State Penalties Enforcement and Other Legislation Amendment Bill 2009

Explanatory Notes

Objectives of the Bill

The objectives of the Bill are to:

1. amend the *State Penalties Enforcement Act 1999* (SPEA) to strengthen the compliance and enforcement capabilities of the State Penalties Enforcement Registry
2. amend the *Police Service Administration Act 1990* and the *Education (Queensland College of Teachers) Act 2005* to enable Queensland's participation in the COAG-endorsed national exchange of criminal history information for people working with children
3. confer additional jurisdiction on the Queensland Civil and Administrative Tribunal (QCAT)
4. correct minor technical errors to ensure that the *Queensland Civil and Administrative Tribunal Act 2009* and the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* can operate as intended
5. amend the *Classification of Films Act 1991*, the *Classification of Publications Act 1991* and the *Classification of Computer Games and Images Act 1995* (classification Acts) to allow the appointment of appropriately qualified public service officers as inspectors under those Acts, in order to facilitate the continued use of Office of Fair Trading inspectors, despite recent machinery of government changes
6. expand the bail powers of judicial registrars in uncontested matters in the Magistrates Courts consistent with the original policy intent and enable judicial registrars to hear and determine minor civil disputes as adjudicators for QCAT (consistent with their current powers in relation to small claims and minor debts)
7. amend the *Guardianship and Administration Act 2000* to correct an oversight that inadvertently removed the ability for a person to apply

to the Guardianship and Administration Tribunal for a review of the appointment of an administrator

8. amend the *Right to Information Act 2009* and the *Information Privacy Act 2009* to clarify internal review delegation powers, ensure that decisions to neither confirm nor deny the existence of certain information are reviewable and to ensure that the Information Commissioner is not prevented from giving certain documents to parties to an external review so that natural justice is accorded to all parties

9. amend the *Disability Services Act 2006* to extend the transitional period for restrictive practices for a further 9 months, and to make a consequential amendment to the *Guardianship and Administration Act 2000*

10. amend the *Superannuation (State Public Sector) Act 1990* to confirm that the QSuper Board of Trustees (QSuper Board) is within the regulatory reach of the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investment Commission (ASIC), to the extent relevant as a regulated superannuation fund; and also to provide for the appointment of a 'standing' deputy chairperson to the QSuper Board.

Reasons for the Bill

SPER Enforcement Initiatives

The State Penalties Enforcement Registry (SPER) recovers unpaid court ordered fines (which are paid into consolidated revenue), court ordered restitution or compensation (which is paid to victims of crime) and infringement notice penalties issued by State Government agencies and other administering authorities (e.g. local councils, hospitals, universities).

The objectives of the SPER system include maintaining the integrity of fines as a viable sentencing or punitive option for offenders and maintaining confidence in the justice system by enhancing the way fines and other monetary penalties can be enforced.

Acknowledging that not everyone can pay their fine or other monetary penalty in full upfront, the SPER system currently provides a range of "compliance" options for people to pay their debt. These include flexible payment arrangements under an instalment plan, direct debit or deduction from Centrelink payments or, for those people who genuinely can not afford to pay, unpaid community service under a fine option order in lieu of

payment. As at 1 June 2009, approximately $203M of the outstanding fine pool managed by SPER was under "active compliance".

Although many people accept responsibility for their wrongdoing and either pay their debt in full or enter into a compliance arrangement, there are just as many people who steadfastly refuse to pay their debt to society. The SPER system currently provides a range of enforcement options to recover these debts. These include driver licence suspension (for unpaid amounts relating to motor vehicle offences); fine collection notices to garnishee wages, redirect money from debtors' bank accounts or attach debts owed to the debtor; enforcement warrants to register interests against debtors' vehicles or land or to seize and sell real and personal property; warrants of apprehension for interstate debtors; and as a last resort, warrants of arrest and imprisonment.

As at 1 June 2009, $249.1M of the outstanding fine pool managed by SPER was either under some form of enforcement action or not under any form of compliance, enforcement or suspension. The Government has developed new enforcement strategies to significantly enhance SPER's ability to recover this component of the outstanding fine pool. The SPEA requires amendment to facilitate these initiatives.

Enforcement of unpaid wages and other entitlements orders by SPER

Section 34 of the SPEA prescribes the range of court ordered fines, penalties and other amounts that can be referred to SPER for enforcement. It does not currently include orders made under the *Industrial Relations Act 1991* for the payment of unpaid wages, tool allowance, unpaid superannuation contributions or fees charged illegally by private employment agents. These orders are enforceable either under the *Justices Act 1886* as an order for payment of money made under that Act or can be recovered by the employee from the employer as a debt. Over time many of these orders have been referred to, and enforced by, SPER. Two recent Industrial Court decisions identified that the SPEA does not currently permit this practice. Both the SPEA and the Industrial Relations Act require amendment to establish referral to SPER as an alternative enforcement option for "wages victims".

National exchange of criminal history information for people working with children

On 29 November 2008, the Council of Australian Governments (COAG) agreed to establish an inter-jurisdictional exchange of criminal history information for people working with children ("ECHIPWC"; "the

exchange"), to better protect children. COAG also endorsed a set of implementation actions, the establishment of a project implementation committee (which is chaired by Queensland's Department of the Premier and Cabinet) and an implementation plan.

The implementation plan includes that jurisdictions will do what is legislatively necessary for the information exchange to commence by late November 2009. This followed COAG's agreement in principle in April 2007 to a framework for such an exchange.

Currently, the criminal history information (CHI) considered by Australian child related employment screening units is extensive when sourced intrastate but limited when sourced from other jurisdictions: virtually only "unspent" convictions are shared inter-jurisdictionally. Under COAG's proposed exchange, jurisdictions will for the first time share routinely an expanded range of CHI.

The "expanded CHI" that the exchange is designed to share includes:

- spent convictions (convictions which, after a rehabilitation period, are otherwise no longer part of the person's criminal history and which the person need not disclose);
- pending charges and (except for Victoria and the Australian Capital Territory) non-conviction charges, including acquittals and withdrawn charges;
- juvenile as well as adult convictions and charges; and
- "circumstances information", which may be the subject of a follow-up request by a screening unit that has received the bare record of a conviction or charge but is interested in details of the offence or alleged offence that may not be clear from the record, for example, whether a child was involved. Circumstances information will be supplied in the form of a police service's original prosecution brief or extract from it. Circumstances information will be exchanged via a one-year, fee-for-service trial during which time the costs of its supply, so far inestimable nationally, will be assessed. CHI held by Courts and Directors of Public Prosecutions is outside the scope of the exchange.

Screening units in receiving jurisdictions will benefit from receiving the expanded CHI to better inform their decision making. Given the sensitive nature of the expanded CHI and its potential to impact adversely on individuals, COAG has stipulated strict "participation requirements" on the

use of the information, as outlined under "Consistency with Fundamental Legislative Principles" below.

The exchange does not require a uniform approach to how child related employment screening is done within jurisdictions. (Indeed, the exchange is intended to leave jurisdictions' disparate screening arrangements as untouched as possible.) Rather, the exchange is about removing jurisdictions' legislative barriers to supplying the expanded CHI between jurisdictions, while ensuring that the screening units nominated by jurisdictions to receive information via the exchange meet the participation requirements. Queensland has nominated the Commission for Children and Young People and Child Guardian and the Queensland College of Teachers to participate in the exchange.

QCAT Amendments

The *Queensland Civil and Administrative Tribunal Act 2009* creates QCAT, contains the membership provisions and sets out the tribunal's general functions and powers. The *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* amends over 200 pieces of legislation to give QCAT jurisdiction to hear and decide matters that are currently decided by the tribunals that are amalgamated into QCAT.

The Government has announced that QCAT will commence operations on 1 December 2009. The new tribunal is to be a single recognisable gateway to increase the community's access to justice and increase the efficiency and quality of decision making through a larger administrative structure.

Enforcement of classifications Acts

Office of Fair Trading (OFT) inspectors have investigated and prosecuted alleged breaches of the *Classification of Films Act 1991*, the *Classification of Publications Act 1991* and the *Classification of Computer Games and Images Act 1995* (classifications Acts) since the early 1990s. Under recent machinery of government changes, the Attorney-General retained administrative responsibility for classifications but OFT was transferred to the Department of Employment, Economic Development and Innovation. As currently drafted, the classification Acts prevent the employees of any other agency from being appointed as inspectors under those Acts (except the police, who do not investigate or prosecute alleged classification offences unless the complaint involves suspected child exploitation). Amendments are required to facilitate the continued use of OFT inspectors to enforce the classifications Acts.

Amendment to *Disability Services Act 2006*

In 2008, amendments were made to the *Disability Services Act 2006* and *Guardianship and Administration Act 2000* to create a legislative scheme to regulate the use of restrictive practices by disability service providers, and mandate positive behaviour support. A transitional period was included in the legislative scheme to allow time for a disability service provider to set up for the full scheme, which has more onerous requirements. Under the scheme, a disability service provider may be authorised to use a restrictive practice in certain circumstances, while ensuring the individual has safeguards to protect their rights. Restrictive practices include containment, seclusion, chemical, physical or mechanical restraint. At times, restrictive practices are used to manage a person's behaviour which might put them or others at harm or a serious risk of harm.

An amendment is required to extend the transitional period for using a restrictive practice. The amendment will provide more time for a service provider to meet the full legislative requirements, leading to better assessments and plans for the individual and more informed decision-making. It will also authorise a disability service provider to continue to use a restrictive practice during the transitional period if they meet a set of transitional requirements, already prescribed in the current legislative scheme. While the extension is for 9 months, the majority of disability service providers are expected to comply with the full scheme as early as possible.

Amendment to the *Superannuation (State Public Sector) Act 1990*

APRA has raised a concern that the current QSuper Act contains State protection for the QSuper Board, which may prevent the enforcement of any directions, or pecuniary penalties, imposed by APRA or ASIC. The proposed amendment effectively states that the QSuper Board does not have the immunities of the State for specific provisions of the *Corporations Act 2001* (Cwlth) and the *Superannuation Industry (Supervision) Act 1993* (Cwlth), in relation to its operation as a superannuation provider.

The QSuper Act currently allows for the QSuper Board to appoint a deputy chairperson for a meeting if the chairperson is unable to attend. The proposed amendment provides for a standing appointment of a deputy chairperson, how the person is to be elected, who is eligible for election and the circumstances under which they will cease to be deputy chairperson. In situations where both the chairperson and deputy

chairperson are absent, the current practice whereby trustees at the meeting elect a trustee to act as chairperson for that meeting will continue.

Achievement of the Objectives

SPER enforcement initiatives

The Bill strengthens SPER's compliance and enforcement capabilities by amending the SPEA to:

(a) ***expand driver licence suspension to unpaid amounts for non-motor vehicle related offences*** – this initiative brings Queensland into line with all other jurisdictions (except the Australian Capital Territory);

(b) ***create new powers and processes for SPER to immobilise, seize and sell vehicles owned by recalcitrant high-value debtors*** – this initiative brings Queensland into line with Victoria, South Australia and New Zealand, where "wheel clamping" is already an enforcement option. It will first be trialled in the Brisbane metropolitan area (in the Metropolitan North and Metropolitan South police regions) for 12 months commencing 1 January 2010. This will provide an opportunity to assess implementation issues before the initiative is rolled out state-wide.

This new enforcement option will apply to debtors who owe more than a prescribed threshold amount (intended to be prescribed as $5,000), are the sole registered operator of a motor vehicle and for whom other compliance and enforcement options are either not suitable or have proven ineffective.

It will be used as a "last resort" enforcement action, second only to imprisonment. The wheel clamping process will provide debtors with ample opportunity to pay the debt or enter into compliance before their vehicle is actually clamped, seized and sold.

The proposed process involves SPER registering an interest over the vehicle on the Register of Encumbered Vehicles under section 110 of the SPEA (to make it harder for the debtor to avoid clamping by selling the vehicle or transferring its registration); serving the debtor with an intent notice that gives the debtor 14 days to pay or enter into compliance; serving the debtor with an immobilisation warrant that empowers SPER to clamp the vehicle at any reasonable time of the day or night without further notice to the debtor; clamping the vehicle for up to five days; and where the vehicle is of sufficient value,

immediately seizing it for sale after the clamps are removed. Vehicles of low monetary value will be released and SPER will refer the debtor to the next warrant evaluation committee for an arrest and imprisonment warrant. The process is illustrated in the diagram at Appendix A.

The proposed process incorporates an assessment of whether clamping will cause severe and unusual hardship to the debtor, the debtor's family or a third person who uses the vehicle but has no capacity to ensure the debtor pays the debt,. This assessment will be made both before the immobilisation warrant is issued and may be made again during the immobilisation period. It will take account of considerations including the debtor's homelessness, employment and family/carer responsibilities.

It will be possible to clamp vehicles in a public place, the debtor's place of residence, a corporate debtor's place of business or any other place with the occupier's consent. Vehicles cannot be clamped in places where the vehicle would be a traffic or safety hazard or where the safety of the vehicle's occupants could be compromised. Enforcement officers will be given powers of entry, search and to require information to locate and clamp vehicles. They will not be able to use force when exercising these powers.

The proposed amendments will be supported by operational guidelines issued by the SPER Registrar. The amendments also include a range of offences targeting activity that attempts to avoid, frustrate or interfere with the clamping, seizure and sale process.

(c) ***strengthen SPER's existing powers of seizure and sale*** - although SPER already has power to issue an enforcement warrant to seize and sell real and personal property, SPER has not used these powers to date because it has had neither the resources nor systems necessary to regularly seize, store and sell property. The proposed amendments will strengthen SPER's seizure and sale powers and align them with the powers and process for enforcing money orders under the *Uniform Civil Procedure Rules 1999*.

This aspect of the Bill will facilitate both the wheel clamping initiative and a separate two year pilot in the Brisbane metropolitan area using Magistrates Court bailiffs to enforce seizure and sale warrants against debtors who owe $1000 or more.

(d) ***allow SPER to use SMS technology to communicate with debtors, without requiring debtors' consent*** – this aspect of the Bill will facilitate the use of SMS technology to prompt debtor compliance and encourage higher rates of payment, particularly by the 60% of debtors aged under 34 years. Debtors will be sent SMS notifications when SPER intends to suspend the debtor's driver licence (following prior written notification); the debtor's credit card is due to expire (where the debtor has agreed to a payment plan using the credit card); and before SPER cancels an agreed payment plan (following issue of a default notice). Other use criteria will be explored during testing.

Enforcement of unpaid wages and other entitlements orders by SPER

The Bill amends both the Industrial Relations Act and the SPEA to establish referral to SPER as a cost-effective alternative enforcement option for "wages victims". Employees will still be able to use existing civil processes to recover the amounts ordered. Formalising this additional enforcement option will assist employees who may have limited resources to pursue a civil recovery process. The amendment will also validate the past practice of these orders being referred to and enforced by SPER.

National exchange of criminal history information for people working with children

In agreeing at the November 2008 COAG meeting to participate in the exchange, Queensland (along with the other Australian jurisdictions) in effect agreed to (i) enable the supply of its expanded CHI interstate and (ii) ensure its participating screening units can receive the expanded CHI from interstate. "Interstate" in this context means "interjurisdictional" and includes reference to sharing information with the Territories and the Commonwealth.

The Bill amends the *Police Service Administration Act 1990* to remove the current legislative barriers to Queensland supplying its expanded CHI interstate (that is, beyond the convictions currently provided) for the purposes of child related employment screening. Those restrictions are contained in, for example, the *Police Service Administration Act* itself and the *Criminal Law (Rehabilitation of Offenders) Act 1986.*

The Bill amends the *Education (Queensland College of Teachers) Act 2005* to ensure the College meets COAG's requirements for participating in the exchange, including that the expanded CHI can only be used for assessing risks to the safety of children, and not for general employment screening or probity checking individuals. The Commission for Children and Young

People and Child Guardian, which will be Queensland's other agency participating in the exchange, meets the participation requirements already and its legislation is not being amended by this Bill.

QCAT Amendments

To achieve its objectives the Bill will amend the *Queensland Civil and Administrative Tribunal Act 2009*, the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* and other relevant Acts to confer additional jurisdiction and correct minor errors.

The Bill will also amend the *Queensland Civil and Administrative Tribunal Act 2009* and the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* to give judicial registrars some additional bail powers in uncontested matters and enable them to hear and determine minor civil disputes as adjudicators for QCAT. The judicial registrar pilot will be extended from 2 to 3 years at Townsville and Southport Magistrates Courts pursuant to a regulation made under section 53S of the *Magistrates Act 1991.*

Enforcement of classifications Acts

The Bill amends the three classifications Acts to permit the appointment of appropriately qualified public service officers as inspectors under those Acts. This will facilitate the continued use of OFT inspectors to perform the classifications enforcement function. This will be operationalised through a memorandum of understanding between the Department of Justice and Attorney-General (DJAG) and the Department of Employment, Economic Development and Innovation (DEEDI).

Amendment to *Disability Services Act 2006*

The Bill amends the *Disability Services Act 2006* to extend the transitional period for restrictive practices for a further 9 months – making 1 October 2010 the date when a disability service provider must meet all of the requirements under the full scheme. While the extension is for 9 months, the majority of disability service providers are expected to comply with the full scheme as early as possible. A consequential amendment is also made to the *Guardianship and Administration Act 2000* so that the transitional period is consistent for both Acts.

Amendment to the *Superannuation (State Public Sector) Act 1990*

The Bill amends the *Superannuation (State Public Sector) Act 1990* to confirm that the QSuper Board is within the regulatory reach of the APRA and ASIC, to the extent relevant as a regulated superannuation fund; and

also to provide for the appointment of a 'standing' deputy chairperson to the QSuper Board.

Estimated Cost for Government Implementation

An increase in controlled appropriation revenue of $1.08M to SPER over three financial years has been approved, based on the predicted increase in the administered revenue collect by SPER resulting from the wheel clamping initiative.

The remaining SPER enforcement initiatives (including expanding driver licence suspension to unpaid amounts for non-motor vehicle related offences and the two-year pilot using Magistrates Court bailiffs to seize and sell property owned by high value debtors) will be undertaken within existing resources.

DJAG and DEEDI will enter into a fee-for-service arrangement for OFT inspectors to continue to perform the classifications enforcement function. This will continue to be met within existing resources

The costs of Queensland participating in the COAG-endorsed national criminal history exchange are not expected to be substantial. The Commission for Children and Young People and Child Guardian and the Queensland College of Teachers will meet the costs from existing allocations. The exchange is expected to be roughly cost neutral to the Queensland Police Service.

The costs associated with the conferral of additional jurisdiction on QCAT will be funded through the realignment of existing resources.

Funding for the extension of the judicial registrar pilot in the Magistrates Courts at Townsville and Southport for an additional 12 months will be met from existing departmental appropriations.

Any costs for extending the transitional period for restrictive practices will be met from existing budget allocations.

There is no cost to Government in implementing the amendments to the *Superannuation (State Public Sector) Act 1990*.

Consistency with Fundamental Legislative Principles

The following clauses may represent a breach of fundamental legislative principles and are discussed below:

Chapter 2

Wheel clamping initiative

The proposal to immobilise a debtor's vehicle and seize and sell it or other real and personal property may be considered to have insufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(2)(a).

The immobilisation and seizure and sale initiative is targeted at debtors who have accumulated large amounts of unpaid monetary penalties and who have steadfastly refused SPER's attempts to work with them to find ways to pay their debt.

The proposal is justified in this context because the affected individuals have:

(a) committed offences for which penalties have been applied;

(b) not taken any action to dispute the offences (or unsuccessfully disputed the offences);

(c) failed to pay the penalties within the initial "time to pay" period;

(d) failed to respond to an enforcement order issued by SPER or defaulted under a compliance arrangement (eg an instalment plan); and

(e) failed to pay the amount or enter into compliance after other applicable enforcement action has been taken (eg driver licence suspension, fine collection order, enforcement warrant).

The debt recovery process under the *State Penalties Enforcement Act 1999* (SPEA) provides debtors with ample opportunity to pay the debt in full or where this is not possible, negotiate a manageable form of compliance. This includes part payment arrangements under an instalment plan, direct debit or deduction from Centrelink payments from as little as $5-$10 a week for low income earners.

The proposed immobilisation process will take account of the debtor's personal circumstances (e.g. whether they are homeless or at risk of homelessness) and the potential impact of immobilisation on the person's work and family responsibilities. Through the issue of an initial notice of intention to immobilise, the process provides the debtor with ample opportunity to work with SPER to pay their debt in full or by instalments or convert it to unpaid community service under a fine option order, before their vehicle is actually clamped, seized and sold. Further, the proposed

amendments ensure the debtor is given notice of each step of the process, as it escalates towards immobilisation, seizure and sale.

The proposed amendments respond to community expectation that people who receive a monetary penalty for breaking the law repay their debt in full.

New section 108A sets out the criteria for immobilisation. These include that the debtor has failed to pay amounts totalling the threshold amount prescribed by regulation. It is intended to prescribe an amount of $5,000 for this purpose. It is acknowledged that this construction is a "Henry VIII clause" that breaches fundamental legislative principles by authorising the amendment of an Act by subordinate legislation – *Legislative Standards Act 1992*, section 4(4)(c).

Although this mechanism relates to a threshold criterion for this new form of enforcement action, its use is justified as it provides the necessary flexibility to adjust the threshold amount having regard to the impact of the economic climate on debtors, from time to time.

The proposed immobilisation process will incorporate an assessment of whether immobilisation, or continued immobilisation, will cause severe and unusual hardship to the debtor, the debtor's family or a third person who relies on the vehicle but has no ability to ensure the debt is paid. The SPER Registrar will make this assessment before issuing an immobilisation warrant and may do so again during the immobilisation period – see clause 13 (new sections 108D & 108P) and clause 29.

The "hardship" assessment will be made having regard to guidelines issued by the SPER Registrar, which will assist in identifying situations in which immobilising a vehicle could cause severe and unusual hardship. The Registrar will make this assessment having regard to information obtained during SPER's preliminary investigations of the debtor and through contact with the debtor after the initial intent notice is issued.

The use of administrative guidelines for this purpose, rather than the Act or subordinate legislation, may be considered to breach fundamental legislative principles by not having sufficient regard to the institution of Parliament – *Legislative Standards Act 1992*, section 4(4). The use of administrative guidelines is justified in this context as section 150B of the SPEA, as amended by clause 29, establishes the broad scope of this aspect of the guidelines. Hardship can only be determined having regard to the individual circumstances of each case. This mechanism provides the flexibility required to accommodate the range of situations in which

hardship may arise. The guidelines must be publicly available, including on the SPER website.

It is proposed that the Registrar's decision to issue a notice of intention to issue an immobilisation warrant under new section 108C or an immobilisation warrant under new section 108D will not be reviewable – section 155 SPEA, as amended by clause 32 Having regard to the potential impact of the immobilisation process on an individual's rights and liberties, the absence of a review process may be considered to breach fundamental legislative principles – *Legislative Standards Act 1992*, section 4(3)(a).

Firstly, this aspect of the proposal is consistent with the current approach under the SPEA in respect of the Registrar's decision to take other forms of enforcement action. The Registrar's decisions to issue an enforcement order, an enforcement warrant, a fine collection notice, notice of intention to suspend a driver licence or an arrest and imprisonment warrant are not reviewable. Driver licence suspension has very similar consequences to vehicle immobilisation; the consequences of an arrest and imprisonment warrant are much more significant. This approach reflects the need to bring finality to the enforcement process.

Further, as noted above, the immobilisation, seizure and sale initiative targets high value debtors who have refused to co-operate with the many opportunities SPER provides to enter into compliance. The immobilisation process itself provides further opportunities for the debtor to pay in full or negotiate compliance before their vehicle is actually clamped, seized and sold. There is also capacity to reconsider hardship considerations during the immobilisation period. For these reasons, it is not proposed to provide a right of review in respect of the Registrar's decision to issue an intent notice or an immobilisation warrant.

New section 108E enables a person claiming an interest in a vehicle that is or is about to be immobilised under an immobilisation warrant to apply to the SPER registrar for part or all of the warrant to be cancelled, suspended or varied. This is no appeal from the registrar's decision, but judicial review is <u>not</u> excluded. This is consistent with the approach taken under section 64 of the SPEA which provides a corresponding process in respect of enforcement warrants issued under Part 5, division 2 of the Act. This approach reflects the need to bring finality to the enforcement process.

Clause 10 of the Bill inserts new provisions to strengthen SPER's existing powers to seize and sell real and personal property. They include provisions which set out the process by which property seized under an

enforcement warrant must be sold. This process includes the ability for debtor to apply to SPER registrar for a direction that property be sold privately rather than by public auction (new section 73F) or for the sale to be postponed (new section 73I). Whilst there is no appeal from the registrar's decision, judicial review has not been excluded. This approach reflects the need to bring finality to the enforcement process.

New section 108I sets out the range of powers to support the enforcement of an immobilisation warrant, including power to enter and re-enter any place occupied by the debtor (other than residential premises), without the debtor's consent. This breaches fundamental legislative principles as a warrant is not required for this power to be exercised – *Legislative Standards Act 1992*, section 4(3)(e).

The immobilisation warrant provides authority for an enforcement officer to immobilise a vehicle without further notice to the debtor. A copy of the immobilisation warrant must be served on the debtor. It is anticipated that some debtors will attempt to avoid immobilisation by hiding or moving their vehicles. This is why the suite of powers proposed in new section 108I and section 114 of the SPEA, as amended by clause 18, is justified. They are supported by power to seek and enforce an immobilisation search warrant issued by a magistrate or a justice of the peace (magistrates court) under new sections 108L and 108M.

It should be noted that:

(a) enforcement officers will carry identity cards, as currently provided under section 10 of the SPEA;

(b) the power of entry to any premises occupied by the debtor is consistent with the existing power of entry under section 70 of the SPEA (which limits entry to part of premises used only for residential purposes with the occupier's consent or under a search warrant);

(c) entry to any other premises (other than a public place) is subject to the occupier's consent or a search warrant;

(d) it is not intended that enforcement officers will use force when exercising these powers;

(e) the power to require the debtor to answer questions under section 114 of the SPEA, as amended by clause 18, is subject to reasonable excuse;

(f) enforcement officers are required to provide the debtor with a notice identifying what property is seized under an enforcement warrant;

(g) the debtor will be given reasonable access to vehicle while it is immobilised;

(h) if the debtor's vehicle or other property is damaged by an enforcement officer exercising powers under the immobilisation process, provision is made for notice to be given to the debtor and for the debtor to seek compensation for the cost of repairing or replacing the damaged property.

The proposed immobilisation process may be considered to adversely affect an individual's rights and liberties by exposing their vehicle to a greater than normal risk of damage or theft – *Legislative Standards Act 1992*, section 4(2)(a). To minimise this risk, new section 108H provides very clear guidance about where a vehicle can and can not be immobilised. Vehicles can not be immobilised in places where the vehicle would impede traffic or pose a safety risk or in places where the safety of the driver and any occupants may be compromised e.g. in isolated locations with limited access to public transport. These provisions will be supported by administrative guidelines issued under section 150B of the SPEA, as amended by clause 29. These guidelines will provide direction to enforcement officers about how to plan and conduct immobilisation operations in a way that minimises the risk of the vehicle being damaged or stolen while immobilised. The justification outlined above in relation to the "hardship" guidelines also applies to this mechanism.

Further, the proposed amendments operate to prevent an insurance company from refusing a claim under a vehicle insurance policy for an event (e.g. theft or damage) that occurred while the vehicle was immobilised, merely because the vehicle was immobilised under the SPEA.

Clause 33 amends section 157 of the SPEA to enable the SPER registrar to issue a certificate that a notice of intention to issue an immobilisation warrant or an immobilisation warrant was served on a stated person on a stated day. The certificate is evidence. This reverses the onus of proof - *Legislative Standards Act 1992*, section 4(3)(d). This is consistent with the current approach under section 157 in relation to evidence of the broad range of compliance and enforcement actions taken under the Act.

<u>Retrospective validation of referral, registration and enforcement of unpaid wages etc recovery orders</u>

Clauses 4, 38 and Chapter 2, Part 2 of the Bill amend the SPEA and the *Industrial Relations Act 1991* to enable and retrospectively validate the

referral of, and registration and enforcement by SPER of orders for the payment of unpaid wages, tool allowance, unpaid superannuation contributions and fees charged illegally by private employment agents made under the Industrial Relations Act. These orders are currently enforceable under the *Justices Act 1886* as an order for payment of money made under that Act or can be recovered by the employee from the employer as a debt. The proposed amendments will formally establish referral to SPER as an alternative and less costly method of enforcing these orders. For this reason, it is not considered that the proposed retrospective validation adversely affects the rights and liberties of individuals - *Legislative Standards Act 1992*, section 4(3)(g).

Chapter 3

National exchange of criminal history information for people working with children

Clause 66 of the Bill inserts into the *Police Service Administration Act* a new Part 10, Division 1B (Provisions about exchange of criminal history for child related employment screening) to enable the Queensland Police Service to supply charges and spent convictions information interstate. New Division 1B might be considered to have insufficient regard to the rights and liberties of individuals—*Legislative Standards Act*, section 4(2)(a)—with respect to individuals' rights to rehabilitation, privacy, paid employment and the freedom to participate in their community as volunteers. The rights implications are particularly acute when the CHI is untested information in the form of pending charges and withdrawn charges, or acquittals.

However, the potential breach is justified given the objective of making the information available to child related employment screening units; namely, to safeguard children from sexual, physical and other abuse.

The potential breach is also ameliorated to the extent that COAG has insisted on strict "participation requirements" on the use of the information, given its sensitivity and potential to affect individuals adversely.

These participation requirements have been consolidated by the ECHIPWC national project implementation committee so they can be set out in the intergovernmental agreement on ECHIPWC that is planned to be in place before ECHIPWC's scheduled commencement as a trial in late November 2009. (A 12-month trial is planned to refine aspects of the exchange; there

is no suggestion that the COAG exchange might discontinue after the trial.) The participation requirements apply to participating screening units in each jurisdiction that will receive the expanded CHI under the exchange.

The participation requirements are as follows.

- Each participating screening unit has a legislative basis for screening of persons working or seeking to work with children.
- Each participating screening unit may use the expanded CHI received through the exchange only for the purposes of child related employment screening.
- Each participating screening unit is prohibited from—and, where appropriate, subject to penalty for—disclosing the expanded CHI received through the exchange beyond the screening unit or to persons not performing functions relevant to criminal record employment screening for child related work. (However, a unit may disclose the information for the protection of a particular child or class of children as part of a legislated child protection function.)
- If a participating screening unit undertakes screening with both (i) a child safety screening element and (ii) a general employment suitability or probity screening element (many teacher registration and accreditation authorities fit this category), there is appropriate legislation or business rules in place to ensure that the expanded CHI received through the exchange is used only to screen risks to the safety of children, and not for general employment suitability or probity screening.
- Each participating screening unit has a risk assessment and decision-making framework pertaining to child related employment screening that is: (i) evidence-based, at least to the extent possible in light of the requirements of the governing legislation; and (ii) documented, and supported by business rules and tools.
- Each participating screening unit has appropriately skilled staff to make assessments about risks to children's safety suggested by applicants' criminal histories.
- Each participating screening unit obtains the written consent of the individual that records the individual's understanding that the employment screening will involve the provision of the expanded CHI, including information from other jurisdictions and information about the circumstances of the convictions or charges. (For this

purpose, the project implementation committee has developed a model consent form to inform participating screening units' consent forms.)

- Each participating screening unit has a scheme that reflects the principles of natural justice. In particular, where there is an intention to make an adverse decision about an individual, the screening unit, tribunal or authority is required by legislation or policy to:
  - — disclose the CHI to the individual;
  - — allow the individual a reasonable opportunity to be heard; and
  - — consider the individual's response before finalising the decision.
- Each participating screening unit must comply with Commonwealth, State and Territory privacy and human rights legislation where relevant.
- Each participating screening unit must comply with records management legislation within their jurisdictions that determines information management, storage, retention and destruction requirements.

Clause 66 of the Bill inserts into the *Police Service Administration Act* new section 10.2S which defines "interstate screening unit" (to which the Queensland Police Service can supply the expanded CHI) as:

(a) units set out in a regulation; and

(b) units (outside Queensland) set out in the Commonwealth regulation that will list the Australian screening units to which the Commonwealth will supply its expanded CHI. (The Commonwealth's regulation making power in this regard is a proposed amendment to the Commonwealth *Crimes Act 1914* contained in the Crimes Amendment (Working With Children-Criminal History) Bill 2009 currently before the Commonwealth Parliament.)

The definition might be considered to breach the fundamental legislative principle that there be sufficient regard to the institution of Parliament by allowing the delegation of legislative power only in appropriate cases—*Legislative Standards Act*, section 4(4)(a). The potential breach represented by paragraph (a) above is ameliorated somewhat by Parliament being asked to endorse as part of this Bill the regulation that has been prepared for this purpose. See Chapter 3, Part 3 (Amendment of *Police Service Administration Regulation 1990*). Further, while the Executive can

of course add to, or take away from, that regulated list afterwards, under the proposed ECHIPWC intergovernmental agreement a government can only nominate a screening unit for participation in the exchange if the screening unit satisfies COAG's participation requirement safeguards. Accordingly, Queensland's regulation will refer to an interstate screening unit only if the unit is proposed for listing in the intergovernmental agreement. The proposed intergovernmental agreement will provide for screening units to be added in the future, but only if other jurisdictions agree the units comply with the participation requirements.

Paragraph (b) above is ameliorated by proposed section 85ZZGE of the Commonwealth bill to which reference is made above. Proposed section 85ZZGE provides that, before a regulation is made, the Commonwealth Minister must be satisfied that the screening unit complies with a list of matters that replicate COAG's participation requirements.

The delegation of legislative power is considered desirable to modify or add to the list of interstate units in a responsive way.

Chapter 4

Amendments to *Queensland Civil and Administrative Tribunal Act 2009*

- amendment of section 210 (principal registrar)
- amendment of section 237 (immunity of participants etc.)
- amendment of section 238 (protection from civil liability).

The proposed amendment of section 210 will enable the principal registrar to delegate his or her functions to a QCAT registry staff member or a Magistrates Court staff member. The delegation may only be to a person appropriately qualified to perform the function. This amendment is made to ensure that the processing and case management of QCAT matters in rural and regional areas can be carried out by appropriately qualified tribunal and court staff.

The proposed amendment to section 237 extends the protection and immunity that section confers to also cover a tribunal registry staff member or a Magistrates Court staff member performing a function of the principal registrar that has been delegated to the member under section 210 (as amended) and that is mentioned in subsection (6). It is appropriate that a person acting as part of a judicial process should be free of personal attack on the basis of illegal or negligent action when performing their roles. The immunity will ensure that these persons can act with appropriate

confidence in carrying out their roles in the community interest. Such roles would be difficult to carry out if the office holders involved in the proceeding were subject to allegations and litigation taken against them personally for their actions in the office or proceeding.

The proposed amendment to section 238 extends the immunity from civil liability that the section confers on a Magistrates Court staff member performing a function of the principal registrar that has been delegated to the member under section 210 (as amended). The immunity is for acts or omissions done or made honestly and without negligence under the *Queensland Civil and Administrative Tribunal Act 2009* or an enabling Act. Any potential liability attaches instead to the State.

Amendments to *Adoption Act 2009*:

- new section 307J (children must not be compelled to give evidence)
- new section 307L (children giving evidence or expressing views to tribunal)
- new section 307M (questioning of children)
- new section 307N (confidentiality order).

New part 14A replicates and continues part 3A of the *Adoption of Children Act 1964* which was inserted into that Act by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

Where the Bill departs from fundamental legislative principles, this occurs in the context of the tension between the rights of individuals as safeguarded by the *Legislative Standards Act 1992* and the competing rights of children and young people to participate in review processes in a way which protects them from distress and harm which may occur through a strictly adversarial review process.

New section 307J provides that children cannot be compelled to give evidence in a proceeding for a reviewable decision under the *Adoption Act 2009* and specifically overrides the *Queensland Civil and Administrative Tribunal Act 2009* so that children must not be required to attend a hearing of a proceeding to give evidence or produce a statement, document or other thing to the tribunal.

New section 307L provides that where children are giving evidence or expressing their views to the tribunal only the constituting members, the lawyer, the separate representative and the child's support person may be present.

New section 307M prohibits the cross-examination of children who give evidence or express their views to the tribunal.

While it will be rare that a particular child is the subject of a reviewable decision under the *Adoption Act 2009*, it is possible. These provisions are considered necessary to ensure their views and wishes are heard and to reduce the stress for children and young people who choose to give evidence. The children involved in these proceedings may be very vulnerable and should not be required to give evidence and be cross-examined. The restriction on cross-examination is also justified given this review occurs in an administrative proceeding as opposed to a court environment. Further, as the primary focus of the tribunal in these proceedings is to make the best possible decision in the interests of the child about whom the reviewable decision has been made, the protection is considered appropriate and the departure from fundamental legislative principles warranted.

New section 307N gives the tribunal the power to make confidentiality orders in relation to documents produced, or evidence given to the tribunal. The effect of such an order is to prohibit or restrict the disclosure of the document or evidence to the parties in the proceedings. This power is considered necessary to ensure that very sensitive information about a child or prospective adoptive parent is not released that could result in harm to a child or young person, or jeopardise the safety of another person or unduly interfere with the privacy or a child or another person.

Amendment to *Local Government Act 2009*:

- new section 201A (equality of employment opportunity obligations)
- new section 201B (QCAT's powers for an investigation)

New section 201A permits a regulation to be made about administrative and operational equality of employment opportunity (EEO) matters for local governments and provides that the chief executive may refer to QCAT for investigation and to give a report, a local government's non-compliance with the regulation.

The proposal in section 201A to permit a regulation to provide for administrative and operational matters about EEO for local governments may be considered to have insufficient regard to the fundamental legislative principle that subordinate legislation should only contain matters appropriate to subordinate legislation - *Legislative Standards Act 1992*, section 4(4)(a).

The approach taken in section 201A, which enables a regulation to be made to govern operational and administrative EEO matters, is consistent with the principles-based framework of the new *Local Government Act 2009* as foreshadowed in the explanatory notes to the Local Government Bill 2009. The explanatory notes state that the Act would be supplemented by regulations that govern essential but subordinate operational and administrative issues. Accordingly, Parliament was fully informed of the policy intent to build these regulation-making powers into the Act, and as such, any concern about potential breach of fundamental legislative principles in this regard have been addressed.

Amendment to *Queensland Building Services Authority Act 1991*:

- amendment of section 95 (expedited hearing of domestic building disputes).

Section 94(1)(b) of the *Queensland Civil and Administrative Tribunal Act 2009* provides that the tribunal may conduct an expedited hearing for a matter an enabling Act states is a matter for which an expedited hearing may be conducted. The amendment to section 95 of the *Queensland Building Services Authority Act 1991* will enable QCAT to deal with a domestic building dispute between a building owner and a building contractor or a review of a decision of the Queensland Building Services Authority (QBSA) by way of an expedited hearing if certain circumstances apply.

Under section 83 of the *Queensland Building Services Authority Act 1991* if a proceeding about a building dispute is commenced in or transferred to the Commercial and Consumer Tribunal (QCAT from 1 December), the tribunal has management of the dispute. The QBSA must not act further in relation to the dispute. This amendment is proposed to address instances where certain building contractors commence proceedings with the purpose only of delaying QBSA assistance to building owners, for example, by way of issuing a direction or providing assistance under the Queensland Home Warranty Scheme.

Under the *Queensland Civil and Administrative Tribunal Act 2009* expedited hearings are to be conducted in the way stated in the rules (section 94(2)) and a party to a proceeding conducted by way of an expedited hearing does not have an automatic right to cross-examine or re-examine witnesses (section 95(2)(c)). However, under section 28 the tribunal must act fairly, observe natural justice and ensure all relevant material is disclosed to QCAT to enable it to decide the proceeding with all the relevant facts. Further, the proposed amendment provides that an expedited hearing for the dispute or review may

be conducted only if the tribunal considers a building owner will suffer "undue hardship" and that the dispute or review may be properly decided by way of an expedited hearing.

Chapter 5

Retrospectivity of proposed amendment to *Guardianship and Administration Act 2000*

It is proposed to amend section 29 of the *Guardianship and Administration Act 2000* to correct an oversight that was made upon commencement of the *Disability Services and Other Legislation Amendment Act 2008* (amending Act) that commenced on 1 July 2008. Prior to the commencement of the amending Act, section 29 provided the authority for certain persons to make an application for the review of an appointment of a guardian and/or administrator. The amending Act amended section 29 to also provide for the review of a guardian appointed for a restrictive practice matter under chapter 5B. However, when drafting the new section 29, the reference to the review of the appointment of an administrator was inadvertently omitted.

Since 1 July 2008 any applications that have been lodged with the Guardianship and Administration Tribunal seeking a review of the appointment of an administrator under section 29 have been made and also considered by the Tribunal without the proper authority. Given that the omission of the reference to a review of an administration appointment was an oversight, the retrospective operation of this amendment is justified to correct the unintended consequences of this oversight.

Retrospectivity of proposed amendment to *Right to Information Act 2009* and *Information Privacy Act 2009*

It is proposed to amend the *Right to Information Act 2009* and *Information Privacy Act 2009* to rectify issues identified since commencement of the new legislation. The amendments, which clarify the internal review delegation powers of principal officers and Ministers require retrospective effect to ensure the validity of any internal review delegations executed prior to commencement of the amendments. The proposed amendments to clarify that a decision to issue a notice neither confirming nor denying the existence of certain types of prescribed information is a reviewable decision will ensure that the review rights of applicants are maintained. The amendments will therefore not adversely affect the rights of liberties of individuals.

Amendment to *Disability Services Act 2006*

The proposal to extend the transitional period for restrictive practices may be considered to have insufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(2)(a). The proposed amendment to the *Disability Services Act 2006* will extend the 18 month transitional period for a further 9 months. The amendment will allow a disability service provider a further 9 months to comply with all of the requirements of the full scheme. In the meantime, they can continue to use a restrictive practice during the transitional period if they meet a set of transitional requirements, aimed at safeguarding the individual. A consequential amendment is also made to the *Guardianship and Administration Act 2000* – which will extend the transitional period during which a guardian (appointed before the commencement of the transitional period) may continue to make decisions for an adult about the use of restrictive practices.

Overall the aim of the restrictive practices scheme, together with the renewed focus on positive behaviour support, is intended to drive cultural change in the disability sector- through the provision of services that promote an improved quality of life and the reduction or elimination of the use of restrictive practices. The extension of the transitional period will allow disability service providers enough time to conduct a thorough assessment and prepare a comprehensive plan that best meets the needs of the individual – in line with best practice and the full legislative requirements. This will lead to better informed decision making, which is ultimately in the individual's best interests. For these reasons, it is considered the potential breach of the fundamental legislative principle is justified. At the same time, the proposal maintains existing safeguards to ensure appropriate protection for the individual subject to the restrictive practice. In particular, for the *Disability Services Act 2006*, these include:

- the disability service provider must act honestly and without negligence;
- use of the restrictive practice is necessary to prevent harm and is the least restrictive way of ensuring the safety of the adult or others;
- either consent of an authorised guardian or an assessment of the adult is required; and
- the disability service provider must keep and implement a policy and procedures on the use of the restrictive practice (including information on monitoring and reviewing the restrictive practice).

For the amendment to the *Guardianship and Administration Act 2000*, the safeguard for the adult is that the guardian was authorised to make decisions around restrictive practices before the commencement of the transitional period, and the appointment is subject to review by the Guardianship and Administration Tribunal.

Consultation

The Department of the Premier and Cabinet (DPC), Queensland Treasury, QPS, Department of Transport and Main Roads, the Department of Communities (DOC), Department of Infrastructure and Planning and the Department of Employment, Economic Development and Innovation (DEEDI) were consulted on the proposed SPEA amendments.

In relation to the amendments enabling Queensland's participation in the national exchange of criminal history information for people working with children, the following entities have been consulted—Queensland Treasury, QPS, Department of Employment and Training, the Office of the Queensland College of Teachers, Queensland Teachers Union, Queensland Independent Education Union, Commission for Children and Young People and Child Guardian, DOC, the Department of the Prime Minister and Cabinet, Commonwealth Attorney-General's Department, CrimTrac, and the other States and Territories.

The Queensland Building Services Board was consulted in relation to the amendment to the *Queensland Building Services Authority Act 1991*. The Crime and Misconduct Commission was consulted in relation to the amendments to the *Crime and Misconduct Act 2001*.

DEEDI, DPC and Treasury were consulted on the proposed classification Acts amendments.

The Chief Magistrate was consulted about the amendments for judicial registrars.

The Guardianship and Administration Tribunal, the Adult Guardian and the Public Advocate were consulted on the amendments to the *Disability Services Act 2006* and *Guardianship and Administration Act 2000*.

For the amendment to the *Disability Services Act 2006*, key disability service providers and advocacy representatives were also consulted.

For the amendments to the *Information Privacy Act 2009* and the *Right to Information Act 2009*, the Information Commissioner was consulted.

Consultation about the amendments to the *Superannuation (State Public Sector) Act 1990* has occurred with APRA, ASIC and Commonwealth treasury, together with key Queensland government departments that may have an interest in the amendments.

Notes on Provisions

Chapter 1 Preliminary

Clause 1 states the short title of the Act.

Clause 2 provides that:

- Chapter 2, part 1 (other than sections 4, 12, 35 and 38) and part 3 are to commence on 1 January 2010. Chapter 2, part 1 amends the *State Penalties Enforcement Act 1999* (SPEA) to strengthen the compliance and enforcement capabilities of the State Penalties Enforcement Registry (SPER). Chapter 2, part 3 amends the *Transport Operations (Road Use Management) Act 1995*, consequential to the new vehicle immobilisation provisions in Chapter 2, Part 1. Sections 4, 12, 35 and 38 and Chapter 2, part 2 are to commence on assent;
- Chapter 3, other than as provided, and chapter 4, part 3 (QCAT) are to commence on proclamation;
- Section 66, to the extent that it inserts the *Police Service Administration Act 1990*, section 10.2S, definition interstate screening unit, paragraph (b) commences immediately after the commencement of the *Crimes Act 1914* (Cwlth), section 85ZZGA;
- Chapter 3, section 54 and chapter 4, parts 4 to 8, 11 to 21 and 24 (QCAT) are to commence immediately after the commencement of the *Queensland Civil and Administrative Tribunal Act 2009*, chapter 7;

- Chapter 4, parts 1, 2 and 9 are to commence on assent;
- Chapter 4, parts 10, 22 and 23 (QCAT) are to commence when the *Queensland Civil and Administrative Tribunal Act 2009*, chapter 7 commences;
- Chapter 5 will commence on assent.

Chapter 2 Amendment of State Penalties Enforcement Act 1999 and related Acts

Part 1 Amendment of State Penalties Enforcement Act 1999

Clause 3 provides that this part amends the *State Penalties Enforcement Act 1999* (SPEA).

Clause 4 amends section 34 of the SPEA to include an order mentioned in section 400(1) or 408H(1) of the *Industrial Relations Act 1999*. Section 34 sets out the range of court ordered fines, penalties and other amounts (including compensation, restitution and amounts forfeited under undertakings and recognisances) that can be referred to SPER for enforcement. The effect of this amendment is to enable the referral to, registration and enforcement by SPER of orders made under the Industrial Relations Act for the payment of unpaid wages, tool allowance, unpaid superannuation contributions and fees charged illegally by private employment agents. This amendment commences on assent.

This amendment operates in conjunction with corresponding amendments to the Industrial Relations Act contained in Chapter 2, Part 2 below and new section 174A, inserted by clause 38 below, which retrospectively validates the referral of these types of orders to SPER for enforcement; the registration of those orders and any action taken purportedly under the SPEA to enforce them.

Part 5, division 2 of the SPEA sets out SPER's existing powers to issue enforcement warrants, including warrants to seize and sell real and personal property in which the enforcement debtor has a legal or beneficial interest. Division 2 currently contains limited provisions for the issue, renewal, cancellation, suspension or variation of an enforcement warrant (ss.63, 64) and the enforcement of an enforcement warrant (ss.69-74, 115, 116, 117). Section 150 sets out the form and content requirements for an enforcement warrant to seize and sell property.

To date, SPER has not used enforcement warrants for seizure and sale to recover unpaid amounts. This is because SPER has not had the resources or systems in place to regularly seize, store and sell property.

It is proposed to strengthen SPER's existing powers to seize and sell property and align them with the powers and process for enforcing money orders under the *Uniform Civil Procedure Rules 1999* ('UCPR'). These changes will facilitate both the wheel clamping initiative (which may result in debtors' vehicles being seized and sold) and a separate two year pilot in the Brisbane metropolitan area using Magistrates Court bailiffs to enforce seizure and sale warrants against debtors who owe unpaid amounts of $1,000 or more.

Clause 5 amends section 63 of the SPEA to align it with rules 820, 821 and 828 of the UCPR.

Section 63(2)(a) currently sets out the registrar's power to issue an enforcement warrant to seize and sell real and personal property in which the enforcement debtor has a legal or beneficial interest. For consistency with rule 828(1) of the UCPR, section 63(2)(a) is amended by subclause 5(1) to limit the range of property that can be seized and sold under an enforcement warrant. It does this by importing the concept of 'exempt property', which is defined under the *Supreme Court of Queensland Act 1991* to mean property that is not divisible among the creditors of a bankrupt under the relevant bankruptcy laws as in force from time to time. Having regard to the *Bankruptcy Act 1966* (Cth) and the bankruptcy regulations, this means that SPER will be unable to seize and sell property including household property that is reasonably necessary for the domestic use of the debtor's household, having regard to current social standards; property used by the debtor in earning income by personal exertion worth less that $2,600 or transport vehicles worth less than $5,000. Whilst this amendment reduces the current scope of SPER's seizure and sale powers, it was not considered appropriate that SPER continue to be given an

advantage over enforcement creditors seeking to enforce a money order under the UCPR.

For consistency with rule 820(1)(b) of the UCPR, section 63(3)(c) is amended by subclause 5(3) to increase the maximum period of an enforcement warrant to seize and sell property from six to twelve months. The maximum period for other types of enforcement warrants remains unchanged.

As noted above, vehicles immobilised under the wheel clamping initiative may be seized and sold if debtors fail to either pay the amount owing or enter into compliance by the time the immobilising device is removed. For this to occur, the SPER registrar will first have to issue an enforcement warrant under Part 5, Division 2 of the SPEA to seize and sell the vehicle. To support this process, subclause 5(6) inserts new subsections (6) & (7) in section 63 to provide that whilst there is nothing to prevent the SPER registrar from issuing a seizure and sale enforcement warrant while a vehicle is immobilised, the warrant can not be enforced during the immobilisation period. This will occur immediately after the immobilising device is removed. The rationale for this approach is discussed further in clause 13 below (in respect of new section 108R).

Section 63(3)(b) requires enforcement warrants to be directed to enforcement officers. Having regard to the amended definition of this term under clause 39 below, this means an appropriately qualified public service officer (engaged by SPER), the sheriff, the deputy sheriff, a court bailiff or a commercial agent engaged under section 10 of the SPEA.

Clause 6 inserts new section 63A in Part 5, Division 2 of the SPEA. For consistency with rule 821 of the UCPR this new provision:

(a) replaces existing subsection 63(4), which is omitted by clause 5 above. New subsection 63A(1) increases the renewal period for an enforcement warrant to seize and sell property from six to twelve months. The renewal period for other types of enforcement warrants remains unchanged;

(b) requires any type of renewed enforcement warrant to state the period for which the warrant has been renewed - new subsection 63A(2);

(c) clarifies that the priority of a renewed enforcement warrant is decided according to the date the warrant was originally issued – new subsection 63A(3); and

(d) requires a copy of the renewed warrant to be served on the enforcement debtor – new subsection 63A(4).

Clause 7 inserts new section 68A in Part 5, Division 2 of the SPEA. This provision makes it an offence for a debtor who is served with a copy of a seizure and sale enforcement warrant to conceal, sell, transfer or otherwise deal with the property with the intention of defeating the enforcement of the warrant or adversely affecting the seizure or sale of the property under the SPEA. Consistent with an existing similar offence under section 68 of the SPEA (dealing with charged or restrained property), the maximum penalty for this offence is 200 penalty units or three years imprisonment.

Clause 8 inserts new section 69A in Part 5, Division 2 of the SPEA. For consistency with rule 828(2) & (3) of the UCPR, this new provision:

(a) requires the SPER registrar to give an enforcement warrant to an enforcement officer for enforcement, subject to instructions given under section 69 of the SPEA. These instructions require an enforcement officer to first attempt to recover the amount owing in full and if this is not possible, then attempt to interview the debtor with a view to getting the debtor into compliance under a fine collection notice or a fine option order;

(b) requires an enforcement officer to have the warrant in their possession when enforcing the warrant and to show it to any person claiming to have an interest in the property to be seized;

(c) clarifies that actual seizure is not necessary to authorise the sale of real property; and

(d) provides that real property is taken to have been seized if the advertising requirements under new section 73H are complied with.

Clause 9 amends section 72 of the SPEA to give an enforcement officer power to do anything else reasonably necessary to be done that is incidental to searching for and seizing any property that may be seized and sold under the enforcement warrant. This will include the power for an enforcement officer to direct a tow truck operator to enter a place, including a debtor's private property, where a vehicle has been immobilised under an immobilisation warrant, in order to tow the vehicle under a direction issued by the enforcement officer under new section 73B.

Clause 10 inserts new sections 73A-73K in Part 5, Division 2 of the SPEA.

New section 73A establishes the process once an enforcement officer seizes property under a seizure and sale enforcement warrant. It requires the enforcement officer to serve a notice on the debtor or the person who is in possession of any of the debtor's property that is being seized under the warrant. The notice must be in the approved form and identify the property that is being seized. The notice must also set out the offences under new section 68A and section 117 of the SPEA (which both target activity aimed at defeating the seizure and sale process).

New section 73B enables an enforcement officer who seizes a motor vehicle under an enforcement warrant to authorise the vehicle to be towed from the place where it was seized to a holding yard, pending sale.

New section 73C is a modified version of rule 829 of the UCPR. It sets out the order in which an enforcement officer must seize and sell property. In doing so, the enforcement officer must have regard to the objectives of promptly enforcing the warrant without undue expense and minimising hardship to the debtor and other persons. The SPER registrar may direct the enforcement officer to seize and sell property in a different order, but in exercising this discretion must still have regard to the objectives outlined above. The provision also enables an enforcement officer to seize and sell an item of property with a value exceeding the amount owing. If this occurs, the enforcement officer is prevented from seizing and selling additional items. New section 73J sets out how sale proceeds are distributed, discussed below.

New section 73D is a modified version of rule 830 of the UCPR. It operates to prevent an enforcement officer from selling seized property if at or before the sale, the debtor pays both the amount owing (stated in the warrant) and the costs of enforcement incurred to date.

New section 73E is a modified version of rule 831 of the UCPR. It requires an enforcement officer to store seized goods in an appropriate place or to give them to an appropriate person, approved by the SPER registrar for that purpose. SPER is liable for any storage expenses but can recover these as costs of enforcement. The recovery of these costs from the sale proceeds is dealt with in new section 73J, discussed below.

New section 73F is a modified version of rule 832 of the UCPR. It sets out the process for selling seized property. It is to be read in conjunction with new section 73H below, which requires certain advertising to be undertaken before the property is sold.

Subsections 73F(1) – (2) provide that unless the SPER registrar directs otherwise, property liable to be sold under an enforcement warrant must be put up for sale by public auction (conducted by either an enforcement officer or another person authorised by the SPER registrar), as early as possible and at a place and in a way the enforcement officer considers suitable for a beneficial sale of the property.

Subsection 73F(3) sets out the conditions under which the seized property must be sold. It should be noted that the reserve price for property sold at auction is set by the SPER registrar. It must be an amount the registrar considers is not less than a reasonable amount for the property. This is to be read in conjunction with new section 73K below, which enables an enforcement officer to require the debtor to provide information about the property in order to help the registrar set the reserve.

Subsections 73F(4) – (6) establish a process by which the debtor can apply to the SPER registrar for a direction to have the property sold privately instead of by public auction. If the registrar gives this direction, the debtor is liable for any costs already incurred by the enforcement officer for the public auction.

Subsection 73F(7) deals with property that is put up for sale at, but not sold by, public auction. It operates to enable an enforcement officer to sell the property privately and sets out the conditions under which the property can be sold this way.

New section 73G is a modified version of rule 833 of the UCPR. It enables the SPER registrar to direct an enforcement officer to sell any property that has not been sold under new section 73F, at the best price obtainable.

New section 73H is a modified version of rule 834 of the UCPR. It sets out the advertising that must occur before property is put up for sale under section 73F. An enforcement officer is responsible for advertising the details of the property to be sold and the time and place of the sale no less than 2 weeks and no more than 4 weeks before the sale date. The enforcement officer must send a copy of the advertising notice to the debtor, by prepaid post, at the debtor's last known address. The form of advertising required is set out in subsection 73H(5) and depends on whether and how many newspapers circulate in the district where the property is situated and whether or not the property is an interest in land. In any case, the sale must be advertised on the SPER website.

The advertising requirements may be dispensed with if:

(a) the property comprises perishable goods;

(b) the debtor requests it in writing; or

(c) the property is put up for sale at a public auction conducted by someone other than an enforcement officer – in these circumstances the advertising notice need only contain the details, and be advertised in the way, reasonable and usual for a public auction of property of the same nature.

New section 73I is a modified version of rule 835 of the UCPR. It enables the SPER registrar to direct that a sale of seized property be postponed to a specified date. The registrar may issue this direction on the advice of an enforcement officer or on application by the debtor. Postponement of sale under this provision extends the validity of the enforcement warrant authorising the seizure until the end of the stated sale date.

New section 73J is a modified version of rule 836 of the UCPR. It makes an enforcement officer accountable to the SPER registrar for all sale proceeds and other money received by the enforcement officer under an enforcement warrant as soon as practicable after the money is received (whether before or after the property is seized). It allows the enforcement officer to first deduct his or her fees and expenses incurred in enforcing or attempting to enforce the warrant.

Subsection 73J(3) sets out the order in which the money received by SPER from the enforcement officer is to be applied, namely to:

1. first, pay any other enforcement costs incurred by SPER in the actual or attempted seizure and sale of the property – it should be noted that section 149 of the SPEA provides that if no enforcement costs are prescribed then no enforcement costs are payable;

2. from the balance, then discharge any security interest registered over the property under the *Motor Vehicles and Boats Securities Act 1986* or the *Bills of Sale and Other Instruments Act 1955*;

3. from the balance, then pay up to the amount owing stated in the enforcement warrant – it should be noted that sections 111, 112 and 113 of the SPEA set out the order in which this payment is applied. This depends on whether some or all of the amount owing relates to an infringement notice offence and/or another amount and whether there is more than one enforcement order, warrant or fine collection notice to which the amount could be applied; and

4. finally, pay any remaining balance to the debtor.

New section 73K is a modified version of rule 837 of the UCPR. It enables an enforcement officer to require information from the debtor about the property to be sold for the purpose of setting a reserve price for the property. The debtor is only required to provide information that is known to, or can reasonably be obtained by, him or her. The debtor must comply with the requirement unless he or she has a reasonable excuse. Failure to comply is an offence punishable by a maximum penalty of 10 penalty units and does not prevent the SPER registrar from setting a reserve under new section 73F. An enforcement officer is only permitted to communicate the reserve price before the sale if it is necessary to do so to conduct the sale or there is another sufficient excuse.

Clause 11 makes a minor technical amendment to section 75 by inserting 'or' between subparagraphs (2)(b) and (c).

Clause 12 amends section 104 to expand the application of driver licence suspension to any unpaid amounts. It does this by omitting paragraph (a) from subsection (1), which currently limits this enforcement action to unpaid amounts for motor vehicle related offences. This expansion brings Queensland into line with the other States and Territories (other than the Australian Capital Territory). This amendment commences on assent.

Clause 13 inserts a new division 7A in Part 5 of the SPEA. Division 7A establishes vehicle immobilisation as a new enforcement action under the SPEA.

Subdivision 1 sets out the criteria for immobilisation. New section 108A provides that this new enforcement option may be applied in respect of a person who:

(a) is the subject of one or more enforcement orders issued by the SPER registrar under section 38 of the SPEA; and

(b) has failed to pay amounts totalling at least the prescribed amount and is not taking action to dispute all or part of the unpaid amount. It is intended that the prescribed threshold amount will be $5,000. For the purpose of this provision "failure to pay" encompasses:

    (i) failing to pay the amount stated in the enforcement order per se; or

    (ii) having an instalment payment notice cancelled under section 36 of the SPEA because the person has defaulted in paying an instalment under the notice within the time allowed; or

(iii) having a fine option order revoked under section 129 of the SPEA because the person failed to comply with the order; or

(iv) having a good behaviour order cancelled under section 118 of the SPEA; and

(c) is the sole registered operator of a motor vehicle of the type described in new section 108B – 'registered operator' is defined in Schedule 2 and captures not only the person in whose name the vehicle is registered under Queensland or corresponding interstate transport legislation, but also in the case of a vehicle that is not, but has been registered, the person who was the last registered operator of the vehicle. This is intended to prevent debtors from avoiding the immobilisation process by deregistering their vehicle or allowing their vehicle registration to lapse. Further, it should be noted that jointly registered vehicles can not be immobilised under the SPEA; and

(d) for whom other enforcement options under the SPEA (such as driver licence suspension, garnisheeing wages or redirecting money from the debtor's bank account under a fine collection notice, registering an interest against the debtor's vehicle or land or arrest and imprisonment) are either not suitable or have already been attempted by SPER, without success.

It is intended that vehicle immobilisation will be used as a 'last resort' enforcement action, second only to arrest and imprisonment under Part 6 of the SPEA.

New section 108B establishes the types of vehicles that can be immobilised under Division 7A. Having regard to the existing definition of 'motor vehicle' in Schedule 2 of the SPEA, this provision limits immobilisation to:

(a) motorised vehicles with wheels, other than those specified in subsection 108B(2); and

(b) trailers built to be attached to a motorised vehicle with wheels e.g. a caravan, haulage trailer, boat trailer.

Subsection 108B(2) expressly excludes the range of motorised wheeled vehicles used by people with a disability and their carers (motorised wheelchairs, scooters, quad bikes and motor vehicles adapted to accommodate the person's disability), as well as motorised wheeled recreational devices such as a motorised bicycle, golf buggy or other motor-assisted transport device ordinarily used for recreation or play.

It should be noted that section 150B of the SPEA, as amended by clause 29 below, provides for the making of guidelines to support the operation of this provision. It is intended that these guidelines will provide guidance about operational matters such as when it is appropriate for trailers to be immobilised under an immobilisation warrant.

The **first step** in the immobilisation process will be for SPER to register an interest over the debtor's vehicle on the Register of Encumbered Vehicles under section 110 of the SPEA. Having regard to the operation of section 63(6) of the SPEA, a copy of the enforcement warrant under which this action is taken must be served on the debtor.

This action serves two purposes – firstly, it alone may be sufficient incentive for the debtor to pay the outstanding amount in full or enter into compliance; secondly, it makes it harder for the debtor to avoid immobilisation by selling the vehicle or transferring its registration. Clause 14 amends section 110 of the SPEA to clarify that this action does not prevent the registrar from taking action in respect of the debtor under the vehicle immobilisation process by issuing a notice of intention to issue an immobilisation warrant under new section 108C or an immobilisation warrant under new section 108D or a seizure and sale enforcement warrant under section 63 of the SPEA.

Subdivision 2 deals with the **second step** in the immobilisation process. This involves placing the debtor on notice that their vehicle may be immobilised if they don't either pay the amount owing in full or enter into compliance, within 14 days. The intent notice is designed to provide the debtor with a very clear indication of the consequences of vehicle immobilisation and what steps the debtor can take to satisfy the unpaid amount, without having their vehicle immobilised. It is anticipated that the issue of an intent notice alone will be sufficient incentive for some debtors to pay their outstanding amount in full or enter into compliance.

New section 108C requires the SPER registrar to serve the debtor with a notice of intention to issue an immobilisation warrant ('intent notice'), as a precursor to issuing a warrant to immobilise the debtor's vehicle.

The form and content of the intent notice is set out in new section 146A, which is inserted in Part 9 of the SPEA by clause 26. The notice must be in the approved form and state the following matters:

(a) the total amount owed by the debtor;

(b) the vehicle proposed to be immobilised – it should be noted that new section 108C provides flexibility for more than one vehicle to be immobilised under a single immobilisation warrant. It should be noted that section 150B, as amended by clause 29, provides for the making of guidelines to support the operation of this provision. It is intended that these guidelines will provide direction about when it is appropriate for more than one vehicle to be identified for immobilisation. The registrar must have regard to these guidelines when issuing an intent notice and an immobilisation warrant;

(c) that the debtor has 14 days within which to either pay the amount owing in full or enter into compliance. To have entered in compliance, the debtor must have been granted an application to pay by instalments under section 42 of the SPEA or to convert the unpaid amount to hours of unpaid community service under a fine option order made under section 50 of the SPEA. The notice also acknowledges that the making of a good behaviour order under section 118 of the SPEA will prevent immobilisation proceeding;

(d) the effect of an immobilisation warrant, namely that it authorises an enforcement officer to immobilise the debtor's vehicle without further notice to the debtor and without the debtor's consent;

(e) where, when and for how long the debtor's vehicle can be immobilised under the warrant – this is intended to generally state the effect of new sections 108H and 108O, discussed below;

(f) that the debtor's vehicle may be liable to be seized and sold under an enforcement warrant if the debtor does not either pay the amount owing in full or enter into compliance or a good behaviour order is not made by the time the immobilising device is removed from the vehicle; and

(g) the range of offences that apply in respect of activity that is intended to avoid, frustrate or interfere with the immobilisation process – these offences are set out in subdivision 4 of new division 7A and also section 116 of the SPEA, as amended by clause 20.

It should be noted that clause 34 amends section 158 of the SPEA to enable an intent notice to be served on the debtor by post or facsimile at either:

(a) the address at which the debtor's vehicle is registered; or

(b) if the debtor is an individual – the address last known to the SPER registrar to be the debtor's residential or business address; or

(c) if the debtor is a corporation – the address last known to the SPER registrar to be the corporation's head office, registered office or a principal office.

Operationally, SPER will endeavour to make and maintain contact with the debtor during the 14 day intent notice period with the objective of getting them to either pay the debt in full or enter into compliance, without having to proceed to the next step of the immobilisation process i.e. issuing an immobilisation warrant.

It should noted that clause 32 below amends section 155 of the SPEA to provide that the registrar's decision to issue an intent notice is not reviewable.

Subdivision 3 deals with the **third step** in the immobilisation process, namely the issue, service and enforcement of an immobilisation warrant.

New section 108D enables the SPER registrar to issue a warrant to immobilise one or more of the debtor's vehicles after the 14 day intent notice period if:

(a) the debtor has not paid the amount owing in full;

(b) the debtor's application to pay the unpaid amount by instalments or to convert it to hours of unpaid community service under a fine option order has not been granted or a good behaviour order is not made in relation to the debtor;

(c) the debtor has not taken action to dispute part or all of the unpaid amount.

When deciding whether or not to issue an immobilisation warrant, the registrar may have regard to whether immobilisation would cause severe or unusual hardship to the debtor, the debtor's family or another person who uses the vehicle but has no capacity to ensure the debtor pays the amount owing.

The registrar is required to make the hardship assessment having regard to guidelines issued under section 150B, as amended by clause 29. New subsection 150B(4) provides the broad scope of the guidelines issued to support the hardship assessment, including whether hardship is caused because immobilisation deprives the debtor of his or her means of earning a living (e.g. the debtor relies on the vehicle in the ordinary course of their employment) or because immobilisation impacts adversely in another way (e.g. because the debtor is homeless or a risk of homelessness or it seriously compromises the debtor's family or carer responsibilities for

example, by leaving the debtor without reasonable access to alternative means of transport to get their children to school or to obtain regular medical treatment). An example of immobilisation causing severe and unusual hardship to a third person is the situation of an employee who has full personal use of the vehicle under an employment contract with the debtor. These guidelines will be publicly available on the SPER website.

It is expected that SPER's preliminary investigations into, and contact with the debtor after the intent notice is served under subdivision 2 will elicit sufficient information for the registrar to make the hardship assessment.

In cases where immobilisation does not proceed because hardship is established, SPER will instead consider whether or not the debtor is eligible for a good behaviour order under section 118 of the SPEA (as an alternative to arrest and imprisonment under Part 6 of the SPEA).

Before issuing an immobilisation warrant, SPER will also liaise with the Queensland Police Service to help locate the debtor and assess risk having regard to information about the debtor's criminal history. This is currently permitted under section 151 of the SPEA.

The form and content of the immobilisation warrant is set out in new section 146B, which is inserted in Part 9 of the SPEA by clause 26. The warrant must be in the approved form and state the following matters:

(a) the debtor's full name and address;

(b) the total amount owed by the debtor, together with a debt schedule that identifies the offence for which an amount incurred as a fine became payable or the original court order to which an amount owing under a court order relates;

(c) the date and time when the warrant was issued and its expiry date (no longer than 12 months after it was issued);

(d) the vehicle or vehicles proposed to be immobilised under the warrant;

(e) that the debtor's vehicle may be liable to be seized and sold under an enforcement warrant if the debtor does not either pay the outstanding amount in full or enter into compliance or a good behaviour order is not made in relation to the debtor by the time the immobilising device is removed from the vehicle. To have entered in compliance, the debtor must have been granted an application to pay by instalments under section 42 of the SPEA or to convert the unpaid amount to hours of unpaid community service under a fine option order made under section 50 of the SPEA; and

(f) the range of offences that apply in respect of activity that is intended to avoid, frustrate or interfere with the immobilisation process – these offences are set out in subdivision 4 of new division 7A and also section 116 of the SPEA, as amended by clause 20.

Subsection 108D(3) requires a copy of the warrant to be served on the debtor as soon as practicable after it is issued. It should be noted that clause 36 amends section 158 of the SPEA to enable an immobilisation warrant to be served on the debtor by post or facsimile at either:

(a) the address at which the debtor's vehicle is registered; or

(b) if the debtor is an individual – the address last known to the SPER registrar to be the debtor's residential or business address; or

(c) if the debtor is a corporation – the address last known to the SPER registrar to be the corporation's head office, registered office or a principal office.

It should noted that clause 32 below amends section 155 of the SPEA to provide that the registrar's decision to issue an immobilisation warrant is not reviewable.

New section 108E enables a person claiming an interest in a vehicle that is or is about to be immobilised to apply to the SPER registrar for all or part of the warrant to be cancelled, suspended or varied. This mirrors the process currently provided under section 64 of the SPEA for enforcement warrants. Although there is no appeal from the registrar's decision on an application made under this provision, judicial review has not been excluded under section 155 of the SPEA.

New section 108F states the effect of an immobilisation warrant. The warrant authorises an enforcement officer to attach an immobilising device to the vehicle, without further notice to the debtor and without the debtor's consent. 'Immobilising device' is defined to mean wheel clamps or another device that effectively detains the vehicle. An enforcement officer also has the powers set out in new section 108I (discussed below) under an immobilisation warrant.

Consistent with the approach taken with other forms of enforcement action under the SPEA, subsection 108F(3) operates to increase the total amount owing by the debtor by the addition of the prescribed civil enforcement fee once an immobilisation warrant is issued.

After the warrant is served, SPER will endeavour to make and maintain contact with the debtor with the objective of getting them to either pay the

debt in full or enter into compliance before the vehicle is immobilised. It is anticipated that the service of the warrant alone will be sufficient incentive for some debtors to satisfy their unpaid amount, without SPER having to actually immobilise the debtor's vehicle.

If the debtor does not respond to these attempts, SPER will then start planning the immobilisation operation. This will include liaising with the Queensland Police Service to advise that it has issued the warrant against the debtor and where and when it proposes to enforce the warrant. New 151A, inserted by clause 30, facilitates this information exchange.

Once SPER has located the debtor's vehicle, the immobilisation warrant will be enforced. New section 108G provides than an enforcement officer may enforce an immobilisation warrant. Notwithstanding the scope of the definition of 'enforcement officer', as amended by clause 39 below, in practice, immobilisation warrants will be enforced by SPER employees who will be trained specifically to undertake immobilisation operations.

New section 108H deals with where and when an immobilisation warrant can and can not be enforced.

Subsection 108H(1) sets out the places where a vehicle <u>can</u> be immobilised under an immobilisation warrant, namely:

(a) in a public place – this is defined in subsection 108H(5) to mean an area that is open to or used by the public and is developed for, or has as one of its uses, the driving or riding of motor vehicles, whether on payment of a fee or otherwise;

(b) on property occupied by an individual debtor – this includes the debtor's place of residence or place of business;

(c) at a corporate debtor's place of business or registered office; or

(d) any other place, but only with the occupier's consent.

A vehicle can be immobilised even if it is unattended. The immobilisation notice affixed to the vehicle under new section 108N below will contain contact details for the SPER immobilisation team. SPER will endeavour to contact the debtor immediately after an unattended vehicle is immobilised.

During the 12 month trial commencing on 1 January 2010, SPER intends to target public places like Queensland Rail car parks, park and ride stations, universities and shopping centre car parks, but not privately operated paid parking stations. SPER intends to conduct immobilisation operations at paid parking facilities operated by local councils, universities or other

administering authorities only if a memorandum of understanding can be negotiated with the relevant entity so that immobilised vehicles do not attract any further parking fees or penalties. SPER will liaise with the relevant entities and QPS when planning these immobilisation operations.

Subsection 108H(4) sets out the places where a vehicle can not be immobilised, namely a place where:

(a) the immobilised vehicle could impede the use of the place or traffic flow or pose a safety risk – this is intended to include a place that becomes a clearway or a no parking zone during certain times; and

(b) the enforcement officer reasonably believes the safety of the driver and any other occupants may be at risk, e.g. in an isolated location.

When enforcing an immobilisation warrant, the enforcement officers must have regard to guidelines issued by the SPER registrar to support the operation of this provision – see new subsection 150B(6), inserted by clause 29 below. In short, if the vehicle can not be clamped safely where it is located, it will not be clamped at that time.

Further, under new subsection 108H(4)(c), an enforcement officer is prevented from immobilising a vehicle if the debtor either pays the amount owing in full or enters into compliance (by successfully applying to have pay the amount by instalments or to convert the amount to unpaid community service under a fine option order) or a good behaviour order is made in relation to the debtor before the immobilising device is attached to the vehicle.

Consistent with the enforcement of enforcement warrants under section 70 of the SPEA, new subsection 108H(3) enables an enforcement officer to enforce an immobilisation warrant at any reasonable time of the day or night. During the 12 month trial, it is intended that immobilisation operations will be conducted during SPER's normal hours of operation (8am to 5:45pm), with most operations conducted in the mornings to maximise the five day immobilisation period. This will be reviewed as part of the trial evaluation.

New section 108I sets out the additional powers an enforcement officer can exercise under an immobilisation warrant, namely power to:

(a) enter and re-enter a public place – this is defined in subsection 108I(3) to mean a place that is open to or used by the public, whether or not on payment of a fee;

(b) enter and re-enter premises occupied by the debtor, without the debtor's consent – 'premises' is currently defined by the SPEA to include any structure, building, aircraft, vehicle, vessel or place, whether built on or not. It should be noted that if the premises is used only for residential purposes, the enforcement officer may only enter with the debtor's consent or an immobilisation search warrant;

(c) enter and re-enter premises occupied by someone other than the debtor, but only with the occupier's consent;

(d) do anything else reasonably necessary to immobilise the vehicle.

It should be noted that when enforcing an immobilisation warrant, an enforcement officer will also have power under section 114 of the SPEA, as amended by clause 18 below, to require a person whom the enforcement officer reasonably believes to be the debtor named in the warrant to answer questions.

New sections 108J and 108K are standard provisions that apply when an enforcement officer is seeking consent to enter residential premises occupied by the debtor or premises occupied by someone other than debtor.

New section 108J sets out the extent of an enforcement officer's power of entry, without consent or a warrant, to ask the occupier for consent to enter.

New section 108J sets out the process an enforcement officer must follow when seeking consent to enter a place.

It is anticipated that some debtors will move their vehicles to places where the occupier will refuse entry to the enforcement officers. To address this, new section 108L enables an enforcement officer to apply for an immobilisation search warrant to enter, re-enter and search premises to locate the debtor's vehicle. It mirrors the process under section 71 of the SPEA for issuing a search warrant to support the enforcement of an enforcement warrant. The application for an immobilisation search warrant can only be made if the enforcement officer reasonably believes the debtor's vehicle has been relocated to premises, by or on the debtor's behalf, in an attempt to avoid the enforcement of an immobilisation warrant. The form and content of an immobilisation search warrant is set out in new section 146D, which is inserted in Part 9 of the SPEA by clause 26.

New section 108M sets out the powers an enforcement officer can exercise under an immobilisation search warrant, namely to enter, re-enter and search premises for a vehicle that is the subject of an immobilisation

warrant and to use reasonable help to exercise those powers. This is consistent with the powers set out in section 72 of the SPEA that can be exercised under a search warrant to support the enforcement of an enforcement warrant.

New section 108N requires an enforcement officer, when immobilising a vehicle under an immobilisation warrant, to also attach an immobilisation notice to a prominent place on the vehicle e.g. on the vehicle's windscreen.

The form and content of the immobilisation notice are set out in new section 146C, which is inserted in Part 9 of the SPEA by clause 26. The notice must be in the approved form and state:

(a) that the vehicle has been immobilised under the SPEA;

(b) how long the vehicle can remain immobilised; and

(c) the range of offences that apply in respect of activity that is intended to avoid, frustrate or interfere with the immobilisation process – these offences are set out in subdivision 4 of new division 7A and also section 116 of the SPEA, as amended by clause 20.

In practice, the notice will also contain contact details for the SPER immobilisation team and their hours of operation. This notice is intended to act as an additional visual deterrent to other would-be fine defaulters in the community.

New section 108O establishes the maximum period for which a vehicle can be immobilised under an immobilisation warrant. It provides that both the immobilising device and the immobilisation notice can only be attached to the vehicle for up to five days. This provision is to be read in conjunction with section 38 of the *Acts Interpretation Act 1954*, which deals with the reckoning of time. Even though the vehicle is immobilised, the debtor may still access the vehicle during the immobilisation period e.g. to retrieve personal property from it.

Once the vehicle is immobilised, SPER will assess whether it is of sufficient value for seizure and sale immediately after the immobilising device is removed. If so, the SPER registrar will issue a separate seizure and sale enforcement warrant under section 63 of the SPEA and serve it on the debtor during the immobilisation period. Even though section 63, as amended by clause 5 above, prevents the seizure and sale enforcement warrant from being enforced during the immobilisation period, the issue and service of a separate warrant during the immobilisation period provides

further incentive for the debtor to either pay the amount owing in full or to enter into compliance before the immobilisation period ends.

SPER will continue to work with the debtor during the immobilisation period. Application of the immobilising device (whether or not supplemented by a separate seizure and sale enforcement warrant) may be sufficient incentive for the debtor to either pay the amount owing in full or enter into compliance (by successfully applying to pay the amount in instalments or to convert the amount into hours of unpaid community service under a fine option order) or a good behaviour order is made in relation to the debtor before immobilisation period ends. If this occurs, then new section 108P(1) requires the registrar to direct an enforcement officer to remove both the immobilising device and the immobilisation notice from the vehicle as soon as practicable.

New section 108P(1) also operates to require the removal of the immobilising device and immobilisation notice before the end of the immobilisation period if the registrar is satisfied that the immobilised vehicle is impeding the use of a place or traffic flow or is a safety risk. This direction must be made having regard to guidelines issued by the SPER registrar to support the operation of this provision – see new subsection 150B(5), inserted by clause 29 below. The direction must be given even if the debtor has not paid the amount owing in full or entered into compliance.

New section 108P(2) gives the SPER registrar discretion to direct the removal of the immobilising device and the immobilisation notice before the end of immobilisation period, even though the debtor has not paid the amount owing in full or entered into compliance. This discretion may be exercised if the registrar is satisfied that continued immobilisation will cause severe or unusual hardship to the debtor, the debtor's family or another person who uses the vehicle but has no capacity to ensure the debtor pays the amount owing. When exercising this discretion, the registrar may have regard to guidelines issued under section 150B, as amended by clause 29 below. The broad scope of these hardship guidelines was discussed in relation to new section 108D above.

New section 108Q requires an enforcement officer to remove both the immobilising device and the immobilisation notice from the vehicle immediately after the immobilisation period ends, even if the debtor still hasn't paid the amount owing or entered into compliance.

As outlined above, there are three scenarios in which the immobilising device and immobilisation notice can be removed without the debtor having paid the amount owing in full or having entered into compliance or a good behaviour order having been made in relation to the debtor, namely:

(a) before the end of immobilisation period – under new section 108P(1)(d) or (2); and

(b) after the immobilisation period ends.

If this occurs, new section 108R operates to enable the SPER registrar to direct an enforcement officer to immediately seize the vehicle under an enforcement warrant issued under section 63 of the SPEA, once the immobilising device is removed under new section 108Q. The vehicle will then be sold under Part 5, division 2 of the SPEA.

Vehicles not worth selling will be released once the immobilising device and immobilisation notice are removed under new section 108Q. In these cases, SPER will then assess whether the debtor is eligible for a good behaviour order under section 118 of the SPEA or will refer the debtor to the next warrant evaluation committee to consider whether the debtor should be issued with an arrest and imprisonment warrant under Part 6 of the SPEA.

An immobilisation warrant remains current for 12 months. New section 108S operates to enable a current warrant to be re-enforced if a debtor who enters into compliance at any stage during the immobilisation process, later defaults by having:

(a) an instalment payment notice cancelled under section 36 of the SPEA (for defaulting on a payment under the notice); or

(b) a fine option order revoked under section 129 of the SPEA (for failing to comply with the order); or

(c) a good behaviour order cancelled under section 118 of the SPEA.

New section 108T mirrors section 74 of the SPEA by requiring an enforcement officer to give the SPER registrar a return about the enforcement or attempted enforcement of an immobilisation warrant. The return must certify what was done to enforce the warrant or what other action, if any, was taken.

New section 108U sets out the requirement for, and the process by which, an enforcement officer must give notice of any damage he or she causes to

property during the enforcement of an immobilisation warrant, to the owner of the damaged property.

New section 108V operates to enable a person to make a claim against the State for the cost of repairing or replacing property damaged by an enforcement officer during the enforcement of an immobilisation warrant. It should be noted that this provision does not extend to any damage caused to an immobilised vehicle during the immobilisation period by someone other than an enforcement officer or by some other event.

New section 108W operates to prevent a claim under a vehicle insurance policy for an event that occurred during the immobilisation period being refused merely because the vehicle was immobilised under the SPEA. This applies despite anything to the contrary in a vehicle insurance policy or other agreement. SPER will develop operational guidelines to assist enforcement officers to plan and conduct immobilisation operations in a way that minimises the risk of a vehicle being damaged or stolen while it is immobilised.

Subdivision 4 contains a range of offences that apply in respect of activity intended to avoid, frustrate or interfere with the immobilisation process. It is an offence:

(a) for a debtor to conceal, sell, transfer or otherwise deal with a vehicle stated in an intent notice issued under new section 108C, with intent to avoid the issue of an immobilisation warrant – new section 108X(1);

(b) for a debtor to conceal, sell, transfer or otherwise deal with a vehicle stated in an immobilisation warrant, with intent to avoid the enforcement of the warrant – new section 108X(2); and

(c) for a person to interfere with or remove an immobilised vehicle during the immobilisation period with intent to adversely affect the seizure or sale of the vehicle – new section 108Y.

    For consistency with an existing corresponding offence under section 68 of the SPEA (dealing with charged or restrained property), each of these three offences is punishable by a maximum penalty of 200 penalty units or three years imprisonment.

(d) for a person to tamper with or remove or attempt to remove an immobilising device or an immobilisation notice attached to a vehicle under the SPEA – new section 108Z. This offence is punishable by a maximum penalty of 50 penalty units.

Clause 14 amends section 110 to clarify that the registration of an interest in a motor vehicle under that section does not prevent the SPER registrar from issuing an immobilisation intent notice or an immobilisation warrant for the vehicle under new division 7A of Part 5 of the SPEA or a seizure and sale enforcement warrant under section 63 of the SPEA.

Clause 15 amends section 111 to extend its application to payment by a debtor of part or all of an amount payable under an immobilisation warrant.

Clause 16 amends section 112 to extend its application to payment by a debtor of part or all of an unpaid amount payable under an immobilisation warrant.

Clause 17 amends section 113 to extend its application to payment by a debtor of part or all of an unpaid amount payable under an immobilisation warrant.

Clause 18 amends section 114 to give an enforcement officer enforcing an immobilisation warrant power to require a person the enforcement officer reasonably believes to be the debtor named in the warrant to answer a question that is relevant to the warrant or the exercise of powers under the SPEA because of the warrant. The enforcement officer is required to warn the person that failure to comply with the requirement is an offence, unless the person has a reasonable excuse. The clause also amends section 114 to require an enforcement officer to show their identity card before they exercise a power under subsection 114(1) or (5). This amendment supplements the additional powers set out in new section 108I that an enforcement officer may exercise under an immobilisation warrant.

Clause 19 amends section 115 to include reference to an immobilisation warrant.

Clause 20 amends section 116 to expand the scope of the offence to include threatening an enforcement officer acting in the performance of duties under the SPEA.

Clause 21 amends section 117 to increase the maximum penalty for the offence of interfering with a seized item left at the place of seizure or a seizure tag or sticker placed on the item. The penalty is increased from ten to 50 penalty units. This achieves consistency with the maximum penalty for the offence under new section 108Z.

Clause 22 amends section 118 to include reference to an immobilisation warrant.

Clause 23 amends section 119 to include reference to an immobilisation warrant.

Clause 24 amends section 136(1)(i)(i) to include reference to an immobilisation warrant.

Clause 25 amends section 137 to include reference to the issue of an immobilisation warrant.

Clause 26 inserts new sections 146A – 146D in Part 9 of the SPEA. These provisions set out the form and content requirements for a notice of intention to issue an immobilisation warrant (section 146A), an immobilisation warrant (section 146B), an immobilisation notice (section 146C) and an immobilisation search warrant (section 146D). Each provision is explained in detail in clause 13 above.

Clause 27 amends section 147 which provides that an enforcement warrant issued by the SPER registrar is taken to be a warrant of the Magistrates Court in the central division of the Brisbane Magistrates Court district. For consistency with rule 826 of the UCPR, section 147 is amended to deal with the situation where the SPER registrar believes the debtor or any of the debtor's property is in another Magistrates Court direct. It establishes a process by which the warrant can be enforced in the other district. The remittance of moneys back to the SPER registrar is dealt with under new section 73J, discussed above.

Clause 28 amends section 148 to include reference to an immobilisation warrant.

Clause 29 amends section 150B to enable the SPER registrar to issue guidelines to support the operation of new sections 108B, 108C, 108D(2), 108H(4)(a) or (b) or 108P(1)(d) or (2). The scope and application of these guidelines under these provisions are explained in clause 13 above. The guidelines must be made publicly available, including on the SPER website.

Clause 30 inserts a new section 151A in Part 9, division 2. This provision complements the information exchange currently permitted under section 151 of the SPEA. It enables the SPER registrar to advise the Queensland Police Service once it has issued an immobilisation warrant and when and where it proposes to enforce the warrant. This information exchange will assist in ensuring that SPER's immobilisation operations do not compromise major police investigations and will enable immobilisation warrant information to be flagged in QPRIME. It is possible that enforcement officers may need to call the police for assistance during an

immobilisation operation. The proactive information exchange permitted under this provision will assist QPS to allocate policing resources to respond to these situations. The information provided by the SPER registrar under this provision may only be used by the QPS in relation to the enforcement of the warrant and not for general policing purposes.

Clause 31 amends section 153 to include reference to the registrar's decision to issue a notice of intention to issue an immobilisation warrant or an immobilisation warrant. Particulars of both must be entered on the State penalties enforcement register required to be kept under this section.

Clause 32 amends section 155 to provide that the registrar's decision to issue a notice of intention to issue an immobilisation warrant or an immobilisation warrant is not reviewable. This is consistent with the current approach under the SPEA in respect of the registrar's decision to take other forms of enforcement action, including to decisions to issue an enforcement order, an enforcement warrant, a fine collection notice, notice of intention to suspend a driver licence or an arrest and imprisonment warrant.

Clause 33 amends section 157 to include reference to the service of a notice of intention to issue an immobilisation warrant or the service of an immobilisation warrant on a stated person on a stated day.

Clause 34 amends section 158 to enable a notice of intention to issue an immobilisation warrant or an immobilisation warrant to be served on the debtor by post or facsimile at either:

(a) the address at which the debtor's vehicle is registered; or

(b) if the debtor is an individual – the address last known to the SPER registrar to be the debtor's residential or business address; or

(c) if the debtor is a corporation – the address last known to the SPER registrar to be the corporation's head office, registered office or a principal office.

Clause 35 inserts a new section 159A in Part 9 of the SPEA. It gives the SPER registrar express power to communicate with enforcement debtors by SMS, without requiring debtor consent for this form of contact. The registrar is permitted to use this technology to communicate with debtors about matters relating to their payment of an unpaid amount (i.e. under a form of compliance such as an instalment payment notice) or about enforcement action that is being, or may be taken against the debtor. This amendment commences on assent.

This amendment will facilitate a program of proactive SMS contact by SPER aimed at prompting debtor compliance and encouraging higher rates of payment. Initially, it is intended that debtors will be sent SMS notifications where the debtor has entered into an instalment payment plan using a credit card and that credit card is due to expire; before SPER cancels an instalment payment notice (following issue of a default notice) and when SPER intends to suspend the debtor's driver licence (following prior written notification). Other use criteria will be investigated following testing.

The provision overrides the operation of the *Information Privacy Act 2009*. This is because section 7 of that Act provides that it operates subject to the provisions of any other Act relating to the collection, storage, handling, accessing, amendment, management, transfer, use and disclosure of personal information.

Clause 36 amends section 165 to include reference to immobilisation warrants. It also omits the power to make a regulation about the property that may not be seized under an enforcement warrant, the sale of property seized under an enforcement warrant, the order in which the property may be sold, when and how the property may be sold and accounting for the proceeds of a sale of property seized under an enforcement warrant. This aspect of the regulation making power is no longer required as these matters are now dealt with in the SPEA.

Clause 37 amends section 169 to correct a section reference.

Clause 38 inserts new section 174A in Part 9 of the SPEA. This provision is to be read in conjunction with the amendment of section 34 under clause 4 above. This provision retrospectively validates the referral to SPER of particulars of orders mentioned in section 400(1) or 408H(1) of the *Industrial Relations Act 1999* for enforcement; the registration of those orders and any action taken purportedly under the SPEA to enforce them. This amendment commences on assent.

Clause 39 amends the dictionary in schedule 2 of the SPEA by inserting definitions of new terms to support the seizure and sale and immobilisation amendments. It also inserts an amended definition of 'enforcement officer' which adds an appropriately qualified public service officer to the now exhaustive list.

Part 2 Amendment of Industrial Relations Act 1999

Clause 40 provides that this part amends the *Industrial Relations Act 1999*.

Clause 41 amends section 400 of the Act to give the magistrate discretion to give the court registrar particulars of the orders mentioned in subsection (1) to provide to the SPER registrar for registration under section 34 of the *State Penalties Enforcement Act 1999*. These include orders for the payment of unpaid wages, tool allowance and unpaid superannuation contributions.

Clause 42 amends section 408H of the Act to give the magistrate discretion to give the court registrar particulars of the order mentioned in subsection (1) to provide to the SPER registrar for registration under section 34 of the *State Penalties Enforcement Act 1999*. This is an order for the payment of fees charged illegally by a private employment agent or a costs order.

These amendments are to be read in conjunction with the amendment of section 34 of the SPEA under clause 4 above, which enables the SPER registrar to receive, register and enforce these orders.

The effect of these amendments is to establish referral to the State Penalties Enforcement Registry as an alternative enforcement option under the Act, which already enables these orders to be enforced either under the *Justices Act 1886* as an order for payment of money made under that Act or to be recovered by the employee from the employer as a debt.

The amendments contained in this part commence on assent.

Part 3 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 43 provides that this part amends the *Transport Operations (Road Use Management) Act 1995* (the TORUM).

Clause 44 makes a consequential amendment to section 135 of the TORUM to provide that an enforcement officer who enforces an

immobilisation warrant under the *State Penalties Enforcement Act 1999* does not commit an offence under section 135(1)(c).

The amendment contained in this part commences on 1 January 2010.

Chapter 3 Amendments relating mainly to the national exchange of criminal history information

Part 1 Amendment of Education (Queensland College of Teachers) Act 2005

Clause 45 provides that this part amends the *Education (Queensland College of Teachers) Act 2005*.

Clause 46 amends section 11 (Suitability to teach—criminal history information) by inserting a provision that makes section 11 subject to new section 12A.

Clause 47 amends section 12 (Suitability to teach—other considerations) by inserting a provision that makes section 12 subject to new section 12A.

Clause 48 inserts a new section 12A to ensure that the Queensland College of Teachers meets requirements of the Council of Australian Governments' (COAG) agreement dated 29 November 2008 to facilitate the inter-jurisdictional exchange of criminal history information for people working with children. In considering whether a person poses a risk of harm to children as part of the assessment about whether a person is suitable to work in a child related field under section 12(1)(b), the College must consider the expanded interstate criminal history information sourced from interstate under the exchange as well as any other information relating to that expanded interstate criminal history information as provided by the commissioner of police under section 15 or an interstate commissioner of police under new section 15A. In addition when considering the

information relating to the expanded interstate criminal history information, the College must consider: when the offence was committed, is alleged to have been committed or may possibly have been committed; the nature of the offence and its relevance to the duties of a teacher; and any other matter considered relevant by the College in deciding whether a person poses a risk of harm to children.

Subsection (4) provides that the section does not limit the matters that the college may consider under section 11(2) or 12(1)(b).

Subsection (5) of new section 12A provides that despite section 11 or 12, in considering whether a person is suitable to work with children, a person's expanded interstate criminal history information (and related information) is only relevant to a consideration of whether a person poses a risk of harm to children.

Clause 49 inserts a new section 15A that enables the College to request a brief description of the circumstances of a conviction or charge for an interstate or Commonwealth offence mentioned in an applicant's criminal history, from the relevant interstate (including territory) or Commonwealth commissioners of police. Under COAG arrangements, jurisdictions' police commissioners will be obliged to supply screening units of other jurisdictions formally participating in the exchange with expanded criminal history information and, if the subject of a follow-up request, with descriptions about the circumstances of the charges and convictions.

Clause 50 amends section 16 (Requirement to advise applicant of criminal history information received) to include a reference to section 15A.

Clause 51 amends section 65 (College's power to obtain criminal history etc. in relation to an approved teacher) to enable the College of Teachers to seek interstate criminal history information or a brief description of the circumstances relating to that criminal information to determine if a teacher is or continues to be suitable to teach.

Clause 52 replaces section 91 (Definition for ch 5) and provides a new definition of *disciplinary information* in section 91 (Definition for ch 5) which states that the definition does not include interstate information. Subsection (2) of new section 91 clarifies that information disclosed by a person to the college as required by chapter 3, part 1 is not interstate information even if the information is also disclosed to the college by the commissioner of police or an interstate commissioner.

Clause 53 amends section 112 (Reporting of offences) to remove any doubt that, in subsection (1), a reference to other information does not include interstate information.

Clause 54 amends section 124, as inserted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*, to clarify that references to members that constitute the tribunal for the purpose of determining matters under the Act, are references to members of QCAT, not members of the Board of the Queensland College of Teachers or the Professional Practice and Conduct Committee. In addition it provides that a legally qualified member means a legally qualified member under the QCAT Act.

Clause 55 amends section 282 (Definition for pt 1) to include in the definition *relevant personal information*, information obtained under the new section 15A.

Clause 56 amends section 283 (Confidentiality of particular information) to describe the limited circumstances in which interstate criminal history information may be disclosed.

Clause 57 amends section 286 (College may enter into information sharing arrangement with commissioner of police) to include in the definition *criminal history information*, information that is required or permitted to be given to the College of Teachers under the new section 15A. The section title is also changed to more accurately reflect the existing nature of the provision, to 'Information sharing arrangement with commissioner of police for information otherwise lawfully given'.

Clause 58 amends section 287 (Other information sharing agreements) to clarify that interstate criminal history information may not be the subject of an information sharing agreement under section 287.

Clause 59 inserts a new part 10 which outlines the transitional provisions. The effect of the transitional provision is to clarify that an *interstate charge* refers to a charge against a person for an offence including a charge for an offence alleged to have been committed by the person before the commencement of this Act. Also, that for the definition *interstate spent conviction*, a reference to a conviction of a person includes a conviction of the person before the commencement of this Act.

Clause 60 amends schedule 3 (Dictionary) by including definitions of *expanded interstate criminal history, interstate charge, interstate*

commissioner of police, interstate information, interstate rehabilitation law and interstate *spent conviction.*

expanded interstate criminal history, of a person, means (a) every interstate spent conviction of the person and (b) every interstate charge against the person.

interstate charge, made against a person, means a charge against the person for an offence alleged to have been committed by the person against a law of another State or the Commonwealth.

interstate commissioner of police means the commissioner of a police force or service of another State (including a Territory) or the Commonwealth.

interstate information means (a) a person's expanded interstate criminal history disclosed by the commissioner of police to the college under section 15, 65 or 75; or (b) any other information, that relates to a person's expanded interstate criminal history, disclosed by the commissioner of police under section 15, 65 or 75, or an interstate commissioner of police under section 15A, to the college.

interstate rehabilitation law means a law applying, or that applied, in another State or the Commonwealth, that provides, or provided, for the same matter as the *Criminal Law(Rehabilitation of Offenders) Act 1986*.

interstate spent conviction, of a person, means a conviction for an offence committed by the person against a law of another State or the Commonwealth that the person is not required to disclose under an interstate rehabilitation law because (a) a rehabilitation period prescribed under that law for the conviction has expired and (b) the conviction has not been revived under that law.

Part 2 Amendment of Police Service Administration Act 1990

Clause 61 provides that this part amends the *Police Service Administration Act 1990*.

Clause 62 amends several existing definitions in section 1.4. Clause 62 amends the definitions of *approved agency*, *conviction* and *criminal history* to refer to new definitions of those terms because the terms are used in new

part 10, division 1B (Provisions about exchange of criminal history for child related employment screening) that is being inserted into the *Police Service Administration Act* by this Bill. Additionally, clause 62 supports the relocations from section 1.4 of substantive definitions of *criminal history* to other parts of the Act by clauses 63, 64 and 65 below, by referring to the changed locations. Finally, subsection (2) inserts references into section 1.4 to the definitions of *child-related employment screening* and *interstate screening unit* provided by new section 10.2S.

Clause 63 relocates the existing definition of *criminal history* for part 5AA (Assessment of suitability of persons seeking to be engaged, or engaged, by the service) from section 1.4 (Definitions) to part 5AA, as new section 5AA.1A. The existing definition is relocated without any change being made to it.

Clause 64 relocates the existing definition of *criminal history* for subdivision 2 (Criminal history disclosure provisions) of division 1 (Provisions about information disclosure) of part 10 (Miscellaneous provisions) from section 1.4 (Definitions) to subdivision 2 of division 1 of part 10, as new section 10.2AA. The existing definition is relocated without any change being made to it, apart from the addition of the editor's note.

Clause 65 relocates the existing definition of *criminal history* for division 1A (Provisions about exchange of policing information) of part 10 (Miscellaneous provisions) from section 1.4 (Definitions) into division 1A, as an amendment to section 10.2G. The existing definition is relocated without any change being made to it.

Clause 66 inserts new part 10, division 1B (Provisions about exchange of criminal history for child related employment screening) comprising of new sections 10.2S, 10.2T, 10.2U and 10.2V. The key section of new division 1B is 10.2T (Giving criminal history information to interstate screening unit or approved agency for child-related employment screening), which is supported by new section 10.2U (Use of criminal history permitted despite other provisions) and must be read with the critical definitions in new section 10.2S (Definitions for div 1B).

New division 1B gives effect to the Council of Australian Governments' (COAG) agreement of 29 November 2008 to facilitate the inter-jurisdictional exchange of criminal history information for people working with children. It does this by enabling the Queensland Police Service to provide the expanded criminal history information that is the

subject of the COAG agreement to interstate child-related employment screening units, to better inform their decision making in safeguarding children from sexual, physical and other abuse.

The provision of the expanded criminal history information by the Queensland Police Service under new division 1B will be the subject of various safeguards that underline the COAG agreement of 29 November 2008 and which will be the subject of a formal intergovernmental agreement that will be in place before information is provided under new division 1B. The safeguards are in the form of requirements that COAG has insisted child related employment screening units must comply with before they receive the expanded criminal history information under the national exchange. Australian governments will be obliged to ensure the screening units they are nominating to participate in the exchange comply with these 'participation requirements'.

The participation requirements are those listed under the "Consistency with Fundamental Legislation Principles" heading above, and are that the participating screening unit must:

- have a legislative basis;
- use the information only for the purposes of child related employment screening;
- be prohibited from—and, where appropriate, subject to penalty for—disclosing the information beyond the screening unit (though there is an express exception to this requirement for legislated child protection functions);
- if they have functions beyond child safety screening, they use the information only to screen risks to the safety of children, and not for general employment suitability or probity screening;
- have appropriate risk assessment frameworks;
- have appropriately skilled staff;
- obtain the written consent of the individual that records the individual's understanding that the employment screening will involve the provision of the expanded interstate criminal history information (and to facilitate this the COAG national implementation committee has developed a model consent form);
- have a scheme that reflects the principles of natural justice. In particular, where there is an intention to make an adverse decision

about an individual, the screening unit is required to disclose the information to the individual, allow the individual a reasonable opportunity to be heard and consider the individual's response before finalising the decision;

- comply with Commonwealth, State and Territory privacy and human rights legislation where relevant; and
- comply with records management legislation within their jurisdiction.

New section 10.2S (Definitions for div 1B) defines the terms *approved agency*, *child-related employment screening*, *criminal history* and *interstate screening unit* for the purposes of part 10, division 1B.

approved agency means CrimTrac or a police service of the Commonwealth or another State.

child-related employment screening means using information about a person in a way that is authorised or required under a law of another State or the Commonwealth that relates to assessing whether a person poses a risk of harm to children. The provision defines 'child related employment screening' by reference to the legislation of the other jurisdiction in which the information will be used for the screening.

criminal history, of a person, means the person's convictions for offences committed in Queensland or elsewhere, charges against the person for offences alleged to have been committed in Queensland or elsewhere, and circumstances information, namely, information about a conviction or charge including a brief description of the circumstances of the conviction or charge.

interstate screening unit means an entity, established under a law of another State or the Commonwealth, that is (a) prescribed under a regulation or (b) prescribed for the purposes of the *Crimes Act 1914* (Cwlth), section 85ZZGB, 85ZZGC or 85ZZGD.

The interstate screening units that other jurisdictions have advised they are nominating for participation in the exchange are listed in this bill at chapter 3, part 3 (Amendment of Police Service Administration Regulation 1990).

The provisions to which reference is made in paragraph (b) of the definition are new sections of the Commonwealth *Crimes Act* proposed by the Crimes Amendment (Working With Children - Criminal History) Bill 2009 (Cwth) currently before the Commonwealth Parliament. Proposed section 85ZZGE of the Commonwealth bill provides that, before a regulation is made, the Commonwealth Minister must be satisfied that the

screening unit complies with a list of matters that replicate COAG participation requirements

New section 10.2T (Giving criminal history to interstate screening unit or approved agency for child-related employment screening) is the key section of new division 1B and provides that to enable an interstate screening unit to use the history for child related employment screening, the commissioner may disclose a person's criminal history information, either directly to an interstate screening unit or to CrimTrac or a police service of another State or the Commonwealth for forwarding to an interstate screening unit.

New section 10.2U (Use of criminal history permitted despite other provisions) provides the commissioner may disclose the person's criminal history despite a prescribed provision. *Prescribed provision* is defined to mean: part 5A, part 5AA or part 10, division 1 or 1A of the *Police Service Administration Act*; the *Criminal Law (Rehabilitation of Offenders) Act 1986*; or part 9 of the *Juvenile Justice Act 1992*.

New section 10.2V (Protection from liability) is designed to ensure that a person who is acting honestly and without negligence will not be civilly or criminally liable for the disclosure of criminal history information under new division 1B.

Clause 67 inserts new division 5 (Transitional provisions for the *State Penalties Enforcement and Other Legislation Amendment Act 2009*) into part 11 to provide for transitional and declaratory provisions in relation in relation to the *State Penalties Enforcement and Other Legislation Amendment Act 2009*.

New section 11.9 (Definition for div 5) clarifies that, for the purposes of the division, commencement means the commencement of the *State Penalties Enforcement and Other Legislation Amendment Act 2009*.

New section 11.10 (Amendment of regulation by the *State Penalties Enforcement and Other Legislation Amendment Act 2009* does not affect powers of Governor in Council) declares that the amendment by Parliament to the regulation proposed in chapter 3, part 3 of this Bill does not affect the power of the Governor in Council to further amend or repeal the regulation.

New section 11.11 (Exchange of criminal history for child-related employment screening) clarifies that for new section 10.2S, definition *criminal history*, a reference to a charge against a person for an offence includes a charge for an offence alleged to have been committed by the

person before the commencement of the *State Penalties Enforcement and Other Legislation Amendment Act 2009.*

Part 3 Amendment of Police Service Administration Regulation 1990

Clause 68 provides that this part amends the *Police Service Administration Regulation 1990*.

Clause 69 inserts new Part 7E (Provision about exchange of criminal history for child-related employment screening) into the regulation.

New 7E.1 (Interstate screening units—Act, s 10.2S, definition *interstate screening unit*, paragraph (a)) identifies entities that are interstate screening units for the purposes of paragraph (a) of the definition *interstate screening unit* in new section 10.2S (Definitions for div 1B) of the *Police Service Administration Act.*

Chapter 4 QCAT Amendments

Part 1 Amendment of Queensland Civil and Administrative Tribunal Act 2009

Clause 70 provides that this part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 71 amends section 2 to provide that section 277A, as inserted into the Act by this Bill, is to commence upon assent of the Bill as an Act.

Clause 72 amends section 128 to include in subsection (2)(b) a person performing a function of the principal registrar delegated to the person under section 210(2). This amendment is consequential on the amendment

to section 210 which permits the principal registrar to delegate his or her functions to a QCAT registry staff member or a Magistrates Court staff member.

Clause 73 amends section 132 to provide that enforcement of a final decision of the tribunal relating to a minor civil dispute is to be by filing in the registry of the Magistrates Court, rather than the Supreme Court as presently provided.

Clause 74 amends section 166 in relation to internal appeals within QCAT, that is, appeals from QCAT in its original jurisdiction to QCAT in its appeal jurisdiction. The amendment will provide that an appeal from QCAT constituted by a magistrate must be heard by a judicial member, as opposed to a non-judicial member. This amendment will apply to appeals from magistrates' decisions as ordinary members for minor civil disputes and magistrates' decisions as supplementary members for other QCAT matters.

Clause 75 amends section 167 to insert a note which refers to the powers of judicial registrars to hear and determine minor civil disputes as adjudicators under the new section 198A (which is inserted by the following clause).

Clause 76 inserts a new section 198A. This section will allow judicial registrars to hear and determine minor civil disputes as an adjudicator. Under the *Magistrates Act 1991* the Chief Magistrate may currently issue a practice direction which allows judicial registrars to hear and determine minor debt claims and small claims. The jurisdiction for minor debt claims and small claims will form part of the minor civil disputes jurisdiction of QCAT from commencement.

Clause 77 amends section 203 to correct punctuation.

Clause 78 amends section 210 to permit the principal registrar to delegate his or her functions to a QCAT registry staff member or a Magistrates Court staff member. The delegation may only be to a person appropriately qualified to perform the function. This amendment is made to ensure that the processing and case management of QCAT matters in rural and regional areas can be carried out by appropriately qualified tribunal and court staff. A consequential amendment is made to the heading to more accurately reflect its content following the amendment.

Clause 79 amends the heading to section 211 for consistency with the amendment made to the heading to section 210.

Clause 80 amends section 212 (principal registrar must disclose interests) to add to the definition of principal registrar a person performing a function of the principal registrar delegated to the person under section 210(2). This amendment is consequential on the amendment to section 210 which permits the principal registrar to delegate a QCAT registry staff member or a Magistrates Court staff member.

Clause 81 amends section 216 (false or misleading information) to add to the definition of official a Magistrates Court staff member performing a function of the principal registrar delegated to the person under section 210(2). This amendment is consequential on the amendment to section 210 which permits the principal registrar to delegate his or her functions to a Magistrates Court staff member.

Clause 82 amends section 218 to clarify that a finding of contempt is a matter to be determined in each case and hence "may" arise from the listed behaviour. The clause also amends the section to provide that the behaviour of insulting certain persons may constitute contempt where the person insulted is performing a function that is linked with a proceeding. Presently, the section does not require that link to behaviour during a proceeding, which is inconsistent with similar contempt provisions. Also, the list of relevant persons, the insulting of whom may constitute contempt, is extended to apply to a Magistrates Court staff member. This amendment is consequential on the amendment to section 210 which permits the principal registrar to delegate his or her functions to a Magistrates Court staff member. The provision is also extended to apply to assessors.

Clause 83 amends section 220 to replace the reference to, and definition of, tribunal staff member with a reference to, and definition of, prescribed persons. The provision is thereby extended to include a Magistrates Court staff member performing a function of the principal registrar delegated to the member under section 210 as a person who may lawfully remove a disruptive person from the tribunal.

Clause 84 amends section 228 to omit the requirement that magistrates, who are ordinary members of the tribunal by virtue of section 171(2), are to take an oath of office. Magistrates already take an oath of office under the *Magistrates Act 1991.*

Clause 85 amends section 233 (confidentiality generally) to add to the definition of prescribed person a Magistrates Court staff member performing a function of the principal registrar delegated to the person under section 210(2). This amendment is consequential on the amendment

to section 210 which permits the principal registrar to delegate his or her functions to a Magistrates Court staff member.

Clause 86 amends section 234 (further limitation on disclosure to a court etc.) to add to the definition of prescribed person a Magistrates Court staff member performing a function of the principal registrar delegated to the person under section 210(2). This amendment is consequential on the amendment to section 210 which permits the principal registrar to delegate his or her functions to a Magistrates Court staff member.

Clause 87 amends section 237 (immunity of participants etc.) to add to the definition of principal registrar a person performing a function of the principal registrar delegated to the person under section 210(2). This amendment is consequential on the amendment to section 210 which permits the principal registrar to delegate a QCAT registry staff member or a Magistrates Court staff member.

Clause 88 amends section 238 (protection from civil liability) to add to the definition of official a Magistrates Court staff member performing a function of the principal registrar delegated to the person under section 210(2). This amendment is consequential on the amendment to section 210 which permits the principal registrar to delegate his or her functions to a Magistrates Court staff member.

Clause 89 inserts a new section 242A. This section provides that section 242A and section 198A of the Act expire at the same time as the provisions for judicial registrars in Part 9A of the *Magistrates Act 1991*. Part 9A of that Act expires 2 years after it commences however the period before expiry of the part may be continued by regulation for up to 1 year. Despite the expiry of the part, a judicial registrar will have jurisdiction beyond expiry to the extent necessary to enable a decision to be given in a part heard matter or standing for the decision.

Clause 90 amends section 263. Section 263 operates to transfer members, other than full-time members, of tribunals abolished by the Act from membership of those tribunals to ordinary membership of QCAT, for a period of two years. As such members may apply to be a senior member or an adjudicator of QCAT, a situation may arise in which a person was appointed as an ordinary member by virtue of section 263 and appointed as a senior member or an adjudicator by virtue of an appointment. An amendment is therefore made to provide that section 263 does not apply, or ceases to apply if it has already operated to apply, to a person who is appointed as a member or an adjudicator.

Clause 91 amends section 268 to correct an incorrect cross-reference.

Clause 92 inserts new section 277A which provides that the chief executive may approve forms for use under the Act. Initial forms will therefore be approved by the chief executive and subsequent forms will be approved by the rules committee pursuant to section 241. This provision expires three months after section 241 commences. This allows for the circumstance that a rules committee is not appointed prior to commencement of QCAT operations.

Clause 93 amends schedule 2, section 12(d) to substitute a word.

Clause 94 amends schedule 3 to omit a redundant definition and to insert a definition of Magistrates Court staff member. The insertion of this definition is consequential upon the amendments to sections 210, 212, 216, 218, 220, 233, 234, 237 and 238.

The clause also amends schedule 3 to replace the definition of adjudicator to refer to the new section 198A and insert a definition of the term *judicial registrar.*

Part 2 Amendment of Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009

Clause 95 provides that this part amends the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009.*

Clause 96 amends section 11 to replace subsection (5) of new section 36E that is inserted into the *Adoption of Children Act 1964* by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. Subsection (5) sets out the circumstances in which a member is ineligible to be a constituting member for a review of a reviewable decision made under the *Adoption of Children Act 1964*. Currently subsection (5) is drawn from section 30(3) and (4) of the *Children Services Tribunal Act 2000* (which will be repealed when the relevant provisions of the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* commence). The current criteria for ineligibility, namely, whether a person is approved or not as an approved carer is not considered to bear sufficient

relationship to adoption matters that are reviewable and accordingly is not an appropriate ground for disqualifying a member. The new criteria concerns a member's current participation in the adoption process or a previous decision that the member was not suitable to be an adoptive parent.

Clause 97 inserts new section 559A to amend section 97 of the *Gaming Machine Act 1991*. The amendment omits reference to a section that is repealed by the amendment contained in the next clause.

Clause 98 replaces section 564. The effect of the replacement is to omit all of part 12 division 8 of the *Gaming Machine Act 1991*, rather than just sections 414 to 421 (as currently omitted by section 564), as it has been determined that all of the division is redundant.

Clause 99 amends section 565 to insert a provision omitting part of the definition of "commencement" from the schedule to the *Gaming Machine Act 1991* and renumbering the remainder of the definition. The clause also inserts a provision amending the definition of "operating authority" in the schedule to the *Gaming Machine Act 1991*. These amendments are consequential on the repeal of part 12 division 8.

Clause 100 replaces section 699 to replace section 500B of the *Property Agents and Motor Dealers Act 2000*, to remove reference to an approved form in relation to starting a proceeding. All forms for use in relation to QCAT proceedings will be approved under the *Queensland Civil and Administrative Tribunal Act 2009.*

Clause 101 amends section 724 to substitute a reference to "appeal" in the heading to new section 153 of the *Racing Act 2002* with a reference to "review" to correctly reflect the nature of the proceeding before the tribunal.

Clause 102 replaces sections 871 and 872 to replace the amendment to the *Wine Industry Regulation 1995* consequential on the remaking of the regulation as the *Wine Industry Regulation 2009*.

Clause 103 replaces section 1047. The amendment is made to include a reference in section 213 of the *Health Practitioners (Professional Standards) Act 1999*, inadvertently omitted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*, to the president choosing a judicial member to hear a disciplinary matter. The amendment also correctly requires the principal registrar, rather than the president, to choose assessors to assist the tribunal.

Clause 104 amends section 1273 to substitute a reference to appeals and the Commercial and Consumer Tribunal in the heading to section 189 of the *Building Act 1975* with a reference to review and the tribunal to correctly reflect the nature of the proceeding before QCAT.

Clause 105 amends section 1293 which inserts new section 1137K in the *Local Government Act 1993* to provide appropriate protection against self-incrimination for an individual required to provide information to QCAT under section 1137K.

Clause 106 amends section 1466 which inserts new section 163 into the *Guardianship and Administration Act 2000*. The amendment includes a reference to the Court of Appeal that was inadvertently omitted in section 163(3)(a)(viii). From the commencement of QCAT operations, the right of appeal of decisions under the *Guardianship and Administration Act 2000* lies with the QCAT appeal tribunal or the Court of Appeal rather than the Supreme Court.

Clause 107 replaces section 1519 to correct the number of the new section to be inserted into the *Legal Profession Act 2007.*

Clause 108 inserts new section 1555A. This new section will amend section 53I of the *Magistrates Act 1991* to insert a note which refers to the powers of judicial registrars to hear and determine minor civil disputes as adjudicators under the new section 198A the QCAT Act.

Clause 109 replaces section 1556 which amends section 53J of the *Magistrates Act 1991*. Section 53J sets out the subject matters that judicial registrars may hear and determine if so authorised by the Chief Magistrate by practice direction. Section 1556 makes a consequential amendment to section 53J by omitting paragraphs 53J(1)(b) and (c) which refer to minor debt claims under the *Magistrates Courts Act 1921* and small claims under the *Small Claims Tribunals Act 1973*. As these claims will become part of the jurisdiction of QCAT, they no longer need to be referred to in section 53J.

The replacement provision also expands the bail powers of judicial registrars in uncontested matters consistent with the original intent of the provisions. The amendment will allow judicial registrars to consider applications to enlarge or vary bail for defendants charged with an offence mentioned in section 16(3) of the *Bail Act 1980* and to also grant bail in those matters following a consent committal provided the complainant, the prosecutor or a person appearing on behalf of the Crown does not oppose

the application. Other paragraphs in section 53J are renumbered as a consequence.

Clause 110 amends section 1557 to refer to the new paragraphs in section 53J(1) of the *Magistrates Act 1991* inserted and renumbered by the above clause.

Clause 111 amends section 1844 to insert a new subsection (2) into the new section 10 that is inserted into the *Debits Tax Repeal Act 2005* by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. The amendments to the *Debits Tax Repeal Act 2005* by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* allow a person who is dissatisfied with a commissioner's decision on objection to either: request that the commissioner refer the commissioner's decision to the Supreme Court, consistent with the current arrangements, or apply to QCAT for a review of the decision. Consistent with this choice of forum, if a Supreme Court proceeding has been started but is still pending at the commencement of the transitional provisions for the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*, section 10 of the *Debits Tax Repeal Act 2005* provides that the Supreme Court proceeding cannot be transferred to QCAT without the consent of the applicant for the Supreme Court proceeding. The amendment clarifies that section 268(7) of the *Queensland Civil and Administrative Act 2009* does not apply to a final decision of the Supreme Court. Section 268(7) provides that a continuing entity's (that is, the Supreme Court's) final decision has effect as though it is a final decision of QCAT. However when an applicant chooses not to have a Supreme Court proceeding transferred to QCAT, the ensuing decision of the Supreme Court should be not taken to be a decision of QCAT.

Clause 112 amends section 1886 to omit subparagraph (e) from new section 68(2) that is inserted into the *Taxation Administration Act 2001* by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009.* Subparagraph (e) provides that a notice of an objection decision is to include any right the taxpayer has to have the operation of the decision stayed. However, new section 69(1)(b) inserted by section 1887 of the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* is clear that the taxpayer cannot seek a stay of the decision. The taxpayer must pay all outstanding amounts before an application for review by QCAT can be made.

Clause 113 amends section 1892 to insert a new subsection (2) into the new section 165 that is inserted into the *Taxation Administration Act 2001* by the

Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009. The amendments to the *Taxation Administration Act 2001* by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* allow a person who is dissatisfied with a commissioner's decision on objection to either: appeal to the Supreme Court, consistent with the current arrangements, or apply to QCAT for a review of the decision. Consistent with this choice of forum, if a Supreme Court proceeding has been started but is still pending at the commencement of the transitional provisions for the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*, section 165 of the *Taxation Administration Act 2001* provides that the Supreme Court proceeding cannot be transferred to QCAT without the consent of the applicant for the Supreme Court proceeding. The amendment clarifies that section 268(7) of the *Queensland Civil and Administrative Act 2009* does not apply to a final decision of the Supreme Court. Section 268(7) provides that a continuing entity's (that is, the Supreme Court's) final decision has effect as though it is a final decision of QCAT. However, when an applicant chooses not to have a Supreme Court proceeding transferred to QCAT, the ensuing decision of the Supreme Court should be not taken to be a decision of QCAT.

Part 3 Amendment of Adoption Act 2009

Clause 114 provides that this part amends the *Adoption Act 2009*.

Clause 115 amends section 29, consequential to the insertion of new part 14A.

Clause 116 amends section 30, consequential to the insertion of new part 14A.

Clause 117 amends section 39, consequential to the insertion of new part 14A.

Clause 118 amends section 148, consequential to the insertion of new part 14A.

Clause 119 amends section 175, consequential to the insertion of new part 14A.

Clause 120 inserts new part 14A to provide for proceedings before QCAT. Part 14A replicates part 3A of the *Adoption of Children Act 1964* which was inserted into that Act by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. Pursuant to the insertion of part 3A, the jurisdiction of the Children Services Tribunal and the Guardianship and Administration Tribunal to determine adoption matters is transferred to QCAT from the commencement of QCAT operations. The insertion of part 14A into the *Adoption Act 2009* ensures that the jurisdiction of QCAT continues from the date of repeal of the *Adoption of Children Act 1964* and the commencement of the *Adoption Act 2009*. This clause and the remainder of part 2 will commence upon proclamation to coincide with the commencement of the *Adoption Act 2009*. Apart from some drafting changes, part 14A does not depart significantly from the intention of part 3A as explained in the Explanatory Note to clause 11 of the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009.*

Clause 121 amends section 319, consequential to the insertion of new part 14A.

Clause 122 amends section 335, consequential to the insertion of new part 14A.

Clause 123 amends section 337, consequential to the insertion of new part 14A.

Clause 124 amends schedule 3 (dictionary), consequential to the insertion of new part 14A.

Part 4 Amendment of Body Corporate and Community Management Act 1997

Clause 125 provides that this part amends the *Body Corporate and Community Management Act 1997*.

Clause 126 amends section 279 to replace a reference to written notice with a reference to a QCAT information notice and to replace the reference to section 241 with a reference to section 241A. The clause also omits the reference to a stay under section 291, as that section is repealed by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions)*

Amendment Act 2009. The reference will be to a stay under the *Queensland Civil and Administrative Tribunal Act 2009*, as stays are provided for under that Act.

Part 5 Amendment of Child Protection Act 1999

Clause 127 provides that this part amends the *Child Protection Act 1999*.

Clause 128 amends section 99H which is inserted into the Act by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. The amendment is a re-wording of subsection (2) which deals with constitution of the tribunal for a compulsory conference. The amendment does not change the effect of the section.

Part 6 Amendment of Crime and Misconduct Act 2001

Clause 129 provides that this part amends the *Crime and Misconduct Act 2001*.

Clause 130 amends sections 56 and 174 to refer to a "Note" rather than an "Editor's note" as the note text is not merely editorial.

Clause 131 amends the headings to certain sections in line with current drafting practice.

Clause 132 amends section 78 to correct a cross-reference.

Clause 133 amends section 86 to insert a missing word.

Clause 134 amends section 109 to replace a reference to misconduct tribunal with a reference to QCAT. Misconduct tribunal jurisdiction is transferred to QCAT by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

Clause 135 amends the heading to section 119B in line with current drafting practice.

Clause 136 amends section 119K to omit subsection (3) which provides a redundant definition.

Clause 137 amends section 124 to omit redundant words. The *Cross-Border Law Enforcement Legislation Amendment Act 2005* removed references to "major crime" from the surveillance device provisions of the Act, but omitted to remove this reference from section 124.

Clause 138 amends section 130 to replace a reference to misconduct tribunal with a reference to QCAT. Misconduct tribunal jurisdiction is transferred to QCAT by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

Clause 139 amends section 146K to correct numbering.

Clause 140 amends section 166 to remove a reference to a repealed division.

Clause 141 amends section 170 to omit a redundant word.

Clause 142 amends section 227 to correct a cross-reference.

Clause 143 amends section 230 to correct two cross-references.

Clause 144 amends sections 326 and 339 to remove an unnecessary word in each section.

Clause 145 amends schedule 2, definition of evidence, to update the drafting style. The clause also amends the definition of relevant person to omit a reference to a repealed section.

Part 7 Amendment of Fisheries Act 1994

Clause 146 provides that this part amends the *Fisheries Act 1994*.

Clause 147 amends section 186, as inserted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*, to clarify that references to members that constitute the tribunal for the purpose of determining matters under the Act, are references to members of the tribunal, not members of the Joint Authority.

Part 8 Amendment of Food Act 2006

Clause 148 provides that this part amends the *Food Act 2006*.

Clause 149 inserts new section 240 to provide for the stay of operation of an original decision. Current section 240 was inadvertently omitted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. (The provision making the omission has not been commenced.) New section 240 will maintain the right of a person to apply for a stay of an original decision where an application for internal review of the decision is made. The stay application is currently made to the Magistrates Court. This will transfer to QCAT upon commencement of QCAT operations.

Part 9 Amendment of Health and Other Legislation Amendment Act 2009

Clause 150 provides that this part amends the *Health and Other Legislation Amendment Act 2009*.

Clause 151 amends section 42, which amends section 392 of the *Health Practitioners (Professional Standards) Act 1999*, to omit a reference to the Nursing Tribunal. The jurisdiction of the Nursing Tribunal to determine matters under the *Nursing Act 1992*, including matters referred to it under the *Health Practitioners (Professional Standards) Act 1999*, is transferred to QCAT from the commencement of QCAT operations. A substituted reference to QCAT is unnecessary as section 392(3)(b) already applies the section to a disciplinary body which in turn is defined as QCAT (following amendment by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*).

Clause 152 amends section 43, which amends the dictionary to the *Health Practitioners (Professional Standards) Act 1999*, to omit the definition of the Nursing Tribunal. This amendment is consequential on the transfer of the tribunal's jurisdiction to QCAT from the commencement of QCAT operations.

Part 10 Amendment of Integrated Resort Development Act 1987

Clause 153 provides that this part amends the *Integrated Resort Development Act 1987*.

Clause 154 replaces section 175W which provides the Commercial and Consumer Tribunal with jurisdiction to hear disputes about the transfer of a letting agent's management rights. This jurisdiction will transfer to QCAT upon commencement of QCAT's operations, hence replaced section 175W refers to QCAT rather than the Commercial and Consumer Tribunal.

Clause 155 amends section 175X which provides the Commercial and Consumer Tribunal with jurisdiction to hear disputes about the appointment or engagement of a person as a body corporate manager or caretaking service contractor for an approved scheme or part of an approved scheme; or the authorisation of a person as a letting agent for an approved scheme or part of an approved scheme. This jurisdiction will transfer to QCAT upon commencement of QCAT's operations, hence section 175X is amended to replace the reference to the Commercial and Consumer Tribunal with a reference to QCAT.

Clause 156 amends section 179B which provides the Commercial and Consumer Tribunal with jurisdiction to hear disputes about the application of a development control by-law for an approved scheme; or a contravention or alleged contravention of a development control by-law for an approved scheme. This jurisdiction will transfer to QCAT upon commencement of QCAT's operations, hence section 179B is amended to replace the reference to the Commercial and Consumer Tribunal with a reference to QCAT.

Clause 157 amends section 179C which applies to section 179B and requires that reasonable efforts must be made to resolve the matter using an internal dispute resolution process before it can be decided by a referee or the Commercial and Consumer Tribunal. Consequential to the amendments to section 179B, the references to the Commercial and Consumer Tribunal and tribunal are replaced by references to QCAT.

Clause 158 amends the schedule 7 (dictionary) to omit the definition of the Commercial and Consumer Tribunal. This amendment is made as the jurisdiction conferred on the Commercial and Consumer Tribunal will

transfer to QCAT upon the commencement of QCAT's operations. The definition of QCAT is contained in the *Acts Interpretation Act 1954*.

Part 11 Amendment of Local Government Act 2009

Clause 159 provides that this part amends the *Local Government Act 2009*.

Clause 160 inserts new division 4 into chapter 6, part 5. The new sections are drawn from certain sections of part 3A inserted into the *Local Government Act 1993* by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. However, much of the contents of part 3A of the *Local Government Act 1993* are not replicated in new division 4, as regulations will set out the equality of employment opportunity obligations for local governments.

New section 201A permits a regulation to be made about equality of employment opportunity and provides that the chief executive may refer to QCAT for investigation and to give a report, a local government's non-compliance with the regulation.

Concerns with respect to potential fundamental legislative principle issues in relation to section 201A have been previously addressed in the explanatory notes under the section on Fundamental Legislative Principles.

New section 201B, drawn from section 1137K of the *Local Government Act 1993*, confers jurisdiction on QCAT to investigate a referral made to it under section 201A and also provides appropriate protection against self-incrimination for an individual required to provide information to QCAT under section 201B.

New section 201C, drawn from section 1137L of the *Local Government Act 1993*, requires QCAT at the end of a referral to give a report, with or without recommendations, to the chief executive officer of the local government and the chief executive.

New section 201D, drawn from section 1137N of the *Local Government Act 1993*, provides that a local government must comply with a recommendation in a report of QCAT.

Clause 161 amends section 270 to permit regulations to be made about reviews of decisions made under the Act. Accordingly, a regulation may provide for QCAT to conduct a review of a decision, as permitted by section 6 of the *Queensland Civil and Administrative Tribunal Act 2009*.

Part 12 Amendment of Nursing Act 1992

Clause 162 provides that this part amends the *Nursing Act 1992*.

Clause 163 amends section 87 to substitute references to "president" with references to "principal registrar". Consistent with sections 88 and 89, the principal registrar rather than the president of QCAT is to perform the role of choosing assessors to assist the tribunal in determining matters under the *Nursing Act 1992*.

Part 13 Amendment of Pest Management Act 2001

Clause 164 provides that this part amends the *Pest Management Act 2001*.

Clause 165 inserts new section 107 to provide for the stay of operation of an original decision. Current section 107 was inadvertently omitted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. (The provision making the omission has not been commenced.) New section 107 will maintain the right of a person to apply for a stay of an original decision where an application for internal review of the decision is made. The stay application is currently made to the District Court. This will transfer to QCAT upon commencement of QCAT operations.

Part 14 Amendment of Plumbing and Drainage Act 2002

Clause 166 provides that this part amends the *Plumbing and Drainage Act 2002*.

Clause 167 amends section 70B, as inserted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*, to clarify that references to members that constitute the tribunal for the purpose of determining matters under the Act, are references to members of the tribunal, not members of the Plumbers and Drainers Board.

Part 15 Amendment of Police Powers and Responsibilities Act 2000

Clause 168 provides that this part amends the *Police Powers and Responsibilities Act 2000*.

Clause 169 amends section 207 to omit subsection (3) which provides a redundant definition.

Part 16 Amendment of Private Health Facilities Act 1999

Clause 170 provides that this part amends the *Private Health Facilities Act 1999*.

Clause 171 inserts new section 130 to provide for the stay of operation of an original decision. Current section 130 was inadvertently omitted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. (The provision making the omission has not been commenced.) New section 130 will maintain the right of a person to apply for a stay of an original decision where an application for internal review of the decision is made. The stay application is currently made to the District

Court. This will transfer to QCAT upon commencement of QCAT operations.

Part 17 Amendment of Property Agents and Motor Dealers Act 2000

Clause 172 provides that this part amends the *Property Agents and Motor Dealers Act 2000*.

Clause 173 amends section 477 to substitute "president" for "chairperson" to correctly reflect the title of the head of QCAT.

Clause 174 replaces section 598 which currently differentiates between forms used in relation to the Commercial and Consumer Tribunal proceedings (approved by the chairperson of the tribunal) and forms used otherwise (approved by the chief executive). As all forms for use in relation to QCAT proceedings will be approved under the *Queensland Civil and Administrative Tribunal Act 2009*, the section is replaced with a reference to forms being approved only by the chief executive.

Part 18 Amendment of Public Health (Infection Control for Personal Appearance Services) Act 2003

Clause 175 provides that this part amends the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

Clause 176 inserts new section 123 to provide for the stay of operation of an original decision. Current section 123 was inadvertently omitted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. (The provision making the omission has not been commenced.) New section 123 will maintain the right of a person to apply for a stay of an original decision where an application for internal review of the decision is made. The stay application is currently made to the Magistrates Court. This will transfer to QCAT upon commencement of QCAT operations.

Part 19 Amendment of Queensland Building Services Authority Act 1991

Clause 177 provides that this part amends the *Queensland Building Services Authority Act 1991*.

Clause 178 amends section 95 to provide that QCAT may deal with a domestic building dispute between a building owner and a building contractor or a review of a decision of the Queensland Building Services Authority by way of an expedited hearing if certain circumstances apply.

Part 20 Amendment of Radiation Safety Act 1999

Clause 179 provides that this part amends the *Radiation Safety Act 1999*.

Clause 180 inserts new section 187 to provide for the stay of operation of an original decision. Current section 187 was inadvertently omitted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. (The provision making the omission has not been commenced.) New section 187 will maintain the right of a person to apply for a stay of an original decision where an application for internal review of the decision is made. The stay application is currently made to the District Court. This will transfer to QCAT upon commencement of QCAT operations.

Part 21 Amendment of Retail Shop Leases Act 1994

Clause 181 provides that this part amends the *Retail Shop Leases Act 1994*.

Clause 182 amends section 17 to update a reference to Commonwealth legislation to reflect the repeal of the *Petroleum Retail Marketing Franchise*

Act 1980 and the commencement of the *Trade Practices (Industry Codes–Oilcode) Regulation 2006*.

Clause 183 amends section 63. Section 63 requires a mediator to refer a retail tenancy dispute to the chief executive following a failed mediation. The *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* replaces this requirement by a requirement that the mediator refer the dispute to QCAT. As a result, the chief executive is no longer notified of the outcome of failed mediations, information which the chief executive requires to maintain the register of retail tenancy disputes under section 116. The clause will require the mediator to inform the chief executive of the referral of a dispute to QCAT.

Part 22 Amendment of Sanctuary Cove Resort Act 1985

Clause 184 provides that this part amends the *Sanctuary Cove Resort Act 1985*.

Clause 185 amends section 4 to omit the definition of the Commercial and Consumer Tribunal. This amendment is made as the jurisdiction conferred on the Commercial and Consumer Tribunal will transfer to QCAT upon the commencement of QCAT's operations. The definition of QCAT is contained in the *Acts Interpretation Act 1954*.

Clause 186 replaces section 94T which provides the Commercial and Consumer Tribunal with jurisdiction to hear disputes about the transfer of a letting agent's management rights. This jurisdiction will transfer to QCAT upon commencement of QCAT's operations, hence replaced section 94T refers to QCAT rather than the Commercial and Consumer Tribunal.

Clause 187 replaces subsection (2) of section 94U which provides the Commercial and Consumer Tribunal with jurisdiction to hear disputes about a claimed or anticipated contractual matter about:

- the appointment or engagement of a person as a body corporate manager or caretaking service contractor for the resort or part of the resort; or
- the authorisation of a person as a letting agent for the resort or part of the resort.

This jurisdiction will transfer to QCAT upon commencement of QCAT's operations, hence amended section 94U refers to QCAT rather than the Commercial and Consumer Tribunal.

Clause 188 amends section 104B which provides the Commercial and Consumer Tribunal with jurisdiction to hear disputes about the application of a development control by-law; or a contravention or alleged contravention of a development control by-law. This jurisdiction will transfer to QCAT upon commencement of QCAT's operations, hence section 104B is amended to replace the reference to the Commercial and Consumer Tribunal with a reference to QCAT.

Clause 189 amends section 104C which applies to section 104B and requires that reasonable efforts must be made to resolve the matter using an internal dispute resolution process before it can be decided by a referee or the Commercial and Consumer Tribunal. Consequential to the amendments to section 104B, the references to the Commercial and Consumer Tribunal and tribunal are replaced by references to QCAT.

Part 23 Amendment of Taxation Administration Act 2001

Clause 190 provides that this part amends the *Taxation Administration Act 2001*.

Clause 191 amends section 29B to replace subsections (7) to (10) with new subsections (7) to (11). Section 29B currently provides a right of appeal to the Commercial and Consumer Tribunal from a decision of the commissioner refusing an application for the withdrawal of a notice to make an electronic payment. The appeal right will become a right of review to QCAT upon commencement of QCAT operations. The amendments therefore update the language to refer to "review" rather than "appeal" proceedings, to reflect the nature of the proceeding before QCAT. New subsection (11)(a) provides a right to legal representation for parties to a proceeding before QCAT. This is consistent with other QCAT review proceedings under this Act. New subsection (11)(b) provides that the grounds for review are limited to the grounds upon which an application may be made to the commissioner for withdrawal of the notice.

Clause 192 amends the heading to section 61 to include a reference to QCAT, to properly reflect the contents of section 61 as amended by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

Clause 193 amends section 143B to replace subsections (7) to (10) with new subsections (7) to (11). Section 143B currently provides a right of appeal to the Commercial and Consumer Tribunal from a decision of the commissioner refusing an application for the withdrawal of a notice to make an electronic lodgement of documents. The appeal right will become a right of review to QCAT upon commencement of QCAT operations. The amendments therefore update the language to refer to "review" rather than "appeal" proceedings, to reflect the nature of the proceeding before QCAT. New subsection (11)(a) provides a right to legal representation for parties to a proceeding before QCAT. This is consistent with other QCAT review proceedings under this Act. New subsection (11)(b) provides that the grounds for review are limited to the grounds upon which an application may be made to the commissioner for withdrawal of the notice.

Clause 194 amends section 153C to replace subsections (3)(c) and (d), (6) and (7). Section 153C currently provides a right of appeal to the Commercial and Consumer Tribunal from a decision of the commissioner to require a person to pay a penalty for noncompliance with a notice under section 29B or 143B of the Act. The appeal right will become a right of review to QCAT upon commencement of QCAT operations. The amendments therefore update the language to refer to "review" rather than "appeal" proceedings, to reflect the nature of the proceeding before QCAT. New subsection (7)(b) provides a right to legal representation for parties to a proceeding before QCAT. This is consistent with other QCAT review proceedings under this Act.

Clause 195 amends schedule 2 to change the definition of tribunal from the Commercial and Consumer Tribunal to QCAT.

Part 24 Amendment of Veterinary Surgeons Act 1936

Clause 196 provides that this part amends the *Veterinary Surgeons Act 1936*.

Clause 197 amends section 15B, as inserted by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*, to clarify that references to members that constitute the tribunal for the purpose of determining matters under the Act, are references to members of the tribunal, not members of the Veterinary Surgeons Board of Queensland.

Chapter 5 Other amendments

Part 1 Amendment of Classification of Computer Games and Images Act 1995

Clause 198 provides that this part amends the *Classification of Computer Games and Images Act 1995*.

Clause 199 makes minor technical amendments to section 12 of the Act to relocate the existing footnotes as notes in line with Queensland's current legislation format and to correct a section reference in one of the notes.

Clause 200 amends section 30 of the Act to enable the appointment of a public service officer as an inspector. A public service officer can only be appointed as an inspector if the chief executive believes the person has the necessary expertise or experience to be an inspector. The amendment preserves the current power to appoint a police officer as an inspector. For consistency with the other classification Acts, a note is inserted to cross reference the operation of section 13 of the *Police Powers and Responsibilities Act 2000*, which requires a proposed appointment of a police officer to have the approval of the Police Commissioner.

This amendment will facilitate the continued use of Fair Trading inspectors to perform the classifications enforcement function. This will be operationalised through a memorandum of understanding between the Department of Justice and Attorney-General and the Department of Employment, Economic Development and Innovation.

Clause 201 amends section 51 of the Act to omit an unnecessary and incorrect footnote.

Clause 202 amends the dictionary in Schedule 2 of the Act to omit unnecessary footnotes from the definitions of "approved form", "determined markings" and "exempt computer game".

The amendments contained in this part commence on assent.

Part 2 Amendment of Classification of Films Act 1991

Clause 203 provides that this part amends the *Classification of Films Act 1991*.

Clause 204 amends section 4 of the Act to enable the appointment of a public service officer as an inspector. A public service officer can only be appointed as an inspector if the chief executive believes the person has the necessary expertise or experience to be an inspector. The amendment preserves the current power to appoint a police officer as an inspector. It relocates and corrects the existing footnote about the operation of section 13 of the *Police Powers and Responsibilities Act 2000* as a note to subsection 4(1)(b), in line with Queensland's current legislation format.

This amendment will facilitate the continued use of Fair Trading inspectors to perform the classifications enforcement function. This will be operationalised through a memorandum of understanding between the Department of Justice and Attorney-General and the Department of Employment, Economic Development and Innovation.

Clause 205 makes minor technical amendments to section 27 of the Act to relocate the existing footnotes as notes in line with Queensland's current legislation format and to correct a section reference in one of the notes.

Clause 206 makes a minor technical amendment to section 28 of the Act to relocate the existing footnote as a note in line with Queensland's current legislation format and to correct a section reference in the note.

Clause 207 makes a minor technical amendment to section 56 to correct a grammatical error.

The amendments contained in this part commence on assent.

Part 3 Amendment of Classification of Publications Act 1991

Clause 208 provides that this part amends the *Classification of Publications Act 1991*.

Clause 209 amends section 3 of the Act to omit unnecessary footnotes from the definitions of "board", "classification guidelines" and "determined markings".

Clause 210 amends section 5 of the Act to enable the appointment of a public service officer as an inspector. A public service officer can only be appointed as an inspector if the chief executive believes the person has the necessary expertise or experience to be an inspector. The amendment preserves the current power to appoint a police officer as an inspector. It relocates and corrects the existing footnote about the operation of section 13 of the *Police Powers and Responsibilities Act 2000* as a note to subsection 5(1)(b), in line with Queensland's current legislation format.

This amendment will facilitate the continued use of Fair Trading inspectors to perform the classifications enforcement function. This will be operationalised through a memorandum of understanding between the Department of Justice and Attorney-General and the Department of Employment, Economic Development and Innovation.

Clause 211 amends section 6A of the Act to omit 'of the department'. This is unnecessary as the term 'chief executive' is defined under section 33(11) of the *Acts Interpretation Act 1954.*

Clause 212 makes a minor technical amendment to section 11C of the Act by omitting an unnecessary footnote.

The amendments contained in this part commence on assent.

Part 4 Amendment of Disability Services Act 2006

Clause 213 provides that this part amends the *Disability Services Act 2006*.

Clause 214 amends the definition of 'transitional period' in section 241(1). The effect of the amendment is to extend the transitional period for restrictive practices for a further period of 9 months – making 1 October 2010 the new date when a disability service provider using a restrictive practice must meet all of the full legislative requirements.

Part 5 Amendment of Guardianship and Administration Act 2000

Clause 215 provides that this part amends the *Guardianship and Administration Act 2000*.

Clause 216 amends section 29(1)(b) to provide than an application for the review of an appointment of an administrator is also able to be made as well as an application for the review of a guardian (other than a guardian for a restrictive practice matter under chapter 5B). This amendment is required to correct an oversight that was made upon commencement of the *Disability Services and Other Legislation Amendment Act 2008*.

Clause 217 makes a consequential amendment to section 265(4) to amend the definition of 'transitional period' to be consistent with the definition of 'transitional period' in the *Disability Services Act 2006* (see Part 4). The amendment allows a guardian authorised to make decisions around restrictive practices before the commencement of the transitional period, to continue to make these decisions until the end of the extended transitional period, unless otherwise ordered by the Guardianship and Administration Tribunal.

Clause 218 inserts new section 268 which is a transitional provision. New section 268 provides that from the commencement of the *Disability Services and Other Legislation Amendment Act 2008* on 1 July 2008, the amendments to section 29 made by the above clause, is taken to always

have applied in relation to a review of an appointment of an administrator for an adult.

Part 6 Amendment of Information Privacy Act 2009

Clause 219 provides that this part amends the *Information Privacy Act 2009*.

Clause 220 amends section 50 to insert a definition of 'power to deal' with an access or amendment application to clarify that it includes the power to deal with an application for internal review.

Clause 221 amends section 51 to insert a definition of 'deal' with an access or amendment application to clarify that it includes dealing with an application for internal review.

Clause 222 amends section 69 to put it beyond doubt that a decision under subsection 69(2) is a decision refusing access to a document under section 67.

Clause 223 amends section 94 to insert a further note that an internal review application may be dealt with under a delegation or direction.

Clause 224 amends section 120 to clarify that the information commissioner must not disclose documents the subject of the decision being reviewed to a person other than to the persons set out in subsections 120(a)(i), (ii) and (iii) and that, at the end of the review, those documents must be returned to the person who gave them.

Clause 225 inserts a heading for part 1 of chapter 8.

Clause 226 inserts a heading for part 2 of chapter 8. This clause also inserts new transitional provisions 212, 213 and 214. New section 212 sets out a definition of 'relevant period' which means the period starting on 1 July 2009 and ending immediately before the commencement of this part. New section 213 provides for the retrospective validation for delegations by a principal officer and directions by a Minister that have occurred during the relevant period. New section 214 provides that a decision made under section 69(2) during the relevant period is taken to be a reviewable decision as if section 69 as amended by this Act had been in force on the day the

decision was made. New section 214 also provides that the 20 business day timeframe for making an application for an internal or external review starts after the commencement date of this part and that any internal or external review application in relation to matters mentioned in section 69 made before the commencement of this part is taken to have been made immediately after the commencement of this part.

Part 7 Amendment of Right to Information Act 2009

Clause 227 provides that this part amends the *Right to Information Act 2009*.

Clause 228 amends section 30 to insert a definition of 'power to deal' with an access application to clarify that it includes the power to deal with an application for internal review.

Clause 229 amends section 31 to insert a definition of 'deal' with an access application to clarify that it includes dealing with an application for internal review.

Clause 230 amends section 55 to put it beyond doubt that a decision under subsection 55(2) is a decision refusing access to a document under section 47.

Clause 231 amends section 80 to insert a further note that an internal review application may be dealt with under a delegation or direction.

Clause 232 amends section 107 to clarify that the information commissioner must not disclose documents the subject of the decision being reviewed to a person other than to the persons set out in subsections 107(a)(i), (ii) and (iii) and that, at the end of the review, those documents must be returned to the person who gave them.

Clause 233 inserts a heading for part 2 of chapter 7.

Clause 234 inserts a heading for part 3 of chapter 7. This clause also inserts new transitional provisions 204, 205 and 206. New section 204 sets out a definition of 'relevant period' which means the period starting on 1 July 2009 and ending immediately before the commencement of this part. New section 205 provides for the retrospective validation for delegations

by a principal officer and directions by a Minister that have occurred during the relevant period. New section 206 provides that a decision made under section 55(2) during the relevant period is taken to be a reviewable decision as if section 55 as amended by this Act had been in force on the day the decision was made. New section 206 also provides that the 20 business day timeframe for making an application for an internal or external review starts after the commencement date of this part and that any internal or external review application in relation to matters mentioned in section 55 made before the commencement of this part is taken to have been made immediately after the commencement of this part.

Part 8 Amendment of Superannuation (State Public Sector) Act 1990

Clause 235 cites that this part amends the *Superannuation (State Public Sector) Act 1990* (QSuper Act).

Clause 236 amends section 3 to insert provisions which provide that for the purposes of Chapter 7 of the *Corporations Act 2001* (Cwlth) and the *Superannuation Industry (Supervision) Act 1993* (Cwlth), the QSuper Board does not represent the State, nor has the immunities and privileges of the State.

Clause 237 inserts new section 6DAA into the QSuper Act which allows the trustees to elect one of their number as standing deputy chairperson of the Board. Further, this clause sets out how the deputy chairperson is to be elected, which trustees are eligible for election and the circumstances under which the person ceases to be the deputy chairperson.

Clause 238 amends section 6I of the QSuper Act to state that the deputy chairperson of the QSuper Board is to preside at meetings in the chairperson's absence. In the absence of both the chairperson and deputy chairperson, consistent with current practice another trustee chosen by the trustees present, is to preside.

OVERVIEW OF WHEEL CLAMPING, SEIZURE AND SALE PROCESS