

Justice and Other Legislation Amendment Bill 2010

Explanatory Notes

Objectives of the Bill

The primary objective of the Justice and Other Legislation Amendment Bill 2010 (the Bill) is to make minor, technical or other amendments to Acts administered by the Attorney-General and Minister for Industrial Relations.

These Acts include:

- *Acts Interpretation Act 1954*
- *Appeal Costs Fund Act 1973*
- *Appeals Costs Fund Regulation 2010*
- *Bail Act 1980*
- *Childrens Court Act 1992*
- *Criminal Code*
- *District Court of Queensland Act 1967*
- *Drugs Misuse Act 1986*
- *Electoral Act 1992*
- *Electoral Regulation 2002*
- *Evidence Act 1977*
- *Guardianship and Administration Act 2000*
- *Industrial Relations Act 1999*
- *Industrial Relations (Tribunals) Rules 2000*
- *Judges (Pensions and Long Leave) Act 1957*
- *Justices Act 1886*
- *Justices of the Peace and Commissioners for Declarations Act 1991*
- *Legal Profession Act 2007*

- *Magistrates Act 1991*
- *Magistrates Courts Act 1921*
- *Penalties and Sentences Act 1992*
- *Professional Standards Act 2004*
- *Property Law Act 1974*
- *Public Trustee Act 1978*
- *Queensland Civil and Administrative Tribunal Act 2009*
- *Queensland Civil and Administrative Tribunal Regulation 2009*
- *Reprints Act 1992*
- *State Penalties Enforcement Act 1999*
- *Supreme Court Act 1995*
- *Supreme Court of Queensland Act 1991*
- *Torres Strait Islander Land Act 1991*
- *Uniform Civil Procedure (Fees) Regulation 2009*
- *Workers' Compensation and Rehabilitation Act 2003*

The Bill amends the *Family Responsibilities Commission Act 2008*, an Act administered by the Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships.

The Bill makes a minor amendment to the *Payroll Tax Act 1971*, an Act administered by the Treasurer and Minister for Employment and Economic Development.

The Bill amends the *Disability Services Act 2006*, an Act administered by the Minister for Disability Services and Multicultural Affairs.

The Bill amends the *Transport Operations (Passenger Transport) Act 1994*, an Act administered by the Minister for Transport.

Reasons for the Bill

The Bill amends various Acts administered by the Attorney-General and Minister for Industrial Relations, including the following amendments:

Acts Interpretation Act 1954

- The *Acts Interpretation Act 1954* (the Acts Interpretation Act) is amended to clarify that Parliament's powers to make laws extend to coastal areas as prescribed by the *Coastal Waters (State Powers) Act 1980 (Cwlth)* and the *Coastal Waters (State Title) Act 1980 (Cwlth)* (collectively known as the State Title and Powers Acts).

The State Title and Powers Acts were enacted by the Commonwealth Government with agreement from the States following the decision in *The State of New South Wales v The Commonwealth of Australia* (1975) 135 CLR 337, which held that State boundaries ended at the low water mark and that the States had no proprietary rights in respect of the territorial sea or seabed.

Even though the decision in *Jones v State of Queensland and Another* [1998] AILR 1 provides authority for the application of the State Title and Powers Acts, it would be desirable for the law in this area to be clarified. Therefore, the Bill amends the Acts Interpretation Act to clarify that Parliament's powers to make laws extend to coastal areas as prescribed by the State Title and Powers Acts. Similar amendments have been made in New South Wales, Victoria, Tasmania, South Australia and Western Australia.

Appeal Costs Fund Act 1973 and the Appeal Costs Fund Regulation 2010

- The Bill relocates the provision for the approval of forms to the *Appeal Costs Fund Act 1973* from the *Appeal Costs Fund Regulation 2010*.

Bail Act 1980

- The Bill amends sections 16 and 33 of the *Bail Act 1980* (the Bail Act) to allow for watch house bail to be granted 'where the defendant is charged or held in custody' for a Bail Act offence. Section 16(3) of the Bail Act provides that a police officer may grant watch house bail if a defendant is charged with an offence against the Bail Act. Section 33(1) of the Bail Act creates an offence for failing to appear in accordance with a bail undertaking. Proceedings for that offence against the Bail Act are instituted with the laying of a complaint. Because the defendant is not "charged" with the offence, a police officer cannot grant watch house bail under section 16(3). The amendments will allow watch house bail to be granted where the defendant is held in custody for a Bail Act offence.

Childrens Court Act 1992

- The Bill amends the *Childrens Court Act 1992* (the Childrens Court Act) and the *Justices Act 1886* (Justices Act) to allow access to court records for approved research. The *Child Protection Act 1999* (Child Protection Act) contains confidentiality provisions that prohibit any party who receives information in the performance of their functions under that Act, from releasing that information other than to perform a function under the Act. The Childrens Court receives information relating to children the subject of statutory intervention under the Child Protection Act. The provisions of the *Child Protection and Other Acts Amendment Act 2010* (yet to commence) authorise the chief executive (child safety services) to allow researchers access to material in the possession of the chief executive to perform the chief executive's function of promoting research into the causes and effects of child abuse under the Child Protection Act. The current provisions in the Childrens Court Act do not authorise the release of information contained in court files. The amendment will facilitate the registrar or clerk of the Childrens Court to allow access to court records or information for research purposes. As the release of information contained in court files is generally provided for under the Justices Act, a consequential amendment to the Justices Act is made to facilitate the research exemption.

Criminal Code

- The Bill amends section 694 of the Criminal Code to extend the entitlement to costs in failed applications for leave to file charges in a private prosecution. Any person may, by leave of the Supreme Court, present charges against any other person for any indictable offence. Section 694 of the Criminal Code provides that the defendant in an unsuccessful private prosecution is entitled to costs. The legislation is currently silent as to costs for a defendant in circumstances where the person was not given leave to file the charges. The proposed amendment has been prompted by the decision in *Dudzinski v Spender* [2008] QSC 54, in which the defendant was unsuccessful in an application for costs after a private prosecutor was refused leave to file charges. Her Honour Justice White indicated that if she had the power to award costs she would have exercised it.

Drugs Misuse Act 1986

- The Bill amends section 4C of the *Drugs Misuse Act 1986* (the DM Act) to allow the Minister to delegate his or her power to appoint drug analysts to the Chief Executive, or another suitable officer within the Department.

Electoral Act 1992

- The Bill amends the *Electoral Act 1992* (the Electoral Act) so that electoral roll information is no longer available for purchase by any person.

The proposed amendments are consistent with the *Commonwealth Electoral Act 1918* (the Commonwealth Act). Under this Act, the electoral rolls may only be released for electoral and other specific purposes. Given that Queensland and the Commonwealth share joint electoral rolls, greater consistency with the Commonwealth Act is desirable.

The *Electoral Regulation 2002* is also amended to omit certain fees pertaining to the purchase of electoral roll information following the amendments to the Electoral Act.

Guardianship and Administration Act 2000

- Section 245 of the *Guardianship and Administration Act 2000* (the Guardianship Act) is amended to allow the Queensland Civil and Administrative Tribunal (QCAT) to obtain copies of court documents without charge regarding a person who is the subject of a court sanction and who has impaired capacity. The Guardianship Act requires QCAT to periodically review appointments of administrators for adults with impaired capacity. The court documents relating to the adult and the making of the administration appointment may be relevant to the review proceeding by QCAT. While the section requires the registrar of the court to provide a copy of the relevant court orders to QCAT, the Act is silent as to the provision of other court material, such as affidavits, to QCAT and whether fees are applicable.
- The Guardianship Act is amended to include a new provision to give the registrar of the court discretion to release documents relating to civil proceedings (other than when an order is made under section 245) to QCAT upon a request by QCAT for no fee.

Industrial Relations Act 1999 and the Industrial Relations (Tribunals) Rules 200

- The Bill amends the *Industrial Relations Act 1999* (IR Act) to allow a person to apply for parental leave in relation to a child born under an altruistic surrogacy arrangement. The *Surrogacy Act 2010*, which commenced on 1 June 2010, decriminalised altruistic surrogacy and provided for the transfer of the legal parentage of the child from the birth mother to the intended parents in certain circumstances. The parental leave provisions for intended parents are modelled on Queensland's existing parental leave entitlements. The amendments will provide that the intended parents under a surrogacy arrangement will be permitted access to parental leave to which any other parent is entitled.
- The Bill also amends the IR Act to allow appointments to the Industrial Court of Queensland (ICQ) and Queensland Industrial Relations Commission (QIRC) to be made on a part-time basis and allow existing members to work on a part-time basis with the agreement of the Minister.
- In addition, the Queensland Workplace Rights Ombudsman (ombudsman) will be able to be appointed on a part-time basis. An ombudsman who is also a member of the QIRC will be able to work on a part-time basis in both positions, with the agreement of the Minister and president of the QIRC, subject to safeguards in the legislation to deal with potential conflicts of interest. The Bill will finalise the transfer of the vice president's administrative responsibilities to the president. It transfers the remainder of the vice president's responsibilities, other than his or her role as the President's delegate and to be appointed as acting president if the president temporarily cannot perform his or her functions. Provision is also made for another suitably qualified presidential member to be appointed to act if the vice president cannot. Most responsibilities were transferred to the president in June 2009.
- The Minister will be able to approve all forms of leave for the president and the ombudsman and allow the president to approve all forms of leave for other members of the QIRC. Currently, the Governor in Council has to approve long leave exceeding one month for the president, vice president and the ombudsman and the Minister has to approve other leave for the vice president.

- The Bill will allow the Minister to appoint associates to the QIRC instead of the Governor in Council as well as allow the ombudsman to report annually to the Minister instead of quarterly.
- The Bill will amend the IR Act to provide compliance and enforcement arrangements in relation to a mandatory code of practice for clothing outworkers that is currently able to be made by the Governor in Council under section 400I. The amendments will allow a code, if made, to be enforced in the Industrial Magistrates Court by enabling the Industrial Magistrates Court to deal with breaches; and for authorised industrial officers to inspect records required to be kept by the code.
- The Bill amends the *Industrial Relations (Tribunals) Rules 2000* to provide that vacations and holidays of members of the QIRC and ICQ may be rearranged with the approval of the president rather than the vice president.

Judges (Pensions and Long Leave) Act 1957

- The Bill includes amendments to remove the requirement for Governor in Council approval of the long leave or deferment of leave for the Chief Judge and Chief Magistrate. The Chief Justice will now approve the long leave and the deferral of leave of the Chief Judge and the Chief Magistrate, unless the Chief Magistrate is also a District Court Judge in which case the Chief Judge will approve. Long leave or the deferment of leave for the Chief Judge and Chief Magistrate are matters that can be properly dealt with by the Chief Justice or Chief Judge.

Justices Act 1886

- The Bill amends section 47 of the Justices Act to allow a police officer to serve a Notice of Intention to Allege Previous Convictions (Notice of IAPC) in the same manner as a Notice to Appear, where the proceeding is commenced through a Notice to Appear. Currently, proof of service of the Notice of IAPC must be sworn on oath before a Justice. However, to prove service of the Notice to Appear as part of the same proceeding, the police officer is only required to declare service occurred by signing the Notice to Appear. Therefore, it is proposed to align the processes for proving service of the Notice of IAPC and Notice to Appear, where proceedings are commenced through a Notice to Appear.

Justices of the Peace and Commissioner for Declarations Act 1991

- The Bill amends the *Justices of the Peace and Commissioners for Declarations Act 1991* (the JP Act) to allow the registrar to withhold the contact details of a Justice of the Peace (JP) and Commissioner for Declarations (CDec) from inspection, if the registrar considers it is necessary to do so to protect the safety or wellbeing of the JP or CDec or a relative of the JP or CDec.

Legal Profession Act 2007

- The Bill amends the *Legal Profession Act 2007* to clarify that persons admitted as legal practitioners under arrangements predating specifically mentioned “repealed admission rules” are lawyers under the Act. The Bill also makes amendments to clarify that lawyers who have applied for practising certificates, and are entitled to engage in legal practice, are allowed to represent that they are entitled to engage in legal practice. Further amendments are made to allow for the provision of bills for legal services in electronic form to clients who request it and to clarify the meaning of “committee” in section 683(1)(b).

Court Acts

- The Bill includes amendments to the *Magistrates Act 1991* to extend the compulsory retirement age for magistrates, acting magistrates and judicial registrars from 65 years to 70 years.
- The Bill includes amendments to the *Magistrates Court Act 1921*, *District Court of Queensland Act 1967*, the *Supreme Court of Queensland Act 1991* and the *Uniform Civil Procedure (Fees) Regulation 2009* to remove provisions about the courts’ management of mediators and case appraisers. In practice, parties to proceedings nominate the mediator or case appraiser they intend to use, and do not use the court-approved mediators or case appraisers. Therefore, the courts’ management of mediators and case appraisers through the register is unnecessary.
- In 2007, the *Magistrates Act 1991* was amended to support a two year trial for the appointment of judicial registrars to deal with minor matters that would otherwise need to be decided by a magistrate. The trial period was extended by a year by regulation and is to expire on 1 January 2011. The use of judicial registrars has proven to be a cost effective and efficient way of disposing of minor matters and allowing

magistrates to concentrate on more complex and contentious matters. The Bill will repeal those provisions in the *Magistrates Court Act 1991* that provide for the expiry of the scheme. A consequential amendment is also required to the *Queensland Civil and Administrative Tribunal Act 2009* (the QCAT Act) because judicial registrars are also adjudicators for the purposes of minor civil disputes under that Act (section 198A) and the QCAT Act has a corresponding expiry provision (section 242A).

- The Bill includes amendments to the *Supreme Court Act 1995* and *District Court of Queensland Act 1967* to remove the requirement for Governor in Council approval of the appointment of associates to the Supreme and District Courts. The Chief Justice and the Chief Judge will approve the appointment of associates to the Supreme and District Courts respectively. The approval of the salary and conditions of appointment of associates will remain with the Governor in Council. The appointment of associates is a matter that can be properly dealt with by the Chief Justice or Chief Judge.

Penalties and Sentences Act 1992

- The Bill amends section 15D(1)(b) of the *Penalties and Sentences Act 1992* (the P&S Act) to allow offenders charged with an offence against section 10(1) of the DM Act to be eligible for drug diversion.

An offence against section 10(1) of the DM Act provides that it is a crime to have possession of anything used in connection with a crime, as defined under Part 2 of the DMA. The maximum penalty is 15 years imprisonment. This offence covers a wide range of scenarios, including possessing implements or substances to produce dangerous drugs, or mobile phones used in the supply or trafficking of dangerous drugs. However, the provision can also be used to charge offenders with offences relating to personal drug use (for example, a pair of scissors or a coffee grinder).

Drug diversion may be appropriate for these personal use offences. While these offences may be serious, before the court can impose a drug diversion order, it must have regard to the offender's character, age, health and mental condition, the nature of the offence and any circumstance that make the offence less serious than if it were committed under other circumstances.

- The Bill amends section 32 of the P&S Act to allow a magistrate to impose conditions on a recognisance order where a conviction is

recorded. A recognisance is an obligation by the convicted person to keep the peace and be of good behaviour, and comply with any conditions imposed by the court. Failure to comply may result in the convicted person forfeiting a sum of money. Section 32 of the P&S Act provides that a magistrate may impose a recognisance and record a conviction against a person convicted of an offence. This recognisance may not contain any additional conditions. However, under section 19 of the P&S Act a magistrate may impose conditions on a recognisance where no conviction is recorded. The amendment will address this inconsistency.

Professional Standards Act 2004

- The *Professional Standards Act 2004* (the PS Act) provides for the creation of schemes for limiting the liability of members of occupational associations. The Professional Standards Council of Queensland (PSCQ) can approve schemes under the PS Act. Notice of the scheme is provided by Ministerial gazette notice. Section 15 of the PS Act provides for the commencement date of schemes following the gazette notice. Notice of interstate schemes may also be gazetted under the PS Act. However, there is no corresponding provision for their commencement. Therefore, it is proposed to amend section 15(1) of the PS Act to clarify that interstate schemes commence in the same manner as schemes approved by the PSCQ.
- Section 14 of the PS Act provides for the approval of an interstate scheme or an instrument amending an interstate scheme. This section is also amended to provide for the approval of an instrument amending a scheme to make it an interstate scheme.

Queensland Civil and Administrative Tribunal Act 2009

- The Bill includes amendments to the QCAT Act to provide that the Governor in Council may allow a person to hold the positions of both an adjudicator and ordinary member to the Queensland Civil and Administrative Tribunal (QCAT). The Bill will also include a provision that states that an appointment of a person in the roles of both an adjudicator and ordinary member (including any decision, order or declaration by the person) before the amendment commences is taken to have been validly made, as if the amendment was in force before the appointment (or decision, order or declaration by the person) was made.

State Penalties Enforcement Act 1999

- Section 56(3) of the *State Penalties Enforcement Act 1999* (the SPE Act) is amended to allow the registrar of the State Penalties Enforcement Registry (SPER) to extend the time in which a debtor may apply for the cancellation of an enforcement order where satisfied there is reasonable cause for the delay.

Section 56(1) of the SPE Act provides that an application for the cancellation of an enforcement order by the registrar may be made for the reasons stated in section 56(1)(a) to (d). However, under section 56(2), the application must be made within the earlier of: 14 days after the debtor becomes aware of the existence of the order; or 6 months after the issue of the relevant enforcement order. Currently, in section 56(3), the registrar may extend the time frames in which a debtor may apply for the cancellation of the enforcement order, but only when the debtor is applying to the Magistrates Court to hear the matter of the offence to which the relevant enforcement order relates (that is, the ground in section 56(1)(d)).

A debtor is not able to meet the stated timeframes if, for example, the debtor was overseas or seriously ill. In these cases, the SPER registrar has no discretion to extend the time in which the debtor may apply for a cancellation of the enforcement order. The Bill amends section 56(3) to allow the SPER registrar to extend the time frames in section 56(2) in which a debtor may apply for the cancellation of the enforcement order to any ground under section 56(1).

- The Bill amends section 110 of the SPE Act to lower the minimum total debt that a debtor must owe before the SPER registrar may register an interest in a motor vehicle from \$1,000 to \$500 in the relevant register (currently, the Register of Encumbered Vehicles). The ability of the SPER registrar to register an interest over a debtor's motor vehicle is an effective enforcement option. This amendment will encourage a higher number of debtors to either pay their fines in full or enter into an instalment plan for the payment of the fine, without the need to resort to more serious enforcement options.
- The Bill amends section 112 of the SPE Act to allow the SPER Registrar to apply amounts of money paid to SPER by debtors for all other types of orders before payment is made to the State under the *Victims of Crime Assistance Act 2009*. Section 112 of the SPE Act provides for the order of priority when amounts are paid to SPER by

debtors. Currently, debts payable to the State under the *Victims of Crime Assistance Act 2009* (the VOCA Act) have higher priority than certain other amounts, including fines. This unfairly impacts on agencies that register fines with SPER for collection.

- The Bill amends section 57 of the SPE Act to provide the administering authority with additional options of issuing a fresh infringement notice or accepting payment of the infringement notice, after an enforcement order is cancelled by the SPER registrar under section 56.

Torres Strait Islander Land Act 1991

- Amendments to the *Torres Strait Islander Land Act 1991* provide that the chairperson of the Torres Strait Islander Land Tribunal (TSILT) is not required to prepare and present an annual report to the Minister when there has been no activity during a financial year. Consistent with the recommendation of the Weller review into Queensland Government Boards, Committees and Statutory Authorities to abolish the TSILT, the appointment of a chairperson to the TSILT has lapsed. As there is an obligation on the chairperson to lodge an annual report, section 126 of the *Torres Strait Islander Land Act 1991* is amended to provide that an annual report does not need to be prepared for a financial year when no claims have been lodged, determined or pending determination in that financial year.

Minor or technical amendments

The Attorney-General and Minister Industrial Relations is responsible for the administration of wide range of legislation. Periodically, these Acts are examined to identify minor or technical amendments that can be made to improve the operation of the legislation and to ensure that the Acts continue to operate in the manner intended. The Bill includes a number of amendments for this purpose.

Other Acts amended

The Bill also includes amendments to the *Family Responsibilities Commission Act 2008* (FRC Act), which is administered by the Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships. These amendments provide for the more effective and efficient operation of the Family Responsibilities Commission (the Commission) during its current trial period, which ends on 31 December 2011; and ensure that the Commission's efforts and resources remain focussed on priority service areas

that benefit the members of the Cape York Welfare Reform communities of Aurukun, Hope Vale, Mossman Gorge and Coen. The amendments:

- allow three Local Commissioners to constitute the Commission where the expected outcome of a conference is a referral to services;
- ensure a case plan is no longer necessary where an agreement or order includes those matters the FRC Act requires be in a case plan;
- reduce the notice period for a show cause hearing from at least 28 to at least 14 days to support more timely service delivery and responses to breaches of referrals to services;
- enable the Commissioner to dismiss frivolous or vexatious applications to amend or end agreements or orders; and
- extend the FRC Act's confidentiality provisions to persons engaged by a community support service who gain confidential information in relation to Commission clients.

The Bill also makes a minor amendment to the *Payroll Tax Act 1971*, an Act administered by the Treasurer and Minister for Employment and Economic Development. This amendment is made as a consequence of the amendments to the *Industrial Relations Act 1999* that extend the application of parental leave to intended parents in an altruistic surrogacy arrangement.

The Bill also includes amendments to the *Disability Services Act 2006*, an Act administered by the Minister for Disability Services and Multicultural Affairs, and the *Guardianship and Administration Act 2000* to allow short-term approvals to be made for certain restrictive practices where there is a guardian for restrictive practice (general) matters appointed but where the guardian has not yet made a decision; and to extend the transitional period for a further six months until 31 March 2011. These amendments will:

- clarify that the Chief Executive and/or the Adult Guardian may consider a short-term approval for certain restrictive practices, even where a guardian for a restrictive practice (general) matters has been appointed but where no decision has been made by the guardian; and
- clarify that one circumstance when short-term approval ends is once the guardian for a restrictive practice (general) matters for the adult has made a decision.

The Bill also includes an amendment to the *Transport Operations (Passenger Transport) Act 1994* to validate the *Transport Legislation (Postponement Regulation (No. 1) 2008*.

Achievement of the Objective

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

Estimated Cost for Government Implementation

The costs associated with the implementation of this Bill will be met within existing resources.

Consistency with Fundamental Legislative Principles

The following aspects of the Bill may represent breaches of fundamental legislative principles which are justified in the circumstances.

The retrospective application of the amendment to the QCAT Act, which provides that the Governor in Council may allow a person to hold the positions of both an adjudicator and ordinary member, as well as the validation of any decision, order or declaration by the person may potentially breach section 4(3)(g) of the *Legislative Standards Act 1992* (LS Act). There has been one appointment to QCAT of a person as an adjudicator and ordinary member. To ensure the best interests of justice are protected, it is important that the prior appointment of this person as an adjudicator and ordinary member, and any acts or decisions made under the appointments, are validated.

The amendments to the *Electoral Act 1992* will potentially reduce the public's access to information on the electoral rolls and may be regarded as having an adverse effect on the rights and liberties of persons under section 4(3)(g) of the LS Act. However, this limitation is justified as it protects the privacy of persons whose personal details are entered on electoral rolls and the amendments are consistent with Commonwealth legislation. The amendments will close a loophole that allowed electoral roll information to be used for commercial and other unintended uses, such as direct marketing and debt collecting. The amendment does not remove a person's right to access the information on electoral rolls but only limits a person's right to obtain a copy of electoral rolls information.

The amendment of section 82 of the FRC Act reduces the stated time for a person to attend a show cause hearing from at least 28 days to at least 14 days. This amendment may be regarded as having an adverse affect on the rights and liberties of persons under section 4(3)(g) of the LS Act.

Currently, an alleged failure to comply with a requirement may not be resolved for four to six weeks after a show cause notice is issued. While the amendment could be considered to potentially affect procedural fairness, it will be beneficial as it will enable the earlier determination of matters and ensure clients attend and receive assistance from support services in a more timely manner.

For example, a show cause notice involving clients whose children are subject to a child protection notification and multiple unexplained absences from school must be resolved quickly to secure the interests, rights and well-being of the children, consistent with the objects and principles of the FRC Act. Unexplained school absences of three days or more per term can prompt a referral to the Commissioner. The Commissioner convenes a conference with the person and the action could include attendance at the Wellbeing Centre or other support services and an instruction that the child or children must attend school every day, be fed and ready to learn. If the Commissioner receives a report that the client has not attended services as directed, or that the child or children continue to be absent from school, a show cause notice will be issued. Given that vulnerable children are involved, it is imperative that school attendance be resumed as quickly as possible. The current notice period of at least 28 days is far too long for action to take place. It could mean that children miss over a month's schooling, on top of their existing disadvantage.

Another example that requires timely follow-up is where regular attendance at the Wellbeing Centre is critical to anger management and reducing domestic violence. If a client fails to comply with a Commission order to attend a Wellbeing Centre for anger management, there is the potential that violence may occur. Community members may be at risk of injury or death during the at least 28 days of a notice to show cause. The ability to issue a show cause notice and to instigate a response after 14 days is critical to timely follow-up of such matters. This more intensive monitoring of progress could assist in diffusing anger and improve safety for women and children.

The insertion of new section 97A in the FRC Act provides that the Commissioner may dismiss an application to amend or end an order or agreement on the grounds that it is frivolous or vexatious, instead of the

matter being set down for hearing. While this provision may breach the fundamental legislative principles by having an adverse effect on the rights and liberties of persons (section 4(3)(g) of the LS Act), the amendment has been requested to address applications that would never have been accepted by the Commission as they were not made on reasonable grounds. For example, despite the grounds for the original income management order not having changed, clients have sought to amend or terminate orders to enable them to purchase cigarettes or alcohol.

In deciding whether or not to dismiss applications on the grounds that they are frivolous or vexatious, the Commissioner may notify applicants that they have at least 14 days in which to provide further information prior to a final decision. This information can be provided verbally or in writing, with language assistance from local Commission staff if required. The Commissioner must consider all representations and may dismiss the application if there are no accepted representations or if they still consider the application to be frivolous or vexatious.

If an application is dismissed on the grounds it is frivolous or vexatious, the applicant will receive a notice of decision and an appeal notice advising that an appeal may be made to a Magistrates Court, but only on a question of law. This ensures that the same appeal rights apply to these decisions as to decisions made by the Commission at a conference.

The insertion of new section 373A to the IR Act creates an offence where the person does not produce to the authorised industrial officer the record the authorised industrial officer has requested by notice under that section. The offence carries a maximum penalty of 27 penalty units. The creation of this offence may be regarded as adversely affecting the rights and liberties of individuals. However, this penalty is similar to the penalty imposed for other offences of a similar nature under section 373. The offence is considered necessary to ensure compliance with the statutory requirements for protection of clothing outworkers. Under subsections (1)(a) and (b) of this section, the authorised industrial officer must nominate a place and time for the production of the record that is reasonably convenient for the person who is to produce the record. It would be a defence to a prosecution under the section if the nominated place and time is not reasonably convenient.

The proposal in the *Disability Services Act 2006* to apply the extension of the transitional period retrospectively may be considered to adversely affect the rights and liberties of individuals under section 4(3)(g) of the LS Act.

Whilst the liberties of some adults with an intellectual or cognitive disability receiving a funded or provided disability service may be affected, the proposed amendment relates to amendments to clarify a situation and correct an unintended legislative consequence around short-term approvals. The proposed retrospective amendment would allow a disability service provider to lawfully use a restrictive practice between 30 September 2010 and when the amendment to the transitional period commences, provided they comply with the transitional requirements in the *Disability Services Act 2006* (sections 244-248).

The relevant service provider would receive the (retrospective) benefit of the immunity provisions only if they complied with the requirements in the *Disability Services Act 2006*, which requires the service provider to have:

- acted honestly and without negligence;
- demonstrated the restrictive practice was necessary to prevent the adult's behaviour causing harm to the adult or someone else and is the least restrictive way of ensuring their safety; and
- assessed the adult to identify the nature and causes of their behaviour and developed strategies to manage the adult's behaviour, as well as strategies to meet the adult's needs.

These requirements are aimed at providing appropriate safeguards for the individual who may be subject to the restrictive practice. It is considered the effect of the retrospective amendment balances proper safeguards for the individual who may be subject to a restrictive practice, with providing legal certainty to individuals or relevant service providers. For these reasons, it is considered the proposal is justified.

Consultation

Consultation on the justice portfolio aspects of the Bill has been undertaken with the Chief Justice, Chief Judge, President of the Queensland Civil and Administrative Tribunal, Chief Magistrate, Electoral Commissioner of Queensland, Queensland Law Society, Bar Association of Queensland, Legal Aid Queensland and with all Government Departments.

Consultation on the amendments to the FRC Act has been undertaken with the Family Responsibilities Commission Board, which comprises the Director of the Cape York Institute for Policy and Leadership; the Secretary and the Queensland State Manager of the Australian Government's

Department of Families, Housing, Community Services and Indigenous Affairs; and the Director-General of the Department of the Premier and Cabinet. The Director of the Cape York Institute for Policy and Leadership was further consulted about the amendments to FRC Act, as well as members of the Hope Vale community including the Community Justice Group, the Hope Vale Aboriginal Shire Council and key service providers.

Consultation on the amendments to the IR Act and the *Industrial Relations (Tribunals) Rules 2000* has been undertaken with the Queensland Council of Unions, Australian Workers Union, Textile Clothing and Footwear Union of Australia, Queensland Chamber of Commerce and Industry, Master Builders Association, Australian Community Services Employers Association Queensland and Employer Services and the Local Government Association of Queensland. The Australian Industry Group was invited but declined. The president of the Queensland Industrial Relations Commission was also consulted.

The Adult Guardian has been consulted in respect of the amendments to the *Disability Services Act 2006* and *Guardianship and Administration Act 2000*.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides for the short title to the Act as the *Justice and Other Legislation Amendment Act 2010*.

Clause 2 provides that the commencement of clauses 17, 23, 25, 26, 73 and 212 will be on a day to be fixed by proclamation. The balance of the clauses in the Bill will commence on assent. However, clause 28 of the Bill commences, or is taken to have commenced from after 30 September 2010.

Part 2 **Amendment of Acts** ***Interpretation Act 1954***

Clause 3 provides that this part and the schedule amend the *Acts Interpretation Act 1954*.

Clause 4 amends section 9 (Act to be interpreted not to exceed Parliament's legislative power) to change the heading and insert two new subsections (1A) and (1B). These amendments clarify that Parliament's powers to make laws extend to coastal areas as prescribed by the *Coastal Waters (State Powers) Act 1980 (Cwlth)* and the *Coastal Waters (State Title) Act 1980 (Cwlth)*.

New subsection (1A) confirms that Parliament's legislative power includes the power conferred on Parliament under the *Coastal Waters (State Powers) Act 1980 (Cwlth)*, section 5 and the *Coastal Powers (State Title) Act 1980 (Cwlth)*, section 4.

New subsection (1B) provides that subsection (1A) does not apply in relation to the matters which are the subject of section 3 of the *Crimes at Sea Act 2001*.

Clause 5 makes a minor amendment to section 35C (Headings part of provisions etc) to clarify that a provision reference associated with a heading to a schedule is part of the heading.

Clause 6 inserts new 'Part 12 Application of particular State laws to coastal waters' that further clarifies Parliament's powers to make laws, which extend to coastal areas as prescribed by the *Coastal Waters (State Powers) Act 1980 (Cwlth)* and the *Coastal Waters (State Title) Act 1980 (Cwlth)*. This clause inserts new sections 47, 47A, 47B, 47C, 47D and 47E.

New section 47 (Definitions for pt 12) defines terms to be used in new part 12, namely: '*cooperative scheme*', '*criminal laws*' and '*laws of the State*'.

New section 47A (Application of laws of the State to coastal waters) confirms that the laws of the State apply in, and in relation to the coastal waters of the State; and the seabed and subsoil beneath, and the airspace above, the coastal waters of the State, as if the coastal waters of the State, as extending from time to time, were within the limits of the State.

New section 47B (Laws with specific application not to apply) clarifies the application and effect of new part 12 on other laws of the State that include provisions which may limit its application in a particular place.

New section 47C (Extent of jurisdiction in relation to coastal waters) clarifies the authority of a person to perform a function or power that is conferred on the person in relation to the coastal waters of the State. This section also clarifies the jurisdiction of courts of the State in relation to provisions applying to the coastal waters of the State.

New section 47D (Constitutional basis) confirms that new part 12 is enacted under the legislative power of Parliament as extended by the *Coastal Waters (State Powers) Act 1980 (Cwlth)*, section 5 and the *Coastal Powers (State Title) Act 1980 (Cwlth)*, section 4.

New section 47E (Saving) confirms that new part 12 does not limit the application of any laws of the State where those laws provide for their application beyond the limits of the State.

Part 3 Amendment of *Appeal Costs Fund Act 1973*

Clause 7 provides that this part amends the *Appeal Costs Fund Act 1973*.

Clause 8 amends section 4 (Interpretation) to insert a new definition of ‘approved form’.

Clause 9 amends section 2 (Statement to Minister) to change the words ‘prescribed form’ to ‘approved form’, which is consistent with current drafting practices.

Clause 10 inserts new section 25A (Approval of forms) to provide that the chief executive may approve forms for use under this Act. The authority for approval of forms for use in this Act is currently contained in the *Appeal Costs Fund Regulation 2010*. To be consistent with current drafting practice, this amendment relocates the authority to approve forms from the Regulation to the Act.

Clause 11 inserts new ‘Part 6 Transitional provision’ with new sections 27 (Amendment of regulation) and 28 (Approved forms). New section 27 provides that the amendments to the *Appeal Costs Fund Act 1973* and the *Appeal Costs Fund Regulation 2010* do not affect the power of the Governor in Council to further amend or repeal the regulation.

New section 28 provides the transitional provision for forms that were approved prior to the commencement of the amendments in this Bill. This clause provides that a form that was approved for a purpose under section 13 of the *Appeal Costs Fund Regulation 2010*, before its repeal, is taken to be an approved form under new section 25A.

Part 4 Amendment of Appeal Costs Fund Regulation 2010

Clause 12 provides that this part amends the *Appeal Costs Fund Regulation 2010*.

Clause 13 omits section 2 (Definition), which defines ‘approved form’. This definition is no longer necessary as the authority for approval of forms is included in new section 25A of the *Appeal Costs Fund Act 1967*.

Clause 14 repeals section 13 (Approval of forms). This section is repealed as the authority for the approval of forms has been included in new section 25A of the *Appeal Costs Fund Act 1967*.

Part 5 Amendment of *Bail Act 1980*

Clause 15 provides that this part and the schedule amend the *Bail Act 1980*.

Clause 16 amends section 16 (Refusal of bail) to insert a note at the end of section 16(3)(d), which clarifies that a person proceeded against under section 33(3) is taken to be charged with an offence against the Act (as provided for under section 33(6)).

Clause 17 amends section 28A (Other warrants for apprehension of defendant) to omit unnecessary section references inserted by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*.

Clause 18 amends section 33 (Failure to appear in accordance with undertaking) by inserting new subsection (6) that provides a defendant mentioned in subsection (1)(b) is taken to be charged with the offence for the purposes of applying for bail under this Act or for section 16(3)(d).

Part 6 **Amendment of *Childrens Court Act 1992***

Clause 19 provides that this part amends the *Childrens Court Act 1992*.

Clause 20 inserts new section 28A (Access to court records for approved research) to provide the chief executive with the power to authorise a person to have access to a record, or information from a record, to carry out approved research in certain circumstances.

Part 7 **Amendment of Criminal Code**

Clause 21 provides that this part amends the Criminal Code.

Clause 22 amends section 694 (Costs of defence) to allow costs to be awarded to an accused person where the application for leave to present an information against the accused person ends without the application being granted.

Clause 23 renumbers Part 9 Chapter 87 and section 724 to 726 as a result of the passage of the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*.

Part 8 **Amendment of *Disability Services Act 2006***

Clause 24 provides that this part amends the *Disability Services Act 2006*.

Clause 25 amends section 123ZK (Short term approval for use of restrictive practices other than containment or seclusion). Subsection (2)(b) is amended to allow the Chief Executive of the Department of Communities to make a short term approval where a guardian for a restrictive practice (general) matter has been appointed but has not given, or not refused to give, consent to the use of the restrictive practice for the adult.

Clause 26 amends section 123ZL (Period for which short term approval has effect). Subsection (3)(a) is amended to provide that one circumstance when the short term approval ends is when the guardian for restrictive practice (general) matter has made a decision to consent, or refuse to give consent, to use the restrictive practice.

Clause 27 amends Part 16 Division 3 heading to insert ‘and *Justice and Other Legislation Amendment Act 2010*’.

Clause 28 amends section 241 (Interpretation) to extend the transitional period for a further six months to 31 March 2011. This provision commences, or will be taken to have commenced on 30 September 2010.

Clause 29 inserts a new section 241A (Declaration about transitional period) which is a declaration about the transitional period in section 241. The provision state that retrospectivity applies for all purposes.

Part 9 Amendment of *District Court of Queensland Act 1967*

Clause 30 provides that this part and the schedule amend the *District Court of Queensland Act 1967*.

Clause 31 amends section 3 (Definitions) to omit the definition of ‘approval’ and to make changes to the definitions of ‘case appraiser’ and ‘mediator’.

Clause 32 amends section 36 (Principal registrar and associates) by omitting the current section and inserting a new section to provide that the Chief Judge may appoint a person nominated by a judge as an associate to the judge. An associate is appointed under this Act and not the *Public Service Act 2008*, and an associate’s salary and conditions of appointment are decided by the Governor in Council. The principal registrar continues to be appointed by the Governor in Council.

Clause 33 omits sections 93, 94 and 95, which relate to the approval of mediators and case appraisers and the establishment of an ADR Register.

Clause 34 omits Part 7, Division 7, which relates to the revocation of approval as a mediator or case appraiser.

Clause 35 omits section 121 (Appeal against refusal to approve and revocation of approval as mediator or case appraiser) because of the amendments made in the previous two clauses.

Clause 36 inserts new section 147 (Transitional provision for *Justice and Other Legislation Amendment Act 2010*) to clarify the effect of the appointment of an associate under section 36 that was made prior to the commencement of the amendment to section 36.

Part 10 **Amendment of *Drugs Misuse Act 1986***

Clause 37 provides that this part and the schedule amend the *Drugs Misuse Act 1986*.

Clause 38 amends section 4C (Analysts) to allow the Minister to delegate the Minister's function to appoint drug analysts to the chief executive; or an officer of the Department who the Minister is satisfied has the qualifications, experience or standing necessary to perform the function.

Part 11 **Amendment of *Electoral Act 1992***

Clause 39 provides that this part and the schedule amend the *Electoral Act 1992*.

Clause 40 amends section 60 (Inspection and purchase of publicly available parts of electoral rolls) to prevent the sale of the publicly available parts of electoral rolls to any person. This would include members of the public and commercial entities.

Clause 41 inserts new section 61 (Availability of entire electoral rolls) to clarify the availability of entire electoral rolls.

New section 61(1) includes a table which sets out the persons and organisations to which the commission must give information about

electoral rolls, the information that must be given and the circumstances in which it must be given.

New section 61(2) sets out the persons and organisations to which the commission may give a copy, in any form, of information about electoral rolls, the information that may be given and the circumstances in which it may be given.

Both new sections 61(1) and (2), which reflect existing section 61, are not intended to change the availability of entire electoral rolls to candidates for election, registered political parties, members of the Legislative Assembly, local governments, departments or State public authorities.

New section 61(3) ensures that any charge levied by an entity other than the commission in relation to accessing electoral rolls information must be paid by the department or State public authority that has requested information under new section 61(2).

New section 61(4) reflects existing section 61(10).

Clause 42 makes a consequential amendment to section 152 (Misuse of restricted information). This amendment is required as a result of the amendment to section 60.

Clause 43 inserts new Part 11 Division 4 ‘Transitional provision for *Justice and Other Legislation Amendment Act 2010*’ and new section 190. Section 190 provides that the amendment of the *Electoral Regulation 2002* does not affect the power of Governor in Council to further amend the regulation or to repeal it.

Clause 44 amends the schedule, section 320 (Inspection and supply of copies of claims and returns) to omit section 320(5). In September 2008, section 46 of the *Electoral Amendment Act 2008* inserted a new provision (section 319B) which requires the Electoral Commission to publish returns on its website within six weeks after the return is given. This has made section 320(5) redundant.

Part 12 **Amendment of *Electoral Regulation 2002***

Clause 45 provides that this part amends the *Electoral Regulation 2002*.

Clause 46 amends schedule 2 (Fees) to omit item 1 and to insert into items 2 and 3 the updated section references following the amendments made to sections 60 and 61 by clauses 40 and 41 in this Bill.

Part 13 Amendment of *Evidence Act* 1977

Clause 47 provides that this part amends the *Evidence Act 1977*.

Clause 48 amends section 21AM (Use of prerecorded evidence) to clarify that the affected child's evidence is that which is contained in a video-taped recording and not the tape.

Part 14 Amendment of *Family* *Responsibilities Commission* *Act 2008*

Clause 49 provides that this part amends the *Family Responsibilities Commission Act 2008*.

Clause 50 amends section 10 (Commission's functions) to omit 'compulsory' from section 10(1)(b) to enable the Commission's functions to include dealing with, under part 7, division 2, non-compliance with all case plans.

Clause 51 amends section 50 (Constitution of commission for conference) and its heading to take into account new section 50A, which will enable three Local Commissioners to constitute the Commission in certain circumstances.

Clause 52 inserts two new sections, section 50A (Constitution of commission for particular conference) and section 50B (Commissioner must monitor particular decisions).

New section 50A(1) provides that the Commission may be constituted by three Local Commissioners in specified circumstances. These circumstances arise where an agency notice triggers a conference and the

Commissioner considers that the decision made at the conference is likely to be one other than:

- (a) a decision to enter into a family responsibility agreement which requires that the person is subject to an income management decision; or
- (b) an order under section 69(1)(b)(iv) requiring that the person be subject to an income management decision for between three months and one year.

New section 50A(2) provides that a section 50A Commission may be constituted by three Local Commissioners appointed for the welfare reform community area in which the Commissioner considers the person who is the subject of the conference lives or lived. Under new section 50A(3), the three Local Commissioners are to be nominated by a local registry coordinator of the Commission. The Local Commissioners are appointed by the Commissioner under section 51. Existing requirements in section 51(2) ensure that persons nominated for appointment as a Local Commissioner for a conference have successfully completed the required training.

New section 50A(4) provides for the Commissioner to appoint one of the Local Commissioners to be the chairperson of the Commission for the conference, and section 50A(5) provides that the chairperson presides at the conference.

New section 50B requires the Commissioner to monitor the decisions of Commissions constituted under section 50A, to ensure consistency with decisions made at conferences constituted under section 50 or 50A.

Clause 53 amends section 53 (Reconstituting commission for particular conference) so that section 53 will apply to the reconstituting of the Commission for conferences generally, but not to a Commission for a conference constituted under new section 50A.

Clause 54 inserts new section 53A (Reconstituting commission for particular conferences) to provide for the situation where a constituting member of a Commission constituted by three Local Commissioners under section 50A is not available for the conference for any reason.

New section 53A(2) will enable the Commissioner to direct that the Commission be reconstituted by:

- (a) the remaining two Local Commissioners and another Local Commissioner; or
- (b) the remaining two Local Commissioners and the Commissioner.

New section 53A(3) provides that where a section 50A Commission adjourns a conference under new section 64(2), i.e. where a Commission constituted under section 50A considers the decision for the conference is likely to be an income management decision, the Commissioner must direct that the Commission for the conference be reconstituted by the Commissioner and two Local Commissioners.

New section 53A(4) provides that, where practicable, the Local Commissioners are to be from among those constituting the conference prior to its adjournment. Also, under new section 53A(5) the Commissioner is to have regard to the matters mentioned in subsections (2) and (3) of section 51 (Nomination and appointment of local commissioners for conference) e.g. the Local Commissioners have successfully completed the necessary training to ensure they can perform their duties on the Commission.

New section 53A (6) provides that the Commission as reconstituted must continue and finish the conference having regard to any record relating to the conference made by the Commission as previously constituted.

These requirements will enhance the reconstituted conference process through having, where practicable, two of the Local Commissioners with prior knowledge of the matters to be considered, as members of the Commission. Also, guidelines will be developed to assist in determining when three Local Commissioners will sit without the Commissioner, and to support Local Commissioners in their role.

Clause 55 amends section 62 (Obtaining views of persons not attending conference) by inserting new section 62(3) to provide that the obligation in section 62(1) for the Commissioner to take steps to make known at the conference the views of a person relevant to the conference is an obligation of the chairperson of a section 50A conference.

Clause 56 amends section 64 (Adjournment of conference) to require a Commission constituted under section 50A to adjourn if it considers it is likely to make an income management decision (a new definition of *income management decision* is inserted in the Dictionary by this Bill). This clause also requires the chairperson of the Commission to inform the registrar of the adjournment.

Clause 57 amends section 73 (Notice about requirement to attend community support service) to provide that where a Commission decides to enter into an agreement or direct a person to attend a community support service, and if the agreement or direction includes a plan including section

76 matters, a case plan need not be prepared for the person. The section 76 matters include: the goal to be achieved by implementing the plan; details of the community support service to which the plan relates; information about whether a person's attendance at a community support service under the plan is compulsory; and if a person's attendance at a community support service under the plan is compulsory—information about the consequences of not complying with the plan.

This amendment, along with other provisions, gives effect to the policy objective of ensuring that where a family responsibilities agreement or order contains those matters set out in section 76, a case plan is not required. This avoids administrative duplication where the case plan would simply replicate the referral to services part of an agreement or order.

Clause 58 amends section 77 (Recording of case plan) by inserting new section 77(2) to provide that the Registrar need not prepare a case plan if the Commission decides to enter into a family responsibility agreement or make a family responsibilities order which includes a plan containing section 76 matters. This amendment, combined with the amendments to section 73, gives effect to the policy objective of ensuring that where a family responsibilities agreement or order contains those matters set out in section 76, a case plan is not required.

Clause 59 amends the heading in Part 7, Division 2 by omitting the word 'compulsory' to reflect amendments to part 7, Division 2.

Clause 60 amends section 81 (Definition for div 2) to insert a definition of case plan for Division 2 that includes the section 76 matters that are contained within a family responsibilities agreement or a family responsibilities order directing a person to attend a community support service. This has the effect of applying the show cause provisions to those parts of family responsibilities agreements and orders that include section 76 matters.

Clause 61 amends section 82 (Show cause notice) by omitting in subsection (1) 'compulsory'. This amendment widens the Commissioner's obligation to give persons a show cause notice if they reasonably believe a person who is a welfare recipient has not complied with a requirement under a case plan, irrespective of whether the case plan is compulsory or not.

This clause also amends section 82(4) by reducing the stated time for a notice of a show cause hearing from at least 28 days to at least 14 days. This amendment supports the policy objective of achieving a more timely

response by the Commissioner to an alleged breach of a requirement for a person to attend a community support service.

Clause 62 amends section 86 (Ending show cause process without taking proposed action) by omitting the word ‘compulsory’ in relation to case plans. This is to ensure consistency with the other amendments in relation to case plans.

Clause 63 inserts new heading ‘Division 1 Applications’ in Part 9 of the Act.

Clause 64 inserts new Part 9 Division 2 with new section 97A (Frivolous or vexatious applications). Section 97A enables the Commissioner to dismiss an application under this Part, and refuse to amend or end a family responsibilities agreement or order to which the application relates, if the Commissioner considers the application to be frivolous or vexatious. The Commission will no longer need to convene a conference prior to dismissing a frivolous or vexatious application.

Under new section 97A(2) the Commissioner may notify an applicant that his or her application will be dismissed unless the applicant makes oral or written representations to the Commissioner, within a period of at least 14 days, to show that the application is not frivolous or vexatious. The Commissioner is required under new section 97A(3) to consider all representations made under section 97A(2). Under new section 97A(4), the Commissioner may dismiss the application if, at the end of the stated period, no representations have been made by the applicant, or if after considering the applicant’s representations, the Commissioner still considers the application is frivolous or vexatious.

New section 97A(5) requires the Commissioner to give the applicant notice of the decision, reasons for a decision to dismiss the application and an appeal notice for the decision. This will ensure that applicants have the same appeal rights in relation to decisions under section 97A as to those made by the Commission at a conference.

This clause also inserts new heading, ‘Division 3 Hearing and deciding applications’.

Clause 65 amends section 98(1) to change the reference to ‘this part’ to ‘division 1’.

Clause 66 amends section 100(1) to change the reference to ‘this part’ to ‘division 1’.

Clause 67 amends section 101(2)(a) to change the reference to ‘this part’ to ‘division 1’.

Clause 68 amends section 103(1) to change the reference to ‘part’ to ‘division’

Clause 69 amends section 147 (Preservation of confidentiality) to provide that a person engaged by a community support service (including contractors and volunteers) must preserve client confidentiality. This amendment will extend the confidentiality provisions of the Act to cover persons engaged by service providers who receive information from the Commission.

Clause 70 inserts to Part 15 new section 157 (Transitional provision for *Justice and Other Legislation Amendment Act 2010*), which provides that a case plan under amended section 81 is a case plan on and from the commencement of this section.

Clause 71 amends the schedule (Dictionary). The definition of ‘case plan’ is amended to include those parts of the Act where the term ‘case plan’ is used.

This clause also inserts into the Dictionary a definition of ‘*income management decision*’ that will encompass decisions of the Commission to enter into a family responsibilities agreement with a person about giving Centrelink notice requiring a person to be subject to income management and decisions to give Centrelink a direction, pursuant to section 69(1)(b)(iv), requiring that a person be subject to income management.

In addition, this clause also adds a definition of ‘*section 76 matters*’ to the Dictionary to ensure it covers all of the matters mentioned in section 76(1)(c) and any other matters that may be included in a case plan.

Part 15 Amendment of *Guardianship and Administration Act 2000*

Clause 72 provides that this part amends the *Guardianship and Administration Act 2000*.

Clause 73 amends section 80ZK (When adult guardian may give short term approval for use of other restrictive practices) to provide that the Adult

Guardian can give a short term approval for the use of certain restrictive practices where there is a guardian for a restrictive practice (general) matter but they have not given, or not refused to give, consent to the use of the restrictive practice for the adult. This clause amends section 80ZK (7) to provide that one circumstance when the short term approval ends is when the guardian for a restrictive practice (general) matter for the adult gives, or refuses to give, consent to use the restrictive practice for the adult.

Clause 74 inserts new Chapter 11, Part 2A with new section 244A (Access to record of proceedings). Section 244A provides that the registrar of the court may provide to QCAT a copy of part of the record of proceedings from a civil proceeding upon request from QCAT where the registrar considers that part of the record of proceeding is relevant to the tribunal's consideration. No fee is payable to the court for a copy of part of the record of proceedings.

Clause 75 amends section 245 (Settlements or damages awards) to include an authority for the registrar of the court to provide a copy of part of the record of proceedings upon request from QCAT and for no fee.

Clause 76 amends the Schedule 4 (Dictionary) to insert a definition of 'record of proceedings'.

Part 16 Amendment of *Industrial Relations Act 1999*

Clause 77 provides that this part amends the *Industrial Relations Act 1999*.

Clause 78 amends section 17 (Definitions for pt 2) to define certain words to be used in the *Industrial Relations Act 1999*.

Clause 79 amends section 18 (Entitlement) to insert a provision to entitle employees who become parents as a result of entering into an eligible surrogacy arrangement, as defined in section 17 of the *Industrial Relations Act 1999*, to parental leave.

Clause 80 amends section 20 (Notices and documents – parental leave other than maternity or adoption leave) to clarify that this section is not meant to apply to employees taking surrogacy leave, as defined in section 17 of the *Industrial Relations Act 1999*.

Clause 81 inserts new section 21A (Notices and documents – surrogacy leave) that provides the details of the notice and documentation requirements for employees taking surrogacy leave. In accordance with this provision, the only documentation considered necessary for employees taking surrogacy leave is a statutory declaration.

Clause 82 amends section 22 (Reasons not to give notice or documents) to extend the exemption for failing to give notice under reasonable circumstances to employees taking surrogacy leave.

Clause 83 amends section 23 (Notice of change to situation) to extend the obligation to notify an employer of a change of situation to employees taking surrogacy leave.

Clause 84 amends section 25 (Spouses not to take parental leave at same time) to provide that the existing requirement that spouses are not to take parental leave at the same time includes employees taking long surrogacy leave.

Clause 85 amends section 26 (Cancelling parental leave) to provide that the existing requirements regarding cancellation of parental leave include surrogacy leave.

Clause 86 amends section 29A (Extending period of parental leave by agreement) to provide that the existing entitlements regarding extending periods of parental leave apply to employees taking surrogacy leave.

Clause 87 amends section 29C (Application for extension or part-time work) to extend the existing employee obligations with respect to applying for parental leave or part-time work to employees on surrogacy leave.

Clause 88 amends section 29D (Employer to give proper consideration to application for extension or part-time work) to extend the existing employer obligation to consider an employee's application for an extension to parental leave or a request to return to work on a part-time basis to employees taking surrogacy leave.

Clause 89 amends section 31 (Effect on parental leave of ceasing to be the primary caregiver) to clarify that employer obligations, with respect to an employee ceasing to be a child's primary caregiver, apply to employees on all types of parental leave other than any form of short leave and include long parental leave, long adoption leave and long surrogacy leave.

Clause 90 amends section 33 (Employer's obligation to advise about parental leave entitlements) to clarify that employer obligations to advise employees about entitlements to parental leave and employee obligations

to notify employers about relevant matters, apply where any type of parental leave, including surrogacy leave, is applicable.

Clause 91 amends section 34 (Dismissal because of pregnancy or parental leave) to clarify that an employer must not dismiss an employee because the employee or the employee's spouse is going to become a parent or the employee has applied for or is taking parental leave. The amendment to this section extends existing protections to employees and or employees' spouses who are or become parents through a surrogacy arrangement.

Clause 92 inserts new section 38AA (Special surrogacy leave) that provides an entitlement to employees who are intended parents for a surrogacy arrangement to up to 2 days unpaid leave to attend compulsory interviews or court hearings associated with the surrogacy arrangement.

Clause 93 amends section 243 (President of the court) by inserting subsection (4) to provide for the appointment of a non-judicial appointee as president of the Industrial Court of Queensland (ICQ) and Queensland Industrial Relations Commission (QIRC) to be made on a full-time or part-time basis and by subsections (5) and (7), by written agreement of the Minister and the non-judicial appointee, for the non-judicial member to be able to change from performing the functions on a full-time basis to a part-time basis and vice versa.

Subsection (6) provides that where the person is appointed on a part-time basis or by agreement carries out the functions of the office on a part-time basis, then the appointment or agreement must set out the percentage of the time, in relation to the time required for carrying out the functions on a full time basis, that is required to be undertaken on a part-time basis.

Subsection (8) provides that a person performing the functions on a part-time basis may hold another office, perform other duties or engage in employment, provided the Minister is satisfied the office, duties or employment is compatible and there are no conflict of interest issues with the office of president and further provided the Minister has given written approval.

Clause 94 amends section 246(2)(b) (Acting president of the court) to provide that if the vice president temporarily can not perform the functions of the office of the president then another presidential member who is a lawyer of at least 5 years standing may be appointed to act in the position of president.

Clause 95 amends section 258 (Vice president of the commission) to provide in subsection (3) for a person to be appointed as vice president of the QIRC on a full-time basis or a part-time basis and under subsections (4) and (6), by written agreement of the Minister and the vice president, for the vice president to be able to change from performing the functions on a full-time basis to a part-time basis and vice versa.

Subsection (5) provides that where the person is appointed on a part-time basis or by agreement carries out the functions of the office on a part-time basis then the appointment or agreement must set out the percentage of the time, in relation to the time required for carrying out the functions on a full-time basis, that is required to be undertaken on a part-time basis.

Subsection (7) provides that a vice president, who performs the functions of the office on a part-time basis, may hold another office, perform other duties or engage in employment provided the Minister is satisfied that it is compatible and there are no conflict of interest issues with the office of vice president and further provided that the Minister has given his written approval.

Clause 96 amends section 258A (Deputy presidents of the commission) to provide in subsection (3) for a person to be appointed as a deputy president of the QIRC on a full-time basis or a part-time basis and, in subsections (4) and (6) by written agreement of the Minister and a deputy president, for a deputy president to be able to change from performing the functions on a full-time basis to a part-time basis and vice versa.

Subsection (5) provides that where the person is appointed on a part-time basis or by agreement carries out the functions of the office on a part-time basis then the appointment or agreement must set out the percentage of the time, in relation to the time required for carrying out the functions on a full-time basis, that is required to be undertaken on a part-time basis.

Subsection (7) provides that a deputy president, who performs the functions of the office on a part-time basis, may hold another office, perform other duties or engage in employment provided the Minister is satisfied it is compatible and there are no conflict of interest issues with the office of deputy president and provided further that the Minister has given written approval.

Clause 97 amends section 259 (Commissioners) to provide in subsection (3) for a person to be appointed as a commissioner of the QIRC on a full-time basis or a part-time basis and in subsections (4) and (6), by written agreement of the Minister and a commissioner, for a commissioner

to be able to change from performing the functions on a full-time basis to a part-time basis and vice versa.

Subsection (5) provides that where the person is appointed on a part-time basis or by agreement carries out the functions of the office on a part-time basis then the appointment or agreement must set out the percentage of the time, in relation to the time required for carrying out the functions on a full-time basis, that is required to be undertaken on a part-time basis.

Subsection (7) provides that a commissioner, who performs the functions of the office on a part-time basis, may hold another office, perform other duties or engage in employment provided the Minister is satisfied that it is compatible and there are no conflict of interest issues with the office of a commissioner and further provided that the Minister has given written approval.

Clause 98 amends section 259A (Commissioner may be appointed ombudsman) by deleting subsection (3) and inserting a new provision that a commissioner who is also appointed as ombudsman may perform the functions of office of both a commissioner and ombudsman, by a written agreement between the Minister, president and the commissioner. This agreement would contain the arrangements for the commissioner to be able to carry out the functions of both offices.

Clause 99 inserts new section 259AA (Dealing with matters as commissioner and ombudsman) which prohibits a commissioner who is also appointed as ombudsman or was appointed as ombudsman and has dealt with a matter in that capacity from dealing with it in his or her capacity as a commissioner.

Clause 100 amends section 264 (Administrative responsibilities for the commission and registry) by inserting new subsection (4) and (4AA) which provide that where a member has dealt with, or is dealing with a particular issue as ombudsman, the president is prohibited from constituting the commission (including a full bench) with the member, for a matter or proceeding that will, or is likely, to consider, or have regard to the particular issue.

Clause 101 amends section 278 (Power to recover unpaid wages and superannuation contribution etc) to provide in subsection (6) that any presidential member, not only the vice president, may remit a matter, about the recovery of wages and superannuation, to be heard by an Industrial Magistrate, instead of the commission, if considered to be more convenient to be heard by an Industrial Magistrate.

Clause 102 amends section 281 (Reference to full bench) to provide that referral of matters to the full bench under this section be approved by any presidential member and not only the vice president as at present.

Clause 103 amends Section 338 (Rules) to provide that in formulating his consent to the making of rules under for the Industrial Court of Queensland and Queensland Industrial Relations Commission (QIRC) the president is to consult with any two commissioners rather than with the vice president and another commissioner as at present.

Clause 104 inserts new section 339GA (Dealing with matters as ombudsman and commissioner) which prohibits an ombudsman who is also appointed as a commissioner or was appointed as a commissioner and has dealt with a matter or proceeding in that capacity from dealing with it in his or her capacity as ombudsman.

Clause 105 amends section 339H (Appointment of ombudsman) to provide in subsection (3) for a person to be appointed as ombudsman on a full-time basis or a part-time basis and under subsections (4) and (6), by written agreement of the Minister and a commissioner, for a commissioner to be able to change from performing the functions on a full-time basis to a part-time basis and vice versa.

Subsection (5) provides that where the person is appointed on a part-time basis or by agreement carries out the functions of the office on a part-time basis then the appointment or agreement must set out the percentage of the time, in relation to the time required for carrying out the functions on a full-time basis, that is required to be undertaken on a part-time basis.

Subsection (7) provides that an ombudsman, who works on a part-time basis, may hold another office, perform other duties or engage in employment provided it is compatible and there are no conflict of interest matters with the office of ombudsman and further provided the Minister has given written approval.

Subsection (8) provides that an ombudsman who is also appointed as a commissioner and is carrying out the functions of both offices at the same time may, when the appointment as the ombudsman ends, return to performing the functions of office of commissioner on a full-time basis which would attract the appropriate full-time salary and allowances payable to a commissioner.

Clause 106 omits section 339Z (Quarterly report) to eliminate the requirement of the ombudsman to report quarterly. The ombudsman will

still be required to report annually and the transitional provisions in clause 113, will preserve the obligation to provide the last quarterly report for the period from 1 October to 31 December 2010.

Clause 107 amends section 365 (Revocation and suspending industrial officer's authorisation) to extend the right to apply to the commission to determine if an authorised industrial officer is in breach of the section, to a person required to produce a record under section 373A provided for in a mandatory code of practice for the clothing industry under section 400I.

Clause 108 amends section 373 (Right to inspect and request information - authorised industrial officer) to insert new subsection (2A) to provide that an authorised industrial officer may inspect records required to be kept under a mandatory code of practice for the clothing industry made under section 400I and new subsection (3)(c) to provide that the employer must allow the inspection. The amendment of subsection (3A) extends the authority to make a copy of the time and wages record to include making a copy of the record required to be kept under the mandatory code for the clothing industry under section 400I.

Clause 109 inserts new section 373A (Right to request information about outworkers under code) to provide that an authorised industrial officer for a relevant employee, may give a notice that requires a person to produce the record that they are required to keep under a mandatory code of practice for the clothing industry made under section 400I. A breach of the section is an offence with a maximum penalty of 27 penalty units. This penalty is similar to the penalty for other offences of a similar nature under section 373. Under subsections (1) (a) and (b) the authorised industrial officer must nominate a place and time for the production of the record that is reasonably convenient for the person who is to produce the record. It would be a defence to a prosecution under the section if the nominated place and time is not reasonably convenient.

Subsection (2) provides that an authorised industrial officer may make a copy of the record required to be kept under a mandatory code of practice for the clothing industry under section 400I but can not require any help from the person providing the record.

Subsection (3) provides a definition for a relevant employee organisation, which is an employee organisation that is entitled to represent the industrial interests of the employee under the code made under section 400I.

Clause 110 amends section 400I (Mandatory code of practice for outworkers) to insert subsection (8) to provide that an industrial magistrate may hear and decide a complaint for an offence under section 400I.

Clause 111 amends section 408F (Commission may order repayment of fees received by private employment agent) by providing in subsection (5) that any presidential member, not only the vice president as at present, may remit a matter, about the repayment of fees received by a private employment agent, to an industrial magistrate if considered to be more convenient to be heard by an industrial magistrate.

Clause 112 amends section 412 (Meaning of *office* for ch 12) to delete the hyphen in ‘vice-president’ which corrects an error.

Clause 113 inserts new part 11 (Transitional provisions for the *Justice and Other Legislation Amendment Act 2010*) after section 762 to include new sections 763 and 764.

New section 763 (Amending of tribunals rules under the *Justice and Other Legislation Amendment Act 2010*) provides that amending the *Industrial Relations (Tribunals) Rules 2000* in the minor amendments of the Bill does not remove the authority of the Governor in Council to amend the rule or repeal it in the future.

New section 764 (Final quarterly report by ombudsman) provides that although the Bill omits section 339Z, which requires the ombudsman to prepare quarterly reports, this section reinstates the obligation of the ombudsman to prepare the report for the period 1 October to 31 December 2010.

Clause 114 contains amendments to Schedule 2 (Appointments). Part 1, section 1 (Remuneration) is amended by renumbering section 1(4) and (5) as section 1(5) and (6) and inserting new section 1(4) to provide that a member of the QIRC who carries out the functions of the office on a part-time basis is to be paid the percentage of the salary and allowances payable to a person carrying out the functions of the office on a full-time basis as set out in the appointment or agreement that applies to the member.

An example is set out in the subsection. New subsection (7) provides that for new subsection (4) ‘**relevant member**’ does not include the president if the president is a Supreme Court judge.

Schedule 2, Part 1 is also amended by inserting new section 2A (Benefits for part-time members) after section 2 (Benefits – *Judges (Pensions and Long Leave) Act 1957*) which sets out the method for determining the

period of service and the appropriate salary for calculating a relevant member's benefit for sections 3, 4 and 5 of the JPLL Act, where the relevant member has performed the functions of office of a member on a part-time basis at any time during a period when the person served as a member.

A formula is provided and examples are given in the section. Definitions for equivalent full time service and relevant member are given.

Subsection 4 (Leave under the pensions Act) is amended by deleting subsection (3) (a), (b) and (c) to provide that the Minister, not the Governor in Council, grants the leave for section 15 of the JPLL Act for the president and a member holding appointment as the ombudsman and that the president grants the leave for other members.

Subsection 4A (Other leave) is amended to provide that the Minister grants the leave, under this section, to the president and a member holding appointment as the ombudsman and the president grants the leave for other members.

In new section 4AA (Leave for part-time members), inserted after section 4A, subsection (1) provides that for a member of the QIRC who performs the functions of office on a part-time basis the member's entitlement to leave is worked out by multiplying the percentage, set out in the appointment or agreement, by the entitlement to leave of a relevant member performing the functions of the office on a full-time basis.

Subsection (2) provides that for subsection (1) '**relevant member**' does not include the president if the president is a Supreme Court judge.

Part 1A, section 4C is amended to provide that the Minister, instead of the Governor in Council, is to appoint associates to the members of the QIRC and to further provide in new subsection (4) that the Minister may delegate the function to the chief executive.

Clause 115 amends sch 5 (Dictionary) to insert a definition for 'conflict of interest' being the same as in section 10 of the *Integrity Act 2009* and to include terms relevant to surrogacy leave.

Part 17 **Amendment of *Industrial Relations (Tribunals) Rules 2000***

Clause 116 provides that this part amends the *Industrial Relations (Tribunals) Rules 2000*.

Clause 117 amends rule 201A(1) to provide that vacations and holidays of members are the same as for the Supreme Court but may be rearranged with the approval of the president, rather than the vice president.

Part 18 **Amendment of *Judges (Pensions and Long Leave) Act 1957***

Clause 118 provides that this part amends the *Judges (Pensions and Long Leave) Act 1957*.

Clause 119 amends section 15 (Leave of absence of judges) to change the definition of ‘prescribed authority’.

Part 19 **Amendment of *Justices Act 1886***

Clause 120 provides that this part and the schedule amend the *Justices Act 1886*.

Clause 121 amends section 47 (What is sufficient description of offence) to allow for the service of a Notice of Intention to Allege Previous Convictions in the same manner as a Notice to Appear, where the proceeding is commenced through a Notice to Appear.

Clause 122 omits section 64 (Sunday warrants) as this section is no longer required following the repeal in 1984 of the *Sunday Observance Act 1677 (Imperial)*.

Clause 123 amends section 151 (Formal convictions and orders) to allow the clerk of the court to draw up the conviction and order.

Clause 124 amends section 152 (Formal record of conviction not necessary, except for special circumstances) as a consequential amendment following the amendment in the previous clause.

Clause 125 amends section 154 (Copies of record) to allow a person access to a record of information under the *Childrens Court Act 1992*, section 28A which has been inserted by clause 20 in this Bill.

Part 20 **Amendment of *Justices of the Peace and Commissioners for Declarations Act 1991***

Clause 126 provides that this part and the schedule amend the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Clause 127 amends section 3 (Interpretation) to insert new definitions for ‘*contact details*’ and ‘*registered particulars*’.

Clause 128 amends section 13 (Register of justices of the peace and commissioners for declarations) to allow the registrar to withhold the contact details of a particular person from inspection if the registrar considers it necessary to do so to protect the safety or wellbeing of the person or relative of the person.

Clause 129 amends section 14 (Correction of register) to use the new terminology inserted by the amendment to section 3 above.

Clause 130 amends section 21 (Registration of justices of the peace and commissioners for declarations) to use the new terminology inserted by the amendment to section 3 above.

Clause 131 amends section 22 (Registrar to be notified of change to registered particulars) to use the new terminology inserted by the amendment to section 3 above.

Clause 132 amends section 23 (Resignation) to use the new terminology inserted by the amendment to section 3 above.

Clause 133 amends section 24 (Revocation of appointment) to use the new terminology inserted by the amendment to section 3 above.

Clause 134 amends section 25 (Prohibition on acting in office) to use the new terminology inserted by the amendment to section 3 above.

Clause 135 amends section 26 (Notification of cessation of office) to use the new terminology inserted by the amendment to section 3 above.

Clause 136 amends section 38 (Publication of office holders) to use the new terminology inserted by the amendment to section 3 above and to clarify that the contact details withheld from inspection under section 13, are not to be included in the publication of details as provided for in section 38.

Clause 137 inserts new Division 3 – ‘Transitional provision for the *Justice and Other Legislation Amendment Act 2010*’ and new section 47 (Correction of register to comply with the amended Act). New section 47 provides that the registrar may correct the register as soon as practicable to do so after the commencement of the amendment to section 13.

Part 21 Amendment of *Legal Profession Act 2007*

Clause 138 provides that this part and the schedule amend the *Legal Profession Act 2007*.

Clause 139 amends section 25 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled) to clarify that lawyers who are entitled to engage in legal practice under section 24(3) of the Act are allowed to represent that they are entitled to engage in legal practice.

Clause 140 amends section 330 (Bills) to allow for the provision of bills in electronic form to all clients, where the client has requested it.

Clause 141 amends section 683 (Delegation) to clarify the meaning of ‘committee’.

Clause 142 inserts new Chapter 10, Part 3 – (Transitional provisions for *Justice and Other Legislation Amendment Act 2010*) and new section 778 (Amended definition of *previous admission rules*). Section 778 clarifies the application and effect of the new definition of ‘*previous admission rules*’.

Clause 143 amends the schedule 2 (Dictionary) to change the definition of ‘previous admission rules’ to clarify that persons admitted as legal practitioners under arrangements predating specifically mentioned ‘repealed admission rules’ are lawyers under the Act.

Part 22 Amendment of *Magistrates Act* 1991

Clause 144 provides that this part and the schedule amend the *Magistrates Act 1991*.

Clause 145 amends section 4 (Qualifications for appointment of magistrates) to extend the maximum qualification age for magistrates from 65 years to 70 years.

Clause 146 amends section 6 (Appointment of acting magistrates) to provide that a retired magistrate is eligible to be appointed as an acting magistrate if the person has not attained the age of 70.

Clause 147 amends section 12 (Functions of Chief Magistrate) by omitting subsection 12(5) that provides for the expiry of subsection 12(4).

Clause 148 amends section 42 (Tenure of office) to extend the retirement age for magistrates from 65 years to 70 years.

Clause 149 amends section 53 (Appointment of judicial registrars) by omitting subsection 53(5), which relates to persons appointed as a judicial registrar after the expiry period.

Clause 150 amends section 53A (Appointment of acting judicial registrars) by omitting subsection 53A(5), which relates to persons appointed as a judicial registrar after the expiry period.

Clause 151 amends section 53N (Ceasing to be a judicial registrar) to extend the retirement age for a judicial registrar from 65 years to 70 years. This clause also omits subsection 53N(1)(g), which relates to the expiry of this part.

Clause 152 omits Part 9A, Division 4, which provides for the expiry of part 9A.

Clause 153 inserts new Part 10 Division 7 “Transitional provision for *Justice and Other Legislation Amendment Act 2010*’ and new section 65 (Acting Magistrates). New section 65 clarifies the effect of the amendments to section 6(5) and 42(d) for magistrates who ceased to be a magistrate under section 42(d) prior to the commencement of the amendments to sections 6(5) and 42(d).

Part 23 Amendment of *Magistrates Courts Act 1921*

Clause 154 provides that this part and the schedule amend the *Magistrates Courts Act 1921*.

Clause 155 amends section 2 (Definitions) to omit the definition of ‘approval’ and to make changes to the definitions of ‘case appraiser’ and mediator’.

Clause 156 omits sections 25, 26 and 27, which relate to the approval of mediators and case appraisers and the establishment of an ADR Register.

Clause 157 omits section 49 (Appeal against refusal to approve revocation of approval as mediator or case appraiser) because of the amendments made in clauses 156 and 158.

Clause 158 omits Part 5, Division 7, which relates to the revocation of approval as a mediator or case appraiser.

Part 24 Amendment of *Payroll Tax Act 1971*

Clause 159 provides that this part amends the *Payroll Tax Act 1971*.

Clause 160 amends section 14A (Exemption for parental and adoption leave) by including surrogacy leave as a type of leave that is also exempt from payroll tax.

Part 25 Amendment of *Penalties and Sentences Act 1992*

Clause 161 provides that this part amends the *Penalties and Sentences Act 1992*.

Clause 162 amends section 15D (Meaning of *eligible drug offence*) to provide that a person convicted of an offence against section 10(1) of the *Drugs Misuse Act 1986* is eligible for drug diversion, if the charge related to the personal use of the thing mentioned in the charge by the person in connection with the offence.

Clause 163 amends section 32 (Recognisance instead of imposing any other sentence) to allow the court to impose any additional conditions that it considers appropriate when making an order under section 32(1).

Clause 164 inserts a new section 219 (Transitional provision for the *Justice and Other Legislation Amendment Act 2010*) to provide that the amendments in this part apply to a sentence imposed after the commencement of the part, whether the offence was committed before or after the commencement of the part.

Part 26- Amendment of *Professional Standards Act 2004*

Clause 165 provides that this part amends the *Professional Standards Act 2004*.

Clause 166 amends section 14 (Schemes are subject to disallowance) to clarify that a reference to an interstate scheme in section 14 includes: an instrument amending an interstate scheme; and also an instrument amending a scheme prepared under the corresponding law of another jurisdiction so that the scheme indicates an intention to operate as a scheme of this jurisdiction.

Clause 167 amends section 15 (Commencement of schemes) to clarify the commencement date of interstate schemes approved under section 14.

Clause 168 amends section 16 (Challenges to schemes) to update the reference to ‘schemes’ to refer to the new definition in section 14(5).

Part 27 Amendment of *Property Law Act 1974*

Clause 169 provides that this part and the schedule amend the *Property Law Act 1974*.

Clause 170 amends section 82 (Tacking and further advances) by correcting an incorrect section reference in subsection 82(4).

Part 28 Amendment of *Public Trustee Act 1978*

Clause 171 provides that this part amends the *Public Trustee Act 1978*.

Clause 172 amends section 77 (Definitions) to correct the definition of ‘proper officer’.

Part 29 Amendment of *Queensland Civil and Administrative Tribunal Act 2009*

Clause 173 provides that this part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 174 inserts new Chapter 4, Part 4A – Dual appointments. New section 206A (Dual appointments) is inserted in this new part. Section 206A provides that a person may hold appointment as an ordinary member and an adjudicator and the appointment may be made in the same instrument or separate instruments. The section also clarifies how the

person who holds a dual appointment may be removed or suspended from office.

Clause 175 omits section 242A (Expiry of ss 198A and 242A and amendment of Act), which relates to the expiry period for judicial registrars.

Clause 176 inserts new Chapter 9 – Transitional and validation provisions for *Justice and Other Legislation Amendment Act 2010*, which contains new sections 281 (Effect of regulation amendment in *Justice and other Legislation Amendment Act 2010*) and 282 (Validation relating to dual appointments).

Section 281 provides that the amendment of the *Queensland Civil and Administrative Tribunal Act 2009* and the *Queensland Civil and Administrative Tribunal Regulation 2009* does not affect the power of the Governor in Council to further amend the regulation or repeal it.

Section 282 clarifies the commencement and effect of new section 206A relating to persons appointed as an ordinary member and adjudicator prior to the commencement of this section. This section validates any prior appointments as well as every decision, order or declaration made, or direction given by the person as if the amendments were in force at the time of the appointment.

Clause 177 amends schedule 3 (Dictionary) to change the definition of ‘prescribed amount’ to mean \$25,000.

Part 30 Amendment of *Queensland Civil and Administrative Tribunal Regulation 2009*

Clause 178 provides that this part amends the *Queensland Civil and Administrative Tribunal Regulation 2009*.

Clause 179 omits part 5 (Other provisions), which provides the prescribed amount to be \$25,000. *Clause 177* provides for the prescribed amount to be defined in the *Queensland Civil and Administrative Tribunal Act 2009*.

Part 31 Amendment of *Reprints Act 1992*

Clause 180 provides that this part amends the *Reprints Act 1992*.

Clause 181 amends section 26(2) by omitting example 4 as it is obsolete.

Clause 182 amends section 40 (Omission of amending and repealing provisions) to replace the word ‘another’ with ‘a’, as this will allow a provision of a law to repeal or amend a provision of the same law.

Part 32 Amendment of *State Penalties Enforcement Act 1999*

Clause 183 provides that this part amends the *State Penalties Enforcement Act 1999*.

Clause 184 amends section 24 (Registration of instalment payment for infringement notices) to provide that the registrar may, if satisfied that it is appropriate, allow the fine to be paid by instalments of less than the minimum instalment. Section 28 of the *State Penalties Enforcement Regulation 2000* provides that the minimum instalment is: \$60 for the first instalment; and \$30 each fortnight regardless of the frequency at which the instalments must be paid; or the amount that is remaining to be paid if it is under \$30.

Clause 185 amends section 30 (Application to cancel infringement notice for mistake of fact) to clarify that that this section applies only to an infringement notice that is the subject of a default certificate given to SPER for registration under section 33(1).

Clause 186 amends section 32 (Proceedings after cancellation of infringement notice) to clarify that the time limit to commence proceedings is not limited by section 52 of the *Justice Act 1886*.

Clause 187 amends section 46 (Fine option order only for unpaid fine) to clarify that a fine option order cannot be made in relation to restitution or compensation.

Clause 188 amends section 55 (Application of div 6) to clarify that part 4, division 6 applies only to an enforcement order for an infringement notice offence that has been registered with SPER under section 33 of the Act.

Clause 189 amends section 56 (Applications for cancellation of enforcement orders) to provide that in subsection 56(1)(d), an enforcement debtor may apply to SPER for the cancellation of an enforcement order on the basis the person is electing to have the matter heard by the Magistrates Court.

This clause also amends subsection 56(3) to provide that the registrar may, if the registrar is satisfied the applicant has reasonable grounds for the delay, extend the time limits in subsection 56(2) in which a person may apply for the cancellation of an enforcement order. This amendment will allow the registrar to extend the time limits for each of the grounds listed in section 56(1).

Clause 190 amends section 57 (Decision on application) to provide for additional options the administering authority may choose from, after receiving the referral from the registrar that an enforcement order has been cancelled.

Clause 191 amends section 60 (Provisions relating to cancellation of enforcement order) to clarify that the time limit to commence proceedings is not limited by section 52 of the *Justice Act 1886*.

Clause 192 amends section 110 (Registration of interests) to provide that the registrar may register an interest in a motor vehicle when the amount owing by the enforcement debtor is more than \$500. Currently the threshold amount that an enforcement debtor must owe to register an interest in a motor vehicle is more than \$1000.

Clause 193 amends section 112 (Order of satisfaction of other amounts) to provide that the amounts liable to be paid to the State under the *Victims of Crime Assistance Act 2009*, sections 117(4) and 191(4) are to be the lowest priority of satisfaction.

Clause 194 amends section 118 (Good behaviour order when imprisonment not appropriate) to confirm that a good behaviour order cannot be made in relation to restitution or compensation.

Clause 195 amends section 137 (Enforcement order) to provide that the information on an enforcement warrant is to include the new threshold amount to register an interest in a motor vehicle, as provided for in the amendment to section 110 above.

Part 33 **Amendment of *Supreme Court Act 1995***

Clause 196 provides that this part amends the *Supreme Court Act 1995*.

Clause 197 amends section 210 (Principal registrar and associates) by omitting the current section and inserting a new section to provide that the Chief Justice may appoint a person nominated by a judge as an associate to the judge. An associate is appointed under this Act and not the *Public Service Act 2008*, and an associates' salary and conditions of appointment are decided by the Governor in Council. The principal registrar continues to be appointed by the Governor in Council.

Clause 198 inserts new section 306 (Transitional provision for *Justice and Other Legislation Amendment Act 2010*) to clarify the effect of the appointment of an associate under section 210 that was made prior to the commencement of the amendment to section 210.

Part 34 **Amendment of *Supreme Court of Queensland Act 1991***

Clause 199 provides that this part amends the *Supreme Court of Queensland Act 1991*.

Clause 200 omits sections 98, 99 and 100, which relate to the approval of mediators and case appraisers and the establishment of an ADR Register.

Clause 201 omits Part 8, Division 7, which relates to the revocation of approval as a mediator or case appraiser.

Clause 202 inserts a new section 140 (Transitional provision for *Justice and Other Legislation Amendment Act 2010*) to provide that the amendments to the *Uniform Civil Procedure (Fees) Regulation 2009* do not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Clause 203 amends the Schedule 1 (Subject matter for rules) by omitting section 9(1)(d)(i) that relates to the approval of mediators and case appraisers.

Clause 204 amends schedule 2 (Dictionary) to omit the definition of ‘approval’ and to make changes to the definitions of ‘case appraiser’ and mediator’.

Part 35 Amendment of *Torres Strait Islander Land Act 1991*

Clause 205 provides that this part amends the *Torres Strait Islander Land Act 1991*.

Clause 206 amends section 126 (Annual report) to provide that the chairperson does not need to prepare and give to the Minister an annual report if during the year no claims have been made to, or heard or determined by the tribunal.

Part 36 Amendment of *Transport Operations (Passenger Transport) Act 1994*

Clause 207 provides that this part amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 208 inserts a new Chapter 13 Part 10 and a new section 188 to validate the *Transport Legislation Amendment (Postponement) Regulation (No. 1) 2008* which extended the commencement of a number of amendments to the *Transport Operations (Passenger Transport) Act 1994* in 2010.

Part 37 **Amendment of *Uniform Civil Procedure (Fees) Regulation 2009***

Clause 209 provides that this part amends the *Uniform Civil Procedure (Fees) Regulation 2009*.

Clause 210 omits part 3 (Alternative dispute resolution fees) that provides for the fees for the approval of a case appraiser and mediator in the Supreme, District and Magistrates Courts.

Part 38 **Amendment of *Workers' Compensation and Rehabilitation Act 2003***

Clause 211 provides that this part amends the *Workers' Compensation and Rehabilitation Act 2003*.

Clause 212 rennumbers Chapter 26 and section 663 following the passage of the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*.

Clause 213 amends Schedule 4 (Adjacent areas) to update and correct references to certain Acts.

Part 39 **Minor Amendments**

Clause 214 provides that the schedule amends the legislation it mentions.

Schedule Minor Amendments of Act

The amendments in the schedule make minor or technical amendments to: correct and update section references; correct conjunctives and disjunctives; update styles; or remove or replace unused terms in various legislation.

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