

# Justice and Other Legislation Amendment Bill 2013

## Explanatory Notes

### Short title

The short title of the Bill is the Justice and Other Legislation Amendment Bill 2013.

### Policy objectives and the reasons for them

The objective of the Bill is to make miscellaneous amendments to over 30 Acts administered by the Attorney-General and Minister for Justice, including to:

- improve provisions concerning the operation of various commission, court, tribunal and registry processes;
- implement model provisions to allow for accession to international conventions;
- implement red tape reduction measures concerning boards and mechanisms for appointments;
- improve the safety of people who suffer or fear domestic violence;
- clarify that the Information Commissioner may publish the name of declared vexatious applicants; and
- update or clarify definitions and references or make technical amendments.

### Achievement of policy objectives

The Bill achieves the objectives by providing for amendments to:

- the *Acts Interpretation Act 1954* to clarify the meaning of ‘lawyer’;
- the *Anti-Discrimination Act 1991* to expand the grounds on which the Anti-Discrimination Commissioner may reject or lapse a complaint, to provide for preliminary investigations of complaints before they are accepted and to allow for a 28 day ‘cooling off’ period when complainants give written notice that they wish to withdraw a complaint;
- the *Appeal Costs Fund Act 1973* and *Appeal Costs Fund Regulation 2010* to provide that the secretary and staff to the Appeal Costs Board are public servants;
- the *Births, Deaths and Marriages Registration Act 2003* to remove the requirement for the registrar and deputy registrar under the Act to be appointed by the Governor in Council;
- the *Child Employment Act 2006* and *Child Employment Regulation 2006* to prohibit the employment of minors in the unregulated live adult entertainment industry;
- the *Civil Proceedings Act 2011* to amend an uncommenced amendment to the *Justices of the Peace and Commissioners for Declarations Act 1991* to prevent the copying of personal identification information;

- the *Coroners Act 2003* to authorise the publication of inquest and investigation findings and inquest comments, allow coroners to make appropriate directions concerning access to exhibits and provide for urine samples to be taken when an external autopsy is ordered;
- the *Criminal Law (Rehabilitation of Offenders) Act 1986* to exempt certain court, departmental and private-sector staff from compliance with some disclosure restrictions when they are performing official duties;
- the *Dispute Resolution Centres Act 1990* to abolish the Dispute Resolution Centres Council;
- the *District Court of Queensland Act 1967* to facilitate the appointment of retired judges who have reached the age of 70 years but are less than 78 years as acting judges and amend section 113 to provide that the District Court, on appeal, has the same power as the Court of Appeal;
- the *Domestic and Family Violence Protection Act 2012* to provide that when a temporary protection order is made on an application to vary a domestic violence order, the existing domestic violence order is suspended until the variation application is finalised to ensure there is only one order in force and clarity as to the conditions the respondent must comply with;
- the *Domestic and Family Violence Protection Act 2012* and the *Magistrates Courts Act 1921* to provide authority to make stand-alone rules of court for domestic and family violence proceedings;
- the *Electronic Transactions (Queensland) Act 2001* to implement model provisions to modernise electronic commerce laws;
- the *Evidence Act 1977* to clarify that for the purposes of providing that parties, or spouses of parties are competent and compellable in all non-criminal proceedings, a proceeding is defined to include an inquiry, reference or examination;
- the *Guardianship and Administration Act 2000* to provide for the appointment of casual community visitors and for acting arrangements for the Public Advocate to be approved by the Attorney-General;
- the *Information Privacy Act 2009* and the *Right to Information Act 2009* to clarify that the Information Commissioner may publish the name of declared vexatious applicants; and may publish decisions not to make vexatious applicant declarations;
- the *Judges (Pensions and Long Leave) Act 1957* and the *Judicial Remuneration Act 2007* to make amendments consequential to the amendments to the *District Court of Queensland Act 1967* and *Supreme Court of Queensland Act 1991* to facilitate the appointment of retired judges who have reached the age of 70 years but are less than 78 years as acting judges;
- the *Justices Act 1886* to allow the Minister to delegate to the chief executive a decision to release copies of records in certain proceedings and to allow for the sub-delegation of that decision;
- the *Justices of the Peace and Commissioners for Declarations Act 1991* to allow for:
  - the register of Justices of the Peace and Commissioners for Declarations to be maintained in electronic form;
  - the registrar to exempt appointees from gazettal in appropriate cases; and
  - the registrar to ensure that persons accessing personal details on the register have a sufficient interest;
- the *Land Court Act 2000* to:
  - clarify the jurisdiction of the Court;
  - provide time limits on applications for rehearing of a judicial registrar's decision;

- provide that the *Uniform Civil Procedure Rules 1999* will apply to record management procedures and policies in the Land Court to enable consistency of such procedures and policies within Queensland courts; and
- remove the requirement that the Land Court Registrar be appointed by the Governor in Council;
- the *Legal Aid Queensland Act 1997* to change terminology to properly reflect the arrangements for contracting out of work to private law practices;
- the *Legal Profession Act 2007* to clarify that legal practitioners employed by the Queensland Law Society (QLS) may provide support to the Legal Practitioners Admissions Board without contravening the conditions of their in-house lawyer practising certificates;
- the *Magistrates Act 1991* to expand and clarify the powers of the Chief Magistrate, allow for the appointment of more than one Deputy Chief Magistrate, clarify arrangements for a District Court Judge appointed as Chief Magistrate and clarify when a person acts as a judicial registrar;
- the *Peaceful Assembly Act 1992* to allow the Police Commissioner to delegate his powers under the Act to a police officer who is of the rank of sergeant or higher, where currently the Police Commissioner can only delegate to the chief executive of the Department of Transport and Main Roads;
- the *Personal Injuries Proceedings Act 2002* to define a ‘community legal service’;
- the *Queensland Civil and Administrative Tribunal Act 2009* to:
  - allow an application or referral to be withdrawn without needing to obtain the leave of the tribunal;
  - allow for the making of a decision by default, where the claims include a claim for unliquidated damages;
  - provide the tribunal with a discretion as to whether to provide written reasons for interlocutory or procedural decisions;
  - modify the appeal rights where a decision to set aside a decision by default is made;
  - clarify the time period for appealing against a decision of the tribunal or the appeal tribunal;
  - allow the tribunal, rather than the appeal tribunal, to hear appeals which are in substance applications to reopen; and
  - ensure that costs assessors and conciliators have the same protection and immunity as other tribunal participants;
- the *Recording of Evidence Act 1962* to bring arbitration proceedings in the Queensland Industrial Relations Commission under the Act;
- the *Succession Act 1981* to implement model international will provisions;
- the *Supreme Court of Queensland Act 1991* to facilitate the appointment of retired judges who have reached the age of 70 years but are less than 78 years as acting judges; and
- the *Trusts Act 1973* to update references to *Corporations Act 2001* (Cwlth) provisions.

In addition, the Bill includes minor consequential amendments to the *Aboriginal and Torres Strait Islander Land Holding Act 1973*, the *Statutory Instruments Act 1992* and the *Retirement Villages Act 1999*.

## **Alternative ways of achieving policy objectives**

No other options were considered as legislative amendment is the only way to achieve the outcome.

## **Estimated cost for government implementation**

The proposed amendments have no direct financial implications. Should any additional costs be incurred, they will be met from existing agency resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

### *Anti-Discrimination Act 1991*

New chapter 11, part 4 of the *Anti-Discrimination Act 1991* provides for the retrospective operation of certain amendments. The new grounds for rejecting and lapsing a complaint and the prohibitions on making further complaints once a complaint has lapsed, will apply to complaints which were made before the commencement of the amendments. The amendments are justifiable in that they do not deprive complainants of a right to seek a remedy for a legitimate complaint. The amendments simply ensure that complainants are directed to the most appropriate entity to deal with their complaints and that government resources are not wasted in processing duplicate applications.

### *Coroners Act 2003*

Proposed new section 46A (Publication of coroner's findings or comments) of the *Coroners Act 2003* allows for the publication of inquest findings and comments and non-inquest findings on the coroner's website. In the case of inquest findings and comments, the coroner must publish, unless the coroner orders otherwise. The section does not specify what criteria a coroner must take into account when deciding not to publish. The publication of inquest findings and comments reflects current practice.

There could be a concern that the power to make an order that inquest findings and comments should not be published under the new section 46A(1) is not sufficiently defined. However, the decision to order that these findings and comments not be published will be made by magistrates acting as coroners who are well equipped to exercise this discretion. The *State Coroner's Guidelines*, which are required to be issued under section 14(1)(b) of the *Coroners Act 2003*, stipulate matters to be taken into account when the discretions vested in coroners are being exercised. When investigating a death, a coroner must comply with the guidelines and any directions issued to the coroner to the greatest practicable extent (section 14(5)). The exercise of the new statutory discretion will be subject to new guidelines issued by the State Coroner, thereby further ensuring that these powers are sufficiently defined.

*Criminal Law (Rehabilitation of Offenders) Act 1986*

The amendment to section 7 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* clarifies the operation of the legislation to exempt court, departmental and properly appointed private-sector staff from the offence of disclosing spent convictions in the execution of their duties. While this could arguably affect the privacy and confidentiality rights of certain convicted persons, the proposed amendment does not widen the scope of release of material or infringe on existing limitations on the disclosure of transcripts or court files. The amendment protects staff from criminal culpability in the performance of their statutory duties.

*Electronic Transactions (Queensland) Act 2001*

Proposed amendments to section 7A of the *Electronic Transactions (Queensland) Act 2001* will provide that regulations may be made to exclude certain transactions from the application of the Act. This will ensure Queensland has the same flexibility as other jurisdictions to address quickly the need for emerging exclusions, failure to implement which could potentially have adverse commercial consequences for Queensland business. As this clause could potentially be considered not to have sufficient regard to the institution of Parliament, a one year sunset clause has been included for any regulation made under the section.

Proposed new section 28 of the *Electronic Transactions (Queensland) Act 2001* extends application of particular sections about electronic contracts to proposals, actions, statements, declarations, demands, notices or requests, including offers and the acceptance of offers, that are made, carried out or given before the commencement of the amendments. While this could arguably impose obligations retrospectively, the amendments provide certainty for individuals by applying consistent rules and procedures to an entire contract. The retrospectivity does not apply in relation to a contract formed before commencement. This is consistent with the approach taken in the other jurisdictions.

*Information Privacy Act 2009 and Right to Information Act 2009*

Amendments are proposed to the *Information Privacy Act 2009* and *Right to Information Act 2009* to allow publication of the name of vexatious applicants. It could be argued that these amendments involve a minor infringement of that individual's right to privacy. Any breach of fundamental legislative principles is considered fully justified. Existing 'vexatious applicants' provisions recognise that applicants' unreasonable conduct takes up a disproportionate amount of agency time, but a declaration is of little use without a name. Consistent with the approach taken by the Supreme Court of Queensland in publishing lists of vexatious litigants, publishing names of vexatious right to information/ information privacy applicants will allow other agencies to refuse to deal with those individuals. While it is arguable such a power is implicit in the relevant sections, the amendments are sought to put the matter beyond doubt. In making its recommendation for this amendment, the Legal Affairs and Community Safety Committee did not raise concerns from a fundamental legislative principles perspective.

### *Legal Profession Act 2007*

The amendments to the *Legal Profession Act 2007* to clarify that QLS officers providing advice to, or representing, the Legal Practitioners Admissions Board do not contravene the conditions of their in-house lawyer practising certificates, is proposed to operate retrospectively. The proposed amendment does not have any detrimental effect on rights and liberties of individuals and will avoid unintended consequences.

### *Queensland Civil and Administrative Tribunal Act 2009*

Clause 150 amends section 122 (Request for written reasons) to provide the tribunal with a discretion as to whether or not to issue written reasons for particular procedural decisions under the Act. This will assist the tribunal to apply its resources appropriately. For instance, parties have requested reasons where the tribunal has decided to adjourn a matter for a small number of days. The requirement to provide written reasons in such situations places an unnecessary burden on the tribunal, and a discretion to provide written reasons is appropriate.

Clause 152 amends section 142 (Party may appeal) to prohibit an appeal to the appeal tribunal against a decision of the tribunal to set aside a decision by default. Although this right of appeal is removed, this does not have a significant impact on the parties as the tribunal will hear the matter on its merits. Appeals against a decision of the tribunal to refuse to set aside, or amend, a decision by default will remain.

## **Consultation**

Many of the amendments in the Bill have already been exposed to the public through the introduction of the lapsed Law Reform Amendment Bill 2011. The development of amendments to the uniform electronic transactions legislation through the former Standing Committee of Attorneys-General (SCAG) was also subject to public consultation by SCAG.

Targeted consultation on the accession to international conventions on international wills was carried out under the former SCAG. More recently, the QLS, the Bar Association of Queensland and the Public Trustee were consulted on the international wills provisions.

The QLS was consulted on the proposed amendments to the *Legal Profession Act 2007*. The QLS, the Queensland Association of Independent Legal Services and the Aboriginal and Torres Strait Islander Legal Service were consulted on the definition of 'community legal service' proposed to be inserted in the *Personal Injuries Proceeding Act 2002*.

The Queensland Justices Association was consulted on proposed amendments to uncommenced amendments to the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Consultation has occurred with heads of jurisdiction on amendments to court and tribunal legislation. Consultation has also occurred with the Adult Guardian, the State Coroner and the Anti-Discrimination Commission Queensland on relevant amendments.

Amendments to the *Coroners Act 2003*, the *Justices of the Peace and Commissioners for Declarations Act 1991*, and the *Legal Aid Queensland Act 1997* are proposed at the request of the administering agencies.

There has been consultation with the Office of the Information Commissioner in relation to amendments to the *Information Privacy Act 2009* and the *Right to Information Act 2009*.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state, except in relation to the amendments to the *Electronic Transactions (Queensland) Act 2001* and the *Succession Act 1981*.

### *Electronic Transactions (Queensland) Act 2001*

The amendments to the *Electronic Transactions (Queensland) Act 2001* will enact the model provisions developed and agreed to by the former SCAG. The proposed amendments update the law on electronic transactions to reflect internationally recognised standards in accordance with the *United Nations Convention on the Use of Electronic Communications in International Contracts 2005*.

Implementation of the convention will serve to:

- modernise Australia's laws on electronic commerce to reflect internationally recognised legal standards and enhance cross-border online commerce;
- increase certainty for international trade by electronic means and thereby encourage further growth of electronic contracting; and
- confirm Australia's commitment to facilitating electronic communications in international trade transactions as reflected in Free Trade Agreements.

### *Succession Act 1981*

By a decision of the former SCAG, all Australian states and territories agreed to adopt the Uniform Law contained in the *UNIDROIT Convention providing a Uniform Law on the Form of an International Will 1973*. The introduction of the Uniform Law will allow Australia to formally accede to the convention and to provide a consistent approach to the recognition of international wills across Australian jurisdictions.

## **Reasons for non-inclusion of information**

Not applicable.

## Notes on provisions

### **Part 1 Preliminary**

Clause 1 states that, when enacted, the Bill will be cited as the *Justice and Other Legislation Amendment Act 2013*.

Clause 2 provides for commencement, including the commencement by proclamation of stated provisions.

### **Part 2 Amendment of Aboriginal and Torres Strait Islander Land Holding Act 2013**

Clause 3 provides that this part amends the *Aboriginal and Torres Strait Islander Land Holding Act 2013*.

Clause 4 omits section 139 (Amendment of s 32J (Land Court has power of the Supreme Court for particular purposes) as this uncommenced amendment to the *Land Court Act 2000* will be made redundant by amendments to the *Land Court Act 2000* proposed by this Bill.

### **Part 3 Amendment of Acts Interpretation Act 1954**

Clause 5 provides that this part amends the *Acts Interpretation Act 1954*.

Clause 6 amends schedule 1 (Meaning of commonly used words and expressions) to update and clarify the definition of 'lawyer' by reference to the *Legal Profession Act 2007*.

### **Part 4 Amendment of Anti-Discrimination Act 1991**

Clause 7 provides that this part amends the *Anti-Discrimination Act 1991*.

Clause 8 amends section 140 (Commissioner may reject or stay complaints dealt with elsewhere) to provide additional grounds for the commissioner to reject or stay a complaint. The additional grounds allow the commissioner to reject or stay a complaint if the commissioner is of the reasonable opinion that the act or omission that constitutes the complaint can be effectively or conveniently dealt with by another entity; or if the act or omission, the subject of the complaint, has been adequately dealt with by another entity.

Clause 9 amends section 154A (Investigation of complaint) to specify that the commissioner may investigate a complaint at any time after the complaint is received.

Clause 10 amends section 168 (Frivolous etc. complaint lapses) by providing that, once a complaint has lapsed, the complainant cannot make a further complaint relating to the act or omission that was the subject of the complaint. This is to achieve consistency with section 142 which provides for the lapsing of a complaint which has been rejected and with section 169 which provides for the lapsing of a complaint if a complainant loses interest in continuing with the complaint. The amendments also require the commissioner to advise the complainant, in the notice given under new section 168(1A), that if the complaint lapses the

complainant will not be able to make a further complaint relating to the act or omission that was the subject of the complaint.

Clause 11 inserts new section 168A (Complaint will lapse if dealt with elsewhere) to provide new discretionary grounds for lapsing a complaint. The commissioner may require a complainant to show cause why the complaint should not lapse if the commissioner is of the reasonable opinion that the act or omission that is the subject of the complaint has been adequately dealt with by another entity, or may be effectively or conveniently dealt with by another entity. The complainant must be given notice that the complaint will lapse unless the complainant shows within 28 days that the act or omission that is the subject of the complaint has not adequately been dealt with, or may not be effectively or conveniently dealt with, by another entity. Notice must also be given to the complainant that, if the complaint lapses, the complainant cannot make a further complaint relating to the same act or omission that is the subject of the original complaint.

Clause 12 amends section 169 (Complaint may lapse if complainant loses interest) to require the commissioner to include information in the notice given to the complainant that, if the complaint lapses, the complainant can not make a further complaint relating to the act or omission that was the subject of the complaint. This is to achieve consistency with the requirements of sections 168, 168A and 170.

Clause 13 replaces section 170 (Complainant may withdraw complaint) to provide that, when a complainant gives notice that they do not want to continue a complaint, they will have the benefit of a 28 day “cooling off” period, during which time they may give notice that they wish to continue with the complaint, which will prevent the complaint from lapsing. If the complainant does not give notice that they intend to continue the complaint and the complaint lapses, the complainant cannot make a further complaint relating to the same act or omission.

Clause 14 inserts new chapter 11, part 4 which provides for transitional arrangements in relation to the amendments. The clause inserts new section 273 which provides that the amendments to sections 140 (Commissioner may reject or stay complaints dealt with elsewhere) and 154A (Investigation of complaint) apply to a complaint made before the commencement of the section which has not been accepted, rejected or stayed at the commencement. Section 274 provides that, if a complaint has been accepted before the commencement of the section and lapsed under sections 168(3) or 170(2), the complainant cannot make a further complaint in relation to the act or omission the subject of the complaint. Section 275 ensures that new section 168A (Complaint may lapse if dealt with elsewhere) applies to a complaint that has been accepted but not been referred to the tribunal.

## **Part 5      Amendment of Appeal Costs Fund Act 1973**

Clause 15 states that this part amends the *Appeal Costs Fund Act 1973*.

Clause 16 amends section 5(1) of the Act to delete a redundant reference to the *Financial Administration and Audit Act 1977* which has been repealed. The clause also makes amendments to section 5(3) required as a result of the insertion of section 6(6) and renumbering of section 6(7) and to make it clear that the costs of staff employed under section 9, as well as the costs of administration, are to be paid out of the Appeal Costs Fund.

Clause 17 renumbers section 6(6) and (7) as 6(7) and (8). The clause also re-locates to section 6(6) the existing power in section 9(2) to prescribe fees and allowances for officers of the Appeal Costs Board (Board) and amends the power to permit the prescription of fees and allowances for Board members only.

Clause 18 omits section 9 (Staff) which provided for the Governor in Council to appoint a secretary and other officers of the board and replaces it with a new section 9 (Secretary and staff) that provides that there may be a secretary and other staff to enable the Board to perform its functions. Any such staff will be employed under the *Public Service Act 2008*. The amendment will enable a simplified process for appointing the secretary and any other necessary officers.

Clause 19 inserts a new section 30 (Amendment of regulation – *Justice and Other Legislation Amendment Act 2013*) which states that the amendment of the *Appeal Costs Fund Regulation 2010* by the Act proposed by this Bill does not affect the power of the Governor in Council to further amend or repeal that regulation.

## **Part 6 Amendment of Appeal Costs Fund Regulation 2010**

Clause 20 states that this part amends the *Appeal Costs Fund Regulation 2010*.

Clause 21 amends the heading for section 12 (Fees payable to board members – Act, s 9(2)) as a consequence of the relocation of section 9(2) to section 6(6) of the Act.

## **Part 7 Amendment of Births, Deaths and Marriages Registration Act 2003**

Clause 22 states that this part amends the *Births, Deaths and Marriages Registration Act 2003*.

Clause 23 amends section 34 (The registrar) to remove the requirement for appointment of the registrar by the Governor in Council.

Clause 24 amends section 35 (The deputy registrar) to remove the requirement for appointment of the deputy registrar by the Governor in Council.

Clause 25 inserts a new section 66 (Registrar and deputy registrar appointed before commencement) which is a transitional provision to clarify that the persons holding office as the registrar and deputy registrar before commencement of this provision continue in those positions.

## **Part 8 Amendment of Child Employment Act 2006**

Clause 26 states that this part amends the *Child Employment Act 2006*.

Clause 27 amends references to various provisions of the Act to specify that work experience, an apprenticeship, a traineeship or a vocational placement fall within the definition of work. The specified provisions are generally excluded from the definition of work under the Act.

As a result of the amendment to section 8(3), the types of work captured by sections 8A, 8B and 8C will be subject to the prohibitions under the Act if performed in the course of work experience, an apprenticeship, a traineeship or a vocational placement.

Clause 28 inserts a new section 8C (Prohibition on inappropriate roles and situations) which makes it an offence for an employer to require or permit a child to work in an inappropriate role or situation. The provision prohibits persons aged under 18 years from engaging in work concerned with inappropriate adult entertainment type activities. The provision will complement current *Liquor Act 1992* and Criminal Code provisions concerning children working in licensed premises. The provision maintains its original application concerning roles and situations in the general entertainment industry (such as theatrical and recorded performances and in advertising).

Clause 29 inserts a new section 40 (Effect of regulation amendment by the Justice and Other Legislation Amendment Bill 2013) to clarify that the power of the Governor in Council to further amend or repeal the regulation is not affected by the following amendments to the *Child Employment Regulation 2006*.

## **Part 9      Amendment of Child Employment Regulation 2006**

Clause 30 provides that this part amends the *Child Employment Regulation 2006*.

Clause 31 omits existing section 12 (Prohibition on inappropriate roles and situations) from the regulation, as the provision, as amended, is now inserted as section 8C of the *Child Employment Act 2006*.

Clause 32 makes consequential amendments to section 25 (Employer's duty about presence of parent) to reflect the omission of section 12 from the regulation and the relocation of this provision within section 8C of the *Child Employment Act 2006*.

## **Part 10     Amendment of Civil Proceedings Act 2011**

Clause 33 provides that this part amends the *Civil Proceedings Act 2011*.

Clause 34 amends section 237 (Insertion of new section 35A), which on commencement, will insert a new section 35A into the *Justices of the Peace and Commissioners for Declarations Act 1991*. The uncommenced section allows for Justices of the Peace and Commissioners for Declarations to record details of personal identification information, including by taking copies. The amendment will not allow for the taking of copies, but will instead allow for the recording of all or partial personal identification information.

## **Part 11     Amendment of Coroners Act 2003**

Clause 35 states that this part amends the *Coroners Act 2003*.

Clause 36 amends section 23(5) to allow for the collection of a urine sample regardless of the type of autopsy ordered.

Clause 37 inserts a new part 3, division 3 heading.

Clause 38 inserts a new section 46A (Publication of coroner's findings or comments) that allows for the publication of inquest findings and comments and non-inquest findings on the coroner's website. In the case of inquest findings and comments, the section creates a presumption in favour of publication, unless the coroner orders otherwise. In the case of non-inquest findings, the section states that a coroner must be satisfied that publication is in the public interest, and to the extent practicable, must also consult with and have regard to the views of a family member of the deceased person before ordering that such findings be published.

Clause 39 inserts a new section 51A (Access of investigation documents under this division) to clarify that a person may access an investigation document (including an investigation document that is an exhibit tendered at an inquest) if the access is permitted under part 3, division 4.

Clause 40 amends section 54 (Access to investigation documents for other purposes) to provide that a coroner may only consent to a person accessing an investigation document if either: (a) the coroner is satisfied that the person has a sufficient interest in the document; or (b) the coroner considers the access is in the public interest and to the extent practicable, has consulted with and had regard to the views of a family member of the deceased person.

Clause 41 amends the heading of section 62 (Access to physical evidence) to clarify that the section relates to access to physical evidence only by the owner of that evidence.

Clause 42 inserts a new section 62A (Access to physical evidence exhibit) that allows a person, other than the owner of physical evidence, to access a physical evidence exhibit only with the consent of a coroner. 'Physical evidence exhibit' is defined to mean any exhibits, other than investigation documents, that were tendered at an inquest held by the coroner. The criteria that a coroner must apply are the same that apply to a coroner's decision to allow access to investigation documents for purposes other than research under the amended section 54. However, consistent with section 54(5) of the Act, a police officer may access the physical evidence exhibit, or give someone else access to the exhibit, without a coroner's consent if such access is necessary for the investigation or prosecution of an offence relating to a death.

## **Part 12      Amendment of Criminal Law (Rehabilitation of Offenders) Act 1986**

Clause 43 states that this part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Clause 44 amends section 7 (Section 6 not applicable in certain cases) to exempt persons who in the course of performing their official duties are required to make disclosures as part of giving access to, or a copy of, a record under a provision of an Act.

## **Part 13      Amendment of Dispute Resolution Centres Act 1990**

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

Clause 46 amends section 2 (Interpretation) to remove definitions for ‘council’ and ‘member’ and to update a cross reference.

Clause 47 amends the heading for part 2 (Administration).

Clause 48 omits part 2, division 1 (The council) to abolish the Dispute Resolution Centres Council.

Clause 49 omits part 2, division 2 heading (Staff of dispute resolution centre).

Clause 50 relocates and renumbers sections 18 to 21.

Clause 51 inserts a new part 3, division 1 heading (Establishment and operation of dispute resolution centres).

Clause 52 inserts a new part 3, division 2 heading (Staff of dispute resolution centres).

Clause 53 updates a cross reference to renumbered section 27AB.

Clause 54 removes section 35(1)(a) and (b) to reflect the abolition of the council, renumbers section 35(1)(c) and (d) as 35(1)(a) and (b) and omits a reference to members of the council in section 35(5).

Clause 55 amends section 37(2)(e) to replace a reference to ‘the council’ with reference to ‘a director’ and amends the definition of ‘relevant person’ to remove reference to the council or sub-committee of the council.

Clause 56 amends section 38 (Power to accept appointment) to remove references to the council.

Clause 57 inserts a new part 6 (Transitional provisions).

Clause 58 inserts a new part 6, division 1 heading (Justice and Other Legislation Amendment Act 2008).

Clause 59 inserts a new part 6, division 2 (Justice and Other Legislation Amendment Act 2013) to provide for transitional matters for the Justice and Other Legislation Amendment Act 2013.

## **Part 14      Amendment of District Court of Queensland Act 1967**

Clause 60 states that this part amends the *District Court of Queensland Act 1967*.

Clause 61 inserts a new section 14(2) to clarify that an acting retired judge may be appointed despite section 14.

Clause 62 amends section 17 (Acting judge) to allow for the appointment of a retired acting judge over 70 years of age, but less than 78 years.

Clause 63 amends section 113 (Power of District Court on appeal from Magistrates Court) to remove an out-dated reference to the powers of the Supreme Court prior to the commencement of the *District Courts Act 1958*. The provision clarifies that the District Court has the same powers as the Court of Appeal, for an appeal from a Magistrates Court.

Clause 64 inserts a transitional provision to continue the effect of existing section 113 (Power of District Court on appeal from Magistrates Court) for any current appeals.

## **Part 15      Amendment of the Domestic and Family Violence Protection Act 2012**

Clause 65 states that this part amends the *Domestic and Family Violence Protection Act 2012*.

Clause 66 replaces section 48 (Temporary protection order in relation to application for variation) of the Act. New sections 48(1) and 48(2) allow a court to make a temporary protection order when an application for the variation of an existing domestic violence order (the “first domestic violence order”) is adjourned. The court may only make the temporary protection order if it is satisfied that it is necessary or desirable to protect the aggrieved, or another person named in the first domestic violence order.

New section 48(3) provides that if a temporary protection order is made under section 48(2), the first domestic violence order is suspended.

New section 48(4) sets out when the suspension starts.

New section 48(5) sets out when the suspension ends and confirms that when this occurs, the first order is revived. Where a court refuses to vary the first domestic violence order or the variation application is withdrawn, the suspension ends when the respondent is told about the refusal or withdrawal.

The new section 48(6) provides that if the respondent is in court when the refusal or withdrawal happens, they are to be told by the court. Otherwise, they are to be told by a police officer. To enable police to tell respondents, the *Domestic and Family Violence Protection Rules* will oblige courts to notify police that a variation application has been refused or withdrawn.

The new section 48(7) allows police to tell the respondent in any way, including by phone, email or SMS message.

The new section 48(8) provides that when the first order is revived, it is enforceable against the respondent. Re-service of the first order is not required — if there were deficiencies with respect to its original service on the respondent, these will be relevant to any future enforcement action.

Clause 67 amends section 142 of the Act and provides that the *Domestic and Family Violence Protection Act Rules* apply to all proceedings in a court under the Act. It provides that the *Uniform Civil Procedure Rules 1999* apply to an appeal under the Act. It further provides that

the *Childrens Court Rules 1997* and the *Uniform Civil Procedure Rules 1999* do not apply to a proceeding under this Act.

Clause 68 deletes the reference to the *Uniform Civil Procedure Rules 1999* in part 8 division 1 of the Act.

## **Part 16 Amendment of Electronic Transactions (Queensland) Act 2001**

Clause 69 provides that this part amends the *Electronic Transactions (Queensland) Act 2001*.

Clause 70 amends section 4 (Simplified outline) to include an outline of the provisions applying to the use of electronic communications in contracts under new chapter 2, part 4.

Clause 71 amends section 7A (Act does not apply to particular requirements etc.) to extend the restriction of the operation of the Act to transactions, requirements, permissions, electronic communications or other matters set out in schedule 1 of the Act. The clause also inserts new section 7A(2) and (3) to provide that a regulation may exclude a transaction, requirement, permission, electronic communication or other matter not set out in schedule 1 from the application of the Act but such a regulation will expire one year after it is made.

Clause 72(1) amends section 14 (Requirement for signature), which currently provides that the requirement for a signature of a person is met in an electronic communication if a method is used to identify the person and to indicate the person's approval of the information communicated. The amendments provide that, rather than indicating the person's approval of the information, it is sufficient that the signature in the electronic communication indicates the person's intention in respect of the information communicated.

Clause 72(2) replaces section 14(b) to make it clear that, whether or not a signature in an electronic communication is reliable should be decided having regard to all the circumstances, including any relevant agreement, to prevent a party escaping its obligations by asserting its signature, or the other party's signature, was unreliable even if there is no dispute about the identity of the person signing, or the fact of the signing.

The clause also amends the section to clarify that where the Act applies to a law requiring a signature it includes a law providing a consequence for the absence of a signature.

Clause 73 amends section 15 (Other particular laws not affected) to provide that rather than indicating an originator's approval of information communicated, it is sufficient to indicate the originator's intention in respect of the information communicated.

Clause 74 replaces sections 23 (Time of dispatch) to 25 (Place of dispatch and receipt) to provide new default rules for the time and place of dispatch and receipt of electronic communications.

New section 23 provides that the time of dispatch of an electronic communication is the time when the electronic communication leaves an information system or if the electronic communication has not left an information system, the time the addressee receives the electronic communication.

The default rules for determining the time of dispatch are not affected if the information system supporting an electronic address is in a different location from where the electronic communication is taken to have been dispatched, which could be in a different location or jurisdiction.

New section 24 (Time of receipt) provides that the time of receipt of an electronic communication is the time when the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee or, when sent to another electronic address, the time of receipt is when the addressee becomes aware the electronic communication has been sent to that electronic address and the electronic communication is capable of being retrieved by the addressee. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.

As for new section 23, the default rules for determining the time of receipt are not affected if the information system supporting an electronic address is in a different location from where the electronic communication is taken to have been received.

New section 25 provides that an electronic communication is taken to have been dispatched at the place where the originator has its place of business and is taken to have been received at the place where the addressee has its place of business.

A party's place of business is assumed to be the location indicated by the party, unless another party demonstrates they do not have a place of business at that location. Where a party has not indicated a place of business but has only one place of business, that will be assumed to be the place of business. If a party has made no indication and has multiple places of business, the place of business will be either the place with the closest relationship to the transaction, or the principal place of business.

If a party does not have a place of business, for determining the place of dispatch and receipt of an electronic communication, the place of business is assumed to be their place of habitual residence.

The section clarifies that a party's place of business can not be presumed solely because the party makes use of a domain name or electronic mail address connected to a specific country.

Clause 75 inserts new chapter 2, part 4 (Additional provisions applying to contracts involving electronic communication).

New section 26A (Application and operation of this part) provides that the part applies to contracts involving electronic communications where the proper law of the contract is the law of Queensland, whether or not some or all of the parties are located in Australia or elsewhere and whether the contracts are for business, personal, family or household, or other purposes.

New section 26B (Invitation to treat regarding contracts) provides that a proposal to form a contract made through an electronic communication, not addressed to a specific party and generally accessible to parties making use of information systems, is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

New section 26C (Use of automated message system for contract formation – non-intervention of individual) provides that a contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, is not invalid, void or unenforceable merely because automated message systems were used.

New section 26D (Error in electronic communication regarding contracts) contains a safeguard providing a right to withdraw the portion of an electronic communication containing an error in certain circumstances. A natural person who makes an input error in an electronic communication exchanged with the automated message system of another party may withdraw the portion of the electronic communication in which the input error was made if the person notifies the other party of the error as soon as possible and if the person has not received any material benefit or value from any goods or services received from the other party.

New section 26E (Application of Act in relation to contracts) deals with the application of the Act to certain contracts. It clarifies how section 8 (which deals with the validity of electronic transactions) and new sections 23 to 25 apply to certain transactions and electronic communications. The intent of section 26E(2) is to clarify the applicable law in circumstances where different provisions or jurisdictions (or both) could potentially operate in the same field.

Clause 76 inserts new chapter 4 (new section 28 (Transitional provision for Justice and Other Legislation Amendment Act 2013)) to provide that new section 26B extends to proposals made before the commencement, section 26C extends to interactions carried out before the commencement and section 26D extends to statements, declarations, demands, notices or requests, including offers and acceptance of offers, that are made, carried out or given before the commencement. The intent is to provide for consistent rules and procedures to apply to an entire contract. However, new section 28(2) provides that section 28(1) and the chapter 2, part 4 do not have retrospective application in respect of a contract formed before commencement.

Clause 77 inserts schedule 1 (Excluded requirements and permissions) which lists certain transactions, electronic communications and other matters excluded from the application of the Act.

Clause 78 amends schedule 2 (Dictionary) to update existing definitions, and insert a number of new definitions, required to enact the model provisions as set out above.

## **Part 17      Amendment of Evidence Act 1977**

Clause 79 provides this part amends the *Evidence Act 1977*.

Clause 80 amends section 7 (Parties, their wives and husbands as witnesses) to clarify that under subsections (1) and (2), a party to a proceeding includes a person who is the subject of, or a witness in, an inquiry, reference or examination. The amendment confirms that for the purposes of providing that a party or the husband or wife of a party to a proceeding is competent and compellable to give evidence, a proceeding is defined to include an inquiry, reference or examination.

## **Part 18      Amendment of Guardianship and Administration Act 2000**

Clause 81 states that this part amends the *Guardianship and Administration Act 2000*.

Clause 82 amends section 218 (Acting public advocate) to provide that an acting Public Advocate may be appointed by the Minister for a period of up to six months.

Clause 83 amends section 231 (Appointment) to specify that community visitors may be appointed on a casual basis.

## **Part 19      Amendment of Information Privacy Act 2009**

Clause 84 provides that this part amends the *Information Privacy Act 2009*.

Clause 85 amends section 127 (Vexatious applicants) to insert new subsections (6) and (7). New section 127(6)(a) clarifies that the commissioner may publish a declaration that a person is a vexatious applicant, and the decision and reasons for that decision. Section 127 (6)(b) clarifies that the commissioner may publish a decision not to make a declaration, and the reasons for this decision. New section 127(7) clarifies that the commissioner may publish the name of the person who is the subject of a vexatious applicant declaration when publishing that declaration and the reasons for it. Section 127(7) does not apply where the commissioner decides not to make a vexatious applicant declaration.

## **Part 20      Amendment of Judges (Pensions and Long Leave) Act 1957**

Clause 86 states that this part amends the *Judges (Pensions and Long Leave) Act 1957*.

Clause 87 makes a consequential amendment to section 2A (Length of service if previously an acting judge or master in Queensland) to reflect the appointment of retired acting judges to the District and Supreme Courts.

Clause 88 makes a consequential amendment to section 2C (Minimum benefit payable) to reflect the appointment of retired acting judges to the District and Supreme Courts.

Clause 89 amends the schedule (Dictionary) to include definitions for 'retired acting District Court judge' and 'retired acting Supreme Court judge'.

## **Part 21      Amendment of Judicial Remuneration Act 2007**

Clause 90 states that this part amends the *Judicial Remuneration Act 2007*.

Clause 91 inserts a new section 5A to provide for remuneration to be paid to a retired acting Supreme Court judge. This amendment is consequential to amendments to the *Supreme Court of Queensland Act 1991* at part 36 of this Bill.

Clause 92 makes a consequential amendment to section 9 (District Court judge other than the Chief Judge) to reflect the appointment of retired acting judges to the District Court.

Clause 93 inserts a new section 9A to provide for remuneration to be paid to a retired acting District Court judge. This amendment is consequential to amendments to the *District Court of Queensland Act 1967* at part 14 of this Bill.

Clause 94 amends schedule 2 (Dictionary) to include definitions for ‘retired acting District Court judge’ and ‘retired acting Supreme Court judge’.

## **Part 22 Amendment of Justices Act 1886**

Clause 95 states that this part amends the *Justices Act 1886*.

Clause 96 amends section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence) to omit the words ‘crown solicitor’ and replace them with ‘director of public prosecutions’. This reflects that the Director of Public Prosecutions is the prosecuting authority in a trial on indictment.

Clause 97 amends section 154 (Copies of record) to allow the Minister to delegate functions under subsection 154(2) to the chief executive. The provision allows a further sub-delegation from the chief executive to an appropriately qualified person. This amendment will have the effect of streamlining the process to obtain copies of the transcript.

## **Part 23 Amendment of Justices of the Peace and Commissioners for Declarations Act 1991**

Clause 98 states that this part amends the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Clause 99 amends the definition of ‘contact details’ for a Justice of the Peace or Commissioner for Declarations to include an email address.

Clause 100 amends section 13 (Register of justices of the peace and commissioners for declarations) to provide that the register may be kept in hard copy or electronic form. An amendment is also made to provide that the register is available for inspection under new section 38A.

Clause 101 amends section 21 (Registration of justices of the peace and commissioners for declarations) to provide that the registrar is not required to notify the appointment and registration of a justice of the peace or commissioner for declarations in the government gazette if the registrar considers withholding notification is necessary to protect the safety or wellbeing of the person or a relative of the person.

Clause 102 makes a consequential amendment to section 38 (Publication of office holders) to update a section reference.

Clause 103 inserts a new section 38A (Access to register) to provide for an application to the registrar to inspect the register. The provision stipulates that the registrar may grant access

only if the registrar considers the applicant has a sufficient interest in inspecting the register. New section 38A(3) allows the registrar to withhold inspection if the registrar considers it is necessary to protect the safety or wellbeing of the person or a relative of the person.

## **Part 24     Amendment of Land Court Act 2000**

Clause 104 states that this part amends the *Land Court Act 2000*.

Clause 105 amends section 5 (Jurisdiction of the Land Court) to clarify that the Land Court has the jurisdiction given to it under the *Land Court Act 2000* as well as other Acts.

Clause 106 inserts a new section 7B (Land Court order may be enforced in Supreme Court) to provide that an order of the Land Court may be made an order of the Supreme Court and enforced in the Supreme Court. This amendment enables any judgment or order of the Court, including costs orders, to be enforced by utilising the practices and procedures of Supreme Court.

Clause 107 amends section 12 (Power to rehear matters) to provide that the Land Court has the power to extend the 42 day time limit for applications for rehearing.

Clause 108 amends section 14 (Single member to constitute Land Court) to ensure that the phrase ‘this or another Act’ introduced by clause 105 is consistently applied throughout the Act.

Clause 109 amends section 31 (Rehearing after judicial registrar’s decision) to insert a new subsection (2) which specifies a 42 day time limit for applications for rehearing of a judicial registrar’s decision, unless the court allows a longer period.

Clause 110 amends section 32(1) to ensure that the phrase ‘this or another Act’ is consistently applied throughout the Act.

Clause 111 amends section 32J (Land Court has the power of the Supreme Court for particular purposes) to clarify that the Land Court has all the powers of the Supreme Court for exercising its jurisdiction under the Act and any other Act which confers jurisdiction on the Court. This amendment removes the obsolete distinction between the former Land and Resources Tribunal and the Land Court, and ensures that the powers of the Land Court are consistent in relation to all Acts which give the Land Court jurisdiction. Subclause (5) provides for the renumbering and relocation of the section as section 7A.

Clause 112 amends section 34 (Costs) by omitting subsections (3) to (6). Subsections (3) and (4) are no longer necessary following the introduction of new section 7B which now makes general provision for orders of the Land Court to be filed and enforced in the Supreme Court. The removal of subsections (5) and (6) means that the process for cost assessments under the *Uniform Civil Procedure Rules 1999* will apply to costs orders made in the Land Court.

Clause 113 amends section 36 (Preliminary conference) to remove an apparent limitation on the judicial registrar’s powers to arrange a preliminary conference.

Clause 114 amends section 48 (Registrar, deputy registrars and other officers) to remove the requirement that the registrar be appointed by the Governor in Council. The registrar will be appointed by the chief executive under the *Public Service Act 2008*.

Clause 115 omits section 52 (Court records). The effect of this amendment is that the *Uniform Civil Procedure Rules 1999* will apply.

Clause 116 amends section 54 (Jurisdiction of Land Court Appeal) to ensure that the phrase ‘this or another Act’ is consistently applied throughout the Act.

Clause 117 amends section 61 (President decides members for Land Appeal Court) to ensure that the phrase ‘this or another Act’ is consistently applied throughout the Act.

Clause 118 amends section 65 (Notice of appeal) to provide the Land Appeal Court with the power to extend the time for serving a notice of appeal.

## **Part 25 Amendment of Legal Aid Queensland Act 1997**

Clause 119 provides that this part amends the *Legal Aid Queensland Act 1997*.

Clause 120 amends section 19 (How Legal Aid may enforce a condition of an approval) to reflect a terminology change from ‘Legal Aid agent’ to ‘Legal Aid service provider’, as preferred suppliers are in fact engaged as independent contractors, not as agents.

Clause 121 amends section 46 (Power to enter into legal assistance arrangements and other agreements) to reflect the terminology change from ‘Legal Aid agent’ to ‘Legal Aid service provider’.

Clause 122 omits section 81 (Legal Aid not liable for particular acts or omissions of Legal Aid agents) as the provision concerns a relationship of agency, which is not required as preferred suppliers are in fact engaged as independent contractors, not as agents.

Clause 123 amends the schedule (Dictionary) to the *Legal Aid Queensland Act 1997* to reflect the terminology change from ‘Legal Aid agent’ to ‘Legal Aid service provider’.

## **Part 26 Amendment of Legal Profession Act 2007**

Clause 124 provides that this part amends the *Legal Profession Act 2007*.

Clause 125 amends section 662 (Administrative support of the Board) to provide that a legal practitioner employed by the QLS to provide in-house legal services may provide legal services to the Legal Practitioners Admissions Board.

Clause 126 inserts a new section 662A (Australian legal practitioner does not breach practising certificate by providing legal services to board) to clarify that a legal practitioner employed by the QLS, who holds a practising certificate subject to the condition that the legal practitioner is not to engage in legal practice other than to provide in-house legal services, does not breach this condition by providing legal services to the Legal Practitioners Admissions Board.

Clause 127 inserts new section 779 (Application of amendments made by Justice and Other Legislation Amendment Act 2013), a transitional provision to give retrospective effect to new section 662A(2).

## **Part 27 Amendment of Magistrates Act 1991**

Clause 128 provides that this part amends the *Magistrates Act 1991*.

Clause 129 amends section 5 (Appointment of magistrates) to provide that more than one Deputy Chief Magistrate may be appointed.

Clause 130 amends section 5A (Appointment of acting Deputy Chief Magistrate) to provide that more than one acting Deputy Chief Magistrate may be appointed, if a Deputy Chief Magistrate's position is vacant or a Deputy Chief Magistrate is not available to perform the functions of the office.

Clause 131 amends section 11 (District Court Judge appointed as Chief Magistrate) to put beyond doubt that a District Court Judge appointed as Chief Magistrate may exercise the jurisdiction, powers and functions of a magistrate.

Clause 132 amends section 12 (Functions of Chief Magistrate) to clarify and expand the powers of the Chief Magistrate including: deciding the magistrates or persons who are to constitute the Magistrates Courts at particular places; deciding the days, places and times for constituting a Magistrates Court at a place; deciding the magistrates or other persons who are to constitute the Childrens Court at particular places and times; providing for the range of powers the Chief Magistrate may delegate to the Deputy Chief Magistrate or another magistrate; issuing directions about the practice and procedure of Magistrates Courts; and directing professional development and training of magistrates and judicial registrars.

Clause 133 makes a consequential amendment to section 13 (Deputy Chief Magistrate) to reflect that there may be more than one Deputy Chief Magistrate appointed.

Clause 134 makes a consequential amendment to section 14 (Functions of Deputy Chief Magistrate) to reflect that there may be more than one Deputy Chief Magistrate appointed.

Clause 135 makes a consequential amendment to section 17 (Composition of advisory committee) to reflect that there may be more than one Deputy Chief Magistrate appointed.

Clause 136 makes a consequential amendment to section 19 (Presiding at meetings) to reflect that there may be more than one Deputy Chief Magistrate appointed.

Clause 137 amends section 30 (Temporary transfer decisions about constituting Magistrates Courts) to include a note containing an example of a decision under section 30(1).

Clause 138 amends section 53A (Appointment of acting judicial registrars) to clarify that a person appointed as an acting judicial registrar only acts in that capacity when directed by the Chief Magistrate to carry out the duties of that office. The amendment additionally provides

for such an appointment to be on a full-time or part-time basis, or from time to time as directed by the Chief Magistrate.

## **Part 28 Amendment of Magistrates Court Act 1921**

Clause 139 provides that this part amends the *Magistrates Court Act 1921*.

Clause 140 adds a new section 57C (Rule-making power) to the Act and provides that the Governor in Council may make rules of court providing for the practice and procedure of a court, or registry of a court, hearing a proceeding, other than an appeal, under the *Domestic and Family Violence Protection Act 2012*. The clause also provides that the rules should be made with the consent of the Chief Magistrate and that the rules are to be called the *Domestic and Family Violence Protection Rules*.

## **Part 29 Amendment of Peaceful Assembly Act 1992**

Clause 141 provides that this part amends the *Peaceful Assembly Act 1992*.

Clause 142 replaces section 17 (Delegation of powers) and with a new section 17 (Limitation on delegation) which allows the commissioner to delegate powers under the Act to a police officer of the rank of sergeant or higher.

## **Part 30 Amendment of Personal Injuries Proceedings Act 2002**

Clause 143 provides that this part amends the *Personal Injuries Proceedings Act 2002*.

Clause 144 amends section 67A (Exemption from 67(3) and (4)) to replace the definition of 'community legal service' for the section, which was previously based on prescription of entities under the *Personal Injuries Proceedings Regulation 2002*.

## **Part 31 Amendment of Queensland Civil and Administrative Tribunal Act 2009**

Clause 145 states that this part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 146 amends section 46 (Withdrawal of application or referral) to allow a party to withdraw an application or referral without needing to obtain the leave of the tribunal except in the case of proceedings under particular sections of the *Disability Services Act 2006*, the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*.

Clause 147 amends the heading for section 50 (Decision by default for debt) to include a liquidated demand of money for consistency with section 50(1)(a). The clause also makes a minor amendment to accommodate the new definition of 'decision by default'.

Clause 148 inserts a new section 50A (Decision by default for unliquidated damages) to provide the principal registrar with a specific power to make a decision by default where the claim includes unliquidated damages. This provision only applies where the enabling Act or

the rules require the respondent to respond to the application within a stated period and the respondent has not responded. Under this new provision, the applicant must prove that a copy of the application has been given to the respondent before the decision by default is made. The decision made under this new provision is taken to be final and the tribunal must assess the unliquidated damages.

Clause 149 amends section 51 (Setting aside decision by default) to omit the words ‘under section 50’ so that section 51 applies to decisions under both section 50 and new section 50A.

Clause 150 amends section 122 (Request for written reasons) to provide the tribunal with a discretion as to whether or not to issue written reasons for the procedural decisions made under sections 51 (Setting aside decision by default), 54(1) (Consolidation), 55(1) (Sequence), 56(1) (Variation of direction), 57 (General powers), 61(1) (Relief from procedural requirements), 62(1) or (3) (Directions), 63(1) or (4) (Obtaining a document or thing from third parties) or 64(1) (Amending particular documents).

Clause 151 removes the definition of ‘reopening ground’ in section 137 as this definition is inserted into Schedule 3 (Dictionary).

Clause 152 amends section 142 (Party may appeal) to prohibit an appeal to the appeal tribunal against a decision of the tribunal to set aside a decision by default. In situations where the tribunal has made a decision to set aside a decision by default, the matter will proceed to a hearing on the merits. Appeals against a decision of the tribunal to refuse to set aside, or amend, a decision by default will remain.

Clause 153 replaces the definition of ‘relevant day’ in section 143 (Appealing or applying for leave to appeal). This term is used in determining the time period within which an application or appeal to the appeal tribunal must be filed in the registry. In particular, the new provision provides for the relevant day in the situation where a person is not given written reasons for the decision being appealed against and written reasons are not requested under section 122. It also provides for the situation where a person is not given written reasons for the decision being appealed against and the written reasons are not required to be given by the tribunal. In these situations, the new provision clarifies that the relevant day is the day the person received notice of the decision.

Clause 154 inserts a new section 143A (Referring matter to tribunal to consider reopening) to provide the appeal tribunal with the discretion to refer a matter back to the tribunal where the grounds of appeal are limited to, and may constitute grounds for reopening.

Clause 155 replaces the definition of ‘relevant day’ in section 151 (Appealing or applying for leave to appeal). This term is used in determining the time period within which an application or appeal to the Court of Appeal must be made. In particular, the new provision provides for the relevant day in the situation where a person is not given written reasons for the decision being appealed against and written reasons are not requested under section 122. It also provides for the situation where a person is not given written reasons for the decision being appealed against and the written reasons are not required to be given by the tribunal. In these situations, the new provision clarifies that the relevant day is the day the person received notice of the decision.

Clause 156 amends particular paragraphs in section 218 (Contempt of tribunal) to extend these provisions to conciliation. This change is necessary to support the new rule making power for conciliation inserted into the Act by the *Neighbourhood Disputes Resolution Act 2011*.

Clause 157 amends section 237 (Immunity of participants etc.) to ensure a conciliator who conducts conciliation under the rules has the same protection and immunity as a mediator. The clause also clarifies that the term ‘assessor’, as used in the provision, includes a person appointed by the tribunal to assess costs under the rules.

Clause 158 replaces the definition of ‘decision by default’ in Schedule 3 (Dictionary) to accommodate the new section 50A (Decision by default for unliquidated damages). The clause also replaces the definition of ‘reopening ground’, with the definition which was previously found in section 137, in order for it to apply to the new section 143A (Referring matter to tribunal to consider reopening).

### **Part 32      Amendment of Recording of Evidence Act 1962**

Clause 159 provides that this part amends the *Recording of Evidence Act 1962*.

Clause 160 amends the definition of ‘legal proceedings’ in section 4 to include Queensland Industrial Relations arbitration proceedings. This amendment reinstates such proceedings under the Act’s coverage and means that such proceedings will be required to be recorded under the Act, in accordance with section 5. Arbitration proceedings generally were removed from the Act’s coverage by the *Classification of Computer Games and Images and Other Legislation Amendment Act 2013* but should not have been removed for Queensland Industrial Relations arbitration proceedings.

### **Part 33      Amendment of Right to Information Act 2009**

Clause 161 provides that this part amends the *Right to Information Act 2009*.

Clause 162 amends section 114 (Vexatious applicants) to insert new subsections 114(6) and (7). Section 114(6) (a) clarifies that the commissioner may publish a declaration that a person is a vexatious applicant, and the decision and reasons for that decision. Section 114(6)(b) clarifies that the commissioner may publish a decision not to make a declaration, and the reasons for the decision. Section 114(7) clarifies that the commissioner may publish the name of the person who is the subject of a vexatious applicant declaration when publishing that declaration and the reasons for it. Section 114(7) does not apply where the commissioner decides not to make a vexatious applicant declaration.

### **Part 34      Amendment of Statutory Instruments Act 1992**

Clause 163 provides that this part amends the *Statutory Instruments Act 1992*.

Clause 164 is a consequential amendment required as a result of the amendments to the *Magistrates Court Act 1921*, section 57C, which create a rule making power for proceedings under the *Domestic and Family Violence Protection Act 2012*. This clause amends the *Statutory Instruments Act 1992* by inserting a reference to rules of court made under the

*Magistrates Courts Act 1921* in schedule 2A. This has the effect of excluding the *Domestic and Family Violence Protection Rules* made under the *Magistrates Court Act 1921* from the automatic expiry provision in part 7 of the *Statutory Instruments Act 1992*.

## **Part 35 Amendment of Succession Act 1981**

Clause 165 provides that this part amends the *Succession Act 1981*.

Clause 166 inserts new part 2, division 6A (International wills) to provide for international wills made under the requirements of a convention defined in new section 33YA.

Part 2, division 6 will continue to apply to a foreign will that is not in the form of an international will.

New section 33YA (Definitions) defines ‘convention’ as the Convention providing a Uniform Law on the Form of an International Will 1973 signed in Washington on 26 October 1973 and an ‘international will’ as a will made under the requirements of the annex to the convention.

New section 33YB (Application of Convention) provides that the annex to the convention, which contains the Uniform Law requirements for an international will, has the force of law in Queensland and provides that a copy of the annex is set out in schedule 3.

New section 33YC (Persons authorised to act in connection with international wills) provides that Australian legal practitioners and public notaries are authorised to act in connection with international wills. Under the Uniform Law, an authorised person is required to sign a certificate that is attached to an international will confirming that the formalities necessary for an international will have been complied with. The section also recognises the capacity of an authorised person in a country that is a party to the convention to act in relation to an international will.

New section 33YD (Witnesses to international wills) provides that the requirements for witnesses to international wills are governed by Queensland law (see existing sections 10 and 11 of the Act).

New section 33YE (Application of Act to international wills) clarifies that the general provisions applying to wills also apply to international wills.

Clause 167 inserts new schedule 3 (Annex to Convention providing a Uniform Law on the Form of an International Will 1973) which sets out the annex to the convention.

## **Part 36 Amendment of Supreme Court of Queensland Act 1991**

Clause 168 provides that this part amends the *Supreme Court of Queensland Act 1991*.

Clause 169 amends section 6 (Acting judges) to allow for the appointment of a retired acting judge over 70 years of age, but less than 78 years.

Clause 170 amends section 21 (Retirement of judges) to clarify that an acting retired judge may be appointed despite section 21(1).

Clause 171 is a consequential amendment required as a result of the amendments to the *Magistrates Court Act 1921*, section 57C, which create a rule making power for proceedings under the *Domestic and Family Violence Protection Act 2012*. This clause amends section 85 of the *Supreme Court of Queensland Act 1991* by inserting a note referring the reader to the *Magistrates Court Act 1921*, section 57C, for rules of court for a proceeding, other than an appeal, under the *Domestic and Family Violence Protection Act 2012*.

### **Part 37      Amendment of Trusts Act 1973**

Clause 172 provides that this part amends the *Trusts Act 1973*.

Clause 173 amends the definition of ‘public accountant’ to update a reference and wording to more accurately reflect the relevant provision under the *Corporations Act 2001* (Cwlth).

### **Part 38      Other amendments**

Clause 174 provides that schedule 1 (Acts amended) amends the Acts it mentions.

#### **Schedule 1      Acts amended**

Schedule 1 makes a number of minor amendments to the *Legal Aid Queensland Act 1997* to reflect a terminology change from ‘Legal Aid agent’ to ‘Legal Aid service provider’, as preferred suppliers are in fact engaged as independent contractors, not as agents.

Schedule 1 also makes a minor amendment to the *Retirement Villages Act 1999* as a consequence of amendments to the *Dispute Resolution Centres Act 1990*.