it is not reasonable to make any inquiries or efforts.

Subclause (3) provides that upon forfeiture of a thing to the State, that thing becomes the State's property and may be dealt with by the chief executive as he or she considers appropriate.

Subclause (4) specifies that the chief executive may destroy or dispose of the thing.

Subclause (5) provides a limitation on the way the chief executive may deal with a thing that has been forfeited to the State. The chief executive must not deal with a thing in a way that could prejudice the outcome of an appeal to the tribunal under this Act, or another appeal of which the chief executive is aware.

Clause 130 sets out the time period for the return of seized things that are not forfeited. Such things must be returned to the owner at the end of 6 months, or where a proceeding for an offence involving the thing is started within 6 months at the end of that proceeding and any appeal from the proceeding.

Subclause (2) specifies that despite subsection (1), unless the thing is forfeited, it must be immediately returned to its owner where the authorised

officer stops being satisfied that it is necessary as evidence or that it is necessary to prevent the thing being used to continue or repeat the offence.

Clause 131 allows owners to inspect and in the case of a document to copy things that have been seized unless it is impracticable or unreasonable to allow such inspection or copying.

Subdivision 5—Power to obtain information

Clause 132 specifies the circumstances in which an authorised officer may require a person to state the person's name and residential address. Subclause (1) provides that the section applies where an authorised officer finds a person committing an offence against the Act, or reasonably suspects the person is committing or has just committed an offence against this Act.

Subclause (2) provides that the authorised officer may require the person to state their name and residential address.

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

Subclause (4) requires a person who is required to provide information under this section, to comply unless the person has a reasonable excuse. The maximum penalty for non-compliance is 50 penalty units ($3,750).

Subclause (5) provides that if a person was required to provide details of name and residential address by an authorised officer who suspected the person was committing, or had committed an offence against this Act, or the person was required to give evidence of the correctness of the stated name or residential address and that person is not proved to have committed the offence, then no offence has been committed against subsection (4).

Clause 133 deals with the power to require information. Subclause (1) specifies that the section applies if an authorised officer reasonably believes an offence against the Act is being committed or has been committed and that a person may be able to give information about the offence. In such circumstances, the authorised officer may give notice to a person requiring them to give information about the offence to the officer at a stated reasonable place and at a stated reasonable time. Failure to comply with such a notice without reasonable excuse carries a maximum penalty of 50 penalty units or ($3,750).

Clause 134 gives an authorised officer the power to require production of documents from a service provider. These documents must be made available for inspection or produced for inspection at a reasonable time and place nominated by the officer. The documents that this section applies to are, those required to be kept by the service provider under this Act or the service provider's registration certificate or accreditation certificate.

The authorised officer may keep the document to copy it.

If the authorised officer copies a document that is required to be kept under this Act, or part of that document, the officer may require the service provider to certify the copy as a true copy of the document. The officer is required to return any document kept for copying to the service provider as soon as practicable.

Clause 135 makes it an offence for a service provider who has been required to make available or produce for inspection documents, to fail to comply with that requirement without reasonable excuse. The maximum penalty is 50 penalty units or ($3,750).

Subclause (2) provides that despite section 136 relating to self-incrimination, it is not a reasonable excuse for an individual not to comply with a requirement to produce or make available a document, to state that complying with the requirement might tend to incriminate the individual.

Division 3—Miscellaneous

Clause 136 provides that this section applies where an authorised officer makes a requirement of an individual and 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.

Subclause (2) provides that 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 without reasonable excuse.

Subclause (3) provides that it is a reasonable excuse for the individual to fail to comply with the requirement if compliance might incriminate the individual.

Clause 137 sets out the procedure that applies where property is damaged as a result of the exercise or purported exercise of a power under the Act.

Clause 138 provides that a person may claim compensation from the chief executive if that person incurs loss or damage because of the exercise or purported exercise of a power under this part.

Subclause (2) provides that compensation may be claimed for loss or damage incurred in complying with a requirement made of a person under this part. This provision does not limit the general provision relating to compensation under subclause (1).

Subclause (3) provides that compensation may be claimed and ordered to be paid in a proceeding either in an appropriate court or for an offence against this Act brought against the person claiming compensation.

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

Clause 139 makes it an offence for a person to alter a current registration certificate or an accreditation certificate without the chief executive's written authorisation. Maximum penalty for this offence is 10 penalty units or ($750).

Clause 140 provides that a person must not state anything to an authorised officer that the person knows is false or misleading in a material particular. A breach of this provision carries a maximum penalty of 50 penalty units or ($3,750).

Clause 141 makes it an offence to give an authorised officer a document containing information that is false or misleading in a material particular. The maximum penalty is 50 penalty units or ($3,750). No offence is committed if the person when giving the document tells the authorised officer how it is false or misleading and if the person has or can reasonably obtain the correct information, gives the correct information.

Clause 142 provides that it is an offence for a person to obstruct an authorised officer in the exercise of a power without a reasonable excuse. The maximum penalty for such an offence is 100 penalty units or ($7,500). Where a person has obstructed an authorised officer and the officer wishes to proceed with the exercise of the power, the officer must warn the person that it is an offence to obstruct the officer without reasonable excuse and that the officer considers the person's conduct an obstruction. Obstruct includes hinder and attempt to obstruct.

Clause 143 a person must not pretend to be an authorised officer. The maximum penalty for this offence is 80 penalty units or ($6,000).

PART 9—COMPLIANCE PROCESSES

Division 1—Injunctions

Clause 144 allows the chief executive to apply to the District Court for an injunction and empowers the court to grant an injunction against a person at any time.

Clause 145 sets out the grounds on which an injunction may be granted under this Division. An injunction may be granted with respect to both existing and future conduct. The grounds for granting an injunction all relate to a contravention of the Act or conduct surrounding a contravention of the Act. Injunctions may be granted for conduct that is an attempt to contravene the Act; aiding, abetting, counselling or procuring a person to contravene the Act; inducing or attempting to induce in any way a person to contravene the Act; being involved knowingly in a contravention even indirectly in a contravention or conspiring with others to contravene the Act.

Clause 146 provides that the court's power to grant an injunction restraining a person from certain conduct is not limited by considerations as to whether or not it appears to the court that the person intends to continue the conduct or whether the conduct has occurred in the past. Subclause (2) makes the same provision where an injunction is sought to direct a person to do something.

Subclause (3) makes provision for interim injunctions while an application is being decided.

Subclause (4) empowers the court to vary or rescind an injunction at any time.

Clause 147 allows the court to grant an injunction in the terms considered appropriate.

Subclause (2), without limiting subclause (1), provides a specific power to prohibit a person from conducting a residential service for a particular stated period or on particular terms and conditions.

Subclause (3) empowers the court to grant an injunction requiring a person to take action to remedy adverse consequences of the contravention of the Act. This may include disclosing information or publishing advertisements.

Clause 148 provides that if the chief executive applies for an injunction no undertaking as to damages or costs may be required or paid.

Division 2—Undertakings

Clause 149 provides a scheme where the chief executive, in cases where he or she believes the Act has been contravened, can seek an undertaking, by notice in writing, from the service provider that the act or omission will not continue or be repeated.

Clause 150 prevents the chief executive from taking offence proceedings against a service provider who has given an undertaking to stop conduct that is a series of acts or omissions, the chief executive has accepted that undertaking and the conduct has in fact stopped. Offence proceedings may not commence unless the undertaking is withdrawn under section 151.

Clause 151(1) provides that the section applies where the chief executive has accepted an undertaking.

Subclause (2) specifies that if the chief executive agrees the service provider may vary or withdraw the undertaking.

Subclause (3) specifies the circumstances in which the chief executive may vary or withdraw the undertaking. The chief executive's discretion in this regard is limited to circumstances where he or she had a reasonable belief that the service provider contravened the Act in another way before the undertaking was accepted and had the chief executive known that, the undertaking would not have been accepted in its existing form.

Subclause (4) allows the chief executive to withdraw the undertaking where he or she reasonably believes it is no longer necessary.

Subclause (5) ensures that the chief executive gives the service provider written notice of any variation or withdrawal of the undertaking.

Subclause (6) provides that the variation or withdrawal takes effect when the service provider receives notification.

Clause 152 requires the chief executive to keep a register containing a copy of each undertaking which is to be accessible by the public upon payment of the prescribed fee.

Division 3—Compliance notice

Clause 153 establishes a scheme whereby the chief executive can issue compliance notices to service providers where he or she has a reasonable belief that the Act is being contravened or the contravention is likely to be continued or repeated. The compliance notice requires the service provider to remedy the contravention.

The provision ensures that the service provider is fully informed about the provision the chief executive believes has been breached and how it is being or has been breached. The notice must specify the time by which the breach must be remedied and that it is an offence to fail to comply with a notice without reasonable excuse.

Subclause (4) requires further that the compliance notice must state the steps the chief executive reasonably believes are necessary to remedy the contravention.

Subclause (5) requires compliance with the notice in the absence of a reasonable excuse. The maximum penalty for a breach of this provision is the maximum penalty for a breach of the relevant provision.

Subclause (6) provides that if it is an offence to contravene the relevant provision, a service provider cannot be prosecuted for that offence unless the service provider has failed to comply with a compliance notice and has no reasonable excuse.

Subclause (7) specifies that the compliance notice may refer to other matters the chief executive considers appropriate. The example given relates to the power to amend or cancel accreditation.

PART 10—REVIEWS AND APPEALS

Division 1—Reviewable decisions

Clause 154 provides that Schedule 1 states the decisions of the chief executive that are reviewable decisions and for each decision the person who may seek to have that decision reviewed ("the interested person").

Clause 155 requires the chief executive to give notice to the interested person after making a reviewable decision. The notice must set out the reasons for the decision; the timeframe for applying for a review of the decision (28 days after receipt of the notice); how to apply for review and the existence of further appeal rights to the Queensland Building Tribunal where the matter is not resolved on review.

Subclause (2) specifies that this notice may also contain details required to be given under another section of the Act.

Subclause (3) provides for the case where the interested person cannot be located after making reasonable inquiries. In this case the requirement to give a notice does not apply.

Division 2—Review of decision

Clause 156 provides that interested persons may apply to the chief executive for a review of a reviewable decision within 28 days of receiving a notice about the decision under section 155. The time for applying for a review may be extended by the chief executive.

The section details the administrative requirements of making an application.

Clause 157 provides that the application does not stay the decision although the chief executive has the discretion to give the interested person a notice staying the operation of the decision for a stated period. The chief executive may impose the conditions considered appropriate.

Subclause (4) gives an applicant the right to apply to the Queensland Building Tribunal for a stay of the decision. The tribunal may grant the stay to secure the effectiveness of the decision and any later appeal. The tribunal also may grant the stay on any conditions it considers appropriate and for a specified period providing such period does not extend beyond the time the review decision is made and any subsequent time allowed for appeal.

Clause 158 sets out the way that a review decision must be dealt with. The provision ensures that a more senior officer than the original decision-maker reviews the decision unless the decision was made by the chief executive originally.

The section allows 28 days after receipt of the application for a decision to be made. The decision must confirm, amend or substitute another decision for the original decision.

Immediately upon making the decision the chief executive must notify the interested person as to the review decision, the reasons for the review decision, that within 28 days they can appeal to the Queensland Building Tribunal and how the person may appeal.

If a review decision is not made within 28 days of receiving an application the original decision is taken to be confirmed.

Division 3—Appeal against decision

Clause 159 provides for an appeal right for an interested person after receiving a decision notice. The appeal lies to the Queensland Building Tribunal. An appeal must be commenced within 28 days although the tribunal may extend this time period.

The provision also allows a person to appeal where the chief executive has made a review decision but not given a notice.

Subclause (3) requires an appellant to attach a copy of the notice of decision to the application filed under section 29 of the *Queensland Building Tribunal Act 2000*, which is the manner in which applications are made to the tribunal.

Clause 160 provides that an appeal to the Queensland Building Tribunal is by way of rehearing on the evidence that was before the chief executive. The appeal is a review of the original decision made by the chief executive.

Subclause (2) provides that a person may adduce fresh evidence in certain circumstances with the leave of the tribunal. This ensures that despite the operation of section 160(1) requiring that the appeal be a review of the chief executive's decision, an appellant is not unjustly dealt with. The section requires that fresh evidence was not known or could not reasonably have been expected to have been known by the interested person at the time of the original decision or review decision. Such evidence may also be adduced where it would be unfair in the special circumstances of the case not to admit it. These provisions reflect the standard approach taken with respect to fresh evidence on appeal.

Subclause (3) sets out options for the tribunal where it decides to allow fresh evidence to be adduced. The proceedings may be adjourned to allow

the chief executive to reconsider or the proceedings may continue taking into account the new evidence as well as the evidence that was before the chief executive.

Subclause (4) requires the tribunal to grant the chief executive an adjournment, for a stated reasonable time, to reconsider the decision if the chief executive requests such an adjournment.

Making provision for the chief executive to reconsider decisions in the light of fresh evidence ensures that matters do not proceed to a full consideration by the tribunal unless absolutely necessary.

Clause 161 provides that the tribunal may confirm, vary or reverse the review decision and make consequential orders. The tribunal may also set aside whole or part of the review decision and return the matter wholly or partly to the chief executive with directions, as it considers appropriate.

Clause 162 allows the tribunal to stay the operation of the review decision and prescribes the limits to the exercise of this discretion.

Unless the tribunal specifically stays the operation of the review decision it continues in force.

Clause 163 provides that any decision made by the tribunal on appeal is, for the purposes of the Act, a decision of the chief executive.

PART 11—LEGAL PROCEEDINGS

Division 1—Evidence

Clause 164 provides that this division applies to a proceeding under the Act. This includes appeals to the Queensland Building Tribunal under the Act.

Clause 165 provides that the appointment of the chief executive, an associated accreditation officer or an authorised officer or their authority to do anything under the Act need not be proven unless a party, by reasonable notice, requires that it be done.

Clause 166 removes the need to prove the signature of the chief executive officer or an authorised officer.

Clause 167 outlines other evidentiary aids relating to certificates given by the chief executive for a range of administrative matters.

Division 2—Offence proceedings

Clause 168 provides that proceedings for an offence under the Act must be taken in a summary way under the *Justices Act 1886*. The proceedings must start within 1 year after the offence was committed or 6 months after the offence comes to the complainant's knowledge but within 2 years of the commission of the offence, whichever period is the later.

Clause 169 removes the need to present evidence about the complainant's knowledge in proceedings for an offence under the Act. A statement about the knowledge of the complaint, which starts the proceedings, is evidence of the matter stated.

Clause 170 provides that where an offence is defined as involving false or misleading information or statements, it is not necessary to specify which it was.

Clause 171 applies to proceedings for an offence under the Act. This provision makes a person responsible for the actions or omissions of their representative, where that act is done within the scope of the representative's actual or apparent authority, unless it can be proven that the person could not by the exercise of due diligence have prevented the act or omission.

Where it is relevant to an offence to prove a person's state of mind and the act or omission is done by a representative of the person, acting within the scope of the actual or apparent authority, then it is enough to show that the representative had the state of mind.

For the purposes of the section "representative" and "state of mind" are defined in subclause (4). "State of mind" includes the person's reasons for the intention, opinion, belief or purpose as well as the actual intention, opinion, belief or purpose.

Clause 172 requires the executive officers of a corporation to ensure the corporation complies with the Act. It makes the executive officers of a corporation liable for offences committed by the corporation. The maximum penalty for such an offence is the maximum penalty applicable to individuals in such circumstances.

Evidence of the conviction of a corporation of an offence is evidence that the executive officers breached this section. However, it is a defence for an executive officer to demonstrate due diligence where the officer was able to influence the corporation. Alternatively it is a defence for an executive officer to prove that he or she was not in a position to influence the conduct of the corporation.

PART 12—MISCELLANEOUS

Division 1—Reprisals

Clause 173 establishes the meaning of "taking a reprisal". A person takes a reprisal if they cause, attempt or conspire to cause detriment to another person because they believe that other person or someone else has made a complaint or given information to the chief executive about the way a residential service is conducted.

Subclause (2) includes inducing a person to cause a detriment in the concept of detriment.

Clause 174 makes it an offence for a person to take a reprisal with a maximum penalty of 100 penalty units or $7,500. This provision is considered necessary to protect residents who may wish to complain about the service provider.

Clause 175 makes a reprisal a tort and a person who takes a reprisal liable in damages to anyone who suffers detriment as a result. A court may grant any appropriate remedy that it can grant for a tort. If a matter goes to trial it must be decided by a judge sitting without a jury. Whether such a matter goes to the Supreme or District court is determined by the amount of damages being claimed in accordance with the jurisdiction of the courts.

Division 2—Reporting matters of concern to other entities

Clause 176 places an obligation on public service officers carrying out functions or exercising powers under the Act to report, to the chief executive, matters that it is reasonably believed are contraventions of the

accommodation Act. This obligation exists unless the officer knows or reasonably supposes that the chief executive is aware of the matter or the officer reasonably believes the contravention is trivial.

The provision is an exception to the rules about confidentiality that apply under section 180.

The section does not apply to associated accreditation officers who are not public servants. It is not intended that industry peers or residents advocates who may be associated accreditation officers be obliged to report matters to the chief executive.

Clause 177 applies to persons carrying out functions or exercising powers under a prescribed Act who become aware of contraventions of this Act or of matters that adversely affect the health, safety or wellbeing of a resident in a residential service.

The matter must be reported to the chief executive unless the person knows or reasonably supposes that the chief executive knows.

The acts that are prescribed acts for the purposes of this section are set out in subclause (3).

Clause 178 allows the chief executive to give to the chief executive of a department responsible for residential services in another State or territory, information about a particular residential service if relevant.

Division 3—Other matters

Clause 179 requires the chief executive to keep a register of residential services. The details that must be kept on the register and the way it may be kept are outlined in the section. The register may be inspected or a certificate obtained with information from the register upon payment of the prescribed fee.

Clause 180 sets out the confidentiality requirements that are placed on persons acting under the Act. This provision applies to departmental staff, including the chief executive, as well as to associated accreditation and authorised officers. The provision restricts the use that can be made of any confidential information that is gained in the course of administering the Act. The circumstances in which such information can be disclosed are set out in subclause (2), including the normal exceptions for production of documents to a court and under other legislation such as the *Freedom of*

Information Act 1992. The maximum penalty for breaching this section is 50 penalty units ($3,750).

Subclause (3) defines "confidential information". Information about a person that is publicly available is exempt from this definition.

Clause 181 allows the chief executive to delegate his or her powers under the Act with the limitation on the discretion that it must be to an appropriately qualified public service officer. The section specifies that the delegation may include a power of subdelegation.

Clause 182 provides protection from civil liability for acts or omissions made honestly and without negligence under the Act. The liability for such acts or omissions instead attaches to the State, which ensures that any persons affected by such acts, or omissions are not prevented from seeking redress. The section specifies the officers protected.

Clause 183 provides for the approval of forms by the chief executive.

Clause 184 provides the regulation making power for the Act.

PART 13—TRANSITIONAL

Division 1—Preliminary

Clause 185 sets out the definitions for the transitional provisions.

Division 2—Registration of continuing service

Clause 186 provides that existing residential service providers must apply for registration by the "due day" which is 2 years after this Part commences, except where a personal care service is provided as part of the service currently and is continued to be provided after the commencement date. In this case application for registration must be made within 1 year after the Part commences.

Clause 187 provides that section 9, which requires a residential service to be registered, does not apply until the day after the due day. The due day is the applicable day under section 186.

Subclause (2) provides for the situation where an application to register the service may be current on the due day but not decided. The section specifies when section 9 will apply depending on what happens with the application.

Clause 188 provides for the lapsing of applications in certain circumstances. The application must have been made on or before the due day. The section allows the chief executive to request further information, including documents. If the applicant fails to comply with this request within the required time and it has been made in accordance with the requirements regarding notification set out in the section then the application will lapse.

Clause 189 applies to an application to register a continuing service made on or before the due date. This provision allows such services to be registered even if the prescribed building requirements under section 9 are not fully met, providing the premises are safe and substantially comply and the requirements regarding suitability of individuals are complied with.

Clause 190 applies where the chief executive is satisfied as to the matters outlined in the previous section but the building does not fully comply with the building requirements.

Such premises may be registered, subject to appropriate conditions to ensure that the premises are improved to a level that complies with the requirements. A time frame may be imposed for the improvements to be completed. This provision will ensure that service providers do not face onerous requirements in order to be registered and will allow individual circumstances to be taken into account.

Subclause (4) applies the provisions of part 3, division 5 to cancellation, amendment or change of conditions to premises registered under this section.

Subclause (5) makes it an offence for a service provider to contravene a condition on which the service is registered with a maximum penalty of 100 penalty units or $7,500.

Clause 191 makes provision for where an application is made to register a continuing service and the chief executive refuses the application. The chief executive must give certain notices before the service provider is required to cease operating.

Clause 192 requires that details of applications to register continuing services be kept on the register for a certain period of time.

Division 3—Accreditation of continuing services

Clause 193 applies this division to the accreditation of a continuing service.

Clause 194 provides that for services with no food or personal care service, immediately before the commencement of this part, the due date for making application for level 1 accreditation is 4 years after the commencement of this part.

Clause 195 applies this section to services which immediately before the commencement of the part, provided a food service but not a personal care service.

Subclause (2) provides that for section 35, the due day for applying for the level 1 accreditation is 3 years after the commencement of this part.

Subclause (3) specifies that for section 36, the due day for applying for level 2 accreditation is 3 years after the commencement of this part.

Clause 196 applies this section to services which immediately before the commencement of the part, provided a personal care service but not a food service.

Subclause (2) provides that for section 35, the due day for applying for the level 1 accreditation is 2 years after the commencement of this part.

Subclause (3) specifies that for section 38, the due day for applying for level 3 accreditation is 2 years after the commencement of this part.

Clause 197 applies this section to services which immediately before the commencement of the part, provided a personal care service and a food service.

Subclause (2) provides that for section 35, the due day for applying for the level 1 accreditation is 2 years after the commencement of this part.

Subclause (3) specifies that for section 36, the due day for applying for level 2 accreditation is 2 years after the commencement of this part.

Subclause (4) specifies that for section 38, the due day for applying for level 3 accreditation is 2 years after the commencement of this part.

Clause 198 ensures that minimum safety standards are met in all premises used for residential services by requiring all applications for level 1 accreditation of a continuing service to be accompanied by a current building compliance notice from the local government and the prescribed fire safety document.

SCHEDULE 1

The schedule sets out the reviewable decisions under the Act and the persons who are interested persons for the purposes of the Act. Interested persons are given rights to apply for review of decisions and to appeal.

SCHEDULE 2

The schedule provides the dictionary for the Act.