Justice and Other Legislation Amendment Bill 2007

Explanatory Notes

Objective of the Bill

The objective of the Bill is to make minor amendments to legislation administered by the Department of Justice and Attorney-General, in order to improve the operation of the system of justice. A number of amendments relate to statutes administered by other Departments.

The Bill amends the following Acts:

- Acts Interpretation Act 1954;
- Anti-Discrimination Act 1991;
- Bail Act 1980;
- Births, Deaths and Marriages Registration Act 2003;
- Children Services Tribunal Act 2000;
- Corrective Services Act 2006;
- Criminal Code;
- Dispute Resolution Centres Act 1990;
- District Court of Queensland Act 1967;
- Drug Court Act 2000;
- Electoral Act 1992;
- Freedom of Information Act 1992;
- Guardianship and Administration Act 2000;
- Industrial Relations Act 1999;
- Judges (Pensions and Long Leave) Act 1957;
- Judicial Review Act 1991;
- Justices Act 1886;

- Justices of the Peace and Commissioners for Declarations Act 1991;
- Juvenile Justice Act 1992;
- Land and Resources Tribunal Act 1989;
- Land Court Act 2000;
- Law Reform Commission Act 1968;
- Magistrates Act 1991;
- Mental Health Act 2000;
- Ombudsman Act 2001;
- Penalties and Sentences Act 1992;
- Professional Standards Act 2004;
- Recording of Evidence Act 1962;
- Referendums Act 1997;
- Small Claims Tribunal Act 1973;
- Supreme Court of Queensland Act 1991 and
- Vexatious Proceedings Act 2005.

Reasons for the Bill

The Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland is responsible for the administration of a wide range of legislation. Periodically, these statutes are examined to identify minor amendments which can be made to improve the operation of the legislation and also to clarify the legislation, for example, as the result of judicial decisions.

Achievement of the Objective

The Bill achieves the objective by making minor amendments to the legislation as described below.

Estimated Cost for Government Implementation

Funding of any initiatives contained within the Bill will be met through departmental appropriations.

Consistency with Fundamental Legislative Principles

The Bill inserts a new provision, section 32B into the *Guardianship and Administration Act 2000* to provide that when the appointment of a guardian or administrator ends under either sections 26, 27 or 31 of the Act, that the Guardianship and Administration Tribunal may make directions which are binding upon the guardian or administrator, unless the guardian or administrator has a reasonable excuse. Section 32B also provides that the authority of the tribunal to make a binding direction to a guardian or administrator extends to when the appointment of the guardian or administrator ended prior to the commencement of this section. This may impose a retrospective operation of this section in some limited circumstances.

This section is justified on the grounds that in circumstances where the adult with impaired capacity has been neglected, abused or exploited by the previous appointee, the tribunal may wish to issue directions to the previous appointee for the provision of information or another matter to the tribunal or a subsequent appointee about decisions or actions the previous appointee has taken, so that the interests of the adult can be protected.

A person who has accepted an appointment to act as guardian or administrator for an adult with impaired capacity is under stringent and onerous responsibilities and duties and must act in the best interests of the adult. The guardian or administrator who has used their position to gain a benefit to the detriment of the adult should be held accountable for such actions and if there is no authority of the tribunal to make the guardian or administrator provide the information or other matter, then the guardian or administrator may be able to avoid any legal responsibility for their actions or the new appointee may not be able to recover any money on behalf of the adult.

This provision would not impose any further obligations upon the person whose appointment has ended other than what they would have had to comply with had their appointment not ended. This provision would be of benefit to the adult with impaired capacity who has been exploited by the previous appointee because of his or her vulnerability. This provision does not impose any pecuniary penalty or otherwise on the previous appointee.

The amendment to the *Justices of the Peace and Commissioners for Declarations Act 1991* will operate retrospectively to validate the nomination requirement contained in forms in use over the period 22 April 2005 to 10 August 2006, as well as the forms themselves. The amendment will not only validate existing appointments made in consideration of those forms, but will also operate to prevent an applicant whose application was

refused on the basis of non-compliance with the nomination requirement from challenging the decision under judicial review. It should be noted that compliance with the nomination requirement is not the sole determinant of an applicant's suitability for appointment under the Act, as the registrar is empowered under the *Justices of the Peace and Commissioners for Declarations Regulation 1991* to make inquiries and seek character references for the purpose of assessing whether the applicant is a fit and proper person for appointment. It is considered that the extinguishment of a potential right of challenge under judicial review is outweighed by the importance of upholding a longstanding component of the process of assessing the suitability of persons for appointment under the Act.

Consultation

There has been extensive consultation conducted with the Judiciary, the Queensland Law Reform Commission, the Director of Public Prosecutions, Presidents of affected Tribunals, the Adult Guardian, the Public Advocate, the Queensland Ombudsman, Legal Aid Queensland, the Public Trustee, the Crime and Misconduct Commission, the Anti-Discrimination Commission Queensland, the Electoral Commissioner, the Registrar-General of Births, Deaths and Marriages, the Queensland Council of Unions and the Australian Manufacturing Workers' Union.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the Act.

Part 2 Amendment of Acts Interpretation Act 1954

Clause 3 states that this part amends the *Acts Interpretation Act 1954*.

Clause 4 amends section 36 (meaning of commonly used words and expressions) to provide for certain cross-referencing. A definition of "notice to appear" is inserted, which refers the reader to section 382(2) of the *Police Powers and Responsibilities Act 2000* (which provides a definition of notice to appear). The definition of "complaint and summons" is amended to include a Note referring the reader to section 388 of the *Police Powers and Responsibilities Act 2000* (which provides that a notice to appear is equivalent to a complaint and summons). A definition of general application of "senior executive", in relation to the public service, is also inserted into section 36.

Part 3 Amendment of Anti-Discrimination Act 1991

Clause 5 states that this part and the schedule amend the *Anti-Discrimination Act 1991*.

Clause 6 omits section 14(2). Section 14 prohibits discrimination in the pre-work area but exempts discrimination on the basis of trade union activity if section 105 of the *Industrial Relations Act 1999* applies. Section 105 of the *Industrial Relations Act 1999* protects freedom of association as it prohibits specified types of conduct towards employees by employers. To ensure that the Anti-Discrimination Commission Queensland has jurisdiction to accept all complaints of discrimination on the basis of trade union activity in the pre-work area, subsection (2) of section 14 is omitted.

Clause 7 omits section 15(2). Section 15 prohibits discrimination in the work area but exempts discrimination on the basis of trade union activity if section 105 of the *Industrial Relations Act 1999* applies. Section 105 of the *Industrial Relations Act 1999* protects freedom of association as it prohibits specified types of conduct towards employees by employers. To ensure that the Anti-Discrimination Commission Queensland has jurisdiction to accept all complaints of discrimination on the basis of trade

union activity in the work area, subsection (2) of section 15 is omitted. Section 15(3) is re-numbered as section 15(2).

Part 4 Amendment of Bail Act 1980

Clause 8 states that this part and the schedule amend the *Bail Act 1980*.

Clause 9 amends the definition of community justice group in section 6 by replacing the word "offenders" with the word "defendants". This corrects an incorrect reference to offenders in the context of bail applications. Clause 9 also amends section 6 to replace the definition of "court" (this amendment is consequential on the amendment contained in clause 13) and to insert a definition of "lawyer" (this amendment is consequential on the amendments contained in clauses 10, 11, 12, 15, 16 and 18).

Clause 10 amends section 14(7) to update the reference to "counsel or solicitor" to "lawyer", consistent with the *Legal Profession Act 2004*.

Clause 11 amends section 14A(5) to update the reference to "counsel or solicitor" to "lawyer", consistent with the *Legal Profession Act 2004.*

Clause 12 amends section 15(1)(d) to update the reference to "counsel or solicitor" to "lawyer", consistent with the *Legal Profession Act 2004*. Clause 12 also amends section 15(1)(f)(iii) to remove the words "established for offenders". This corrects an incorrect reference to offenders in the context of bail applications.

Clause 13 inserts new section 15A to provide for bail applications in special circumstances. The Act does not specifically allow applications for bail to be dealt with by telephone or radio or other forms of communication. New section 15A allows a magistrate to grant bail on an application made and dealt with by telephone, radio or other means of communication, if the defendant cannot reasonably or practically be brought before a court because of the remote location of the person.

Clause 14 amends section 16 to remove the words "established for offenders". This corrects an incorrect reference to offenders in the context of bail applications.

Clause 15 amends section 20(2) to remove the requirement in a bail undertaking that the defendant's nominated residential address and address for service be within 25 kilometres of the court before which the defendant is required to appear. Clause 15 also inserts subsection (2A) to provide

that the address for service and the residential address may be the same address.

Clause 15 also amends section 20(3)(a)(iii), (3AA) and (3A) to update the reference to "counsel or solicitor" to "lawyer", consistent with the *Legal Profession Act 2004*. New subsections (8), (9) and (10) are inserted to clarify that a person undertaking practical legal training may appear on behalf of a defendant on certain appearances before the Magistrates Court and the Childrens Court.

Clause 16 amends section 27 to update the reference to "counsel or solicitor" to "lawyer", consistent with the *Legal Profession Act 2004*.

Clause 17 inserts new section 27B to provide for the powers of a Magistrates Court to issue a warrant of apprehension where a defendant is granted bail under new section 15A (inserted by clause 13) and the defendant either does not enter into a bail undertaking he or she is required to enter into or the defendant does not comply with conditions of bail, before leaving the presence of the police officer in whose presence the bail application was made.

Clause 18 amends section 28A to update the reference to "counsel or solicitor" to "lawyer", consistent with the *Legal Profession Act 2004*.

Part 5 Amendment of Births, Deaths and Marriages Registration Act 2003

Clause 19 states that this part and the schedule amend the *Births, Deaths and Marriages Registration Act 2003*.

Clause 20 amends section 8. Section 8 of the Act provides that both parents of a child must complete and sign the application for registration of the birth of the child. The Registrar-General may only accept an application signed by one parent in circumstances where the Registrar-General is satisfied that the other parent is unable or unlikely to sign the application. Where the Registrar-General receives an application signed by one parent the Registrar-General is under an obligation to make investigations of the whereabouts of the other parent and his or her willingness to sign the application. This can be very difficult if not impossible where the signing parent is unable or unwilling to provide

information about the whereabouts of the other parent or where the requirement for the other parent to sign the application would cause unwarranted distress. For instance, where the mother is in a domestic violence situation or where contact by the mother of the father may breach a domestic violence order.

The amendment therefore provides additional grounds to allow the Registrar-General to accept an application signed by one parent where a parent is unable or unwilling to provide information as to the whereabouts or identity of the other parent, where the other parent is unwilling to sign the application or where the requirement for the other parent to sign the application would cause unwarranted distress. Where an address of the parent who did not sign the application is provided to the Registrar-General, the Registrar-General is obliged to write to that parent to give him or her an opportunity to sign the application to register prior to its registration, but not if the requirement that the other parent sign would cause unwarranted distress.

Clause 21 amends section 20 to additionally allow notation of a change of name where the change of name is by repute or usage resulting from a person's marriage.

Clause 22 amends section 21. Section 21 presently allows notation or registration of a change of name of a child's first name only once before the child reaches 18 years and a child's surname, or any name of an adult, only once in one year, unless a Magistrates Court orders otherwise. Clause 22 disapplies section 21 to applications to note a person's change of name. Section 21 will continue to apply to applications to register a change of name. The effect of this is that a change of name is permitted to be noted more than once in one year if the person's name has been previously changed by deed poll or under a corresponding law or other legal process or where it is changed by repute or usage following marriage, as set out in section 20. A "corresponding law" is defined in schedule 2 to the Act to mean a law of another state that provides for the registration of births, deaths and marriages. This will allow persons with multiple changes of name since birth to show an audit trail of name changes. Such an audit trail is now commonly required by agencies issuing forms of identity.

Clause 23 amends section 25 to provide that where it is reasonably practicable to do so, the Registrar-General may require the lodgement of the marriage certificate by a marriage celebrant in electronic form. The registry will continue to receive the paper form (which is required by the Commonwealth *Marriage Act 1961*), but some celebrants, for easier administration, will also send the registry an electronic copy of the same

form. Where marriage certificates are provided electronically this will be done in a secure online environment where access will only be possible with a user name and password.

Clause 24 amends section 29 to provide that where it is reasonably practicable to do so, the Registrar-General may require the lodgement of the death registration application by a funeral director in electronic form. Where it is not reasonably practicable to provide the death registration application in electronic form, paper form by post or personal delivery will still be acceptable. Where death registration applications are provided electronically this will be done in a secure online environment where access will only be possible with a user name and password.

Clause 25 amends section 44 to allow the Registrar-General to withhold a residential address from a certificate where a person notifies the Registrar-General that the person does not want his or her address revealed on a certificate issued from the registry.

Clause 25 also amends section 44 to remove the word "birth" from subsection (10) and to replace the definition of "commemorative birth certificate" with a definition of "commemorative certificate". This amendment means all commemorative certificates issued by the registry are declared to be commercial activities to be carried out by the State for the purposes of section 52 of the *Constitution of Queensland 2001*.

Clause 26 amends section 45 to clarify this section. Section 45 of the Act provides that the Registrar-General must maintain and issue on request written statements of policies about who may obtain information from the registry. The amendment ensures that this obligation extends to policies about obtaining information, whether the information is obtained under section 44 or otherwise. However, the Registrar-General is not obliged to provide a copy of a statement of policies where the Registrar-General reasonably believes that withholding the statement is necessary to protection the privacy of persons for whom information is held by the Registrar-General or to prevent the fraudulent or improper obtaining of such information.

Clause 27 replaces part 10 with new part 9, division 3 and provides transitional provisions – new sections 58 to 61 – for certain amendments made by the Bill.

New section 58 provides for the definitions for division 3.

New section 59 is a transitional provision to provide for the situation where an application to have a birth registered under section 8(2) of the Act is received by the Registrar-General before the commencement of section 59

but has not yet been registered. In such a case section 8 as amended by the Bill applies to the application.

New section 60 is a transitional provision to provide for the situation where an application to note a change of a person's name under section 20 of the Act is received by the Registrar-General before the commencement of section 60 but has not yet been noted on the register. In such a case part 3 as amended by the Bill applies to the application.

New section 61 is a transitional provision to provide for the situation where an entity applies for a certificate under section 44(1) of the Act before the commencement of section 61 and the certificate has not yet been given to the entity. In such a case section 44 as amended by the Bill applies to the application.

Clause 28 amends schedule 2 to insert definitions of "amending Act". The reader is referred to section 58 which provides the definition of this term for the purposes of the transitional provisions in part 9, division 3.

Part 6 Amendment of Children Services Tribunal Act 2000

Clause 29 states that this part and the schedule amend the *Children Services Tribunal Act 2000*.

Clause 30 amends section 18 to distinguish the president's mandatory functions from those that are discretionary by the deletion of the word "must" from subsection (1). Paragraphs (a) and (b) of subsection (1) remain mandatory by the insertion of the word "must" in each paragraph. Paragraphs (c), (d), and (e) become discretionary by the insertion of the word "may" in (c) and (d) and the rewording of paragraph (e).

Clause 31 amends section 29 to clarify who acts as the presiding member if a tribunal is constituted by two members. If a tribunal is constituted by two members the presiding member will be the president. If the president is not a constituting member then the presiding member is the deputy president. If the deputy president is not a constituting member then the presiding member will be a constituting member designated by the president.

Clause 32 amends section 32 to provide for the reconstitution of a two member tribunal as well as a three member tribunal in the event that a constituting member stops being a member or for any reason is not

available for the review. In that event, the tribunal will be constituted by the remaining member or members and another member appointed by the president.

Clause 33 amends section 34 to provide that if a tribunal is constituted by two members, a question arising in a proceeding before the tribunal, other than a question of law, is to be determined by the presiding member.

Clause 34 amends section 41 by inserting paragraph (d) in subsection (1) that allows the tribunal to dismiss a review application in circumstances where the parties to the review consent to the dismissal. This may be in circumstances where the parties have reached an agreement.

Clause 35 amends section 42 to enable the tribunal to give its decision on a review either in writing or orally. In some circumstances, it is in the best interests of the child to have a decision given quickly. Enabling the tribunal to give an oral decision will allow this to occur. Subsection (4) has been inserted to require that if the tribunal gives its decision orally, as soon as practicable after the decision is given, it must confirm the decision and the reasons for it in writing.

Clause 36 amends section 71 to enable an applicant to a review to withdraw an application by either written notice given to the registrar or in another way directed by the tribunal. This may be by telephone if the applicant is taking part in the proceedings by telephone.

Clause 37 amends section 80 to clarify the number of constituting members required to attend a preliminary conference. Subsection 2 is amended to provide that if a tribunal is constituted by two members the president may direct that a single member constitute the preliminary conference. If the tribunal is constituted by three members the president may direct that the preliminary conference be constituted by either two members or a single member. A new subsection (3) is inserted to provide that a preliminary conference constituted by two members or a single member can only stay the operation of a reviewable decision if the maker of the decision does not oppose the stay.

Clause 38 amends subsection 105(3) to insert the missing word “may” in paragraph (b). The clause also amends section 105 to include in subsection (4) a new paragraph (c) which broadens the circumstances in which the tribunal may make a confidentiality order to include when there would be undue interference with the child’s or another person’s privacy. This may include circumstances when information has been provided to the tribunal that was originally prepared for another proceeding in another jurisdiction

involving persons who are not a party to the proceeding before the tribunal in relation to the reviewable decision.

Clause 39 amends section 141 to enable the president or the tribunal to consent to the publication of information other than information under subsection (1)(b). For clarity, the word "information" has also been defined for the purposes of the section, to include matters contained in documents filed with or received by the tribunal and the tribunal's decision and reasons.

Part 7 Amendment of Corrective Services Act 2006

Clause 40 states that this part amends the *Corrective Services Act 2006*.

Clause 41 amends section 209(3)(b) to insert a new subparagraph (iii). This amendment will ensure that a prisoner's parole order is not automatically cancelled if they are sentenced to another period of imprisonment for an offence committed during the period of the order, in Queensland or elsewhere, if the period of imprisonment is wholly suspended because of an intensive drug rehabilitation order. Intensive drug rehabilitation orders are made under section 20 of the *Drug Court Act 2000*. If the parole order was automatically cancelled in such circumstances, this would frustrate the effect of the intensive drug rehabilitation order.

Part 8 Amendment of Criminal Code

Clause 42 states that this part and the schedule amend the Criminal Code.

Clause 43 amends section 450F which provides for the appointment of animal valuers to provide that the chief executive rather than the Governor-in-Council appoints animal valuers.

Clause 44 inserts a new Chapter 81, which contains new section 718 which protects the appointment of any animal valuer appointed before the commencement of this Bill.

Part 9 Amendment of Dispute Resolution Centres Act 1990

Clause 45 states that this part amends the *Dispute Resolution Centres Act 1990*.

Clause 46 inserts in section 27(3) reference to the maximum penalty of 15 penalty units for an offence committed under that section. This insertion transfers information on the penalty for committing an offence under section 27(3) from the proceedings section 40(3) which is omitted.

Clause 47 amends section 37 as follows:

- by section 35 of the *Courts Reform Amendment Act 1997* section 34 was repealed and is obsolete. This section gave power to the Minister to cause or arrange for an evaluation of dispute resolution centres. There is some uncertainty as to whether the authors of any evaluations conducted under the repealed section 34 are obligated to keep their evaluation secret. By inserting the words "a relevant person" (which is defined in new section 37(9) of the Act) this amendment keeps it beyond doubt that any person who made an evaluation under the repealed section 34 can only disclose information as provided for by the Act;
- the clause amends section 37(2)(e) by omitting reference to "an evaluation pursuant to section 34" which is an obsolete section that gave power to the Minister to cause or arrange for an evaluation of dispute resolution centres;
- the clause amends subsection 37(3), which creates an offence against the Act for disclosing information otherwise than as authorised by section 37(2), by omitting subsection (3) and inserting a new subsection (3) which refers to a "relevant person". The reference to the maximum penalty of 15 penalty units is inserted at the end of the section and is transferred from the proceedings section 40(3) which is omitted. This amended section is re-drafted. The re-drafted amendments do not change the meaning and purpose of the section; and
- the clause also inserts section 37(9) which describes what a "relevant person" means and includes a person making an evaluation under section 34 as in force at any time before its repeal. This has the effect that any person who may have made an evaluation under the obsolete section 34 can only disclose information as provided for by the Act.

Clause 48 omits section 40(3) which is superfluous following the insertion of maximum penalties not exceeding 15 penalty units in section 23(3) and section 37(3).

Part 10 Amendment of District Court of Queensland Act 1967

Clause 49 states that this part and the schedule amend the *District Court of Queensland Act 1967*.

Clause 50 amends the heading to section 61 to remove the word "Limited".

Part 11 Amendment of Drug Court Act 2000

Clause 51 states that this part and the schedule amend the *Drug Court Act 2000*.

Clause 52 amends section 6. Section 6 defines who is an eligible person for the purposes of the Act. The amendments in this clause:

- remove the unnecessary requirement in section 6(1) for a person to be appearing before a Drug Court because any Magistrates Court can refer a person for an indicative assessment;
- provide that the regulation may require that an eligible person be someone who resides within a stated locality at the time of making a referral for an indicative assessment, at the time of making a referral for an assessment and at the time of making the intensive drug rehabilitation order; and
- clarify that a person is not an eligible person for the purposes of the Act if the person is the subject of a parole or a release order under a law of another State or the Commonwealth which is similar to a parole order, which is cancelled and the person has not served the unexpired portion of the period of imprisonment.

Clause 53 amends section 12A(a) to insert a reference to a Magistrates Court prescribed under regulation. This amendment allows control through

regulation over the number of Magistrates Courts from which referrals for indicative assessments can be made. An amendment is also made in this clause to section 12A to insert an additional requirement for referral of a person to an indicative assessment. This requirement is that the maximum number of active intensive drug rehabilitation orders prescribed under a regulation has not been exceeded.

Clause 54 amends section 12C(2) to change an unnecessary reference to "the drug court magistrate" to "the magistrate".

Clause 55 amends section 13 to clarify that only Drug Court magistrates may refer an offender for assessment under part 4.

Clause 56 amends section 14 to clarify that only Drug Court magistrates may refer an offender for assessment under part 4.

Clause 57 amends section 15 to clarify that only Drug Court magistrates may refer an offender for assessment under part 4.

Clause 58 amends section 16 to clarify that only Drug Court magistrates may refer an offender for assessment under part 4.

Clause 59 amends section 16A to clarify that only Drug Court magistrates may refer an offender for assessment under part 4.

Clause 60 amends section 34(3)(c). If a Drug Court magistrate decides to terminate the rehabilitation program under an intensive drug rehabilitation order for an offender under section 34(1) and the offence in relation to which the order was made is a prescribed drug offence, section 43(3) provides that the magistrate must revoke the conviction recorded for the offence, vacate the order and commit the offender to the Supreme Court for sentence under section 113 of the *Justices Act 1886*. Clause 60 amends section 34(3)(c) to allow a Drug Court magistrate to commit an offender to the Supreme Court under section 113 of the *Justices Act 1886* even though the offender has not been addressed under section 104(2) of the *Justices Act 1886* as required by section 113. This amendment reflects current procedures of the Drug Court.

Clause 61 amends the dictionary in the schedule to insert a new definition of the term "referring magistrate". This new term is used in clause 58 which amends section 16 (1) of the Act.

Part 12 Amendment of Electoral Act 1992

Clause 62 states that this part amends the *Electoral Act 1992*.

Clause 63 amends section 127 and provides that the Chief Justice may be the single judge constituting the Court of Disputed Returns or may appoint another Supreme Court judge as the single judge.

Clause 64 amends section 130 and provides for an application about a disputed election to be filed with the Supreme Court registry in Brisbane rather than with the court.

Clause 65 amends section 131 and provides for a copy of an application about a disputed election to be provided by the Registrar of the Supreme Court rather than the staff of the registry.

Clause 66 amends section 133 and changes a requirement from filing a document with the court to filing it with the Supreme Court registry in Brisbane.

Clause 67 amends section 139 and provides for the registrar of the Supreme Court, rather than the Court of Disputed Returns, to arrange for a copy of the court's final orders to be sent to the Clerk of the Parliament.

Clause 68 amends section 147 and provides for the registrar of the Supreme Court, rather than the court, to arrange for a copy of the court's order in relation to a reference to be sent to the Clerk of the Parliament.

Clause 69 amends section 148F and provides for the registrar of the Supreme Court, rather than the Court of Appeal to arrange for a copy of the Court of Appeal's final orders to be sent to the Clerk of the Parliament.

Part 13 Amendment of Freedom of Information Act 1992

Clause 70 states that this part and the schedule amend the *Freedom of Information Act 1992*.

Clause 71 omits the footnote to section 39(2) and inserts a Note to explain the reference to the provisions mentioned in section 39(2).

Clause 72 amends section 59 to correct incorrect references to subparagraphs.

Part 14 Amendment of Guardianship and Administration Act 2000

Clause 73 states that this part amends the *Guardianship and Administration Act 2000*.

Clause 74 amends section 13 to provide that when the Public Trustee or a trustee company appointed under the *Trustee Companies Act 1968* is appointed for a person who is about to turn 18 years (known as an "advance appointment" and which only takes effect once the person turns 18 years), that the period of the appointment is decided by the Guardianship and Administration Tribunal. Previously, the appointment of the Public Trustee or a trustee company was limited to not more than 5 years. For all other guardianship or administration appointments, the period of the appointment is not more than 5 years. This amendment brings this section into line with the provisions of section 28, which provides for the period of review for appointments of guardians or administrators under general appointments, so that there is now consistency in the periods of appointment for the Public Trustee or a trustee company when appointed as administrator under either an advance appointment or general appointment under the Act.

Clause 75 amends section 14 to recognise the decision in *Adult Guardian v Hunt 2003 QSC 297* (the Hunt case). Section 15 sets out the considerations the tribunal must consider in deciding whether a person is appropriate for appointment as a guardian or administrator for an adult with impaired capacity. Chesterman J in the Hunt case reasoned that where a person has friends or family who are able and willing to provide the requisite support and assistance, it is preferable that they be allowed to do so rather than be supplanted by the Adult Guardian, a functionary of the State. This amendment would require the tribunal to consider and exhaust as possibilities the range of available and appropriate family members before the Adult Guardian is appointed. The tribunal applies this principle in making appointments but the principle is currently not contained in the Act.

Clause 76 inserts new section 32B to provide that when the appointment of a guardian or administrator ends under either sections 26, 27 or 31 of the Act, that the tribunal may make directions which are binding upon the guardian or administrator, unless the guardian or administrator has a reasonable excuse. Section 26 provides for the automatic revocation of an appointment when the guardian or administrator dies or becomes a paid carer, health provider or service provider of the adult or when the guardian or administrator marries or divorces the adult or in the case of an administrator, becomes bankrupt. A guardian or administrator may under section 27 seek the tribunal's leave to withdraw as a guardian or administrator. Section 31 provides for the tribunal to revoke an appointment of a guardian or administrator at a review hearing. The directions made by the tribunal must relate only to the matters the subject of the previous appointment of the person and the tribunal may make the directions at the review hearing or hearing to grant leave to withdraw or at any subsequent hearing relating to the adult.

Clause 77 amends section 95, which provides for the Governor in Council's appointment of a person to act as President of the tribunal if the position is vacant or the President is not available to perform his or her duties. The amendment provides that the Deputy President designated by the Minister is to act as President if the position is vacant or the President is not available to carry out his or her duties. The terms and conditions of the Deputy President whilst acting as President will be the same as the President. This amendment is consistent with the provision contained in the *Coroners Act 2003*, which provides for the Deputy State Coroner to act as State Coroner when the position is vacant or if the State Coroner is unable to perform his or her duties. Section 95 will continue to provide for the Governor in Council to appoint any person to act as President if these circumstances exist.

Clause 78 amends section 129, which provides that if the tribunal is satisfied that urgent action is required, the tribunal may make an interim order in a proceeding without hearing and decide the proceeding without having to comply with the procedural safeguards imposed by the Act, such as being given notice of the hearing. The amendment provides that the tribunal may make an interim order if satisfied on reasonable grounds, there is an immediate risk of harm to the health, welfare or property of the adult concerned in an application, including because of risk of abuse, exploitation or neglect of, or self-neglect by, the adult. The interim order can be made without compliance with the procedural safeguards. This amendment is consistent with the Queensland Law Reform Commission in the Report No. 49 on Assisted and Substituted Decisions (the QLRC

Report), which had recommended that the power to make interim orders should be conferred on the tribunal when an adult with impaired capacity may be vulnerable to exploitation, neglect or abuse and, as a result there may be an immediate risk to the person's health or welfare.

The amendment to section 129 also provides that the maximum duration that may be specified in an interim order is 3 months, this being reduced from 6 months. However, the tribunal may renew the interim order but only if exceptional circumstances exist. The QLRC Report recommended that the maximum period stated on an interim order should be 10 days with an ability to renew an interim order. The time period for interim orders should be reduced so that the management of an adult's affairs is not left uncertain for any unreasonable period of time. A reduction in the period of time for interim orders would result in less disruption to the adult's life and to the lives of members of the adult's existing support network. Currently, interim orders are made ex-parte based on information provided by the applicant with limited inquiries made by the tribunal given the time restraints. There is a possibility that after a final hearing, the tribunal may determine that the adult has capacity and during that 6 month period the adult has been unable to make decisions for him or herself, unable to access his or her money to pay for legal representation or choose who he or she interacts with or where he or she may live. A reduction in the period of time for an interim order is consistent with the least restrictive principle of the Act.

Clause 79 amends section 143 to expand the circumstances that constitute contempt of the tribunal with the addition of the circumstance where a person may disobey a lawful order or direction of the tribunal. Currently, the circumstances that comprise contempt include where a person may insult a tribunal member as to their performance as a tribunal member, where a person interrupts a tribunal proceeding or creates a disturbance in or near a place the tribunal is sitting or where a person does anything that would constitute contempt of court for a court of record.

Clause 80 amends section 157 to clarify that when the President of the tribunal gives a direction for the tribunal to give written reasons for a decision, that the tribunal must give the written reasons for the decision within 28 days after the direction is given. Currently, the tribunal must give the written reasons within 28 days after the decision is made. However, this is unworkable in situations where the direction is given by the President after the expiration of 28 days from when the decision was made.

Clause 81 amends section 172 to permit orders made by the tribunal appointing a guardian or administrator to be enforced by the Supreme

Court. Currently, a tribunal order (but for the payment of money) may be filed in a court having jurisdiction to make the order and can then be enforced as if the tribunal order were an order of the court. However, section 84(1) of the Act provides that the tribunal has exclusive jurisdiction to make guardianship and administration orders and therefore, guardianship and administration orders cannot be filed in the court for enforcement as they are not orders the court has jurisdiction to make. This amendment provides that section 84 orders (which are defined as those orders in section 84(1) for which the tribunal has exclusive jurisdiction) can be filed in the court and enforced as if it is an order of the court.

Clause 82 amends section 226 by providing that a consumer at a visitable site may ask a person "employed at" that site to arrange for the community visitor to visit the site to perform the functions of the community visitor. Currently, the consumer must ask the person "in charge of" the site to arrange for a visit from the community visitor. This has created difficulties in the past as more people may find out about the complaint as there is some loss of confidentiality as the request gets passed through different layers of management. Also where there are poor relations between staff and management, the request for a visit may not be passed on. This amendment will allow the person who has received the request from the consumer directly, to contact the community visitor program and pass on the request for a visit from the consumer, without risking a breach of confidentiality.

Clause 83 amends section 231 to expand the categories of persons who are disqualified from being appointed as community visitors. Currently employees of departments administering the *Disability Services Act 1992* are disqualified from being appointed as community visitors. The reason for this is to remove any room for conflict of interest as the visitable sites include sites administered under that Act. However, visitable sites also include health facilities. Therefore, the amendment provides that public service employees of departments administering the *Disability Services Act 2006*, the *Health Act 1937* and the *Mental Health Act 2000* are not able to hold the office of community visitor.

Clause 84 amends section 232 to provide for the ability of the chief executive to suspend the employment of a community visitor when there is a reasonable suspicion the visitor has become physically or mentally incapable of satisfactorily performing the duties of a community visitor, has performed the community visitor's duties carelessly, incompetently or inefficiently or where the visitor is guilty of misconduct that could warrant dismissal. The suspension expires when the chief executive lifts the suspension by written notice, the chief executive terminates the

employment of the visitor or at the expiration of 30 days from when the visitor received the suspension notice (whichever is the earlier). The purpose of the suspension is to enable the chief executive to make investigations about the visitor to help the chief executive decide if the visitor is suitable to continue to be a community visitor. Currently, there is only provision to terminate the employment of the community visitor but no provision to permit a suspension of the visitor's employment pending an investigation.

Clause 85 inserts two transitional provisions. New section 263 provides that the authority of the tribunal to make a binding direction to a guardian or administrator, under section 32B, also applies to when the appointment of the guardian or administrator ended prior to the commencement of the section 32B. The new section 264 provides that an interim order made under section 129 before the commencement of the amendment to section 129, continues to have effect for the period specified in the order.

Part 15 Amendment of Industrial Relations Act 1999

Clause 86 states that this part amends the *Industrial Relations Act 1999*.

Clause 87 inserts a new subsection 3 into section 4 of schedule 2 to the Act. The amendment is consequential on the amendment made in clause 89. The amendment maintains the current position by providing that the Governor in Council is the prescribed authority for section 15 of the *Judges (Pensions and Long Leave) Act 1957*.

Part 16 Amendment of Judges (Pensions and Long Leave) Act 1957

Clause 88 states that this part amends the *Judges (Pensions and Long Leave) Act 1957*.

Clause 89 amends section 15(2), (3) and (4) to replace the references to the "Governor in Council" with a reference to "prescribed authority". The clause amends section 15(5) to replace the reference to "Governor in

Council's" with "prescribed authority's". New subsection (8) inserts a definition of "prescribed authority". The Governor in Council will be the prescribed authority for leave of absence of the Chief Justice, Chief Judge and Chief Magistrate, where the Chief Magistrate is also a judge. For leave of absence of judges of the Supreme Court, the Chief Justice is the prescribed authority. For leave of absence of judges of the District Court, the Chief Judge is the prescribed authority.

Part 17 Amendment of Judicial Review Act 1991

Clause 90 states that this part amends the *Judicial Review Act 1991*.

Clause 91 amends part 2 of schedule 1 to the Act to include a reference to part 3, division 2 of the *Building and Construction Industry Payments Act 2004* as an enactment to which the Act does not apply. The amendment will fully exempt the decisions of adjudicators made under the *Building and Construction Industry Payments Act 2004* from review under the *Judicial Review Act 1991*. This amendment is consistent with the objective of the *Building and Construction Industry Payments Act 2004* to create a dispute resolution process whereby adjudicators can quickly resolve payment disputes between parties to a construction contract on an interim basis.

Part 18 Amendment of Justices Act 1886

Clause 92 states that this part and the schedule amend the *Justices Act 1886*.

Clause 93 amends section 22C which provides for the appointment of clerks and assistant clerks of the Magistrates Court to provide that the chief executive rather than the Governor in Council appoints clerks and assistant clerks.

Clause 94 amends section 53A and inserts new section 53B. Section 53A allows a clerk of the court to determine that a summons matter may be referred for mediation. The amendment will allow for a magistrate to also refer summons matters to mediation. A Note is inserted to refer the reader

to section 388 of the *Police Powers and Responsibilities Act 2000* under which a requirement in a notice to appear that a person appear before a court at a stated time and place is taken to be a summons issued under the *Justices Act 1886*. New section 53B is composed of former subsections 53A(6) to (9) as amended.

Clause 95 replaces part 5, division 3. The heading of the division has been replaced with "Warrant if summons is disobeyed" to correct the current heading's inaccurate reference to warrants of committal. The new division includes amended wording to section 103 to be consistent with section 142. Sections 103 and 142 empower a justice to issue a warrant to apprehend the defendant where certain elements are made out. Whilst the elements of both sections are the same, they are worded differently. The amendments provide consistency in the wording of the elements of the sections enabling the development of one authorised form which is operationally beneficial for the Magistrates Court.

Clause 96 amends section 142 to provide consistency with section 103 and relates to the amendment made by clause 95 to section 103 of the Act.

Clause 97 amends section 178B. Section 178B is the definitional section for part 6A which allows for certain Magistrates Court proceedings to take place via video link facilities in circumstances where the defendant is at a correctional facility or at another place appointed for the holding of a Magistrates Court. In each case video link facilities can be used to link the defendant with the court. Video link facilities are also desirable to facilitate proceedings where the defendant is at a place where no Magistrates Court exists. For instance on many Torres Strait Islands video link facilities are only available in hospitals or other state institutions. The cost and danger of travel to a court house in this region can be overcome by the use of video link facilities to connect such places with the court. The definition of "associated place" in section 178B is therefore amended to provide that associated place (where the defendant is located) means not only a correctional facility but also another place where the defendant is present and video link facilities are available and the magistrate is of the opinion that the place is suitable to conduct proceedings.

Clause 98 amends section 178C. Section 178C sets out the circumstances in which video link facilities may be used in proceedings before a Magistrates Court. That section is amended to provide that video link facilities may be used not only where the defendant is in custody at a correctional centre but also where the defendant is located at another place where video link facilities are available to link it with the primary court and

the magistrate is of the opinion that the place is suitable to conduct proceedings.

Clause 99 inserts a new part 11, division 3, which contains new section 274 which protects the appointment of any clerk or assistant clerk appointed before the commencement of this Bill.

Part 19 Amendment of Justices of the Peace and Commissioners for Declarations Act 1991

Clause 100 states that this part and the schedule amend the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Clause 101 inserts a new section 46 in the Act. This amendment supplements amendments to the *Justices of the Peace and Commissioners for Declarations Regulation 1991* (the Regulation) to address deficiencies in the application process for appointment under the Act. The eligibility criteria for appointment under the Act include the requirement that the applicant is a fit and proper person. To facilitate this assessment, the application forms require applicants to be endorsed by their local State Member or alternatively a business nominator (if the applicant is seeking appointment to carry out duties in a financial institution or government department) or a Member of a Parliament of Australia. Although a longstanding feature of the application process, there was no provision in the Act or the Regulation that authorised the nomination requirement in the application forms. In addition, application forms made available for use over the period 22 April 2005 to 10 August 2006, although required by the Regulation to be made by the Minister, were approved by a delegate of the chief executive. The Regulation was amended on 27 August 2006 to expressly authorise the inclusion of the nomination requirement in the approved forms for application for appointment under the Act and to transfer the power to approve forms from the Minister to the chief executive. Application forms were subsequently approved by a delegate of the chief executive and notified in the Government Gazette on 11 August 2006.

The objective of new section 46 is to remove any doubt as to the validity of appointments made under the Act in respect of applications submitted in the forms made available for use during the period 22 April 2005 to 10

August 2006. New section 46 does this by retrospectively validating both the nomination requirement contained in those forms, as well as the forms themselves.

Part 20 Amendment of Juvenile Justice Act 1992

Clause 102 states that this part amends the *Juvenile Justice Act 1992*.

Clause 103 amends section 169 to include offences against section 10(4) and (4A) of the *Drugs Misuse Act 1986* in the list of offences to which that section applies.

Part 7, division 3 of the Act provides for the referral by a drug diversion court (prescribed by section 4 of the *Penalties and Sentences Regulation 2005* to be the Childrens Court and the Magistrates Court) of an eligible child who has been charged with an eligible drug offence to drug assessment and education session (the Court Diversion Program for a Minor Drugs Offence). Eligible drug offences are defined in section 169. The offence of possessing and failing to take reasonable care and precautions with respect to a hypodermic syringe or needle (section 10(4) of the *Drugs Misuse Act 1986*) and of possessing and failing to dispose of a hypodermic syringe or needle in accordance with regulations (section 10(4A) of the *Drugs Misuse Act 1986*) are added to the list of eligible drug offences for which a child may be diverted. This amendment mirrors that in clause 128 in relation to adult offenders.

Part 21 Land and Resources Tribunal Act 1989

Clause 104 states that this part amends the *Land and Resources Tribunal Act 1989*.

Clause 105 inserts a new subsection 3 into section 11 of the Act and is consequential on the amendment made in clause 89. The amendment maintains the current position by providing that the Governor in Council is the prescribed authority for section 15 of the *Judges (Pensions and Long*

Leave) Act 1957 in relation to leave of absence of the President or Deputy President of the Land and Resources Tribunal.

Clause 106 amends section 77(3) to remove the eligibility requirements for appointment as registrar of the tribunal. The requirement that the registrar must be a lawyer is superfluous. The position of registrar of the tribunal is confined to an administrative role within the tribunal registry with no power in the Act for the registrar to undertake a judicial/quasi-judicial role. The additional requirements that the registrar has either particular knowledge and experience of public administration or something else with substantial relevance to the duties of the registrar is omitted as the criteria for the position of court registrars is not usually established by legislation.

Part 22 Land Court Act 2000

Clause 107 states that this part amends the *Land Court Act 2000*.

Clause 108 inserts new section 73A to ensure that members, lawyers, agents or witnesses involved in a proceeding before the Land Appeal Court have the same privileges, protection and immunity as if the proceeding were in the Supreme Court.

Part 23 Amendment of Law Reform Commission Act 1968

Clause 109 states that this part amends the *Law Reform Commission Act 1968*.

Clause 110 amends section 7 to provide that a Commission member may resign by written notice of resignation given to the Governor, without the requirement for Governor in Council acceptance. This is consistent with the way in which a judge may resign pursuant to the *Constitution of Queensland 2001*.

Clause 111 amends section 10 to provide that the Commission is to undertake examinations pursuant to individual referrals by the Minister in addition to any programs of examination. This is consistent with the more

common practice now for the Minister to give individual specific references to the Commission rather than a program of references.

Part 24 Amendment of Magistrates Act 1991

Clause 112 states that this part and the schedule amend the *Magistrates Act 1991*.

Clause 113 amends the long title to the Act. This amendment is consequential on the amendments contained in clause 116.

Clause 114 inserts new section 5A to allow the Chief Magistrate to appoint an acting Deputy Chief Magistrate, when that office is vacant or the incumbent is otherwise not available to perform the functions of this office. This amendment will be operationally more efficient.

Clause 115 amends section 12 to insert new subsections (4) and (5). These amendments relate to the amendments to in clause 116 which create the position of judicial registrar in the Magistrates Court. The effect of new subsection (4) is that judicial registrars will be subject to the direction of the Chief Magistrate in deciding where judicial registrars are to constitute a Magistrates Court and what functions the judicial registrars are to take. New subsection (5) provides for the expiry of the amendments in this clause in line with the expiry of the judicial registrar amendments in clause 116, as provided for by new section 53S.

Clause 116 inserts new part 9A containing new sections 53 to 53S which provide for the new position of judicial registrar in the Magistrates Court.

New section 53 provides for the appointment of judicial registrars. Judicial registrars are appointed by Governor in Council following consultation by the Attorney-General with the Chief Magistrate. The clause provides that appointment may be on a full-time or part-time basis.

New section 53A provides for the appointment of acting judicial registrars.

New section 53B makes special provision in relation to clerks of court who are appointed as acting judicial registrars.

New section 53C provides for the conditions of appointment for judicial registrars, which must be published in the Government Gazette.

New section 53D deals with the situation where a judicial registrar was a public service officer immediately prior to appointment or immediately after the appointment ends.

New section 53E provides that a judicial registrar is an officer of the Magistrates Court.

New section 53F provides that an oath or affirmation of office is to be taken by a judicial registrar or acting judicial registrar upon taking office. The form of the oath or affirmation will be prescribed by regulation.

New section 53G provides that a judicial registrar is independent from direction or control, other than that provided for by the Act.

New section 53H provides generally about how a judicial registrar must conduct himself or herself in the position.

New section 53I provides the basis for the power of a judicial registrar to hear and determine matters. When a judicial registrar is authorised in accordance with section 53J to hear and determine a matter, he or she is considered to constitute a Magistrates Court for that purpose and may exercise all of the jurisdiction and power of the court, apart from the power to punish for contempt of court.

New section 53J sets out the subject matters that judicial registrars may hear and determine, if so authorised by prescription by the Chief Magistrate by practice direction.

New section 53K provides that a judicial registrar must refer a matter to a magistrate if the judicial registrar considers it would be proper for a magistrate to hear and decide the matter.

New section 53K also provides that where a judicial registrar hears a bail application under section 53J(1)(e) and is of a mind to refuse the application, the judicial registrar must refer the application to a magistrate for decision.

New section 53L provides for appeals from decisions of judicial registrars by providing that a decision of a judicial registrar is to be considered the decision of a magistrate for the purposes of legislated appeal rights.

New section 53M extends to a judicial registrar the same protection and immunity afforded to magistrates.

New section 53N sets out the circumstances in which a person ceases to be a judicial registrar.

New section 53O provides the process for suspension of office of a judicial registrar on the grounds set out in subsection (4).

New section 53P provides for the immediate suspension of office of a judicial registrar on the happening of an event set out in subsection (1).

New section 53Q provides for the remuneration of a judicial registrar in the event of his or her suspension from office.

New section 53R provides the process for removal of a judicial registrar from office.

New section 53S expires part 9A 2 years after it commences, however by regulation the period before expiry of the part may be continued for up to 1 year. Despite the expiry of the part, a judicial registrar's decision will continue in accordance with new section 53L (which provides that a decision of a judicial registrar is taken to be a decision of a magistrate for appeal purposes) and new section 53N(2) (which provides for continuation of a judicial registrar's jurisdiction for certain purposes beyond expiry of the judicial registrar's appointment).

Part 25 Amendment of Mental Health Act 2000

Clause 117 states that this part and the schedule amend the *Mental Health Act 2000*.

Clause 118 amends section 58(3)(b) to clarify that "remand" is being used in the specific sense of remand in custody, which is consistent with the use of the word in the Act.

Clause 119 amends section 77 to put beyond doubt the court's power to remand a classified patient in custody and to adjourn the proceeding from time to time. A person awaiting the finalisation of a charge for a simple or indictable offence may, under a custodian's assessment authority or a court assessment order, be detained in an authorised mental health service ("a classified patient"). Upon a person becoming a classified patient, proceedings for the offence are suspended under section 75. Section 77 preserves the power of the court to grant bail under section 8 of the *Bail Act 1980*. The preservation of the court's powers to adjourn and to remand in custody is arguable, although section 8(2) of the *Bail Act 1980* requires the court to remand a person in custody if it does not grant bail. This amendment puts beyond doubt the court's powers to remand the person in custody and to adjourn the proceedings from time to time. However, a remand order under the amended section 77 does not affect the defendant's

status as a classified patient under a court assessment order or a custodian's assessment authority. In accordance with section 69(3) of the Act, a patient is a classified patient until the patient ceases to be a classified patient under section 78, 84, 99, 253 or 287.

Clause 120 amends section 244 to remedy a similar problem to that outlined above by putting beyond doubt the court's power to remand a patient on an involuntary treatment order or a forensic order charged with an offence in custody and to adjourn the proceeding from time to time.

Clause 121 amends section 260 to remedy a similar problem to that outlined above by putting beyond doubt the court's power to remand a person charged with an indictable offence in custody and to adjourn the proceeding from time to time while awaiting the hearing of a reference to the Mental Health Court.

Clause 122 replaces section 544 to extend the protection of the current provision against liability for failure to appear to all defendants where proceedings for an offence are suspended under the Act. This will ensure that all people charged with an offence who are involuntary patients or who are awaiting the hearing of a reference to the Mental Health Court and whose criminal proceedings are suspended cannot be penalised for a failure to appear at mentions before the court.

Part 26 Amendment of Ombudsman Act 2001

Clause 123 states that this part amends the *Ombudsman Act 2001*.

Clause 124 amends section 23 to allow the Ombudsman to inform a complainant in any way he considers appropriate that he will not be investigating a complaint. This is consistent with the manner in which complaints may be made and the way that results of investigations can be communicated.

Part 27 Amendment of Penalties and Sentences Act 1992

Clause 125 states that this part and the schedule amend the *Penalties and Sentences Act 1992*.

Clause 126 amends section 9 to provide that a court when sentencing must have regard to the successful completion of any rehabilitation, treatment or other intervention program or course which the offender was required to attend as a condition of his or her bail.

Clause 127 amends section 12 to provide that where an offender has applied for revocation of a community based order or a probation order and there has been no previous breach of the order the recording of a conviction by the court is discretionary. Under section 12 an offender may apply for a community service order or probation order to be revoked. The offender is then re-sentenced by the court. The court must record a conviction in these circumstances. Sometimes an offender may apply for revocation of an order because the offender cannot comply as he or she has gained employment. In such circumstances the offender is to continue to have the opportunity to have no conviction recorded, at the court's discretion.

Clause 128 amends section 15D to include offences against section 10(4) and (4A) of the *Drugs Misuse Act 1986* in the list of offences to which that section applies.

Part 3, division 1 of the Act provides for the referral by a drug diversion court (prescribed by section 4 of the *Penalties and Sentences Regulation 2005* to be the Childrens Court and the Magistrates Court) of an eligible offender who has been charged with an eligible drug offence to drug assessment and education session (the Court Diversion Program for a Minor Drugs Offence). Eligible drug offences are defined in section 15D. The offence of possessing and failing to take reasonable care and precautions with respect to a hypodermic syringe or needle (section 10(4) of the *Drugs Misuse Act 1986*) and of possessing and failing to dispose of a hypodermic syringe or needle in accordance with regulations (section 10(4A) of the *Drugs Misuse Act 1986*) are added to the list of eligible drug offences for which an offender may be diverted. This amendment mirrors that in clause 103 in relation to child offenders.

Clause 129 amends section 125(4)(a) to provide that the provision is subject to new section 126A. This amendment is consequential on the amendment in clause 131.

Clause 130 amends section 126(4) to provide that the provision is subject to new section 126A. This amendment is consequential on the amendment in clause 131.

Clause 131 inserts new section 126A to deal with re-sentencing under section 125(4)(a) (by a Magistrates Court) or section 126(4) (by the District Court or Supreme Court) in circumstances where a period of driver licence disqualification is involved. Where an offender breaches a community based order he or she may be dealt with by the court in a number of ways. Under section 125(4)(a) and section 126(4) the court may sentence him or her in relation to the original offence for which the community based order was made as though the offender had just been convicted of that offence. The amendment deals with the situation where the original offence is one which under the *Transport Operations (Road Use Management) Act 1995* or the *Penalties and Sentences Act 1992* carries a period of driver licence disqualification as part of the sentence. It is unclear whether the court may, or must, impose a fresh period of disqualification. The amendment puts beyond doubt that a court may not change or revoke the period of disqualification.

Clause 132 replaces the entry for the *Drugs Misuse Act 1986* in the schedule in order to correct incorrect references to section headings. Clause 132 also amends the schedule to insert provision headings where missing.

Part 28 Amendment of Professional Standards Act 2004

Clause 133 states that his part amends the *Professional Standards Act 2004*.

Clause 134 inserts a new section 7A to ensure that references in the Act to an occupational liability insurance policy extend to a policy that provides cover that is inclusive of defence costs. (Such references appear in sections 22, 23 and 24 of the Act). This amendment is consistent with amendments made to similar legislation in the other jurisdictions in Australia.

Clause 135 amends section 22 as a consequence of the insertion of proposed section 7A and omits or replaces certain words that are redundant in light of section 29(4) and the proposed amendment to section 29(4). This amendment is consistent with amendments made to similar legislation in the other jurisdictions in Australia.

Clause 136 amends section 23 as a consequence of the insertion of proposed section 7A and omits or replaces certain words that are redundant

in light of section 29(4) and the proposed amendment to section 29(4). This amendment is consistent with amendments made to similar legislation in the other jurisdictions in Australia.

Clause 137 amends section 24 as a consequence of the insertion of proposed section 7A and omits or replaces certain words that are redundant in light of section 29(4) and the proposed amendment to section 29(4). This amendment is consistent with amendments made to similar legislation in the other jurisdictions in Australia.

Clause 138 inserts a new section 27A to make it clear that although a defence costs inclusive insurance policy may (as compared with one that is not a defence costs inclusive policy) reduce the amount available to be paid under the policy to a scheme participant's client in respect of a claim, this does not lower the cap on the scheme participant's liability to the client. The scheme participant will continue to be liable to the client for any difference between the amount payable to the client under the policy and the amount of the cap. This amendment is consistent with amendments made to similar legislation in the other jurisdictions in Australia.

Clause 139 amends section 29(4) to ensure that it has the same effect as words that are omitted from sections 22 to 24 as a consequence of the amendment of those sections by clauses 135 to 137.

Clause 140 amends section 42 to clarify that the status of the Professional Standards Council is a statutory body for the purposes of the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*. This is consistent with the status of the Professional Standard Councils as independent statutory bodies in the other jurisdictions in Australia.

Clause 141 amends Schedule 2 (Dictionary) by inserting a definition of "costs" so that the term is relevant to the concepts of damages and defence costs used in the Act as proposed by the previous amendments. The definition of "damages" is substituted to clarify that the meaning of that term and, in particular, to include in that meaning, interest on costs ordered to be paid in connection with an award of damages. These amendments are consistent with amendments made to similar legislation in the other jurisdictions in Australia.

Part 29 Amendment of Recording of Evidence Act 1962

Clause 142 states that this part amends the *Recording of Evidence Act 1962*.

Clause 143 amends section 6 to allow the chief executive rather than the Governor in Council to appoint shorthand reporters and recorders and to replace the role of the minister with the chief executive.

Clause 144 inserts new section 15 which provides for the continuity of appointments made before this Bill.

Part 30 Amendment of Referendums Act 1997

Clause 145 states that this part amends the *Referendums Act 1997*.

Clause 146 amends section 49 and provides for an application about a disputed referendum to be filed with the Supreme Court registry in Brisbane rather than with the court.

Clause 147 amends section 50 and provides for a copy of an application about a disputed referendum to be provided by the Registrar of the Supreme Court rather than the staff of the registry.

Clause 148 amends section 59 and provides for the registrar of the Supreme Court, rather than the court, to arrange for a copy of the court's final orders to be sent to the Clerk of the Parliament.

Clause 149 amends 62F and provides for the registrar of the Supreme Court, rather than the Court of Appeal to arrange for a copy of the Court of Appeal's final orders to be sent to the Clerk of the Parliament.

Part 31 Amendment of Small Claims Tribunal Act 1973

Clause 150 states that this part amends the *Small Claims Tribunal Act 1973*.

Clause 151 replaces section 19 to update the language of the section so that it refers to statutory orders for review rather than writs of certiorari or prohibition which were abolished by the *Judicial Review Act 1991*.

Part 32 Amendment of Supreme Court of Queensland Act 1991

Clause 152 states that this part amends the *Supreme Court of Queensland Act 1991*.

Clause 153 omits part 2, division 4 which dealt with judicial registrars. The position of judicial registrar in the Supreme Court is abolished owing to the position not being utilised.

Clause 154 amends section 56 to remove references to judicial registrars. This amendment is consequential on the amendments to abolish the position of judicial registrar in the Supreme Court.

Clause 155 amends the heading of part 7, division 2, subdivision 1. This amendment is consequential on the amendments to abolish the position of judicial registrar in the Supreme Court.

Clause 156 amends section 73. This amendment is consequential on the amendments to abolish the position of judicial registrar in the Supreme Court.

Clause 157 amends section 132. This amendment is consequential on the amendments to abolish the position of judicial registrar in the Supreme Court.

Clause 158 makes amendments to schedule 1 that consequential on the amendments to abolish the position of judicial registrar in the Supreme Court.

Clause 159 makes an amendment to schedule 2 that is consequential on the amendments to abolish the position of judicial registrar in the Supreme Court.

Part 33 Amendment of Vexatious Proceedings Act 2005

Clause 160 states that this part amends the *Vexatious Proceedings Act 2005*.

Clause 161 amends section 9 to give the registrar power to remove a vexatious litigant order from the register of vexatious litigants if they are satisfied that the person to whom the order relates has died.

Part 34 Minor Amendments and Repeal

Clause 162 and the schedule operate together to correct a range of minor legislative errors identified by the Office of the Queensland Parliamentary Counsel during the reprints process. The effect of the various amendments contained in the schedule include inserting missing conjunctives and disjunctives, correcting grammar, updating provisions to reflect current drafting practice and updating references to repealed statutes. The Acts amended in this way comprise:

- Anti-Discrimination Act 1991;
- Bail Act 1980;
- Births, Deaths and Marriages Registration Act 2003;
- Children Services Tribunal Act 2000;
- Coroners Act 2003;
- Crime and Misconduct Act 2001;
- Criminal Code;
- Criminal Law (Rehabilitation of Offenders) Act 1986;
- Criminal Offence Victims Act 1995;
- Dangerous Prisoners (Sexual Offenders) Act 2003;
- District Court of Queensland Act 1967;
- Drug Court Act 2000;
- Drugs Misuse Act 1986;
- Evidence Act 1977;
- Freedom of Information Act 1992;
- Justices Act 1886;

- Justices of the Peace and Commissioners for Declarations Act 1991;
- Limitation of Actions Act 1974;
- Magistrates Act 1991;
- Mental Health Act 2000;
- Penalties and Sentences Act 1992;
- Public Trustee Act 1978;
- State Penalties Enforcement Act 1999;
- Trustee Companies Act 1968; and
- Witness Protection Act 2000.

The amendments to the *Trustee Companies Act 1968* reflect the name change of three trustee companies.