# Disability Services Bill 2005

# Explanatory Notes

## Title of the Bill

*Disability Services Bill 2005*

## General Outline

Objectives of the Bill

The Bill will repeal the *Disability Services Act 1992*, which is currently administered by Disability Services Queensland (DSQ). The overall purpose of the Bill is to protect and promote the rights of people with a disability. In particular, the Bill aims to do the following:

- acknowledge the rights of people with a disability, including promoting their inclusion into community life generally;
- provide a contemporary regulatory framework for services that are funded or provided by DSQ;
- ensure DSQ provided and funded services are safe, accountable and responsive to the needs of people with a disability, including improving safeguards for people with a disability from abuse, neglect and exploitation; and
- provide greater clarity around the coverage of the Bill – what activities are covered and who is covered.

The ultimate result of the Bill is to impact positively on the quality of disability service provision and to give government greater power to prevent or minimise the risk of abuse, neglect or exploitation of people with a disability in DSQ provided and DSQ funded services.

## Reasons for the objectives

It is estimated that over 16,000 Queenslanders with a disability received services funded by DSQ in 2004-05. Some disability services are delivered by DSQ (DSQ provided services). Others are delivered by non-government organisations funded by DSQ (DSQ funded services).

In 1992, the *Disability Services Act 1992* was enacted. The *Disability Services Act 1992* promotes the basic rights and equality of people with a disability. The current Act also defines the objectives for the development and implementation of programs and services for people with a disability, particularly as it relates to consumers of DSQ funded services. It was the first disability specific legislation in Queensland and provided the basis for the State's current role in disability service provision and policy.

Since the introduction of the Act in 1992, there have been significant changes for people with a disability. Community attitudes have become more open and inclusive, and government and non-government service providers have changed in many aspects in the way they deliver disability services and support. The Act has not been amended since its commencement. As a consequence, the DSA is dated in style and content and no longer reflects contemporary Queensland disability policy and practice, nor community expectations in relation to accountability of public funds and monitoring of government funded disability services.

In 2002, DSQ commenced the review of the *Disability Services Act 1992*. The review of the Act included extensive community consultation in 2003 and 2004 and led to the development of legislative reforms to address the deficits of the *Disability Services Act 1992*. In particular, community feedback for legislative reform included:

- reaffirm the human rights of people with a disability;
- include objectives that reflect contemporary expectations for service design and delivery;
- clearly set out the funding and regulatory requirements for DSQ funded service providers;
- ensure DSQ provided and funded services meet standards that underpin the Disability Sector Quality System and require compliance with the Disability Sector Quality System;
- provide open and accountable DSQ decision-making;
- introduce a range of sanctions for non-compliance by DSQ funded service providers;
- provide for powers of investigations and monitoring of DSQ funded services;
- allow the Government to respond effectively where the safety of people is comprimised – this includes incorporating a complaints handling process;

- ensure people with a disability are safe when receiving DSQ funded services- such as: criminal history screening for employees of DSQ funded disability services; and
- require each Queensland Government department to develop and review a disability service plan.

## How the objectives will be achieved

There are three main components of the Bill: (a) Rights; (b) Services; and (c) Protection

**(a) Rights**

- *Setting out human rights principle*

The Bill sets out the human rights principle to affirm that people with a disability have the same rights as other members of society and should be empowered to exercise their rights. It also includes a series of supporting rights – some rights are promoting personal rights of people with a disability and others relate to consumer rights when using disability services. Persons are encouraged to have regard to these rights.

These rights have been updated to reflect contemporary values concerning the rights of people with a disability.

- *Service delivery principles*

The service delivery objectives under the *Disability Services Act 1992* are renamed as service delivery principles under the Bill. These service delivery principles (as well as the human rights principle) are for promotion by unfunded specialist service providers as well as general service providers providing services to people with a disability. Queensland Government departments will be required to consider these principles through the development, implementation and publication of disability service plans.

- *Ministerial Advisory Committees*

The Bill includes a specific power to create and dissolve Ministerial Advisory Committees. Ministerial Advisory Committees play an important role in community engagement about disability issues and disability services. For example, the Disability Council Queensland and Regional Disability Councils are important vehicles for strengthening government partnerships between the Government and the community. Similarly, the Complaints Management Quality Committee plays a vital

role in monitoring system issues that relate to the operation of the complaints system and recommending strategies for improvement.

**(b) Services**

- *Focus on Quality*

The regulatory framework in the Bill governing the delivery of disability services is predicated on the Disability Sector Quality System. This system is DSQ's primary means of supporting quality service delivery where the department works with DSQ funded non-government service providers towards continuous improvement of services. The Disability Sector Quality System operates independently of the Bill. The system provides for a series of disability service standards that are recognised in the Bill and apply to recurrently funded services. The disability service standards were introduced in March 2004 and a four-year implementation period commenced in July 2004.

- *Strengthened regulatory framework*

The Bill provides for a contemporary and strengthened regulatory framework for non-government service providers funded by DSQ to provide quality disability services. 'Disability services' is defined in the Bill – and it has been amended to align with the Commonwealth-State/ Territory Disability Agreement (CSTDA). The CSTDA is the agreement between the Commonwealth Government and States and Territories and provides the national framework for disability services and determines disability funding.

Funded non-government service providers will be required to comply with the conditions of their contract (funding agreement), any prescribed requirements (**clause 56**) and any record keeping requirements (**clause 211**) under the Bill, as well as achieve and maintain certification under the Disability Sector Quality System.

The legislative proposal for the funding framework consists of four main elements:

— a legislated pre-approval process before an organisation is eligible to receive recurrent funding (**part 5**);

— a strengthened funding contractual framework - based on Part 5 of the *Disability Services Act 1992* (**part 6**);

— compliance with 'prescribed requirements' – to be listed in a regulation (**clause 56**); and

— record keeping requirements – to be listed in a regulation (**clause 211**).

• *Strengthening accountability*

Merits-based review

The Bill introduces the right to seek a review of decisions made by the chief executive under the Bill (**part 13**). This includes review of the merits of a decisions relating to:

— the pre-approval process of service providers;

— suspension/cancellation of funding resulting from non-compliance with a provision in the Bill; and

— the appointment of an interim manager.

These decisions are subject to a two-tiered process – (1) an internal review and (2) an external review to an independent tribunal – the Commercial and Consumer Tribunal.

In addition, certain decisions made by the chief executive under the criminal history screening process for persons engaged by funded non-government service providers are also subject to external review (**part 9**).

Notification of compensation

Some people who acquire a disability through an injury or accident, for example, may be eligible to receive compensation (through a common law or statutory scheme **o**r an insurance claim) relating to their disability. The Bill (**clause 220**) requires a person applying for or receiving funded disability services to notify DSQ about certain details including:

— if they are eligible for or in receipt of a payment relating to their disability; and

— whether a component of their payment has been allocated for future care.

An administrative decision will be made on a case by case basis as to whether the person should contribute to the cost of the services they receive from DSQ.

• *Disability service plans*

This is a new legislative requirement – every Queensland Government department will need to prepare, publish and implement a disability service plan. The purpose is to improve access to government services by people with a disability. The disability service plans provide focus, direction and

coordination of government service delivery, policy and program development.

**(c) Protection**

The Bill complements existing legislative powers in other relevant legislation, such as the *Guardianship and Administration Act 2000.* The Bill improves safeguards for people with a disability from abuse, neglect and exploitation by having:

- mandatory criminal history screening for staff, volunteers and other relevant persons engaged by DSQ and those engaged by DSQ funded services;
- increased monitoring and investigation powers by authorised officers; and
- legislatively recognising a complaints management system.
- *Mandatory criminal history screening*

Under the *Family Services Act 1987,* DSQ workers are required to undergo a criminal history check – which includes a check on a person's criminal history (includes charges and convictions) and certain investigative information. Under the Bill this criminal history screening process will continue and also include screening of certain others engaged by DSQ in the provision of disability services and members of Ministerial Advisory Committees (**part 8**).

To better protect people with a disability and for greater consistency within and across the disability and related sectors, mandatory criminal history screening will extend to persons engaged by a DSQ funded non-government service provider (**part 9**). The criminal history scheme is a similar process to that for DSQ workers and is intended to have the same outcomes as those that apply to DSQ workers. People who are required to undergo a criminal history screening process and who do not have a criminal history or do not have an adverse criminal history will be issued with a positive notice. A positive notice card will also be issued – this is evidence that a person holds a current positive notice.

The Bill includes transitional provisions to roll-out the criminal history screening.

- *Increased monitoring and investigation powers*

Currently compliance of funded non-government service providers is sought administratively through general service agreements. These arrangements severely limit DSQ's capacity to conduct investigations of

complaints where there is an unco-operative service provider, manager or staff member.

The Bill allows the appointment of authorised officers – this could be the appointment of an officer who is external to DSQ. The authorised officers will have powers to monitor, investigate and enforce provisions in the Bill. This will provide a greater ability to facilitate the appropriate resolution of disputes between a complainant and a service provider (**part 10**). It is not intended that investigations under the Bill will compromise other investigations of criminal matters.

If necessary, there is the ability for the chief executive to appoint an interim manager to ensure the proper and efficient use of funds under the funding agreement and to protect consumers of the service from abuse, neglect or exploitation (**part 11**).

## Administrative cost to government implementation

Initial implementation costs of the Bill (for commencement on 1 July 2006) will include providing resources for:

- monitoring compliance with the regulatory framework;
- investigation functions;
- criminal history screening; and
- communication and awareness raising with key stakeholders.

## Consistency with fundamental legislative principles

Section 4(3)(a),(b), (g) - *Legislative Standards Instruments Act 1992*

Criminal History Screening (**parts 8 & 9**)

Extending criminal history screening to staff, volunteers and others engaged by a funded non-government service provider will mean that a person either seeking to be engaged or presently engaged by the service provider will need to have a criminal history check. A criminal history check will include a check for any charges or convictions and the ability to obtain information on investigations of a serious sexual or violent offence.

It is arguable that this reform could negatively impact on the rights and liberties of people applying for work in DSQ funded disability service providers. People who have a criminal history and currently work with people with a disability may be excluded from working in DSQ funded disability services on commencement of this reform.

Throughout targeted consultation on the draft Bill, there was broad support for criminal history checks. It was seen as a necessary check to promote the protection of people with a disability and for greater consistency across the disability sector. Public consultation as part of the *Disability Services Act 1992* review (between 2002 and 2004) provided similar feedback.

Criminal history screening is a strategy to reduce the risk of abuse, neglect and exploitation by ensuring that people with a relevant criminal history are excluded from working with people with a disability in DSQ funded services.

The reform subjects people working in funded non-government disability services to the same level of scrutiny as that which currently applies to those working in child-related employment, child care workers, residential service providers and DSQ staff and volunteers.

The proposal incorporates several components of natural justice and review to ensure the process is fair:

- the chief executive assesses the criminal history screening and determines whether the person can work in a DSQ funded service outlet where disability services are provided;
- the person has an opportunity to make a submission to the chief executive on the assessment;
- the employer is notified only of the outcome of the decision and not of any police information;
- there is a narrow definition of investigative information and restrictions on when this information can be disclosed;
- the person can appeal to the Magistrates Court on whether information is investigative information;
- there is a right of review to the Commercial and Consumer Tribunal on an adverse finding by the chief executive except in limited cases relating to excluding offences (where a period of imprisonment or disqualification is ordered); and
- (as a general rule) the person can reapply after two years and ask the chief executive to reconsider an adverse decision.

There are strict controls on the use and access of any police information gained by DSQ through criminal history screening. In particular, it will be an offence for a person to disclose or give access to this information to anyone else.

For criminal history screening of staff and volunteers and or other persons engaged by DSQ, similar justifications and protections apply. Currently, all DSQ staff and volunteers are screened under the Family Services Act 1987 – the screening includes charges and convictions and the ability to obtain information on investigations for serious offences. The Bill effectively adopts the same criminal history screening process as the present scheme. Under the Bill, as well as staff and volunteers of DSQ, members of Ministerial advisory committees and contractors providing disability services will be screened. The Bill incorporates components of natural justice and review to ensure the process is fair. For example, the chief executive must develop guidelines for dealing with criminal history and police information. The purpose of these guidelines is to ensure natural justice is provided, only relevant information is used in making a decision and that consistent decisions are made.

The provisions in **parts 8 and 9** of the Bill dealing with criminal history screening are for the benefit of people with a disability and are considered to be reasonable.

Excluding Offences

It is proposed that the concept of 'excluding offences' be used – this is similar to that in the criminal history scheme in Commission for Children, Young People and Child Guardian Act 2000 (CCYPCGA). If a person is convicted of an excluding offence with a penalty of imprisonment or a disqualification order, they cannot work at an outlet of a DSQ funded non-government service provider, where disability services are provided.

The list of excluding offences has been carefully selected. Only those offences that impose a grave risk of violence to people with a disability, whose disability can create vulnerability, have been identified as excluding offences. These accord with the list of excluding offences under the CCYPCGA. Given both children and people with a disability are equally vulnerable to abuse, neglect and exploitation, it is considered that these disqualifying offences are relevant and should also apply to a person working with people with a disability. This is consistent with the overall purpose of the Bill to protect and promote the rights of people with a disability.

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

It is important to note that a person who is disqualified from working in a DSQ funded disability service, can work or continue to work with that

service provider in another capacity. That is, they can work at a service outlet where disability services are not delivered.

- Section 4(3)(g) - *Legislative Standards Instruments Act 1992*

Strengthened Investigative Powers and Sanctions

It is arguable that this reform negatively impacts on the rights and liberties of service providers and people working for DSQ funded service providers. The proposed powers will allow DSQ authorised officers to enter the premises of service providers during business hours (and with a warrant after business hours) and inspect the premises, records and ask questions. This could be construed as an invasion of the privacy of the service provider and its staff, and in a supported accommodation service, residents.

The potential fundamental legislative principle breach is justified to ensure that service providers comply with the conditions of their funding and to ensure that a quality service is provided to clients of DSQ funded services.

- Section 4(3)(e) - *Legislative Standards Instruments Act 1992*

Power to enter a place in certain circumstances without a warrant or consent (**clause 131)**

The Bill includes a provision allowing an authorised officer to enter a place where a funded non-government service provider provides disability services. An authorised officer can enter the place (with reasonable help and force) only in the following circumstances:

- if they reasonably suspect there is an immediate risk of harm to a person with a disability at the place because of abuse, neglect or exploitation; or
- if they reasonably suspect there is imminent risk that evidence at the place, of misuse of (DSQ) funds provided to the service provider, will be destroyed or removed; or
- to check whether the service provider has taken steps required under a compliance notice.

This power negatively impacts on the rights of a DSQ funded service provider to conduct their business operations and on the right to privacy of individual clients, particularly in a supported accommodation service. However, this is reasonable and necessary to protect people with a disability where there is a need to respond without the delay incurred by applying for a warrant. This provision would only be activated where consent to enter the premises was denied.

One of the main drivers for the review of the *Disability Services Act 1992* was the inability for DSQ to respond to allegations of abuse, neglect and exploitation. There is a real need for DSQ to have the capacity to effectively respond to high risk instances of abuse, neglect and exploitation or where there is real risk of misuse of funds. Whilst the overall DSQ philosophy is to support compliance through co-operation and education, there have been extreme circumstances where these approaches have proven unsuccessful.

The power is limited by requiring a reasonable suspicion and operates in limited circumstances – including that there must be a reasonable suspicion of either an 'immediate risk' of harm resulting from abuse, neglect or exploitation; or an 'imminent risk' that evidence of misuse of funds will be destroyed or removed. As part of implementation of the Bill, guidance will be provided to authorised officers on the application of this power. It is anticipated that in most cases, consent of the service provider will be obtained. This is current practice. Also, procedural guidelines (to be developed) will require an authorised officer to explore the option of a warrant before utilising this power.

The power is necessary in relation to a home because the nature of the DSQ service environment is that some funded services operate within homes. As an added safeguard, the authorised officer is required to make reasonable attempts to preserve the privacy of anyone living in the home and minimise the impact on occupiers.

It is also considered appropriate that DSQ have access to service providers who are operating with an 'active' compliance notice. A compliance notice is issued after close scrutiny of the operations of the service provider. Therefore, there is a need for those providers to be closely monitored within the period that the compliance notice is active.

- Section 4(3)(g) - *Legislative Standards Instruments Act 1992*

Power to appoint interim managers

It is proposed that the chief executive can appoint an interim manager to protect consumers from abuse, neglect or exploitation or to ensure the proper and efficient use of funds under the funding agreement and for a limited period. This is based on the model in the *Housing Act 2003*. The interim manager's function is to ensure proper and efficient use of funds and/or protect consumers of a DSQ funded service provider from abuse, neglect or exploitation. It also allows for the continuation of a service for consumers following the identification of deficient service delivery but with an interim manager to address the deficient service delivery.

It could be argued that the exercise of these powers affects the rights and liberties of employees and officers of the approved service providers as well as third parties such as creditors. The overriding objective of the interim manager scheme established in the Bill is to protect consumers from abuse, neglect and exploitation and ensure public funds are spent in accordance with the funding agreement.

The chief executive may only appoint an interim manager as a last resort, after all other remedies have been considered. The appointment of an interim manager would only be considered where there are ongoing serious breaches that threaten the safety of consumers or give rise to serious concerns about the proper use of funds. The powers of an interim manager are co-operative in nature. That is, the interim manager works with a service provider to continue its operations. The decision to appoint an interim manager would be subject to a merits-based review to the Commercial and Consumer Tribunal.

- Section 4(3)(g) - *Legislative Standards Instruments Act 1992*

Information Disclosure (**clauses 222 and 223**)

The legislative scheme may be considered contrary to the Queensland Government Privacy Principles, particularly the principle that consent is required before DSQ can disclose personal information. Whilst DSQ will seek the consent of the person where possible, the proposed scheme is justified to provide greater clarity around when confidential information can be disclosed and for the overall purpose of protecting DSQ clients from harm and maximise coordinated service delivery. The scheme will ensure that only relevant information is disclosed and only in the circumstances set out in legislation.

For DSQ, the decision of whether or not to disclose client information will be made by a high-level decision-maker. When requesting similar information from a funded non-government service provider, the information request would relate to a DSQ funded client and would be linked to ensuring monitoring or enforcing compliance with the Act or for the needs and/or protection of a DSQ client.

It is important for DSQ to have the capacity to share information in certain circumstances so that it is more responsive to the needs of people with a disability, particularly where multiple service providers are involved. In the Public Advocate's Annual Report 2003-2004, it noted that whilst service providers (including government agencies) endeavour to respond to the needs of people with a disability, the response lacked collaboration and

co-ordination. The proposed legislative provision will help improve this co-ordination.

There are safeguards around the access and use of any client information:

- only relevant information would be collected;
- the information is collected for limited, prescribed circumstances; and
- for DSQ funded service providers – any subsequent use of the personal or health information is ordinarily governed by the Commonwealth *Privacy Act 1988.* Also, the Disability Service Standards, of which they are required to comply with, require recognition of a person's right to privacy and confidentiality. There is also capacity to include in a regulation a prescribed requirement about how a service provider respects privacy and confidentiality.

- Section 4(3)(d) - *Legislative Standards Instruments Act 1992*

Executive Officers must ensure corporation complies with Act (clauses 202 and 203)

The Bill includes an offence provision imposing a positive obligation on executive officers to ensure their corporation complies with the provisions of the Bill. This is modelled on section 91 of the Housing Act 2003.

The section is proposed to act as a general deterrent and sanction for corporations in a worst case scenario. Otherwise, DSQ has no mechanism to safeguard a person in circumstances where the corporation (and not the individual) has committed an offence. The section is not imposing any additional obligations on executive officers. Given the profile of the consumer group, it is important to emphasise this responsibility. Reasonable defences are included to protect executive officers and prevent the misapplication of the provision. In these circumstances, the provision is considered reasonable in recognition of the profile of the consumer group.

- Section 4(3)(g) - *Legislative Standards Instruments Act 1992*

Power to require production of documents (**clauses 155 and 156**)

The Bill gives an authorised officer the power to request a person to produce a document that is issued to the person under the Bill or required to be kept by the person under the Bill. It is an offence for a person not to comply with the request unless they have a reasonable excuse.

It is arguable that this requirement adversely impacts on the rights and liberties of individuals. However, the provisions are considered justified

given the nature of documents required to be kept or required to be provided. These documents are required to be kept to ensure the essential parts of the Bill are being complied with. For proper monitoring and enforcement of the Bill, it is essential that authorised officers have the ability to quickly access these documents.

For example, a document that is issued to the person is a positive notice. A positive notice is issued to a person engaged or proposed to be engaged by a DSQ funded non-government service provider. It is evidence that the person has had a criminal history check under the Bill. Criminal history screening is a key safeguard used in the Bill to provide protection for people with a disability and it is important there is an ability to properly monitor and enforce these provisions.

Similarly, the types of documents that will be required to be kept by a funded non-government service provider are equally as important as the nature of these relate to the protection of people with a disability, financial viability and accountability of a service provider and corporate governance arrangements. These documents will be listed in a regulation as a prescribed requirement (**clause 56**) or a record required to be kept under the Act (**clause 211**). They will include records, such as client records, financial records and records of complaints and critical incident.

Finally, there is an added safeguard in the offence provision – it allows an individual not to comply with a requirement to produce a document if they have a reasonable excuse (however, claiming privilege against self-incrimination is not a reasonable excuse).

## Consultation

- Community

Consultation for the review of the Disability Services Act 1992 commenced with a reference group in 2002. Extensive public consultation took place in 2003 and 2004. More recently, targeted consultation of the Bill occurred for seven weeks between August and September 2005. The purpose of targeted consultation was to seek advice on how the Bill delivered on the reforms endorsed by government; technical accuracy and potential implementation issues.

Feedback was sought from the Disability Council of Queensland, 10 Regional Disability Councils, the Complaints Management Quality Committee and a focus group of key experts. The focus group included representatives from:

- peak bodies such as the national industry association for disability services – ACROD, Queensland Alliance of Mental Illness and Psychiatric Disability Groups, Queensland Advocacy Incorporated, Queensland Parents of People with a Disability, and Queenslanders with a Disability Network;
- unions (including the Queensland Public Sector Union); and
- statutory authorities such as the Office of the Adult Guardian, the Commission for Children, Young People and Child Guardian, Office of the Public Advocate and the Anti-Discrimination Commission.

Consultation sessions usually occurred over a day and a half. A comprehensive power point presentation was developed and delivered at each session by senior staff of DSQ as well as participants being provided with a copy of the draft Bill during the session.

- Government

A Government Working Party (GWP) was established in 2002. The GWP is comprised of representatives of the key government departments that have a strategic role in the reforms and/or provide major services to people with a disability. GWP includes a representative from the Department of Communities, Queensland Health, Department of the Premier and Cabinet, Department of Child Safety, Department of Education, Commission for Children and Young People and Child Guardian, Department of Transport, Queensland Treasury, Department of Justice and Attorney-General and the Department of Housing. The GWP was convened throughout 2002 and late 2004 for inter-Departmental consultation on key issues. Individual consultations on specific issues occurred with key agencies.

# Notes on Provisions

## Part 1 Preliminary

### Division 1 Introduction

#### Short Title

Clause 1 provides that the short title of the Bill is the *Disability Services Act 2005*.

#### Commencement

Clause 2 provides that the Bill commences on a day to be fixed by proclamation. This delayed commencement is to allow sufficient time for complimentary administrative arrangements to be made and for promotion and awareness raising of the Bill. It is proposed to commence the Bill on 1 July 2006.

#### Acts binds all persons

Clause 3 provides that the Bill binds all persons including the State and where relevant the Commonwealth and other States. However, nothing in the Bill makes the Commonwealth or a State liable to prosecution.

#### Contravention of this Act does not create civil cause of action

Clause 4 makes it clear that no provision of the Bill creates a civil cause of action based on a contravention of the provision.

#### Act does not affect other rights or remedies

Clause 5 makes it clear that this Bill does not affect or limit a civil right or remedy that exists apart from this Bill.

## Division 2 Objects

### Objects of the Act

Clause 6 provides that the objects of the Bill are to:

- acknowledge the rights of people with a disability including by promoting their inclusion in the life of the community generally; and
- ensure that disability services funded by Disability Services Queensland (DSQ) are safe, accountable and responsive to the needs of people with a disability.

### How objects are mainly achieved

Clause 7 provides that the objects of the Bill are mainly achieved by:

- setting out the human rights principle and supporting rights that apply to all people with a disability;
- setting out the standards for service delivery to people with a disability to be promoted by all service providers (specialist and general);
- regulating disability services funded by DSQ to ensure they deliver quality services and are safe, responsive and accountable; and
- improving the protection of people with a disability using DSQ funded services from abuse, neglect and exploitation.

### Finite resources available

Clause 8 provides that in construing the above purposes of the Bill, it is acknowledged that the State has finite resources available to provide those services. There is a need to distribute the resources fairly and in accordance with Government priorities.

## Division 3 Interpretation

### Definition

Clause 9 provides that schedule 7 defines particular words used in the Bill. Definitions which determine coverage of the Bill and are vital to its application are set out in this division. For example, these definitions help clarify which parts of the Bill are aspirational in nature and apply to all service providers; and which are enforceable and apply only to DSQ funded service providers.

The definition of 'disability' and 'disability services' have been amended to align with the Commonwealth-State/Territory Disability Agreement (CSTDA). The CSTDA is the agreement between the Commonwealth Government and States and Territories; and provides the national framework for disability services and determines disability funding.

### Notes in text

Clause 10 provides that a note in the text of the Bill is part of the Bill.

### What is a disability

Clause 11 provides for the definition of disability. The purpose of this definition is that it is a 'quasi-eligibility' provision and determines what is a disability for the purposes of this Bill. A person has a disability if their condition meets all of the following criteria:

- it is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment - an impairment may result from an acquired brain injury; or
- a combination of impairments; and
- results in a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self-care or management; and
- the person needs support; and
- the disability is permanent or likely to be permanent.

The disability may or may not be of a chronic episodic nature.

This definition remains essentially the same as that in the (repealed) *Disability Services Act 1992*. There are two minor additions (highlighted):

- it expressly acknowledges people with an acquired brain injury; and
- it recognises the impact of capacity for self-care or management.

The amended definition clarifies the current use of the term 'disability'.

### What are disability services

Clause 12 provides for the definition of 'disability services'. Disability services means one or more of the following:

- accommodation support;
- respite services;
- community support services;
- community access;
- advocacy or information services or services that provide alternative forms of communication; and
- research, training or development.

This definition is important for eligibility and funding under the Bill (see **part 5 and part 6**). This definition aligns with the CSTDA service types – under the CSTDA, only these service types can be provided and funded by the State.

### Meaning of service provider

Clause 13 provides for the meaning of a 'service provider'. A service provider may provide services (for profit or not-for-profit) either specifically to people with a disability (for example, accommodation support) or generally to people in the community, including people with a disability (for example, recreational services).

### Meaning of funded service provider

Clause 14 provides for the meaning of a 'funded service provider'. A funded service provider is a service provider that receives funds from DSQ and includes DSQ. It does not include other Government departments receiving funds from DSQ.

### Meaning of non-government service provider

Clause 15 provides for the meaning of a 'non-government service provider'. A non-government service provider is a service provider that provides disability services but does not include a Queensland Government department. A non-government service provider may include a local government.

### Meaning of approved non-government service provider

Clause 16 provides for the meaning of a 'approved non-government service provider'. An approved non-government service provider is a corporation approved by the chief executive of DSQ (under **part 5)** and eligible to receive funding (under **part 6**).

### Meaning of funded non-government service provider

Clause 17 provides for the meaning of 'funded non-government service provider'. A funded non-government service provider is a non-government service provider receiving recurrent or one-off funds from DSQ to provide disability services.

For the purposes of this section, it does not matter if other funds or resources are also used by the non-government service provider to provide disability services.

The definitions in **clauses 13 – 17** are important in determining which parts of the Bill apply to different service providers. For example, the regulatory framework of the Bill applies to a 'funded non-government service provider'.

# Part 2 Disability Rights

## Division 1 Human Rights Principles

### Persons are encouraged to have regard to human rights principle

Clause 18 provides that all persons are encouraged to have regard to the human rights principle. The human rights principle (outlined in the next clause) is to be observed and promoted by all citizens in Queensland and

also by all service providers (specialist and general), including Queensland Government departments.

The Bill divides the human rights principles into general human rights and human rights relating to service delivery.

### Principle that people with a disability have the same human rights as others

Clause 19 provides that people with a disability have the same human rights as other members of society. The clause is accompanied by a series of eleven supporting rights. The clause separates some rights as personal rights and others as disability service consumer rights.

It also updates the original human rights principles to reflect Queensland society's contemporary values on the rights of people with a disability. Three new rights are included:

- to live life free from abuse, neglect or exploitation;
- to have their confidentiality of information respected; and
- to receive services in a safe, accessible built environment appropriate to their needs.

The rights apply regardless of the age of the person with a disability or the origin, nature type or degree of the disability. The clause also makes it clear that services should be provided in ways that are suitable to the person's disability and cultural background.

## Division 2 Service Delivery Principles

### Service delivery principles to be promoted by service providers

Clause 20 encourages service providers to apply and promote 'service delivery principles' in the development and implementation of disability services, where possible. The service delivery principles are derived from the *Disability Services Act 1986* (Cth). These service delivery principles are the same as the principles in the (repealed) *Disability Services Act 1992*, save for minor amendments.

The purpose of the clause is to encourage unfunded non-government service providers to consider the application of these principles when developing and implementing programs and services for people with a disability. It is recognised that not all the service delivery principles would

apply to each service provider. The service delivery principles are in no particular order. Queensland Government departments will have to consider these principles through the legislative requirement to develop, implement and publish disability service plans (**clause 215**).

### Focus on the development of the individual

Clause 21 provides that services should be designed and implemented to focus on enhancing an individual's opportunity for a quality life.

### Participation in planning and operation of services

Clause 22 provides that services should be designed and implemented so that people with a disability are encouraged and able to participate in the planning and operations of services they receive. This also includes being consulted in relation to major policy changes**.**

### Focus on lifestyle the same as other people and appropriate for age

Clause 23 provides that services should be designed and implemented to ensure the conditions of everyday life of people with a disability are the same as (or close as possible to) the conditions of every day life valued by the general community; and appropriate to their chronological age.

### Coordination and integration of services with general services

Clause 24 provides that (where possible) services should be designed and implemented as part of local coordinated systems and integrated with services generally.

### Services to be tailored to meet individual needs and goals

Clause 25 provides that services should be tailored to suit the individual's needs and goals.

### People with a disability experiencing additional barriers

Clause 26 provides that services should be designed and implemented so as not to impose additional barriers because of a person's background – because they are Aboriginal or Torres Strait Islanders or because of age, gender, cultural background or because of their rural or remote location.

### Promotion of competency, positive image and self-esteem

Clause 27 provides that services should be designed and implemented to promote the competency, positive image and self-esteem of a person with a disability.

### Inclusion in the community

Clause 28 provides that services should be designed and implemented to promote the inclusion of people with a disability into community life.

### No single service provider to exercise control over life of person with disability

Clause 29 provides that services should be designed and implemented to ensure that no single service provider exercises control over all or most aspects of an individual's life.

### Consideration for others involved with people with a disability

Clause 30 provides that services should be designed and implemented to have sufficient regard to the needs of families, carers and advocates of people with a disability, and recognise the demands and implications on families of people with a disability.

### Service providers to make information available

Clause 31 provides that service providers should make available information that allows the quality of their services to be judged. The information should be accessible to relevant users, including their families, carers and advocates.

### Raising and resolving grievances

Clause 32 provides that services should be designed and implemented to ensure that appropriate ways exist for people with a disability and their advocates to raise and resolve grievances.

### Access to advocacy support

Clause 33 provides that services should be designed and implemented to ensure people with a disability have access to independent advocacy support so they can participate in decision-making about the services they receive.

# Part 3 Disability Service Standards

## Minister may make disability service standards

Clause 34 provides that the Minister may make service standards for improving the quality of disability services provided by DSQ funded service providers. The service standards detail the manner in which the disability services are to be provided. Each standard must include an indicator to measure whether a standard is being met. They are specified as statutory instruments which means they are subject to the *Statutory Instruments Act 1992.*

The service standards underpin the Disability Sector Quality System, which operates independently of the Bill. Under the Disability Sector Quality System, a service provider who receives recurrent funding from DSQ (including those operated by DSQ) must implement and maintain effective internal systems and process to meet each standard.

The Disability Sector Quality System provides a framework for quality service delivery and independent assessment of services to people with a disability, their families and carers. The Disability Service Standards were launched in June 2004, and a four year implementation period for the disability sector commenced in July 2004 – a transitional provision will also recognise these in legislation.

Under the Bill, recurrently funded non-government service providers must comply with each standard, as a prerequisite to receiving funding. This is to be evidenced by certification under the Disability Sector Quality System, or for new services, a commitment to participating in the quality system **(**see **clause 43).**

Funded non-government service providers will be required to comply with conditions of their contract (a funding agreement), as well as achieving and maintaining certification under the Disability Sector Quality System.

## When service standards takes effect

Clause 35 provides that the Minister must notify the making of the service standard and that notice is subordinate legislation. A service standard takes effect on the day that it is notified or published in the gazette or on a later day stated by the Minister.

### Notice and availability of service standards

Clause 36 provides that the chief executive must keep a copy of the service standards and make them publicly available free of charge. The standards must also be published on the department's website.

## Part 4 Process for certifying whether service providers meet service standards

### Minister may approve process

Clause 37 provides that the Minister may approve a process under which a service provider may be certified by an external certification body as meeting the standards. This clause relates to the acknowledgment of the Disability Sector Quality System in the Bill. Its purpose is simply to describe for the purposes of the Bill, the Disability Quality System. However, the Disability Sector Quality System operates outside the Bill.

Similarly **clauses 38 and 39** legislatively recognise the process for certifying that service providers meet the disability service standards under the Disability Sector Quality System. These clauses also relate to the transitional provision in **clauses 239 and 240**.

### Minister may approve entity as suitable to accredit external certification body

Clause 38 recognises that the Minister can approve an entity (such as JAS-ANZ) to be a suitable body to accredit another entity called the external certification body – the external certification body is the entity that determines whether a service provider meets the disability service standards.

### Minister must publish approvals under pt 4

Clause 39 provides that the Minister must publish, on the DSQ's internet, details of approvals relating to the accrediting entity and external certification bodies.

### Documents relating to process approved must be published

Clause 40 effectively provides that the Minister must publish, on DSQ's internet, documents relating to the Disability Quality Sector System.

## Part 5 Approved non-government service providers

### Explanation

Clause 41 provides that this part establishes how the chief executive may approve non-government service providers that are corporations as eligible to receive funding for disability services.

The funding framework in the Bill has three main elements:

(i) a pre-approval process before the non-government service provider is eligible to receive funding (**part 5**);

(ii) a strengthened contractual funding framework based on part 5 of the (repealed) *Disability Services Act 1992* (**part 6);** and

(iii) record keeping requirements (**clause 211**).

Service providers will need to be given an approved non-government service provider status under this part before they may apply for or receive recurrent funds from DSQ. However, being eligible for funding does not guarantee funding.

Provisions are also included to ensure that funding can be provided without pre-approval in urgent situations (see **clause 51**). Pre-approval would not be required for agencies seeking one-off funding.

### No entitlement to funding

Clause 42 provides that the Minister is not required to approve funding for an approved non-government service provider. This provision makes it clear that agencies who are an approved non-government service provider (under this part) are eligible for funding from DSQ, but this status does not guarantee that funding will be provided.

## Application for approval

Clause 43 provides for the application process to become an approved non-government service provider. The decision is made by the chief executive. The application must be in a form approved by the chief executive and the chief executive must decide the application (and give notice of the decision) within 60 days after they receive the application.

The application process is designed to ensure that recurrent funding is provided to those agencies that have the organisational capacity and infrastructure to provide accountable, sustainable and viable services to people with a disability. 'Recurrent funding' has its ordinary meaning and essentially refers to funding given on a periodic basis for the term of the funding agreement.

To be eligible for funding, the service provider must be:

- a corporation;
- certified under the Disability Sector Quality System or has at least started the process for certification – the only exception to this if the only consumer of disability services provided by the corporation is also a director; and
- provides or intends to provide disability services (see **clause 12** for definition).

In deciding the application, the chief executive may have regard following criteria:

- the business plan of the service provider;
- financial records of the service provider;
- how the service provider conducts or intends to conduct its operations;
- appropriate corporate governance structures;
- how the service provider intends to promote the human rights principle;
- how the service provider intends to deal with complaints about the delivery of their disability services; and
- whether the corporation is receiving funding from another department.

Also, to ensure the application process is flexible, other criteria can be placed in a regulation. This will allow the procedure to be easily amended should changes to practice emerge over time.

### Approval remains in force unless cancelled

Clause 44 provides that the status of an approved non-government service provider remains in force unless it is cancelled.

### Application for cancellation of approval

Clause 45 provides that a corporation may apply to the chief executive to cancel their approval as an approved non-government service provider. The application must be in a form approved by the chief executive. Within 45 days after receiving the application, the chief executive must decide the application and give the service provider notice of the decision. The chief executive may only cancel an approval, on application, if:

- there is no current funding agreement with the service provider; and
- it is not likely any action is required to enforce compliance under the Bill.

The chief executive may also require the service provider to take certain action before cancellation. For example, returning unspent funds.

### Cancellation of approval without application

Clause 46 provides that the chief executive may cancel the approval of an approved non-government service provider without an application. The chief executive may only cancel an approval if:

- there is no current funding agreement with the service provider; and
- it is not likely any action is required to enforce compliance under the Bill and it is not likely further funding will be provided by DSQ.

The clause sets out the following show cause process before the chief executive can cancel an approval:

- state the intention to cancel;
- state the reasons for the proposed cancellation;
- invite the service provider to give a written response within a stated time – which has to be at least 30 days;
- consider any written response received within the stated time; and
- give immediate written notice of the decision.

This show cause process does not have to be followed if the service provider agrees to waive this process.

### Cancellation of approval if funded non-government service provider no longer exists

Clause 47 provides that the chief executive must cancel the approval of an approved non-government service provider if it no longer exists. For example, a non-government service provider may 'no longer exist' if they amalgamate with another another entity or if they are otherwise no longer recognised at law as a legal entity.

## Part 6 Funding of non-government service providers

### Purpose of giving funding

Clause 48 provides that the purpose of giving funding to non-government service providers is to enable them to provide disability services in ways that best achieve the objects of the Bill. Funding can only be provided for disability services (**clause 12**) – that is for particular service types as agreed in the CSTDA.

Funding from DSQ is a two step process: firstly, the Minister is to approve funding **(clause 50)** and secondly, if funding is approved, the chief executive has to enter into a written agreement with the non-government service provider **(clause 53).**

### When funding may be given

Clause 49 provides that to achieve the objects of the Bill, the Minister may approve funding for disability services to a non-government service provider.

### Types of funding

Clause 50 provides that the Minister may approve funding for disability services as recurrent funding or one-off funding.

### Recurrent funding for non-government service providers

Clause 51 provides that the Minister may approve recurrent funding only if the service provider is an approved non-government service provider under the pre-approval process in part 5. However, the clause allows for

'provisional service provider status' in urgent or emergency situations where it is not practicable to first go through the pre-approval process. In these cases, a service provider can be granted funding for a maximum of six months without having an 'approved non-government service provider status'. In other words, after receiving the funding, the service provider must take action to become an approved non-government service provider as soon as practicable, otherwise, funding will cease six months after it is given.

### Who may receive approval for one-off funding

Clause 52 provides that the Minister may approve one-off funding for a non-government service provider. The only condition is that the service provider must be incorporated.

### No funding without agreement

Clause 53 provides that once the Minister approves the funds, the chief executive has to enter into a written agreement with the non-government service provider. The chief executive can only provide the funding (recurrent or one-off) once a funding agreement is signed by both parties.

The exception is in urgent cases where it is not practicable to first enter into an agreement. In this case, funding can be given if the service provider agrees in writing to enter into a funding agreement within a stated time and enters into a funding agreement within that time. If this does not happen recurrent funding must cease.

### Insurance for service outlets

Clause 54 provides that it is an offence for a funded non-government service provider not to have adequate insurance to cover their service outlets subject to DSQ funding. The required insurance cover will be prescribed in a regulation. The maximum penalty is 50 penalty units for an individual and for a funded non-government service provider (as a corporation) – the maximum penalty is 250 penalty units.

### What funding agreement is to contain

Clause 55 provides for what the funding agreement must contain. The funding must state each of the following (as considered relevant by the chief executive):

- amount of funding;

- whether the funding is recurrent or one-off, the period of the agreement – and if it is for recurrent funding, it must specify how often funding is given;
- type of disability services to be delivered;
- place at which those disability services are to be delivered;
- service delivery outcomes to be achieved;
- performance measures to be used in measuring the service delivery outcomes;
- policies and procedures to guide service delivery;
- reporting requirements;
- if recurrent funding – that it must cease if certification under the Disability Sector Quality System is withdrawn;
- circumstances when the non-government service provider is in breach of the funding agreement;
- the action that may be taken by the chief executive for a breach of the agreement – this could include suspension or cancellation of funding under the agreement; and
- the way a non-government service provider will receive and deal with complaints about the delivery of their disability services.

As well as the above, the agreement may include other matters the chief executive considers necessary. For example, it may be a condition of the funding agreement that a service provider must complete certification under the Disability Sector Quality System to continue to be eligible for funding.

# Part 7 Prescribed requirements for funded non-government service providers

### Prescribed requirements

Clause 56 provides that a regulation may prescribe requirements relating to the provision of disability services by a funded non-government service provider. Funded disability service providers are required to comply with a

prescribed requirement (**clause 57**). The clause lists what the prescribed requirements could be – for example, they could include compliance with basic organisational and administrative tasks such as financial management and accountability, corporate governance and staff recruitment, employment and training. Requirements could also relate to service delivery such as protecting people from abuse, neglect or exploitation; eligibility and priority for services; giving information and resolving complaints and disputes.

A prescribed requirement may also include provision about developing and implementing a policy or procedure; reporting a change of address of a funded non-government service provider or reporting other matters to the chief executive, including collecting and reporting data and other information about the provision of disability services to consumers.

### Funded non-government service provider must comply with prescribed requirements

Clause 57 provides that a funded non-government service provider must not contravene a prescribed requirement. Consequences of non-compliance could be:

- a compliance notice could be issued requiring the service provider to fix the contravention (breach of a compliance notice is an offence-**clause 158**);
- the extent of compliance or contravention could be a relevant factor when deciding whether further funding is provided under the Bill; or
- non-compliance with certain types of prescribed requirements could lead to the appointment of an interim manager (**clause 166**).

# Part 8 Screening of persons engaged by the department

## Division 1 Preliminary

### Main purpose of pt 8

Clause 58 provides that the main purpose of this part is to enable the chief executive to obtain the criminal history of, and related information, about persons engaged or to be engaged by DSQ.

Checking the criminal history of staff and volunteers and potential staff (and volunteers) is one way Government can seek to increase the protection of vulnerable people from harm. The Government currently uses this strategy for a number of groups, including children.

Currently under the *Family Services Act 1987*, all employees of DSQ and volunteers are required to undergo criminal history checks prior to their employment or engagement. The Bill represents the status quo for DSQ employees and volunteers and extends screening to certain contractors providing disability services and members of Ministerial Advisory committees. The main difference is that the Bill provides for the ability for the chief executive of DSQ and the Queensland Police Commissioner to enter into an administrative arrangement to determine how the police information is provided to each agency. This can include the ability to enter into an arrangement for the electronic transfer of police information (see **clause 226**). For the protection of confidentiality and restrictions on the use of this information – see **clause 221.**

A person's criminal history means any conviction (whether recorded or not) for an offence in Queensland or elsewhere and any charge for an offence in Queensland or elsewhere. A check also includes a check about investigative information about the possible commission of a 'serious offence'(defined in the Bill).

### Safety of people with a disability to be paramount consideration

Clause 59 provides that the paramount consideration in making a decision under this part is the right of people with a disability to live lives free from abuse, neglect or exploitation.

### Persons engaged by the department

Clause 60 provides for what is meant by the term 'engaged by the department'. This is important as it defines the scope of who has to undergo a mandatory criminal history check. A public service employee of DSQ, a person contracted by DSQ to provide disability services, members of a Ministerial advisory committee and volunteers or students on work experience working in DSQ will be subject to criminal history screening. The main difference from the definition in the *Family Services Act 1987* is that members of a Ministerial advisory committee will be required to have criminal history check**.** The Bill also makes it clear that persons contracted by DSQ to provide disability services for DSQ will be subject to the screening process. For example, a person contracted by DSQ to provide specialist support to a consumer each week for a time limited period will be subject to the scheme.

### This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

Clause 61 provides that this part applies despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986.* This means that a person's criminal history check includes all of the person's criminal history in Queensland or elsewhere (including a person's juvenile history).

### Chief executive to advise of duties of disclosure etc.

Clause 62 provides that before a person is engaged by DSQ, the chief executive must tell the person the following:

- the person's obligation to disclose their criminal history and any changes to their history if subsequently engaged (**clauses 63 and 64**);
- that the chief executive may obtain a report (from the Police Commissioner) about a person's criminal history, description of the circumstances of the charge or conviction, or investigative information about an investigation relating to the possible commission of a 'serious offence' (**clause 67**); and
- that guidelines on how criminal history information is taken into account are available (**clause 71**).

## Division 2 Disclosure of criminal history

### Persons seeking to be engaged by the department must disclose criminal history

Clause 63 provides for a duty of disclosure before a person is engaged by DSQ. Before engagement, the person must disclose if they have a criminal history. If they have a criminal history, the person's complete criminal history must be disclosed.

It is an offence to provide false, misleading or an incomplete disclosure – see **clause 66**.

### Persons engaged by the department must disclose changes in criminal history

Clause 64 provides for a duty of disclosure if there is a change in a person's criminal history after being engaged by DSQ. A change in a criminal history includes if a person acquires a criminal history. The person must immediately disclose to the chief executive the details of the change.

It is an offence to provide false, misleading or an incomplete disclosure. It is also an offence not to disclose a change in criminal history unless the person has a reasonable excuse (see **clause 66**).

### Requirements for disclosure

Clause 65 provides for how a disclosure must be made in order to comply with the disclosure requirements in **clauses 63 and 64**. The disclosure must be in a form approved by the chief executive and must include the following particulars:

- the existence of a conviction or charge;
- when the offence was committed or alleged to have been committed;
- the details of the offence or alleged offence; and
- for a conviction- whether or not a conviction was recorded and a sentence imposed.

### False, misleading or incomplete disclosure or failure to disclose

Clause 66 makes it an offence to either:

- give a disclosure that is false, misleading or incomplete in a material particular; or
- not disclose a change in criminal history unless the person has a reasonable excuse.

It is not an offence if the person indicates, when providing the information, what information they are unable to provide and otherwise gives the information to the best of their ability.

The maximum penalty is 100 penalty units or 2 years. This offence is the same as that in the *Family Services Act 1987* (section 21).

## Division 3 Chief executive may obtain information from other entities about criminal history and certain investigations

### Chief executive may obtain report from commissioner of the police service

Clause 67 provides that where a person engaged by DSQ (or proposed to be engaged) has given the chief executive a disclosure, the chief executive may ask the Police Commissioner to give certain information.

In particular, the chief executive may ask for the following information:

- a written report about the person's criminal history;
- a description of the circumstances of a conviction or charge; and
- information about an investigation relating to the possible commission of a 'serious offence'. 'Serious offence' is defined in **clause 76.**

The Police Commissioner must comply with the request except in certain circumstances. For example, information about an investigation cannot be provided if the Police Commissioner believes the release of the information would hinder the investigation, lead to the identification of the informant or may affect the safety of a police officer. Similarly, information must not be released if the Police Commissioner believes it is unlikely to lead to a reasonable suspicion that an offence was committed.

### Prosecuting authority to notify chief executive about committal, conviction etc.

Clause 68 requires a prosecuting authority (the Police Commissioner or the Director of Public Prosecutions) to notify the chief executive where the authority is aware that the engaged person has been charged with an indictable offence. The clause sets out the particulars that must be provided if the person is committed for trial, if the person is convicted of the offence, if they have appealed against the conviction, or if there is an acquittal or a nolle prosequi or mistrial or the prosecution process is otherwise terminated.

Given the serious nature of indictable offences, it is important for the chief executive to know about this information without relying on the individual's obligation to disclose.

## Division 4 Controls on use of information about criminal history and certain investigations

### Use of information obtained under this part

Clause 69 provides that criminal history (and any investigative) information received by the chief executive under this part cannot be used for any other purpose other than assessing whether or not the person should be, or should continue to be, engaged by DSQ. The clause recognises the sensitivity of the information that is being obtained and limits its use.

It also provides that in making an assessment on the information, the chief executive must have regard to the certain matters:

- when the offence was committed or alleged to have been committed;
- the nature of the offence and its relevance to the person's duties or proposed duties; and
- anything else considered relevant by the chief executive.

### Person to be advised of information obtained

Clause 70 provides that before any information obtained under this part is used to assess whether a person should be, or continue to be, engaged by DSQ, the chief executive must disclose the information to the person and allow them a reasonable opportunity to comment.

### Guidelines for dealing with information

Clause 71 provides that the chief executive must make guidelines for dealing with information obtained under this part. The purpose of the guidelines is to ensure that natural justice is afforded to the person about whom the information relates and that only relevant information is used when determining whether or not to engage, or continue to engage, the person at DSQ. These guidelines must be provided to the person on request.

# Part 9 Screening of persons engaged by funded non-government service provider

## Division 1 Preliminary

### Main purpose of pt 9

Clause 72 states the purpose of this part. The purpose of this part is to allow the chief executive to obtain criminal history and related information about persons engaged, or to be engaged, by a funded non-government service provider.

The majority of disability services in Queensland are provided by non-government agencies. While some services funded by DSQ conduct criminal history checks, there is no requirement to do so. This part extends the requirement for all employees and volunteers and others seeking to be engaged by a funded non-government service provider (at a place where disability services are provided) to undertake a police check (that is criminal history and certain investigative information).

For consistency, the process is modelled on the scheme in the *Commission for Children and Young People and Child Guardian Act 2000* (CCYPCGA). The process is similar to the scheme for those engaged by DSQ under **part 8**. It is intended that the outcome for both criminal history checking processes for DSQ and non-government workers will be the same. **Parts 8 and 9** provide a level of safeguard to people with a disability from abuse, neglect or exploitation in DSQ provided or funded services.

### Safety of people with a disability to be paramount consideration

Clause 73 provides that the paramount consideration in making a decision under this part is the right of people with a disability to live lives free of abuse, neglect or exploitation.

### This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

Clause 74 provides that this part applies despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986.* This means that a person's criminal history check includes all of the person's criminal history whether in Queensland or elsewhere (including a person's juvenile history).

## Division 2 Interpretation

### What is engagement

Clause 75 defines the term 'engagement' and provides that a funded non-government service provider is engaging the person if the provider has an agreement (verbal or written) with the person to carry out work at a service outlet of the provider – that is at an outlet where disability services are provided. This definition is important as it determines who must be screened for a funded non-government service provider.

The purpose of the definition is to include any person who is either directly or indirectly involved in providing disability services to a person with a disability – it addresses the potential risks presented by proximity and opportunity. The clause makes it clear that it does not matter whether the agreement is in writing or oral, the time for which the person is engaged to carry out the work or whether the work is regular or irregular or the nature of the work. This is because staff and volunteers in the disability sector undertake many different roles. Even those people who do not directly provide services are likely to come into contact with or have capacity to access people with a disability.

A person who can be engaged by a service could include:

- an employee of the service provider;
- a volunteer;

- members of a board, management committee or other governing body of the service provider;
- a person contracted by the service provider to provide services;
- a member of a board/management committee/other governing body;
- an executive officer of the service provider; and
- student on work experience.

However, the clause makes it clear that the following people are not persons engaged by the funded non-government service provider and do not require a criminal history (or police) check:

- a consumer of the service provider (even if they carry out work at a service outlet of the provider); or
- a tradesperson who from time to time performs work at a service outlet and who is not employed by the service provider**.**

These people are excluded from screening because they usually will not be in close proximity or contact with the provision of disability services.

### What is a serious offence

Clause 76 defines what is a 'serious offence'. This definition is relevant in determining what type of prescribed notice should be issued by the chief executive - see **clause 82**. A serious offence is defined as:

- an offence referred to in **schedule 3,** which is a list of relevant current Queensland offences, including counselling, procuring, attempting or conspiring to commit those offences;
- an offence referred to in **schedule 4**, which is a list of relevant Queensland offences that have expired or been repealed;
- an equivalent offence in another jurisdiction (State, Territory, Commonwealth or foreign jurisdiction); or
- a class 1 or 2 offence as defined in the *Child Protection (Offender Reporting) Act 2004*, that is not otherwise a serious offence under this subsection. This limb of the definition links the offences for which there is mandatory registration on the Australian National Child Offender Registry (ANCOR) to the list of serious offences, to ensure consistency across these regimes, particularly in relation to Commonwealth offences for which it may be argued that there are no equivalent Queensland crimes.

Subsection (2) clarifies that it is immaterial if an offence in **schedule 3 or 4** has been amended from time to time or that the provision was previously numbered with a different number.

### What is a serious sexual or violent offence

Clause 77 defines what is a 'serious sexual or violent offence'. It is one of the following types of offences:

- an offence referred to in **schedule 5**, which is a list of relevant current Queensland offences of a serious sexual nature;
- an offence referred to in **schedule 6**, which is a list of relevant Queensland offences of a serious sexual nature, that have expired or been repealed. Due to the changes in the elements of some of these offences since first introduced, they are also subject to certain limitations to ensure they fulfil the requirement of being a 'serious sexual or violent offence'.

Subsection (2) clarifies that it is immaterial if an offence in **schedule 5 or 6** has been amended from time to time or that the provision was previously numbered with a different number.

### What is an excluding offence

Clause 78 defines what is an 'excluding offence'. An excluding offence includes a 'serious sexual or violent offence', or offences of pornography listed in schedule 3 in relation to the *Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991* or *Classification of Publications Act 1991*, or certain offences against the Criminal Code relating to making, distributing or possessing child exploitation material.

This definition is relevant in determining what type of prescribed notice should be issued by the chief executive - see **clause 82**.

Under the CCYPCGA scheme, a conviction for an excluding offence involves the sexual exploitation, corruption or moral degradation of children**.** For these offences, where the court has determined the offence serious enough to impose a term of imprisonment or a disqualification order, it is considered justified that a conviction for these offences results in a person not being able to work with a person with a disability (with a DSQ funded non-government service provider). Given both children and people with a disability are equally vulnerable to abuse, neglect and exploitation, it is considered that these disqualifying offences are relevant and should also apply to a person working with people with a disability. This is consistent

with the overall purpose of the Bill to protect and promote the rights of people with a disability.

## Division 3 Risk management strategies

### Risk management strategies about persons engaged by funded non-government service providers

Clause 79 provides that a funded non-government service provider who engages a person at a service outlet of the service provider must develop and implement a risk management strategy each year. Failure of a service provider to comply with this obligation is an offence - maximum penalty for an individual is 20 penalty units and for a corporation: maximum penalty is 100 penalty units

The purpose of this clause is to reinforce that a criminal history check is only one safeguard to protect people with a disability from abuse, neglect or exploitation. It is not a substitute for an appropriate range of risk management strategies to manage persons engaged or proposed to be engaged.

Subsection (3) provides that the purpose of the risk management strategy is for the funded non-government service provider to adopt practices and procedures in relation to people with a disability (beyond that of criminal history screening), to promote their well-being and protect them from harm.

Subsection (4) provides that a regulation may prescribe matters that should be included in a risk management strategy. For example, these matters could include ensuring the strategy caters for the following types:

- a person who has commenced employment pending the outcome of their criminal history application;
- a current employee who has had a non-adverse criminal history check;
- a person working at a service outlet of a funded non-government service provider but who is not required to hold a card;
- a person about whom the employer has been advised that a decision on their criminal history is being reassessed.

## Division 4 Issue of prescribed notices for funded non-government service providers

### Application for notice

Clause 80 provides that a funded non-government service provider may apply to the chief executive for a 'prescribed notice' for a person whom they proposed to engage or continue to engage at a service outlet of the service provider. The application is to be in the approved form and must include the following:

- signed by the service provider and the relevant person;
- provide adequate identifying information about the engaged person;
- certification by the service provider that they have sighted the documents confirming identity of the engaged person– relevant proof documents will be prescribed under a regulation; and
- there must be proof that the engaged person has consented to the criminal history screening.

(A 'prescribed notice' is a positive or negative notice issued by the chief executive following a check of a person's criminal history and related information – see **clause 82** for further details).

On receipt of the application for a prescribed notice, the chief executive may ask the service provider for further information (within a stated time) that the chief executive reasonably needs to establish the identity of the person the service provider proposes to engage or continue to engage.

Subsection (5) lists when an engaged person is taken to have withdrawn their application. Essentially, a person is taken to have withdrawn their application if they have received a written request for further information and do not respond within the stated time.

### Notice of change in engagement, or name and contact details in application under s80

Clause 81 imposes an obligation on a person to notify the chief executive if an application for a prescribed notice is made and their circumstances have changed because either:

- there has been a change in the person's name or contact details; or

- they are no longer engaged by the service provider (who made the application on their behalf).

The change has to be provided in the approved form within 14 days after it happens. It is an offence not to comply – maximum penalty units is 10 penalty units.

## Decision on application

Clause 82 provides for how the chief executive must decide an application for a prescribed notice. The chief executive must decide the application by issuing a prescribed notice which can be either a 'positive notice' or a 'negative notice'.

'Positive notice' – is issued when the chief executive decides that the person can work at a service outlet of the funded non-government service provider.

'Negative notice' – is issued when the chief executive decides that the person cannot work at a service outlet of the funded non-government service provider.

The clause specifies when the chief executive must issue a positive notice and when the chief executive must issue a negative notice. This is summarised in the following table:

| Clause | Information the chief executive is aware of | Type of prescribed notice the chief executive must issue | Proviso |
|---|---|---|---|
| **82(3)(a)** | No **police information** i.e. no **criminal history** or **investigative information** | Positive notice | Nil |
| **82(3)(b)** | **Investigative information**; or<br>charge for an offence other than an **excluding offence**; or<br>charge for an **excluding offence** dealt with other than by a conviction | Positive notice | Unless an exceptional case in which it would not be in the best interests of people with a disability to issue a positive notice (82(4))<br><br>Where the chief executive is satisfied of an exceptional case, the chief executive must issue a negative notice (82(5)) |
| **82(3)(c)** | [2] **Conviction** for an offence other than **a serious offence** | Positive notice | Unless an exceptional case in which it would not be in the best interests of people with a disability to issue a positive notice (82(4))<br><br>Where the chief executive is satisfied of an exceptional case, the chief executive must issue a negative notice (82(5)) |
| **82(6)(a)** | [2] **Conviction** for an **excluding offence,** where imprisonment or a **disqualification** order is ordered | Negative notice | Nil |

| | | | |
|---|---|---|---|
| **82(6)(b)** | [2] **Conviction** for a **serious offence** other than an **excluding offence** where imprisonment or **disqualification** is ordered | Negative notice | Unless an exceptional case in which it would not harm the best interests of people with a disability to issue a positive notice (82(7)).<br><br>Where the chief executive is satisfied of an exceptional case, the chief executive must issue a positive notice (82(8)). |

## Key terms are highlighted and are defined in the Bill

- 'conviction' (**schedule 7**) – a finding of guilt or acceptance of a plea of guilty, whether or not it is recorded;
- 'criminal history' (**schedule 7**) – every conviction (recorded or not) and every charge in Queensland or elsewhere.
- 'disqualification order'- made by a court under **clause 119**;
- 'excluding offence – see **clause 78**;
- 'investigative information' – determined by the Police Commissioner under **clause 106**;
- 'police information' (**schedule 7**) – criminal history and investigative information
- 'serious offence' – see **clause 76**

## Decision-making under s82 in relation to discretionary matters

Clause 83 provides for what factors the chief executive must take into account when deciding whether or not there is an exceptional case under **clause 82(4) or (7).**

Subsection (2) sets out the range of considerations to which the chief executive must have regard to, where the person has been charged or convicted of an offence. These are:

- whether it is a conviction or charge;
- whether it is a serious offence and if so, if it is an excluding offence;

- when the offence was committed (or alleged to have been committed);
- nature of the offence and its relevance to engagement with people with a disability;
- if it is a conviction – the penalty imposed and if no imprisonment or a disqualification order was imposed, the reasons for decision; and
- anything else the chief executive considers is relevant.

Subsection (3) sets out the range of considerations to which the chief executive must have regard to, where there is investigative information. These are:

- when the related acts/omissions of the alleged offence were committed; and
- anything else relating to the commission of the related acts/omissions which the chief executive considers is relevant.

### Actions of chief executive after making decision on application

Clause 84 specifies that after the chief executive has made a decision about an application for a prescribed notice, the chief executive issues either a positive notice or a negative notice to the person about whom the application is made.

Subsection (2) states the process if a negative notice is issued – the process is different depending on whether the decision includes or does not include investigative information.

If the reasons do not include investigative information, **clause 84(2)(b)** states that the notice must specify:

- the reasons for the decision; and
- that the person can apply to the Commercial and Consumer Tribunal within 28 days after they are given the notice about whether there was an exceptional case (as provided for in **clause 82(4) or (7**)).

If the reasons for the decision include investigative information, **clause 84(2)(c)** states that the notice must specify:

- the reasons for the decision; and
- that the person can appeal to the Magistrates Court within 28 days of being given the notice in order to review the decision of the Police Commissioner that information is investigative information; or

- that the person can apply to the Commercial and Consumer Tribunal within 28 days of being given the notice about whether there was an exceptional case (as provided for in clause **82(4) or (7)).**

For each case a copy of the appeal rights in **clause 105** must be included.

Subsection (4) requires the chief executive to notify the funded non-government service provider (who the engaged person is engaged with). The funded non-government service provider is only told whether a positive notice or negative notice was given. No criminal history or related information is disclosed.

Subsection (5) provides that within 14 days of issuing a positive or negative notice, if the person previously held another prescribed notice, it must be surrendered to the chief executive. If it was a positive notice then any positive notice card must also be surrendered. It is an offence not to comply with this obligation – maximum penalty units: 10 penalty units.

The effect of a negative notice issued is that the person cannot work at a service outlet of a funded non-government service provider. This means the person may be engaged or continue to be engaged by the service provider but they cannot work at a place where disability services are provided.

A positive notice is issued in the form of a letter notifying the person that the application for a prescribed notice has been approved. If a positive notice is issued, a positive notice card will also be issued. The card represents that the person has had a non-adverse criminal history screening check at a point in time under the Bill. It means that person can work at a service outlet of a funded non-government service provider.

A current positive notice card is evidence that a person has a current positive notice **(clause 193**).

## Chief executive to invite submissions from engaged persons about particular information

Clause 85 specifies what process the chief executive must follow when deciding to issue a negative notice after considering an exceptional case (as provided for under **clause 82(4) or (7)).** This means that the chief executive is not required to follow this process where a negative notice has been issued for a conviction of an excluding offence with imprisonment or disqualification order.

If the chief executive proposes to issue a negative notice, the chief executive must give the person a written notice:

- stating the police information (criminal history and investigative information); and
- inviting the person to give the chief executive, within a stated time, a written submission about why the chief executive should not issue a negative notice. The stated time must be reasonable and be a minimum of seven days after the notice is given.

Before deciding the application, the chief executive must consider any submissions received within the stated time.

This clause ensures that a person is fully informed of the information on which the chief executive is relying on to make a decision and provides the person an opportunity to respond to that information.

### Currency of prescribed notice and positive notice card

Clause 86 specifies the life of a positive notice (and positive notice card) and a negative notice. A negative notice remains current until it is cancelled under the Bill (under **division 6**). A positive notice remains current for two years after it is issued unless it is earlier cancelled under the Bill (under **division 6**).

Subsection (3) provides that a positive notice card remains current for the same period as the positive notice. This is necessary to ensure consistency in situations where a positive notice is issued by the chief executive at a different time to the actual issue of the positive notice card.

## Division 5 Obligations and offences relating to prescribed notices

## Subdivision 1 Engagement of persons by funded non-government serviced provider

### When person without current positive notice may be engaged

Clause 87 provides that it is an offence (maximum penalty – 50 penalty units for individual and 250 penalty units for a corporation) for a funded non-government service provider to engage or continue to engage a person at a service outlet if the person does not have a current positive notice unless the service provider has applied for a prescribed notice. In other

words, as long as the service provider has made an application for a prescribed notice, they will not be committing an offence.

### Prohibited engagement

Clause 88 provides that it is an offence (maximum penalty – 40 penalty units for individual and 200 penalty units for a corporation) for a funded non-government service provider to engage or continue to engage a person if the service provider applied for a prescribed notice about the person and has been notified by the chief executive that the person has withdrawn their consent to the application for a prescribed notice.

It is also an offence (maximum penalty – 100 penalty units for individual and 500 penalty units for a corporation) for a funded non-government service provider to engage or continue to engage a person if the service provider has been given notice of a deemed withdrawal (under **clause 114(4)**) or the service provider is aware that a current negative notice has been issued to the person. The higher maximum penalty for these two offences reflects their more serious nature.

## Subdivision 2 Obligations if holder of negative notice or application for prescribed notice is withdrawn

### Person holding negative notice, or who has withdrawn consent to screening, not to apply for, or start or continue in, engagement by funded non-government service provider

Clause 89 provides that it is an offence (maximum penalty – 500 penalty units or five years imprisonment) for a person to apply for, or start, or continue with a funded non-government service provider at a service outlet if the person has been issued with a negative notice which is still current.

However, it may not be an offence where the person had a positive notice but it was subsequently cancelled by the chief executive and a negative notice substituted – the person is not liable unless the court is satisfied that the person was given written notice of a substitution by the chief executive under **clause 98**.

Since the Bill is silent on how notice is to be 'given' to a person, the service provisions set out in sections 39 and 39A of the *Acts Interpretation Act*

*1954* apply. If a document is to be given by fax – see also **clause 231** of the Bill.

Subsection (2) provides that it is an offence (maximum penalty – 100 penalty units or 1 year imprisonment) for a person to apply for, or start, or continue with a funded non-government service provider at a service outlet if the person has withdrawn (or taken to have withdrawn) the application for a prescribed notice.

## Subdivision 3 Changes in criminal history

### Acquiring a criminal history

Clause 90 provides that there is a change in a person's criminal history if the person (who previously had no criminal history) subsequently acquires a criminal history.

### Effect of conviction for serious offence or charge for excluding offence

Clause 91 provides that a person with a current positive notice and who is convicted of a serious offence (**clause 76**) or charged with an excluding offence (**clause 78**) must not start or continue to be engaged by a funded non-government service provider at a service outlet until a further positive notice is issued. It is an offence not to comply -maximum penalty is 500 penalty units or 5 years.

### Change in criminal history of engaged person

Clause 92 provides that a person engaged by a funded non-government service provider must immediately disclose to the service provider a change in their criminal history. It is an offence not to comply - maximum penalty of 100 penalty units. The clause also makes it clear that the person is only required to disclose to the service provider that a change has happened. No details of the change in criminal history are required.

Subsection (3) imposes a similar obligation on the funded non-government service provider. On receiving a disclosure, the service provider must not continue to engage the person at a service outlet of the service provider without first applying for a prescribed notice or a further prescribed notice.

It is an offence not to comply – maximum penalty of 100 penalty units for an individual or 500 penalty units for a corporation. The clause makes it

clear that this does not prevent the service provider from continuing to engage the person provided they have applied for a prescribed notice or further prescribed notice.

### Change in criminal history of other persons

Clause 93 sets out obligations placed on persons holding a current positive notice, who are not engaged by a funded non-government service provider (at a service outlet), where there is a change in the person's criminal history. The clause provides that before starting engagement with the service provider (at a service outlet), the person must notify the service provider there has been a change in the person's criminal history. It is an offence not to disclose the change – maximum penalty is 100 penalty units.

Similarly, on receiving the disclosure, the service provider must not engage the person at a service outlet without first applying for a further prescribed notice. It is an offence not to comply – maximum penalty is 100 penalty units for an individual or 500 penalty units for a corporation.

Before engaging the person, the service provider can make their own investigations by applying to the chief executive for information contained on the register of persons engaged by funded non-government service providers, required to be kept by the chief executive under **clause 120**.

## Subdivision 4 General

### False or misleading disclosure

Clause 94 makes it an offence (maximum penalty – 100 penalty units or 2 years imprisonment) for a person to give to a funded non-government service provider, proposing to engage them, information (for this part) that is false or misleading in a material particular. Similarly, it is an offence for the person to state anything to the chief executive that the person knows is false or misleading in a material particular.

### False or misleading documents

Clause 95 provides that a person must not give to the chief executive a document (for the purposes of this part) that is false or misleading in a material particular -maximum penalty of 100 penalty units or 2 years imprisonment).

However, subsection (2) states that it is not an offence if the person when giving the document:

- tells the chief executive, to the best of the person's ability, how it is false or misleading; and
- if the person has, or can reasonably obtain, the correct information, gives it to the chief executive.

### Return of positive notice and positive notice card to chief executive

Clause 96 provides that a person who has a current positive notice and who has a conviction for a serious offence or has had their notice cancelled by the chief executive and has been issued with a negative notice, must immediately return the positive notice and the positive notice card to the chief executive, unless they have a reasonable excuse. It is an offence not to comply – maximum penalty of 100 penalty units.

## Division 6 Cancellation and replacement of prescribed notices

### Cancellation of negative notice and issuing of positive notice

Clause 97 provides that a person who has been issued with a negative notice which is current may apply to the chief executive to cancel the notice if two years has lapsed since the issuing of the notice or any previous application. The clause sets out how the application can be made and provides that a person may state in the application anything the person considers relevant to the decision about whether to issue a positive notice. This can include specifying any change in circumstances since the negative notice was issued.

The clause makes it clear that the chief executive must decide an application under this section and issue a prescribed notice in the same way the chief executive must consider and deal with a usual application for a prescribed notice pursuant to **clauses 82 – 85**.

If the chief executive decides to grant the application, they must cancel the negative notice and issue a positive notice to the person.

### Chief executive may cancel a prescribed notice and substitute another prescribed notice

Clause 98 allows the chief executive to cancel a prescribed notice and substitute it with another notice.

Cancel a positive notice and substitute negative notice

The chief executive can cancel a positive notice and substitute with a negative notice if the chief executive is satisfied that:

- the original decision was based on wrong or incomplete information and now (based on correct or complete information) a negative notice should be issued; or
- the chief executive has received relevant police information (criminal history or investigative information) from the Police Commissioner under **clause 111 or 112.**

In making a decision to substitute a negative notice, the clause makes it clear that the chief executive must decide an application and issue a prescribed notice in the same way that the chief executive must consider and deal with a usual application for a prescribed notice (**clauses 82-84**). This includes the chief executive providing the person an opportunity to respond to any police information about the person required under **clause 85.**

The clause further provides that if a decision is made by the chief executive to substitute a negative notice, the chief executive must also give notice of the substitution to any funded non-government service provider whom the person was engaged by. No details of the decision are disclosed.

Cancel a negative notice and substitute a positive notice

The chief executive may cancel a negative notice and substitute a positive notice if the chief executive is satisfied that:

- the original decision was based on wrong or incomplete information and now (based on correct or complete information) a positive notice should be issued; or
- an order of the sentencing court relating to an excluding offence that resulted in a penalty of imprisonment or a disqualification order was not upheld on appeal.

In making a decision to substitute a negative notice, the clause makes it clear that the chief executive must decide an application and issue a prescribed notice in the same way that the chief executive must consider and deal with a usual application for a prescribed notice (**clause 82-84**).

A decision under this section can be made either on application by the person to whom the cancelled notice was issued or the person who applied for the cancelled notice or on the chief executive's own initiative.

### Cancellation if conviction for excluding offence and imprisonment or disqualification order

Clause 99 provides that where a current positive notice holder, including a person whose positive notice has been suspended, is convicted of an excluding offence and the court imposes a period of imprisonment or makes a disqualification order, the chief executive must cancel the positive notice and substitute a negative notice.

Subsection (3) sets out the process for the chief executive to follow after the chief executive cancels the positive notice and substitutes a negative notice. At the time the chief executive gives the negative notice, a written notice must also be provided stating that:

- there is no appeal or review under this Bill against the decision;
- the person cannot apply after two years for the cancellation of the negative notice (under **clause 97**); and
- the only circumstance where the person may apply to cancel the negative notice (under **clause 98**) is if an order of the sentencing court relating to an excluding offence that resulted in a penalty of imprisonment or disqualification order, was not upheld on appeal.

The clause further provides that if the person was engaged by a funded non-government service provider, the chief executive must also give written notice of the substituted negative notice to the service provider. No other details are disclosed.

### Cancellation if conviction for excluding offence but no imprisonment or disqualification order

Clause 100 outlines that where a current positive notice holder, including a person whose positive notice has been suspended, is convicted of an excluding offence but the court does not order a period of imprisonment or a disqualification order, the chief executive must cancel the person's positive notice (and substitute a negative notice) unless it is an exceptional case in which it would not harm the best interests of people with a disability.

In making the decision, the clause makes it clear that the chief executive must decide an application and issue a prescribed notice in the same way

that the chief executive must consider and deal with a usual application for a prescribed notice (**clauses 82-85**). This includes the chief executive providing the person an opportunity to respond to any police information about the person, required under **clause 85.**

## Effect of charge for excluding offence pending charge being dealt with

Clause 101 outlines that where a current positive notice holder, including a person whose positive notice has been suspended, is charged with an excluding offence, the person's positive notice must be suspended until the charged is finalised.

If the chief executive suspends a person's positive notice, the chief executive must give written notice to the person which states:

- the positive notice held by the person is suspended;
- the reasons for the suspension;
- how long the suspension will continue;
- the effect of the suspension; and
- that the person must return the positive notice and the positive notice card within seven days after the notice is given to the person – it is an offence if the person does not comply (maximum penalty of 100 units).

Subsection (3) provides for the effect of the suspension – a person cannot apply for, start or continue to work in a service outlet of a funded non-government service provider. Failure to comply is an offence – maximum penalty 200 penalty units or 2 years. The effect of this provision is that it still allows a person to be engaged by a funded non-government service provider as long as they do not work at a place where disability services are provided.

Subsections (5) and (6) specifies what the chief executive must do if the person, whose notice is suspended under this clause, is engaged by a non-government service provider – the chief executive must provide written notice to the service provider that the person's positive notice is suspended and the effect of the suspension. The effect of the suspension is that the:

- service provider must not allow the person to work at a service outlet where disability services are provided – it is an offence if the service provider does not comply (maximum penalty units: 200 penalty units

or 2 years imprisonment for an individual and maximum penalty units: 1000 penalty units for a corporation); and

- the service provider must not terminate a person's engagement solely or mainly because of the person's positive notice is suspended.

In other words, the person can continue to work with the service provider as long as they do not work at a place where disability services are provided.

### Cancellation of suspension and issue of further prescribed notice

Clause 102 provides that if the chief executive suspends a positive notice under **clause 101** (because the person has been charged with an excluding offence), the suspension remains in force until the charge is dealt with or the chief executive cancels the suspension and issues a further prescribed notice. A person may only apply to have the suspension lifted if the charge has been dealt with.

If the charge resulted in a conviction with no period of imprisonment or disqualification order – the chief executive must cancel the suspension (and positive notice) and issue a negative notice unless satisfied there is an exceptional case in which it would not harm the interests of people with a disability. If there is an exceptional case – the chief executive must issue a positive notice.

If the charge resulted in a conviction with a period of imprisonment or disqualification order -–the chief executive must cancel the suspension (and positive notice) and issue a negative notice.

If the charge resulted in no conviction – the chief executive must cancel the suspension and issue a further positive notice unless there is an exceptional case – where the chief executive must issue a negative notice.

In making the decision, the clause makes it clear that the chief executive must decide an application and issue a prescribed notice in the same way that the chief executive must consider and deal with a usual application for a prescribed notice (**clauses 82-85**). This includes the chief executive providing the person with an opportunity to respond to any police information about the person, required under **clause 85.**

### Replacement of positive notice or positive notice card

Clause 103 explains what happens if a person who holds a current positive notice or a current positive notice card is lost or stolen. The clause requires

the person to notify the chief executive, in the approved form, within 14 days after the notice or card was lost or stolen. It is an offence if they do not comply - maximum penalty is 10 penalty units.

If the chief executive is notified, the chief executive must cancel the notice and/or card and issue a replacement card and/or notice to the person. The chief executive must also give notice to the Police Commissioner that a current positive notice and/or card has been lost or stolen.

If the person's lost or stolen notice and/or card are subsequently returned to them, they must return the original positive notice and/or positive notice card to the chief executive within 14 days of it being returned. It is an offence if they do not comply – maximum penalty is 10 penalty units.

### Change of details for prescribed notice or positive notice card

Clause 104 explains what happens if a person who holds a current positive or negative notice changes their name or their contact details. The clause requires the person to notify the chief executive of the change, in the approved form, within 14 days after the change. It is an offence if they do not comply – maximum penalty is 10 penalty units.

If the chief executive considers it is appropriate they may issue a replacement positive notice or replacement positive notice card to the person. If the chief executive does this, they must also cancel the previously held positive notice or positive notice card.

If a replacement notice and/or card is issued, the clause requires the person to return the original positive notice and/or card to the chief executive within 14 days after receiving the replacement notice and/or card.

## Division 7 Miscellaneous

### Person may apply for review of decision

Clause 105 lists what decisions a person can apply to the Commercial and Consumer Tribunal for review. A person may only apply for review in relation to the following decisions made by the chief executive under the Bill:

| Clause | Reviewable Decision | Interested person |
|---|---|---|
| **82(4) or (7); 100(2); 102(3)** | Whether or not there is an 'exceptional case' and a negative notice was issued (or substituted) or refused to be cancelled. | Person who is the holder of the negative notice. |
| **101(1)** | Suspend a positive notice because the person has been charged with an excluding offence – in this case only the decision whether or not it is an excluding offence can be appealed. | Person whose positive notice is suspended. |

To avoid doubt, subsection (4) makes it clear that there is no right of review for a decision to issue, or refuse to cancel, a negative notice (only a decision whether or not there is an exceptional case).

Also, if a person does appeal to have a decision reviewed under this clause, the Commercial and Consumer Tribunal cannot stay the operation of that decision.

### Police commissioner may decide that information about a person is investigative information

Clause 106 sets out the matters which the Police Commissioner must be satisfied of, in order to decide that information is investigative information.

Investigative information is gathered by the Queensland Police Service as part of an investigation into an alleged offence, which did not result in the matter proceeding to a charge against the person. Because of the highly prejudicial nature of the information, strict limits have been set around the type of investigative information that may be forwarded from the Police Commissioner to the chief executive.

The clause provides that the Police Commissioner may decide whether information is investigative information if all of the following are satisfied:

- there is or was evidence of acts or omissions that constituted 'serious sexual or violent offence (see **clause 77** for definition); and
- the police investigated the alleged offence; and
- the applicant was formally notified about the investigation including being asked to participate in an interview, by participating in an interview or otherwise being given the opportunity to answer the allegations; and
- there was sufficient evidence to establish each element of the alleged offence; and
- a decision was made not to proceed because the complainant died before the charge was brought, or the complainant was unwilling to proceed, or the complaint's parent or guardian decided not to proceed in the interests of the complainant.

## Delegation by Police Commissioner of power under s 106 restricted

Clause 107 provides that the Police Commissioner can only delegate their powers under **clause 106** (a decision on whether or not it is investigative information) to a police officer with the rank of Superintendent or higher. This aims to balance the importance of having a high-level decision-maker (given the nature of investigative information) and the impracticality of having the Police Commissioner make and be accountable for all these decisions.

## Decision by police commissioner that information is investigative information

Clause 108 provides for a right of appeal to a Magistrates Court in relation to a decision by the Police Commissioner (or authorised delegate) that information is investigative information. On appeal, the Magistrate only determines whether or not the information is investigative information.

A person has 28 days after the negative notice is given to the person to appeal the decision. The chief executive and the Police Commissioner must be given a copy of the notice of appeal.

To preserve the integrity of the Magistrate's decision, the clause provides that the Commercial and Consumer Tribunal does not have jurisdiction to examine whether information is or is not investigative information.

### Court to decide matters afresh

Clause 109 sets out the manner in which the Magistrates Court is to hear an appeal under **clause 108**. In particular, a Magistrates Court is to decide afresh whether information provided by the Police Commissioner is investigative information.

Subsection (2) states that an investigated person cannot call on the complainant to give evidence. However, subsection (3) clarifies that this does not prevent documentary evidence being tendered and received in court.

Subsection (4) provides that the Magistrates Court may confirm or set aside the decision by the Police Commissioner that the information is investigative information.

Subsection (5) clarifies that in making a decision, the Magistrates Court must have regard to the same matters that the Police Commissioner had regard to when making their decision.

### Consequences of decision on appeal

Clause 110 outlines the processes to be undertaken depending on the outcome of the appeal to the Magistrates Court.

If the appeal is successful (that is, the Magistrates Court decides it is not investigative information) – the person may apply to the chief executive under **clause 98** (Chief executive may cancel a prescribed notice and substitute another prescribed notice) to cancel the negative notice based on wrong information.

If the appeal is unsuccessful (that is, the Magistrates Court confirms it is investigative information) – the person may appeal the decision to issue a negative notice (as per the ordinary process) to the Commercial and Consumer Tribunal. The appeal is only about whether there is an 'exceptional case'. The clause ensures that the time within which a person may apply for review of the decision (28 days) does not commence until after the Magistrates Court has given notice of the court's decision.

### Chief executive may obtain information from police commissioner

Clause 111 relates to the information the chief executive may request from the Police Commissioner about an applicant for a prescribed notice (or cancel a negative notice) or about a current positive notice holder.

Subsection (2) provides that the chief executive may ask the Police Commissioner for information, or access to records, about any of the person's police information (criminal history and investigative information) that may exist.

Subsection (3) lists what information the chief executive may provide to the Police Commissioner when requesting information about an applicant or holder. This includes:

- any name the person uses or has used;
- the person's date and place of birth;
- the person's gender – this is relevant when a person has a gender neutral name, for example, Chris Smith;
- any number or date relevant to the prescribed notice or positive notice card – this is to ensure accurate cross-checking; and
- the status of the application – that is, if the person holds a positive notice card, has applied for a positive notice, has been issued with a negative notice, or has asked the chief executive to cancel a negative notice.

If there is police information about a person, subsection (4) allows the chief executive to ask the Police Commissioner for a brief description of the circumstances of a conviction, charge or investigative information.

Subsection (5) states that the Police Commissioner must comply with a request (made under this clause) unless the chief executive notifies the Police Commissioner that the information is no longer required. The Police Commissioner is only required to provide the police information within their possession or to which they have access to (subsection (6)).

Also, subsection (7) lists certain instances where the Police Commissioner may decide that investigative information is exempt and therefore need not be disclosed. That is where the Police Commissioner is reasonably satisfied that the release of the information may:

- prejudice the investigation of a contravention or possible contravention of the law in a particular case;
- enable the existence or identity of a confidential source of information to be ascertained;
- endanger a person's life or physical safety; or

- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.

Also, subsection (7) provides that when the Police Commissioner is providing any investigative information about a person to the chief executive, the Police Commissioner must notify that person in an approved form of that information exchange. This ensures that a person will be informed of the provision of investigative information. This is also relevant if the person wants to appeal the decision on whether or not the information is investigative information (under **clause 108**).

Subsections (10) and (11) stipulate limitations on the use of information that is received by police during the criminal history screening process. In practice, the chief executive will collect information from applicants for the purpose of conducting police information checks of applicants. This information is provided to the Police Commissioner (as the head of the Queensland Police Service) to enable the Service to conduct these checks, which can include an initial police information check and any regular updates to check any changes in police information.

Subsection (10) makes it clear that the information received by the Police Commissioner must not be accessed or disclosed for any purpose except for a police information check under this section or a purpose relevant to law enforcement.

Similarly subsection (11) provides that information that a person's application for a positive notice has been withdrawn, may only be used for purposes under this part and not for any wider policing purposes as this information has no value other than to stop police from providing any further information about that person to the chief executive.

## Notice of change in police information about a person

Clause 112 relates circumstances when the Police Commissioner may notify the chief executive about a change in police information about an applicant for a prescribed notice (or to cancel a negative notice) or about a current positive notice holder.

The Police Commissioner may notify the chief executive that a person's criminal history has changed or that the Police Commissioner has decided information about the person is investigative information.

Subsection (3) provides that a notice to the chief executive about a change in the person's police information must include details of:

- any name the person uses or the Commissioner believes has used;
- the person's gender and date and place of birth; and
- a brief description of the conviction or charge to which the change relates, or of the investigative information.

If the change in criminal history information relates to a person who is the current holder of a positive notice, chief executive may also write to the person to inform them of their disclosure obligations under the Bill (subsection (5)).

If the change in the person's police information relates to new investigative information, the Police Commissioner must give notice (in the approved form) to the person to whom the investigative information relates (subsection (6)). This ensures that a person will be informed anytime there is the disclosure of investigative information.

### Chief executive to give notice to funded non-government service provider about making screening decision about engaged person

Clause 113 applies when the chief executive becomes aware that the police information about a current positive notice holder has changed (except if the person has been convicted or charged with an excluding offence). If the chief executive is satisfied the information may be relevant to engagement of a person by a funded non-government service provider, the chief executive must give written notice to the funded non-government service provider.

The notice must identify the engaged person and state only that the chief executive is making a screening decision in relation to that engaged person.

Also, where the police information is criminal history (not investigative information), the chief executive must tell the service provider whether it is a charge or a conviction and the category of offence for which the charge or conviction – that is whether it is a serious offence or a serious sexual or violent offence (the latter term being part of the definition of an 'excluding offence'). Other than this information, the notice will not provide any other details.

Subsection (5) places an obligation on the funded non-government service provider not to terminate the engaged person solely or mainly because a notice has been given under this clause. Instead, the service provider may implement a risk management strategy (as per **clause 79**) to deal with this situation.

### Withdrawal of engaged person's consent to screening

Clause 114 details when a person may withdraw their consent to criminal history screening or when the person is taken to have withdrawn their consent to screening.

Subsection (2) provides that a person can by written notice withdraw their consent to screening between the time the chief executive has received an application from the funded non-government service provider and the issuing of a prescribed notice.

Subsections (3) to (5) lists the circumstances where the person is considered to have withdrawn their consent:

(subsection (3)):

- the chief executive has asked the person in writing for further information (within a stated time) to establish their identity and warned them that if they do not comply they may get a notice of deemed withdrawal; and
- the person does not comply with the request; and
- the chief executive cannot establish with certainty the identity of that person; and
- the chief executive gives the person a notice of deemed withdrawal.

(subsection (4)):

- the funded non-government service provider gives written notice that the person is no longer engaged with them; or
- the chief executive cannot obtain written information confirming that the person is still employed by the employer; and
- the person has not given written notice to the chief executive that their employment with the employer has ended; and
- the chief executive gives the person and the service provider notice of deemed withdrawal relating to the employee.

This reinforces the obligation on the person who is applying for a prescribed notice to ensure that they keep the chief executive informed of their current engagement details including when their engagement ends.

(subsection (5)):

- if the person is charged with an excluding offence; and
- the chief executive gives the person notice of the deemed withdrawal.

In effect this means the person's application for a prescribed notice cannot be decided by the chief executive until the charge for an excluding offence is dealt with.

### Compliance with requirement to end, or not start, a person's engagement

Clause 115 makes it clear that the funded non-government service provider must comply with any obligations to engage, or continue to engage a person, as required under this part. The service provider does not incur any liability for compliance.

Also, the clause reiterates that a person whose positive notice is suspended because they have been charged with an excluding offence may still be engaged by the funded non-government service provider (other than at a service outlet) pending the outcome of the charge.

### Guidelines for dealing with information

Clause 116 provides that the chief executive must make guidelines for dealing with police information obtained under this part. The purpose of the guidelines are to ensure that natural justice is provided, only relevant information is taken into account and consistent decisions are made. A copy of the guidelines must be given on request.

### Use of information obtained under this part about a person

Clause 117 confirms that the chief executive must not use information obtained under this part for any other purpose.

### Chief executive must give police commissioner a person's current address

Clause 118 allows the Police Commissioner to obtain from the chief executive a person's current address – only where the Police Commissioner needs this to provide a notice under this part. If the chief executive has an address for the person, which is different to the address stated by the Police Commissioner, they must give that information.

To protect the use of this personal information, the clause provides that the information given to the Police Commissioner cannot be used, disclosed or accessed for any other purpose.

### Disqualification order

Clause 119 gives the court power to impose a disqualification order – which effectively is a life-time ban on a person and prevents them working at a service outlet of a funded non-government service provider. The court can make this order if:

- the person is convicted of an excluding offence and a penalty other than imprisonment is ordered; and
- an application by the Crown prosecutor for a disqualification order is made or on its own initiative.

### Register of persons engaged by funded non-government entities

Clause 120 provides that the chief executive must keep an up to date register of persons engaged by a funded non-government service provider for whom an application for a prescribed notice is made. No personal details are recorded, however, the register could include details such as:

- name of the engaged person;
- name of the funded non-government service provider engaging the person;
- whether a positive or negative notice was issued;
- the date of issue;
- if the application for a prescribed notice is withdrawn – the date of withdrawal; and
- details of any review (and outcome) of a decision relating to a prescribed notice.

The funded non-government service provider may (by notice in writing to the chief executive) obtain information from this register – but only the information that relates to the person they are proposing to engage. Whilst it is not compulsory for the service provider to search the register, it is a good risk management strategy to do so.

# Part 10 Monitoring and enforcement

## Division 1 Authorised officers

### Powers generally

Clause 121 provides that an authorised officer has the powers provided under this Bill. In exercising these powers, an authorised officer is subject to the directions of the chief executive.

By way of background, under the (repealed) *Disability Services Act 1992*, there was limited capacity to conduct investigations of complaints without the cooperation of the service provider – compliance was sought contractually through their funding agreement (general service agreement) . This arrangement restricted the ability to investigate complaints where there was an uncooperative service provider. This part is one aspect of a suite of powers that create a legislated complaints management process .

### Appointment

Clause 122 provides that the chief executive may appoint any of the following persons as an authorised officer:

- a public service employee (defined in the *Public Service Act 1996*);
- for the purposes of investigating a particular matter – another person (this person could be external to the department). For example, a person outside the department may be appointed to investigate a very sensitive or controversial matter and to ensure any perceptions of conflicts of interest are reduced.

Also, practically, it is not proposed that any investigations under this Act would compromise other investigations of criminal matters.

### Qualifications for appointment

Clause 123 stipulates that the chief executive can only appoint a person as an authorised officer if the chief executive is satisfied that the person has the necessary experience or expertise and any competencies specified in a regulation.

### Appointment conditions and limit on powers

Clause 124 states the conditions of appointment of an authorised officer can be stated in their instrument of appointment or a written notice signed by the chief executive or in a regulation.

### Issue of identity card

Clause 125 provides that the chief executive must issue an identity card to each authorised officer. It also states what the identity card must include – it must include a photo of the authorised officer, their signature, identify they are an authorised officer appointed under the Bill and state an expiry date.

### Production or display of identity card

Clause 126 provides a general obligation on an authorised officer to produce their identity card before exercising a power or have the identity card clearly visible to the other person when exercising their power. The only exception is when an authorised officer is entering a public place when it is open to the public (**clause 130(1)(b))** or when entering a place to ask for the occupier's consent to enter (**clause 130(2)).**

### When authorised officer ceases to hold office

Clause 127 specifies when an authorised officer ceases to hold office. An authorised officer ceases office when either their term or another condition of appointment ends or they resign.

### Resignation

Clause 128 states that an authorised officer may resign by a signed written notice given to the chief executive.

### Return of identity card

Clause 129 provides that if a person ceases to be an authorised officer, they must return their identity card within 21 days after ceasing to be an authorised officer unless they have a reasonable excuse. It is an offence not to comply – maximum penalty is 20 penalty units.

## Division 2 Powers of authorised officers

## Subdivision 1 Entry of place

### Power to enter places

Clause 130 specifies in what circumstances an authorised officer can enter a place, which includes premises or vacant land. An authorised can enter a place if:

- the occupier consents to entry;
- it is a public place and the entry is made when it is open to the public;
- the entry is authorised by a warrant (**clause 134**); or
- the entry is to the premises of a funded non-government service provider under **clause 131**.

### Power to enter place where funded non-government service provider provides disability services

Clause 131 lists when an authorised officer can enter a place where a funded non-government service provider delivers disability services. Three situations are provided for:

- a general power of entry when the place is not a home – where entry can happen when that place is open to the public or otherwise open for entry; and
- a power to enter a place (whether or not it is home) without a warrant or consent of the occupier to protect a person with a disability from immediate risk of harm because of abuse, neglect or exploitation; or where there is imminent risk that evidence at the place of misuse of funds will be destroyed or removed; and
- a power to enter a place (whether or not it is a home) without a warrant or consent of the occupier to follow up on a 'active' compliance notice.

A power to enter where there is an immediate risk of harm because of abuse, neglect or exploitation OR imminent risk that evidence of misuse of funds will be destroyed or removed

An authorised officer may enter the place (whether or not it is home) with necessary and reasonable help and force if:

- the authorised officer reasonably suspects there is an immediate risk of harm to a person with a disability at the place because of abuse, neglect or exploitation; or
- the authorised officer reasonably suspects there is an imminent risk that evidence at the place, of misuse of funds (provided by DSQ to a service provider under a funding agreement), will be destroyed or removed.

Clients of funded non-government services providers can be vulnerable to abuse, neglect or exploitation. Many of these consumers have a severe or profound core activity restriction (that is, the person always or sometimes needs help in the areas of self-care, mobility or communication). This power is necessary to enable an authorised officer to quickly respond to a high risk incident without the delay incurred by applying for a warrant. Practically, this provision would only be activated where consent to enter the premises was denied. Whilst the overall philosophy is to support compliance of the Bill through co-operation and education, such a power is required in extreme circumstances where a delayed response could harm the person with a disability or lead to the destruction or removal of evidence relevant to the funding agreement of the service provider.

In circumstances where there is no reasonable suspicion of an immediate risk of harm because of abuse, neglect or exploitation; or imminent risk that evidence will be destroyed or removed, a warrant may be issued – see **clause 134.**

The power needs to extend to that of a home as the nature of the service environment means that some funded non-government service providers operate within homes (for example, supported accommodation).

A power to enter to check on compliance notice

An authorised officer may also enter the place (whether or not it is home) with necessary and reasonable help and force to check whether the funded non-government service provider has taken steps required under a compliance notice (issued under **clause 158)**. It is considered appropriate for an authorised officer to have ready access to a service provider where they have an 'active' compliance notice. A compliance notice is issued after close scrutiny of the operations of the service provider and therefore, there is a need for those provisions to be closely monitored.

Also as an added safeguard, the clause provides that if an authorised officer proposes to enter a home, when exercising this power of entry they must make a reasonable attempt to preserve the privacy and dignity of anyone

living at the home and minimise the impact on occupiers who are people with a disability.

## Subdivision 2 Procedure for entry

### Entry with consent

Clause 132 sets out what the authorised officer must do if they intend to seek consent of the occupier of a place before they enter.

Before asking for consent, the authorised officer must tell the occupier the purpose of the entry and that the occupier is not required to consent. If consent is provided, the authorised officer can ask the person to sign an acknowledgment of the consent - the clause lists what the acknowledgment must contain. A copy of the acknowledgment must be provided to the occupier.

If a dispute arises about whether consent was provided, a signed acknowledgment properly made under this clause is evidence that the occupier consented to the entry.

### Application for warrant

Clause 133 provides for how an authorised officer can apply to a magistrate to enter a place – a sworn written application stating the grounds for the warrant must be provided. If there is insufficient information, a magistrate can refuse to consider the application until all relevant information is provided.

### Issue of warrant

Clause 134 provides the circumstances when a warrant can be issued by a magistrate. A warrant can only be issued if a magistrate is satisfied there are reasonable grounds for suspecting:

- there is a particular thing or activity at the place (or will be at the place within the next 7 days) that may provide evidence of an offence in the Bill; or
- it is necessary to enter the place to protect a person with a disability at the place from risk of harm because of abuse, neglect or exploitation; or

- it is necessary to enter the place to investigate the suspected misuse of funds provided to the service provider under part 6 (that is pursuant to a funding agreement); or
- to follow up on a compliance notice – under **clause 131(3)**.

If a warrant is issued, the clause specifies the particulars to be included. An authorised officer can enter the place without a warrant in limited prescribed circumstances – see **clause 131.**

### Application by electronic communication and duplicate warrant

Clause 135 provides for an application for a warrant to be made electronically if an authorised officer reasonably considers it necessary because of urgent circumstances or another special circumstance, such as the authorised officer's remote location. The clause sets out the process for the application and the issuing of a warrant in these special circumstances.

### Defect in relation to a warrant

Clause 136 makes it clear that a defect in a warrant does not invalidate a warrant unless it affects the substance of a warrant in a material way.

### Warrants – procedure before entry

Clause 137 sets out what an authorised officer must do if they enter a place with a warrant. As a general rule, before entering the place, the authorised officer must do or make a reasonable attempt to do the following:

- identify themselves to an occupier of the place;
- give them a copy of the warrant;
- tell them the authorised officer is permitted by the warrant to enter the place; and
- give them an opportunity to allow the authorised officer's immediate entry without using force.

The authorised officer does not have to follow the above procedure if they believe on reasonable grounds that immediate entry is required to ensure effective execution of the warrant is not frustrated.

### Entering a home and preserving privacy

Clause 138 relates to the power of entry by an authorised officer under **clause 131**. It provides that before the authorised officer enters the place (which could include a home), they must make a reasonable attempt to do the following:

- produce or display their identity card;
- tell an occupier that the officer is permitted to enter the home; and
- give the occupier an opportunity to allow the officer immediate entry to the home without using force.

In addition, when entering or after entering a home, an authorised officer must, as far as practicable, preserve the privacy and dignity of anyone living at the home and minimise the impact on other persons with a disability who may be occupiers.

## Subdivision 3 Powers after entry

### General powers after entering a place

Clause 139 lists what monitoring and compliance powers an authorised officer may have upon lawful entry to a place. These powers include:

- search the place;
- inspect, measure, test, photograph or film any part of the place or anything at the place;
- take a thing or sample for analysis or testing;
- copy a document or take a document to another place or copy it – if the authorised officer takes the document away to copy, they must copy it as soon as practicable and return it;
- take into or onto the place any person, equipment and materials the officer reasonably requires for the exercise of a power;
- confer alone with a consumer or person engaged by a funded non-government service provider;
- require a person at the place to provide assistance in the exercise of the authorised officer's powers – when making this requirement, the authorised officer must warn the person that it is an offence not to comply unless they have a reasonable excuse (see **clause 140**) ; and

- require a person at the place to answer questions to help the authorised officer determine whether or not the Bill has been complied with - when making this requirement, the authorised officer must warn the person that it is an offence not to comply unless they have a reasonable excuse (see **clause 141**).

### Failure to help authorised officer

Clause 140 provides that a person required (under the Bill) to give reasonable help by the authorised officer must comply unless they have a reasonable excuse – maximum penalty units is 50 penalty units.

### Failure to answer questions

Clause 141 provides that person required (under the Bill) to answer questions must comply unless they have a reasonable excuse – maximum penalty units is 50 penalty units. The clause confirms that it is a reasonable excuse for a person to not answer any questions if that might tend to incriminate the person.

## Subdivision 4 Power to seize evidence

### Seizing evidence after entry without consent or warrant

Clause 142 allows an authorised officer who lawfully enters a place without consent or a warrant (for example entering a public place when it is open to the public – 113(1)(b)), to seize a thing if they reasonably believe the thing is evidence of an offence under the Bill.

### Seizing evidence after entry with consent or warrant

Clause 143 provides for when the authorised officer can seize things after they enter a place with consent or with a warrant.

If the authorised officer enters the place with consent, they can seize evidence if:

- they reasonably believe the thing is evidence of an offence against the Bill; and
- the seizure is consistent with the purpose of entry as told to the occupier.

If the authorised officer enters the place with a warrant, the officer may seize the evidence authorised by the warrant.

In addition (whether entry was by consent or warrant) the authorised officer may seize a thing if:

- they reasonably believe the thing is evidence of an offence against the Bill; and
- the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence.

## Subdivision 5 Dealing with seized things

### Definitions for sdiv 5

Clause 144 provides, for the purposes of this subdivision, the definition of 'owner of a seized thing' – the term includes the person entitled to possession of the thing.

### Securing a seized thing

Clause 145 specifies what the authorised officer can do once they have lawfully seized the thing. The authorised officer can move the thing from the place where it was seized or leave the thing at the place of seizure but take reasonable action to secure access to it.

### Tampering with a seized thing

Clause 146 makes it an offence to tamper or attempt to tamper with a thing once seized and secured, under **clause 145**, without the approval of the authorised officer – maximum penalty is 100 penalty units.

### Powers to support seizure

Clause 147 allows an authorised officer, to enable them to seize a thing, to require a person to take the thing to a reasonable place at a reasonable time or require the person to retain control of it at a stated place for a reasonable time.

The requirement must be made in writing or if it is not practicable, it may be made orally and confirmed by written notice as soon as practicable.

A person must comply with the requirement unless the person has a reasonable excuse - maximum penalty is 100 penalty units. Usually, any cost of complying with the requirement must be borne by the person.

### Authorised officer may require thing's return

Clause 148 provides that if the authorised officer has required a person to take a thing (under **clause 147**) then they may also require the person to return it. A person must comply with the request unless they have a reasonable excuse – maximum penalty is 100 penalty units.

### Receipts for seized things

Clause 149 provides that the authorised officer must give a receipt as soon as practicable after seizing the thing. The receipt must be given to the person from whom it was seized. If it is not practicable to provide a receipt to the person, they must leave the receipt at the place of seizure in a conspicuous place. The receipt must describe generally each thing seized and its condition.

However, the authorised officer does not need to produce a receipt if it is impracticable or unreasonable to give the receipt given its nature, condition and value.

### Forfeiture of seized things

Clause 150 provides for a when a seized thing is forfeited to the State. The thing is forfeited if an authorised officer either:

- cannot find its owner after making reasonable inquires; or
- cannot return to its owner after making reasonable efforts.

In determining what should be a reasonable inquiry or effort (including the period over which they are made), the nature, condition and value of the thing must be considered. It is not necessary for an authorised officer to make reasonable inquires or reasonable efforts if it would not be reasonable to do so. In deciding whether it is reasonable to make inquires or efforts, the authorised officer must consider the nature, condition and value of the seized thing.

### Return of seized thing

Clause 151 provides for the return of the seized thing if it is not forfeited by the State. The authorised officer must return the thing to its owner at the

end of six months or if there is a proceeding for an offence involving the thing – at the end of the proceeding (including any appeal).

However, if at any time, the thing is no longer necessary as evidence or no longer necessary to prevent the thing being used to continue or repeat an offence – the authorised officer must immediately return the thing to its owner.

### Access to seized thing

Clause 152 provides that until the seized thing is forfeited or returned, the authorised officer must allow its owner to inspect it and if it is a document, to copy it unless it is impracticable or unreasonable.

## Subdivision 6 Power to obtain information

### Power to require name and address

Clause 153 provides that an authorised officer can require a person to state their name and residential address in the following circumstances:

- an authorised officer finds the person committing an offence against the Bill; or
- an authorised officer reasonably suspects the person is committing or just committed an offence against the Bill.

The authorised officer may also ask the person to provide evidence to verify their name or residential address.

Before asking the person for their details, the authorised officer must warn the person that failure to comply with the request is an offence unless they have a reasonable excuse (**clause 154**).

### Failure to give name or address

Clause 154 makes it an offence for a person not to provide their name and address to an authorised officer who has requested those details pursuant to **clause 153**. Maximum penalty – 50 units.

However, it will not be an offence if the person was suspected to have committed the offence and was proved not to have committed the offence.

### Power to require production of documents

Clause 155 allows an authorised officer to require a person produce a document issued to the person under the Bill or a document required to be kept by the person under the Bill (under **clause 156** - it is an offence not to comply).

The authorised officer may copy the document and require the person responsible for keeping the document to certify that it was a true copy. (under **clause 157** – it is an offence not to comply).

The document must be returned (by the authorised officer) as soon as practicable after it is copied (or returned after it is certified).

### Failure to produce document

Clause 156 makes it an offence for a person not to comply with a request to produce a document under **clause 155** unless the person has a reasonable excuse – maximum penalty units is 50 penalty units.

The clause states that it is not a reasonable excuse for the person to not to comply if following the direction might tend to incriminate the person.

### Failure to certify copy of document

Clause 157 makes it an offence for a person not to comply with a request to certify a document under **clause 155** unless the person has a reasonable excuse – maximum penalty units is 50 penalty units.

## Subdivision 7 Other compliance matters

### Compliance notice

Clause 158 introduces a compliance notice and lists when the chief executive can issue a compliance notice. A compliance notice is an important tool in ensuring compliance with the Bill – the purpose of the notice is to identify and notify the funded non-government service provider that part of their operations or the way they are providing their service is not complying with the Bill. The notice then gives them an opportunity to fix the non-compliance.

The chief executive can issue a compliance notice to a funded non-government service provider if the chief executive reasonably believes the service provider is:

- contravening a provision of the Act; or
- has contravened a provision of the Act and it is likely this will continue or be repeated.

This includes contravening / having contravened a prescribed requirement made under a regulation (see **clause 56**). A compliance notice can be issued even if the service provider's funding has been suspended.

The compliance notice must state the following:

- that the chief executive believes the person is contravening a provision of the Act or they have contravened a provision of the Act and it is likely it will continue;
- stating which relevant provision is being contravened;
- how the relevant provision is being contravened;
- that the service provider must fix the contravention within a stated (reasonable) time; and
- that it is an offence not to comply with the notice unless the service provider has a reasonable excuse – the penalty is either the maximum penalty attached to the relevant offence, or otherwise a maximum of 20 penalty units for an individual or 100 penalty units for a corporation.

The compliance notice may state the following:

- the steps the chief executive considers necessary to fix the contravention or avoid further contravention; and
- that the service provider must report to the chief executive after taking the steps.

If the service provider commits an offence by not complying with the notice, the chief executive also has a range of other sanctions they may use:

- they may also suspend or cancel their funding despite anything in the funding agreement;
- pursue a remedy available the funding agreement;
- exercise any other relevant power under the Bill.

If the chief executive issues a notice, the chief executive may also notify any person who they consider should be advised because of their relationship with that person – see **clause 165.**

## Division 3 General enforcement matters

### Notice of damage

Clause 159 specifies what the authorised officer must do if they (or a person acting under their direction) damages property. The clause does not apply to damage the authorised officer believes is trivial.

The authorised officer (unless it is impracticable) must immediately give notice of the details of the damage to the person who appears to be the owner (or in possession/control) of the property. If it is impracticable to give immediate notice to the person, they must leave the notice in a conspicuous position and in a reasonably secure way.

### Compensation

Clause 160 allows a person to claim compensation if they incur loss or expense because they complied with a requirement under this part - it does not include any loss or expense occurred because they followed a compliance notice (under **clause 158**).

The relevant court decides whether or not compensation is payable. The person may bring a claim for compensation in a court with relevant monetary jurisdiction or if they have been charged with an offence under the Act, in the court hearing the offence.

A court may order compensation if it is satisfied that it is just in the circumstances of the particular case.

### False or misleading statements

Clause 161 makes it an offence for a person to state anything to an authorised officer that the person knows is false or misleading – maximum penalty is 100 penalty units.

### False or misleading documents

Clause 162 makes it an offence for a person to provide a document to an authorised officer that the person knows is false or misleading in a material particular – maximum penalty is 100 penalty units.

However, it is not an offence if the person, when giving the document:

- tells the authorised officer (to the best of their ability) how it is false or misleading; and

- if they have or can reasonably obtain the correct information – gives the correct information.

### Obstructing an authorised officer

Clause 163 makes it an offence to obstruct an authorised officer, in the exercise of a power under the Act, unless the person has a reasonable excuse – maximum penalty is 100 penalty units.

If the person has obstructed the authorised officer and the officer decides to proceed with the exercise of the power, the officer must warn the person it is an offence not to comply and considers the person's conduct an obstruction.

### Impersonation of an authorised officer

Clause 164 makes it an offence to pretend to be an authorised officer – maximum penalty 100 penalty units.

### Chief executive may advise people with a disability and others of action taken in relation to a funded non-government service providers

Clause 165 allows the chief executive to notify a person (including a complaints agency or relevant government department) about any compliance notice issued if the chief executive considers they should be advised because of their relationship with the consumer.

## Part 11 Appointment of interim manager

## Division 1 Appointment

### Appointment

Clause 166 allows the chief executive to appoint a person as an interim manager for a funded non-government service provider receiving or that has received funding from DSQ. The appointment may apply to all or only some service outlets of the service provider,

### Basis for appointment

Clause 167 provides the only grounds for when the chief executive can appoint an interim manager. The chief executive may make the appointment only if they are satisfied that the appointment is reasonably necessary to:

- protect consumers of the funded non-government service provider from abuse, neglect or exploitation; or
- ensure the proper and efficient use of funds under the funding agreement with the service provider.

In deciding whether the appointment is reasonably necessary, the chief executive may consider a number of factors:

- whether it appears there has been abuse, neglect or exploitation of a consumer of the (funded non-government) service provider;
- type of disability services provided to the consumer;
- amount of funding given by the chief executive to the service provider;
- whether funding has been suspended or cancelled (or likely to be) by the chief executive;
- whether it appears the service provider is unwilling or unable to provide disability services or are providing the services in way that does not comply with their funding agreement;
- the likely consequences for consumers of the service provider if disability services are not provided (or not provided in way that complies with the funding agreement);
- the likely consequences of the appointment for the service provider and anyone else likely to be affected; and
- any other relevant matter the chief executive is aware of.

An interim manager would be appointed in exceptional circumstances – therefore, before the appointment, the chief executive is also required to consider any alternative action that may be more appropriate, including not taking any action. The service provider, consumers of the service provider, their families and carers may also be consulted before appointment.

## Suitability of proposed appointee

Clause 168 provides that the chief executive may only appoint an interim manager if the chief executive is satisfied that the proposed appointee is suitable for the appointment.

In deciding if a person is suitable as an interim manager, the chief executive must consider the following:

- type of disability services provided by the funded non-government service provider;
- reason for appointment;
- person's expertise or experience relevant to the appointment;
- any conflict of interest that could arise during the course of the appointment – for this purpose, it is an offence for the person, before appointment as an interim manager, to not disclose any conflict of interest that they are aware of that may arise in the course of their duties (maximum penalty – 40 penalty units); and
- any other relevant matter which the chief executive is aware of.

The clause makes it clear that only an adult can be appointed as interim manager.

## Terms of appointment

Clause 169 specifies what matters the appointment of an interim manager must include. These are:

- the person's name;
- details of the service provider;
- the service outlets to which the appointment applies;
- the disability services to be provided;
- the way in which the disability services are to be provided;
- details of the person's functions as interim manager (see **clause 176**);
- any limitations on the person's powers as interim manager;
- the period of appointment;
- any conditions of appointment; and
- anything else the chief executive considers appropriate.

### Notice to funded non-government service provider about appointment

Clause 170 specifies that a copy of the terms of appointment must be given to the service provider immediately after appointment of an interim manager.

### Informing consumers about appointment

Clause 171 provides that before the interim manager exercises any of their powers, the chief executive must ensure that the consumers of the funded non-government service provider are informed of the appointment. Examples of being informed include:

- giving a written notice to the consumers and to their families, carers, guardians or administrators;
- posting a notice of the appointment at a place at the service provider's premises where it is likely to be seen by the consumers; and
- directing the interim manager to inform the consumers (in an appropriate way).

### Initial period of appointment

Clause 172 specifies that the initial period of appointment for an interim manager must not be longer than 3 months.

### Variation of appointment

Clause 173 allows the chief executive to extend or vary the appointment of an interim manager.

For an extension – the chief executive may extend the appointment if the chief executive is satisfied that it is reasonably necessary in the circumstances. The period can be extended more than once. However, any one period of extension cannot be more than 3 months and total period of an appointment (with extensions) cannot be more than 6 months.

For a variation – the chief executive may vary only if the chief executive considers it is appropriate having regard to:

- the matters stated in **clause 167** (these are the factors that needed to be considered before an appointment); and
- the operation of the funded non-government service provider since the appointment started.

If the appointment is varied, the chief executive must ensure notice of the variation is given to the service provider and if the interim manager exercises a power in relation to a consumer of the service provider – to the consumer at or before the time the power is exercised.

### Ending of appointment

Clause 174 provides that the chief executive can end the interim manager's appointment at any time before the end of the period of appointment. Before ending, the chief executive must be satisfied that the appointment is no longer necessary – having regard to the matters in **clause 167.**

If the chief executive does end the appointment, they must give notice of the fact to the funded non-government service provider and to the consumers of the service provider.

## Division 2 Function and powers

### Application of div 2

Clause 175 provides that this division applies to a person appointed as interim manager of a funded non-government service provider.

### Interim manager's function

Clause 176 specifies the functions of the interim manager under terms of the appointment:

- to ensure the protection of consumers of the funded non-government service provider from abuse, neglect or exploitation; and
- to ensure the proper and efficient use of funds under the funding agreement with the funded non-government service provider**;** and
- to provide disability services to consumers that the funded non-government service provider has agreed to provide under the funding agreement.

### Interim manager's powers

Clause 177 provides that so far as is necessary to carry out his or her functions, an interim manager may:

- enter the premises of the service provider;

- use the facilities or things in the premises that (it appears) are intended for use, or are ordinarily used, to provide services to consumers;
- may ask for and accept payments that a consumer must pay to the service provider; and
- may do anything in relation to a funding agreement, on behalf of the service provider, that the service provider is permitted or required to do.

As well as these powers, the interim manager has any powers of the funded service provider that are necessary or convenient to carry out their function – see **clause 179**.

The purpose of these powers are to be co-operative in nature to enable the interim manager to work with the service provider to keep the service operational and functional for the consumers. They are not meant to be investigative in nature.

### Direction by chief executive

Clause 178 makes it clear that the interim manager is subject to the chief executive's direction in performing their functions or exercising their powers.

### Other powers

Clause 179 provides that the interim manager has other powers of the funded non-government service provider that are necessary or convenient to carry out the manager's functions (for example – carry out repairs).

### Limitation on powers under instrument of appointment

Clause 180 states that the powers stated in this section can be limited in the instrument of appointment.

### Production of instrument of appointment for inspection

Clause 181 provides that an interim manager must comply with a request from a person to produce the manager's instrument of appointment if the manager is exercising or proposing to exercise a power in relation to that person.

### Obstruction

Clause 182 provides that a person must not obstruct an interim manager in the exercise of their powers unless the person has a reasonable excuse – maximum penalty is 40 penalty units. If a person has obstructed and the interim manager proceeds, the manager must warn the person it is an offence to obstruct (unless there is a reasonable exercise) and the manager considers the person's conduct an obstruction.

## Division 3 Other matters

### Access to information or documents

Clause 183 gives the ability for an interim manager to access information or documents in two ways:

- the interim manager may ask an executive officer of a funded non-government service provider to provide information or documents the interim manager reasonably needs to carry out their functions; or
- the chief executive may disclose (or give access to) information to an interim manager that the chief executive considers appropriate for the purposes of the manager's appointment.

### Confidentiality

Clause 184 specifies how the interim manager must use and deal with confidential information obtained during the course of their appointment. The person must not disclose the information to anyone else or give access to the information to anyone else other than in the following circumstances:

- for the purpose of exercising a function or power in terms of their appointment; or
- for the purposes of complying with a request by the chief executive to provide relevant records/reports (under **clause 187**);
- with the consent of the funded non-government service provider;
- pursuant to a legal requirement to produce documents or give evidence in a court or tribunal; or
- as expressly permitted or required by another Act.

It is an offence to disclose confidential information other than in these circumstances – maximum penalty is 40 penalty units.

### Remuneration

Clause 185 states that an interim manager is entitled to be paid the reasonable amount of remuneration agreed with the chief executive.

### Funded non-government service provider liable for remuneration and other costs

Clause 186 provides that a funded non-government service provider is liable for remuneration and other administrative costs of the interim manager. This is a liquidated amount that (if not paid) can be recovered by the State. In practice, before determining the estimated administrative costs of an interim manager, the service provider would be consulted.

### Accounts and reports

Clause 187 provides that the interim manager must give to the chief executive the following records and reports about the funded non-government service provider:

- records of all amounts received or paid in the course of the appointment;
- reports about the well being of consumers of the service provider; and
- other reports about the administration as required by the chief executive .

Any records or reports have to be provided to the chief executive as soon as practicable. Also, a copy of each record or report must be given to the service provider.

### Compensation

Clause 188 allows a person to claim compensation from the chief executive if the person incurs loss or damage because of the exercise (or purported exercise) of an interim manager's powers. The court with relevant jurisdiction hears and determines the claim. A court may order compensation to be paid only if it is satisfied that it is just to make the order in that particular case.

# Part 12 Legal Proceedings

## Division 1 Application

### Application of pt 12

Clause 189 provides that this part applies to a legal proceeding under this Bill.

## Division 2 Evidence

### Appointments and authority

Clause 190 provides that for the purposes of any legal proceedings, the following are presumed:

- the chief executive's appointment;
- the authorised officer's appointment; and
- the authority of the chief executive or an authorised officer to do anything under this Act.

However, a party to a proceeding may by reasonable notice request proof of any of these.

### Signatures

Clause 191 provides that a signature purporting to be that of the chief executive or authorised officer is evidence of the signature it purports to be.

### Evidentiary provisions

Clause 192 provides for a number of evidentiary matters - a certificate signed by the chief executive and stating any of the following is evidence of the matter:

- a stated document is one of the following things made, given, issued or kept under the Bill – an appointment/approval/decision; or a notice/ requirement; or a record/extract of record;
- a stated document is another document kept under this Bill;

- a stated document is a copy of a stated thing (mentioned above);
- on a stated day or stated period, the appointment of an authorised officer was not in force for a stated person;
- on a stated day a stated person was given a stated notice under the Bill;
- on a stated day, a stated requirement was made of the stated person.

Also, if a proceeding (for an offence against the Bill) is brought by complaint (see **clause 198**), a statement that the matter of complaint come to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

### Positive notice card is evidence of holding a positive notice

Clause 193 clarifies the status of a positive notice card. It provides that if a current positive notice card is evidence of the person holding a current positive notice. In other words, to comply with the provisions of the Bill, a person must keep both the positive notice and the related positive notice card – the positive notice is primary evidence of an appropriate criminal history check.

## Division 3 Proceedings

### Indictable and summary offences

Clause 194 states that the following two offences under the Bill are indictable offences – which represent the very serious nature of these offences:

- an offence against **clause 89(1)** – a person must not apply for, start or continue to be engaged by a funded non-government service provider if a negative notice has been issued to the person and it is current (maximum penalty – 500 penalty units or 5 years imprisonment); and
- an offence against **clause 91** – a person with a current positive notice, who is charged with an excluding offence or convicted of a serious offence, cannot start or continue to be engaged by a funded non-government service provider until the notice is cancelled and a further positive notice is issued to the person (maximum penalty – 500 penalty units or 5 years imprisonment).

Apart from these two offences, any other offence against the Bill is a summary offence.

## Proceedings for indictable offences

Clause 195 provides for how proceedings for an indictable offence can happen. At the election of the prosecution, the offence can be heard:

- in a magistrates court by way of a summary proceeding under the Justices Act 1886 – if the offence is dealt with summarily – the maximum penalty is limited to 150 penalty units or 2 years imprisonment ; or
- in a higher court on indictment.

However, a magistrate must not hear an indictable offence summarily if the defendant asks (at the start of the hearing) that the charge be prosecuted on indictment or the magistrate considers the charge should be prosecuted on indictment.

The clause then lists how the magistrate must proceed if the magistrate decides (either upon application by the defendant or on their own accord) that the matter should not be heard summarily:

- the magistrate must examine witnesses for an indictable offence; and
- a plea of the person charged at the start of the proceedings must be disregarded; and
- evidence brought in the hearing before a decision was made to proceed on indictment is taken to be evidence for the committal of the person for trial or sentence; and
- before committing the person for trial or sentence, the magistrate must make a statement to the person as required under the *Justices Act 1886* (section 104(2)(b)).

## Limitation on who may summarily hear indictable offence proceedings

Clause 196 limits who may hear an indictable offence in the magistrates court. A magistrate must hear a summary conviction of a person on a charge for an indictable offence or for an examination of witnesses for a charge for an indictable offence.

If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making procedural

action in accordance with the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### Proceedings for offences

Clause 197 provides that a proceeding for an offence against the Bill (other than an indictable offence) must be taken in a summary way in accordance with the *Justices Act 1886.*

### When proceedings may start

Clause 198 specifies the time limits for when an action for an offence against the Bill must commence. The proceedings must commence within the later of the following periods:

- 1 year after the commencement of the offence; or
- 6 months after the offence comes to the complainant's knowledge but within 2 years after the offence is committed.

### Allegations of false or misleading information or document

Clause 199 makes it clear that in any proceeding for an offence against the Bill, which involves false or misleading information or document, it is enough for a charge to state that information was 'false or misleading' without specifying which.

### Forfeiture on conviction

Clause 200 provides that if a person is convicted of an offence against the Bill, a court may order forfeiture to the State (and may make any order to enforce forfeiture) in relation to:

- anything used to commit the offence; or
- anything else the subject of the offence.

The court can make this order regardless of whether or not the thing was seized and if the thing had been seized, regardless of whether or not the thing had been returned to its owner.

The clause also makes it clear that this section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### Dealing with forfeited thing

Clause 201 provides for the consequences of a forfeiture ordered by the court - on the forfeiture of a thing to the State, the thing becomes the State's property and the State can deal with it as it considers appropriate, including destroying the thing.

### Responsibility for acts or omissions of representatives

Clause 202 applies in a proceeding for an offence against the Bill where the offence may have been committed by a representative of the person (including a corporation). It essentially reflects the agency principle that appears in common law.

A representative is defined to mean –

- for a corporation – an executive officer, employee or agent of the corporation;
- for an individual – an employee, or agent of the individual.

If it is relevant to provide a person's state of mind about a particular act or omission, it is enough to show that:

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

'state of mind' is defined to include:

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

Also, an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done also by the person (or corporation). The person will not be responsible if they prove that the person could not, by exercising reasonable diligence, have prevented the act or omission.

### Executive officers must ensure corporation complies with Act

Clause 203 states the general rule that an executive officer of a corporation (anyone who is concerned or takes part in the corporation) must ensure the corporation complies with the Bill. If a corporation commits an offence against the Bill, the executive officer's of the corporation also commit an

offence – the offence of failing to ensure the corporation complies with the Act. The maximum penalty is whatever the penalty is for the contravention of the offence by an individual.

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

However, it is a defence for an executive officer to prove:

- if the officer was in a position to influence the conduct of the corporation in relation to the offence – the officer exercised reasonable diligence to ensure the corporation complied with the Bill; or
- the officer was not in a position to influence the conduct of the corporation in relation to the offence.

# Part 13 Review and appeals

## Division 1 Reviewable decisions

### Reviewable decisions

Clause 204 lists in a schedule (schedule 2) the decisions of the chief executive that can be reviewed and who can apply for review (called the interested person). These are:

| Clause | Reviewable Decision | Interested person |
|---|---|---|
| **43(3)** | Refuse approval as an 'approved non-government service provider' | Applicant for approval |
| **45(3)** | Refuse to cancel an approval as an 'approved non-government service provider' (where the corporation applied) | Approved non-government service provider |
| **46(1)** | Cancel an approval as an 'approved non-government service provider' | Approved non-government service provider |

| | | |
|---|---|---|
| **158(8)** | Cancel or suspending funding of a 'funded non-government service provider' for not complying with a compliance notice | Funded non-government service provider |
| **166** | Appointment of an interim manager | Funded non-government service provider for whom the interim manager is appointed |

These reviewable decisions are subject to a two-tiered review process – (1) internal review (**clause 206**) and (2) external review – Commercial and Consumer Tribunal (**clause 209**)

These decisions as well as those decisions made by the chief executive under **Part 9** (Criminal history screening of persons engaged by funded non-government service providers) are the only decisions that can be reviewed under the Bill.

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

Clause 205 provides that immediately after making a reviewable decision (**clause 204**), the chief executive must give to the interested person a written notice stating the following:

- reasons for decision;
- that within 28 days after receiving the notice, they may apply to the chief executive for a review of the decision; and
- how the person may apply for the review; and
- if they apply for the review and the matter is not resolved, they may appeal to the Commercial and Consumer Tribunal.

However, a notice does not have to be provided, if the chief executive cannot locate the interested person after making reasonable enquires

## Division 2 Review of decision

### Application for review

Clause 206 provides for how an interested person can apply to the chief executive to review a reviewable decision.

Within 28 days after the interested person receives a notice under **clause 205** about the decision, the person may apply to the chief executive to review the decision. The chief executive can extend the usual 28 day time limit.

Also, if the chief executive has not given the interested person a notice under **clause 205**, the person can still apply to the chief executive to have the decision reviewed.

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

### Stay of operation of original decision

Clause 207 states that, as a general rule, an application to the chief executive to review a decision (under **clause 206**) does not stay the original decision made by the chief executive.

However, before a decision takes effect, the chief executive has discretion to stay the operation of the original decision (except for a decision to issue a negative notice) – this is done by the chief executive providing a written notice to the interested person staying the operation of the decision for a stated period. The stay may be granted on conditions the chief executive considers appropriate.

As a further option, the interested person can apply to the Commercial and Consumer Tribunal for a stay of the decision (except for a decision to issue a negative notice). In this case, the tribunal may stay the decision to secure the effectiveness of the review and any later appeal to the tribunal. The stay can be granted on conditions the tribunal considers appropriate and has effect for the period stated by the tribunal.

If the matter is stayed, the clause provides that the period of the stay cannot be longer than the time when the chief executive makes the review of the decision and any later period the tribunal allows to enable the applicant to appeal against the review decision.

Subsection (8) makes it clear that that the chief executive's decision to issue a negative notice must not be stayed. A decision to issue negative notice is not a decision that can be reviewed.

### Review decision

Clause 208 makes it clear that for a review by the chief executive of the original decision (under **clause 206**), the chief executive must ensure the application is not dealt with by the person who made the original decision or a person in a less senior office than the person who made the original decision. The only exception to this is if the chief executive personally made the original decision.

Within 28 days after receiving the review application, the chief executive (or an authorised delegate) must review the original decision and make a decision to either:

- confirm the original decision;
- amend the original decision; or
- substitute another decision.

Immediately after deciding the application, the chief executive must give the interested person, written notice of the following:

- the review of the decision;
- reasons for the new decision;
- that within 28 days after receiving the notice, the person may apply for an external review of the decision to the Commercial and Consumer Tribunal; and
- how they may apply for external review.

If the chief executive does not decide the application within the required 28 days after receiving the review application, the clause deems that the chief executive made a review decision confirming the original decision.

## Division 3 Appeal against decision

### Appeal against review decision

Clause 209 allows the interested person a right of external review of the decision made by the chief executive. Within 28 days after receiving a

decision notice for a review decision, the interested person for the decision may appeal against the decision to the tribunal.

### Appeal is by way of rehearing

Clause 210 specifies how the Commercial and Consumer Tribunal reviews the decision of the chief executive. The tribunal reviews the matter based on the evidence that was before the chief executive.

# Part 14 Miscellaneous

## Division 1 Records

### Funded non-government service providers must keep records

Clause 211 provides that a funded non-government service provider must keep records as prescribed by the chief executive under a regulation. There are penalties for non-compliance. Examples of records to be kept could include records about: client details; financial records; emergency contact details for clients/next of kin; staff and volunteer criminal history applications and results; records of complaints and critical incidents and compliance with the Disability Sector Quality System.

There are penalties for non-compliance – for an individual, maximum penalty is 20 penalty units; and for a corporation, maximum penalty is 100 penalty units.

## Division 2 Other matters

### Complaints by consumers

Clause 212 makes it clear that anyone on behalf of a consumer can make a complaint to the chief executive about the delivery of disability services by a funded service provider – this includes making a complaint about a DSQ provided service. The clause also legislatively recognises the Complaints Management System, already established within DSQ. The Complaints Management System, its policy and procedures include the principle of seeking to resolve complaints at the local level in the first instance.

### Chief executive may refer matters to complaints agency

Clause 213 allows the chief executive to refer a complaint, liaise with and enter into an arrangement with a 'complaints agency' who may have an interest in the particular complaint. This allows for co-ordinated investigations of abuse, neglect or exploitation, where relevant. A 'complaints agency' is defined and includes: the Ombudsman; the Crime and Misconduct Commission; the Anti-Discrimination Commissioner; the Health Rights Commissioner and the Adult Guardian.

### Complaints agency to inform chief executive about actions taken for complaint

Clause 214 allows the chief executive to be updated about any action taken by a complaints agency after the chief executive has referred a matter to them.

### Disability service plans for departments

Clause 215 provides for a legislative scheme for disability service plans. The clause requires each Queensland Government department to develop, publish and implement a disability service plan. These plans will aim to ensure that the department's activities (programs or service design, practice and service delivery, policy and legislation) promote and further the principles and objectives of the Bill. The overall purpose of this clause is to provide focus, direction and coordination of government service, policy and program development and delivery for people with a disability.

### Establishment of Ministerial advisory committees

Clause 216 allows for the Minister to create Ministerial advisory committees and promotes the importance these committees can play in advising government on disability issues and disability services.

A Ministerial advisory committee may be established to advise on the system that deals with complaints. For example, the creation of a Complaints Management Quality Committee – plays a vital role in monitoring the system issues that relate to the operation of the complaints management system and recommending strategies for improvement.

This provision also gives legislative recognition to the Disability Council Queensland and Regional Disability Councils, which are important vehicles to facilitate partnerships between government and local communities.

### Membership of advisory committees

Clause 217 states that the Minister decides the membership of an advisory committee and this could include appointing a person with a disability, a family member or carer of a person with a disability or another person the Minister considers has expertise or experience relevant to people with a disability.

### Dissolution

Clause 218 gives the Minister a specific legislative power to dissolve a Ministerial advisory committee.

### Other matters

Clause 219 allows the Minister to decide matters about a Ministerial advisory committee that are not provided for in the Bill, including for example, the way a committee must conduct meetings or report to the Minister.

### Person with a disability must advise chief executive about compensation

Clause 220 provides the capacity for DSQ to seek a contribution to the cost of DSQ funded or provided services where a person has received (or may receive) compensation (through a common law action, statutory scheme or an insurance claim) for injuries or accidents that led to their disability.

A person with a disability who is applying for DSQ funding or who accesses DSQ provided or funded non-government services must notify the chief executive in the approved form of the following details:

- if action has been taken to recover an amount relating to the disability (through common law action or statutory scheme or insurance claim) – the type of action taken; and
- if an amount has been paid – the date it was paid and the amount; and
- if part or all amounts to future care – the amount that relates to future care (that is, care provided after the date of judgment or settlement).

The clause makes it an offence for a person (or someone who applies for DSQ funding on their behalf) to fail to notify the chief executive of this information – the maximum penalty is 200 penalty units. The high penalty reflects the seriousness of a breach – significant sums of money could be

involved and there needs to be a sufficient deterrent aspect to minimise or prevent failure of those to notify or provide false information.

The notification provisions will allow DSQ to monitor people who receive DSQ funded services who may receive compensation in future. An administrative scheme for contributions for future services will complement and action the notification provisions. Individual circumstances will be considered to determine whether they could or should contribute to the cost of services they use.

## Confidentiality of information about criminal history and related information

Clause 221 protects the confidentiality of police information (criminal history and investigative information) acquired by the chief executive, a public service employee or a selection panel member under the criminal history screening process under **part 8 or 9** of the Bill. It is an offence for the person to disclose the police information or give access to the document – maximum penalty is 100 penalty units or 2 years imprisonment. The offence applies to past and present DSQ employees (including the chief executive) and members of a selection panel.

However, it will not be an offence to disclose or give access the information in the following circumstances:

- if the information is acquired during criminal history screening of DSQ workers or members of Ministerial advisory committees – information (including documents) can be provided to the chief executive, a public service employee or selection panel member to make an assessment under **part 8**;
- if the information is acquired during criminal history screening of persons engaged by a DSQ funded non-government service provider – information can be provided to the chief executive or a public service employee for the purposes of the screening decision;
- if the person is an adult – with their consent; or
- if the disclosure is otherwise required under an Act.

## Confidentiality of other information

Clause 222 protects the confidentiality of information (other than police information – which is dealt with in **clause 221**) acquired by a person through involvement in the Act's administration. In particular, the clause

applies to the following people (who are considered involved in the Acts administration):

- the chief executive;
- an authorised officer;
- an employee of the department;
- a person contracted by the chief executive to provide disability service for the department.
- an interim manager; or
- a member of a Ministerial advisory committee.

It is an offence for a person to disclose the confidential information (maximum penalty - 100 penalty units) other than for the following purposes:

- for administering, monitoring or enforcing compliance with the Bill;
- to discharge a function under another law;
- for a proceeding in a court or tribunal;
- if authorised under another law or regulation made under the Act; or
- if the person to whom the information relates provides written consent and that person is an adult (a person is presumed to have capacity - see *Guardianship and Administration Act 2000)*; or
- to protect person with a disability from abuse, neglect or exploitation.

In addition, the clause allows the disclosure of information to:

- another Queensland Government department or DSQ funded non-government service provider to provide for the needs of a person with a disability or
- the Commonwealth or another entity for the purposes of an agreement with the Commonwealth – for example, under the Commonwealth-State/Territory Disability Agreement (CSTDA), which provides the national framework for disability services and determines disability funding, certain information/data is required for reporting purposes**.**

In particular, it is important for DSQ to have the capacity to disclose information in certain circumstances to other departments or DSQ funded service providers so that it is more responsive to the needs of people with a disability, particularly where multiple service providers are involved. In the Public Advocate's Annual Report 2003-2004, it was noted that whilst

service providers (including government agencies) endeavour to respond to the needs of people with a disability, the response lacked collaboration and co-ordination. The proposed legislative provision will help improve this service and information co-ordination.

## Power to require information or documents

Clause 223 allows the chief executive to require a DSQ funded non-government service provider to give, within a reasonable time, information or documents relating to the provision of disability services to consumers of the service provider.

Under this clause, if a funded non-government service provider receives a written notice from the chief executive (under this clause) to produce information or documents, they must comply with the request. A requirement can be complied with by producing a copy of the requested document, which is certified as a true copy. This requirement to disclose is balanced with the rights of the funded non-government service provider to provide sufficient protection from liability from disclosing any information – see **clauses 224 and 225**.

It is important to have this provision as well as the ability to provide information to other relevant agencies (see **clause 222**). This clause allows for maximum service co-ordination for DSQ clients, particularly where multiple service providers are involved. It will promote greater flexibility to share information and be more responsive to the needs of DSQ clients. In 2003/2004, DSQ funded 82.2% of clients (12 914) who had a severe or profound core activity restriction (that is, the person always or sometimes needs help in the areas of self-care, mobility or communication). The nature of this client group makes these people particularly vulnerable to the risk of abuse, neglect and exploitation**.**

## Protection from liability for giving information

Clause 224 applies where a funded non-government service provider gives information or documents to the chief executive under the Act. A funded non-government service provider (or a person on behalf of the service provider) may give the information despite any other law that would otherwise prohibit or restrict the giving of information.

If the person, acting honestly and on reasonable grounds, gives the information, they are protected from any civil, criminal, administrative proceeding or any breach of professional etiquette/ethics or standards as a result of giving the information. The clause makes it clear that in a

proceeding for defamation, the person has a defence of absolute privilege for publishing information and if the person would otherwise be required to maintain confidentiality about the information, the person does not contravene that requirement, and is not liable for any disciplinary action, by disclosing the information (or document) under the Bill.

### Chief executive to advise on-disclosure

Clause 225 provides that the chief executive must first advise the funded non-government service provider if the chief executive proposes to give to another entity information or documents obtained from the funded non-government service provider under **clause 223**. The only exception to this is if the chief executive considers that doing so would not be in the best interests of a consumer to whom the information or documents relate.

### Chief executive may enter into arrangement about giving and receiving information with police commissioner

Clause 226 allows the chief executive and the Police Commissioner to enter into a written arrangement for information sharing regarding criminal history information, where that information sharing is allowed for (see for example **clauses 67 and 111**). **Clause 226(3)** specifies that this arrangement can include daily electronic transfer of information. Importantly, subsection (4) provides that if the information is to be electronically transferred and there is a limitation on who may access the information or the purposes that the information may be used, the arrangement must provide for such limitation.

### Delegation by Minister

Clause 227 allows the Minister to delegate the Minister's powers under the Act to an appropriately qualified person who is a public service employee (see *Public Service Act 1996* for definition of 'public service employee'). However, the Minister cannot delegate the power to amend the disability service standards (**clause 34**) or the review of the Act (**clause 233**).

### Delegation by chief executive

Clause 228 allows the chief executive to delegate the chief executive's powers under the Act to an appropriately qualified person who is a public service employee - this could be an appropriately qualified public service employee in another department.

## Protecting officials from liability

Clause 229 protects an official involved in the administration, monitoring or enforcement of the Act from any civil liability. An official is not civilly liable for an act done or omission made honestly and without negligence under the Act. An official means the following:

- the Minister;
- the chief executive;
- an authorised officer;
- a public service employee;
- an interim manager;
- a member of a Ministerial advisory committee; or
- a person acting under the direction of an official.

## Approval of forms

Clause 230 provides that the chief executive may approve forms for use under the Bill.

## Service of documents

Clause 231 allows a document to be given to a person by a facsimile transmission. If a document is required or permitted under the Bill to be given to a person, the document may be given to a person (the intended recipient) by faxing it to either:

- the last fax number given to the person by the intended recipient;
- the fax number of the last known address of the intended recipient; or
- if the intended recipient is a corporation – the fax number of their registered office.

A faxed document is taken to have been 'given' on the day the document is transmitted.

## Regulation-making power

Clause 232 provides that the Governor in Council may make regulations under the Act. A regulation may impose a penalty (not more than 20 penalty units) and prescribe fees payable under the Bill.

### Review of Act

Clause 233 provides for a legislative review of the Act (by the Minister) after 5 years from the date of commencement. The purpose of the one-off review is to evaluate the effectiveness of the Bill to continue to provide a contemporary legislative platform for disability rights and the regulation of DSQ funded disability services. It emphasises the importance of continuous improvement of disability services.

## Part 15 Repeal and transitional provisions

## Division 1 Repeal

### Repeal of Disability Services Act 1992

Clause 234 repeals the *Disability Services Act 1992*.

## Division 2 Transitional provisions

### Definitions for div 2

Clause 235 defines for the purposes of this division 'commencement' and 'repealed Act'.

### Screening of persons engaged by funded non-government service providers at the commencement

Clause 236 allows for transitional criminal history screening provisions for persons currently engaged with a funded non-government service provider. Given the number of applications and criminal history screening decisions required to be made, it is planned to have a staged approach to screening (from 1 July 2006 to 31 December 2006) in order to roll out the screening. The transitional will apply to existing persons engaged by a funded non-government service provider who are working at a service outlet of the service provider. Under the Act (**clause 87**), a service provider cannot continue to engage them without first applying for a prescribed notice. A

regulation will give the service provider a period of time (not more than 6 months) in which to comply with this obligation.

A regulation will specify the order of criminal history screening. For the purposes of rolling out implementation of the checks, the regulation will:

- name each funded non-government service provider**;** and
- assign a category to the service provider; and
- state the period in which the service provider has to apply for a prescribed notice (which cannot be longer than 6 months).

### Certain non-government service providers taken to be approved under part 5 and to be funded non-government service providers

Clause 237 deems a non-government service provider who is currently receiving recurrent funds under the (repealed) *Disability Services Act 1992* as an approved service provider (**clause 16**) and a funded non-government service provider (**clause 17**) for the purposes of the Act.

### When grants of financial assistance under the repealed Act continue

Clause 238 provides for the continuation of recurrent funding received by a non-government service provider under a general service agreement entered into under the (repealed) *Disability Services Act 1992*. The service provider will continue to receive the recurrent funding in accordance with the conditions of the general service agreement until it expires. If a service provider at the commencement of this part has not signed a general service agreement, the clause provides that funding must cease 3 months after commencement unless the Minister approves funding under the Bill and a funding agreement (under the Bill) has been signed by the service provider.

### Queensland disability service standards to continue in force

Clause 239 deems the current disability service standards to be made and notified for the purposes of the Bill – in particular for the purposes of **part 3**.

### Disability sector quality system to continue in force

Clause 240 deems the current Disability Sector Quality System (approved by the Minister in June 2004) to be the prescribed system for the purposes of the Bill.

## Part 16 Consequential amendments

### Act amended

Clause 241 states that schedule 1 lists the Acts that require amendments as a consequence of the Bill.

## Schedule 1 Consequential amendments

Schedule 1 lists the Queensland legislation that requires amendments as a consequence of the Bill. For example, the *Family Service Act 1987* is amended because criminal history screening of DSQ staff and volunteers will ultimately occur under the Bill.

## Schedule 2 Reviewable Decisions

Schedule 2 lists some reviewable decisions made by the chief executive under the Bill – **see clause 204** for further explanation.

## Schedule 3 Current serious offences

Schedule 3 lists the current serious offences for the purposes of criminal history screening in relation to funded non-government service providers and in particular **clause 76**.

## Schedule 4 Repealed or expired serious offences

Schedule 4 lists the repealed or expired serious offences for the purposes of criminal history screening in relation to funded non-government service providers and in particular **clause 76**.

## Schedule 5 Current serious sexual or violent offences

Schedule 5 lists the current serious sexual or violent offences for the purposes of criminal history screening in relation to funded non-government service providers and in particular **clause 77**.

## Schedule 6 Repealed or expired serious sexual or violent offences

Schedule 6 lists the repealed or expired serious sexual or violent offences for the purposes of criminal history screening in relation to funded non-government service providers and in particular **clause 77**.

## Schedule 7 Dictionary

Schedule 7 defines terms used in the Bill.