

# One Funding System for Better Services Bill 2011

## Explanatory Notes

### Short title

The short title of the Bill is the *One Funding System for Better Services Bill 2011* (the Bill)

### Policy objectives and the reasons for them

The objective of the Bill is to support the delivery of products and services that contribute to Queensland's economic, social and environmental wellbeing and enhance the quality of life of individuals, groups and communities.

Almost all Queensland Government departments fund other entities, including not-for-profit and for-profit entities and local governments, to deliver products and services to individuals, communities and industries across the state. This funding involves a significant investment of public funds.

The funding is an essential means of maintaining the social, economic and environmental wellbeing of the state. Many people rely on the products and services delivered by funded entities—which range from community facilities to education programs, employment and industry initiatives, resource management schemes, arts and cultural activities, family support, and critical services for vulnerable or disadvantaged people.

In light of these factors, there have been increasing moves to strengthen accountabilities for government funding and the transparency of government's funding practices. Several reports have all stressed the need to ensure government's investment is accompanied by a robust, balanced and transparent set of accountabilities to safeguard and maintain public confidence in the use of public funds. These include reports from:

- the Queensland Audit Office (see Auditor-General of Queensland Report to Parliament No. 2 for 2007 *Results of Performance Management Systems Audit of Management of Funding to*

*Non-Government Organisations*; tabled in Parliament on 22 May 2007)

- the former Service Delivery and Performance Commission (see *Report on the review of the Department of Communities, Disability Services Queensland and the former Department of Aboriginal and Torres Strait Islander Policy*. Service Delivery and Performance Commission. 2007; tabled in Parliament on 9 August 2007); and
- hearings before the Public Accounts and Public Works Committee (see the Public Accounts Committee, Audit Report No.2 for 2007 – Management of funding to non-government organisations, transcript of proceedings, Tuesday 21 October 2008).

The Department of Communities (and its precursors) have led the development of contemporary funding legislation for specific types of services, such as the *Housing Act 2003*, the *Disability Services Act 2006* and the *Community Services Act 2007*. These laws have proved effective in safeguarding public funds, and ensuring the accountable and safe delivery of funded products and services.

To date, however, the use of funding legislation has not been consistent across government. Many laws contain funding provisions but they differ in their requirements and the levels of safeguarding provided for the proper use of funds. There is also some funding that is not provided under legislation at all.

Having many funding laws adds to compliance costs for entities that receive funding under more than one Act. For these entities, the different requirements of the Acts translate into compliance and administrative costs that divert resources from product and service delivery. As well as moving to standardise safeguards for funding, government is seeking to make its investment more effective and efficient and ease cost pressures on funded entities by reducing red tape and simplifying regulation.

## **Achievement of policy objectives**

To achieve its objective, the Bill:

- includes principles that recognise the importance of transparency and timeliness in government funding processes, and cooperative relationships between government and funded entities
- empowers Ministers or their delegates to make decisions about providing funding to entities

- sets two minimum requirements for the funding process: that entities must make a written request for funding and that chief executives or their delegate must enter into a written agreement for the funding provided
- accommodates the variety of funding arrangements in place across government by not limiting types of funding or assistance, or entities that may be funded
- provides clear and consistent investigative and remedial powers that safeguard the funding and the delivery of funded products and services
- provides safeguards for funded entities and others by, for example, setting strict criteria for the use of investigative and remedial powers, and providing for reviews and appeals of significant decisions.

As outlined above, many people use and rely on the products and services delivered with government funding. They are vital to the social, economic and environmental wellbeing of the state and could not exist without the combined efforts and contributions of both the government and non-government sectors.

In a manner similar to existing funding laws, the Bill will provide an important way of safeguarding these vital products and services and the public funds used to deliver them. As well as setting out processes for providing funding, these laws give government the powers to respond quickly if serious concerns arise and it is not possible to resolve these through cooperative means or the terms of an agreement.

The Bill will enable government to investigate and rectify serious concerns that cannot be addressed through other measures, and to ensure public funds are used to deliver crucial products and services in a safe and accountable way.

The Bill has been designed to provide strong safeguards for publicly funded products and services, without causing additional compliance or administrative costs for funded organisations.

The Bill will apply to all funding from Queensland Government departments to other entities unless specifically exempted. It sets the basis for this by firstly defining ‘funding’ as all money or other types of assistance that Government provides to an entity to enable it to deliver specified products or services. The Bill identifies payments or investments not regarded as funding under the legislation. These include, for example,

*ex gratia* payments, sponsorships, and money or other support provided directly to individuals to enable them to obtain, rather than deliver, a product or service.

The Bill also specifies a number of things that are not funding for the purpose of the Bill such as subsidies, donations, funding provided under an investment incentive scheme, or solely for the purposes of economic development and sustainability, and funding regulated under some other Acts (e.g. *Education (Capital Assistance) Act 1993*).

Funding provisions in other Acts which are no longer necessary will be repealed under the Bill.

In terms of the funding process, the Bill sets only two basic requirements — that organisations apply in writing for funding and enter into a written agreement with the relevant government department for the funding they receive. These requirements generally reflect current practices for most funding arrangements across government. No specifications are set about the form or content of either document. Funding agreements will continue to be tailored to suit the circumstances. They will contain details and conditions of funding.

In terms of the powers for investigating and rectifying serious concerns, the Bill clearly describes the circumstances where these powers may be used, rather than setting any legislative requirements that organisations must comply with. Use of the powers is limited to the most serious types of matters only — harm to a person, significant failure to deliver funded products or services, and misuse of public funds.

In these circumstances, the Bill provides government departments with a number of remedial and investigative measures. Depending on the circumstances — and only if strict criteria are met — they may issue a compliance notice, take steps to recover misspent funds as a debt, or where services or products are critical, appoint an interim manager for the funding. If necessary, departments can also require certain documents or information to be provided, or appoint suitably-qualified authorised officers to inspect premises.

These powers are intended to be ‘reserve’ powers that are only exercised where necessary and there are no other workable options. The agreement a funded entity enters into with government will still be the primary vehicle for setting out the funding relationship, describing any requirements, and carrying out any associated monitoring and reporting.

If issues arise, the preference will still be to manage these cooperatively under the terms of the funding agreement. The Bill is designed so that where funded activities and services are operating well under the agreement, the new laws will not have any significant impact.

Funded organisations will be able to request an internal review and an external review (to the Queensland Civil and Administrative Tribunal) for key decisions — to appoint an interim manager and to cease or suspend funding following a compliance notice process.

### **Estimated cost for government implementation**

Implementation costs of the Bill will include:

- communication and awareness raising with key stakeholders
- updating existing documents and policies, and developing new documents, policies, procedures, notices and forms to support the new legislation
- training departmental staff to enable them to undertake roles and responsibilities relevant to the new legislation
- appointing and training authorised officers to carry out monitoring, compliance and investigation functions
- developing protocols for internal reviews of decisions.

All costs will be met from within existing departmental budgets.

### **Consistency with fundamental legislative principles**

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

#### **Legislation should not adversely affect rights and liberties - *Legislative Standards Act 1992*, section 4(3)(g)**

##### Clauses 25 and 26 - Power to appoint an interim manager

Clauses 25 and 26 empower chief executives to appoint an interim manager for funding to an entity where there is a reasonable belief that a serious concern exists. The manager's functions would be to remedy serious concerns and ensure funded products or services continue to be provided. It could be argued that the exercise of these powers affects the rights and

liberties of employees and officers of the entity, in addition to third parties, such as creditors.

One of the main objectives of the legislation is to enable government to take statutory action where necessary to ensure publicly funded products and services are delivered in an accountable and safe way. The powers enable departments to intervene where ongoing concerns threaten the safety of clients or the public or give rise to serious concerns about the proper use of funding.

It should be noted that the power to appoint an interim manager will be available only where continuity of product or service delivery is essential. An interim manager will not have authority to manage or administer the funded entity as a whole; authority will be limited to ensuring the delivery of products and services specified in the entity's written agreement. In addition, the Bill provides a number of safeguards against the inappropriate use of the power. These include imposing a limit on the period for which an interim manager may be appointed, and enabling the external review of decisions to appoint interim managers.

**Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer - *Legislative Standards Act 1992*, section 4(3)(e)**

#### Clauses 63 and 75 - Search and entry powers

Clauses 63 and 75 potentially breach the principle that government officers should only be authorised to enter premises and search for documents with the consent of the occupier or a court issued warrant. Under clause 63, authorised officers will be authorised to: enter a place with the consent of the occupier or with a court-issued warrant; or to enter a public place when it is open to the public. After entering, clause 75 gives officers a range of search and inspection powers.

The powers are necessary to enable effective investigations when serious concerns arise that a funded entity is misusing public funds or people are at risk of harm. Limitations and safeguards will apply to the use of these powers. Officers will only be able to enter a place of residence with the consent of the occupier or a warrant. Entry powers will only be exercisable where a cooperative approach is not appropriate.

Safeguards in the legislation include requiring authorised officers to identify themselves and explain the reasons for their presence, enabling

occupiers to claim compensation in the event that any of their property is damaged and providing reasonable excuse and privilege against self-incrimination defences.

## **Consultation**

Consultation activities were delivered in line with the 2008 *Queensland Compact: Towards a fairer Queensland*. While mainly aimed at expectations and commitments for the Queensland Government and the Non-profit Community Services Sector to work together, the Compact provides generally-applicable principles guiding consultation. The Department of Communities worked with nominees of the Compact Governance Committee to agree on key features of an appropriate approach to consultation on the funding legislation.

As a first step, a targeted consultation workshop on legislative proposals was conducted in November 2010 with representatives from funded human services entities familiar with existing funding legislation. The Local Government Association of Queensland was also consulted at this time. The purpose of the initial consultation step was to formulate legislative policy proposals for government consideration.

Further communication and consultation activities on a draft Bill were conducted with funded entities across government during June and July 2011. These activities included three dedicated face-to-face meetings:

- a targeted consultation workshop for 21 human services sector representatives, which included peak bodies or service providers representing entities which may be funded by the Departments of Communities, Education and Training, Justice and Attorney-General, and Employment, Economic Development and Innovation, and Community Safety
- a briefing meeting for 22 representatives of funded health services entities
- a meeting with representatives of the Local Government Association of Queensland, and the Queensland branch of Local Government Managers Australia.

Information materials about the Bill, and opportunities for further discussion, were also sent to key stakeholders in a range of sectors, including 125 arts entities, 25 regional development and regional tourism

entities, 6 entities providing prisoner support programs, 4 emergency services peak bodies, and 2 fishery peak bodies.

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

In most Australian jurisdictions, the relationship between government and funded entities is governed by a combination of legislative provisions and administrative practice. Ministers are generally given statutory powers to enter into agreements to carry out particular programs or services. That power is generally delegable. Many Acts make entering into an agreement a condition of funding and make compliance with the legislation a mandatory requirement.

Jurisdictions take various approaches to monitoring and compliance matters. The approaches include allowing for an official to enter premises at a reasonable hour to carry out inspections and other investigations. Some Acts contain other powers, such as requiring funded entities to provide particular information. Others establish specific statutory bodies to fulfil oversight roles. Ministers are generally given the power to suspend funding.

## **Notes on provisions**

### **Part 1                      Preliminary**

#### **Division 1                Introduction**

#### **Short Title**

Clause 1 states that, when enacted, the Bill will be cited as the *One Funding System for Better Services Act 2011*.



## **Commencement**

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

## **Division 2            Application, objects and principles**

### **Act binds all persons**

Clause 3 makes it clear that all persons, including the State are bound by the Bill and that nothing in the Bill makes the State liable to be prosecuted for an offence.

### **Application of Act**

Clause 4 makes it clear that application of the Bill is mandatory, subject to relevant definitions.

### **Main object of Act**

Clause 5 sets out the main object of the Bill.

### **How main object is mainly achieved**

Clause 6 provides for the way in which the main object of the Bill is to be mainly achieved.

### **Guiding principles**

Clause 7 provides that the Bill is to be administered in a way that has sufficient regard to the guiding principles.

### **Finite resources available**

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

## **Division 3                      Interpretation**

The division sets out key definitions that are central to the operation of the Bill. It also refers to other definitions contained in a schedule.

### **Definitions**

Clause 9 provides that schedule 2 defines particular words used in the Bill.

### **Application of Acts Interpretation Act 1954, s 33**

Clause 10 clarifies that *any* Queensland Government Minister, department or chief executive may exercise relevant powers or functions under the Bill.

### **Meaning of *funded entity* and *funded product or service***

Clause 11 sets out the meaning of the term ‘funded entity’ and ‘funded product or service’. These terms are important for understanding the exercise of statutory remedial powers, and investigation and enforcement powers.

### **Meaning of *funding***

Clause 12 sets out the meaning of the term ‘funding’. This term is critical for understanding application of the Bill.

The clause is also important for understanding circumstances that are exempt from the application of the Bill, for example:

- an arrangement under the Queensland Government Agent Program;
- a product or service purchased under a government policy on procurement;
- a lease entered into between a department and a retail business under which a commercial rent is payable;
- a provision of a lease that limits use of property to a particular purpose;
- the provision of an interest-free loan to an individual to cover their rental bond in private rental accommodation; and

- a rebate scheme.

### **When dealing with land may be funding**

Clause 13 clarifies that when a department is proposing to provide a licence, lease or other interest in land under a relevant land Act to an entity, a Minister may decide whether or not the Bill applies to the dealing. The clause specifies the matters which the Minister must consider when making this decision. When the Minister determines that the dealing with land is ‘funding’ under the Bill the entity must be notified in writing.

A relevant land Act means any of the following –

- the *Land Act 1994*;
- the *Aboriginal Land Act 1991*;
- the *Forestry Act 1959*;
- the *Nature Conservation Act 1992*;
- the *Recreation Areas Management Act 2006*; and
- the *Torres Strait Islander Land Act 1991*.

### **Meaning of *serious concern***

Clause 14 sets out the meaning of the term ‘serious concern’. This term is a prerequisite for the exercise of particular statutory remedial powers, and investigation and enforcement powers.

## **Part 2                      Providing funding**

### **Purpose of pt 2**

Clause 15 sets out the purpose of the part.

### **Approval for funding**

Clause 16 sets out the process for approving funding.

A request for funding must be provided, in writing, to the chief executive of a department. There is no specified format for the written request. The

request may be any written communication, such as an email, letter or formal submission that indicates an entity is seeking or otherwise wishes to receive funding for the delivery of specified products or services.

The Minister or chief executive may provide a notice to the entity to request further information to help decide the request. If the entity fails to provide the additional information, in a reasonable stated time, it will be assumed that they have withdrawn their funding request.

The clause makes it clear that a department will only provide funding to an entity if the appropriate Minister has approved the funding.

### **Urgent approval for funding**

Clause 17 provides that in urgent circumstances a Minister may approve funding for an entity where the request has not been provided to the chief executive in writing. However, the entity must provide a written request to the chief executive as soon as practicable.

### **Funding decision**

Clause 18 allows the appropriate Minister to make a decision to approve funding, when a funding request is received. It provides guidance on the matters that may be considered when making this decision. The list of relevant information is intended to provide both guidance and transparency, but is not mandatory. The entity must be given notice of the outcome of their request.

Where another Act provides for the funding the Minister must consider - if the Act provides for these:

- the purpose for which funding may be provided under the Act;
- any criteria that may need to be satisfied before funding is provided under the Act;
- the objectives and any principles of the Act; and
- any other matters the Minister must have regard to under the Act.

In addition, in approving the funding, the Minister must comply with the other Act or allow the funding to be provided in a way that complies with the other Act.

For example, in deciding whether or not to fund a disability service, the Minister must consider the human rights and service delivery principals

contained within the *Disability Services Act 2006* and allow the funding to be provided in accordance with any conditions for funding set out in that Act.

The Minister may also specify the way in which funding is to be provided to an entity as part of his or her approval to provide funding. For example the Minister may consider it appropriate to specify a timeframe for providing the funding or the type of funding to be provided.

### **Funding agreement**

Clause 19 provides that, if the appropriate Minister approves funding for an entity, the relevant chief executive must enter into a written agreement (a funding agreement) with the entity. Funding will not be provided to the entity until it has entered into this agreement.

The funding agreement may include provisions considered appropriate by the relevant chief executive and must contain details of the way in which the funding is to be provided, as determined by the Minister, and state that the funding provided is subject to the Bill.

### **Funding may be provided before funding agreement entered into**

Clause 20 allows the Minister to provide funding to entities without a funding agreement where the Minister is satisfied there is an urgent need for the funding and it is not feasible to enter into an agreement before funding is provided.

In order to receive this funding the entity must agree to enter into an agreement within a time determined by the chief executive. The chief executive may extend this timeframe only once. If a funding agreement has not been entered into in this time, funding to the entity will be stopped.

## **Part 3                      Cooperative approach**

### **Cooperative approach for managing funding and the delivery of funded products and services**

Clause 21 provides that before a chief executive or authorised officer exercises a power under the Bill in relation to a funded entity, they must consider whether it would be more appropriate to seek the co-operation of the funded entity or use a remedy available under the funding agreement.

The clause clarifies that the powers which may be exercised under the Bill do not limit or prevent the department adopting a cooperative approach with entities to resolve concerns about funding management and/or product and service delivery.

The clause clarifies that the exercise of a power is not invalid if the matters mentioned above have not been considered. This ensures, for example, that a department can take immediate action where necessary, to protect public funds and the interests of people who are using the funded product or service.

## **Part 4                      Managing serious concern**

### **Division 1                  Preliminary**

#### **Application of pt 4**

Clause 22 provides that the part does not limit any other powers available to the chief executive, whether they be under the Bill, a funding agreement or another Act.

#### **Report by authorised officer**

Clause 23 enables the chief executive to seek a written report about whether a serious concern exists for funding received by a funded entity from an authorised officer, before deciding to take action under the part.

## **Division 2            Compliance notice**

### **Compliance notice**

Clause 24 sets out the circumstances when the chief executive can issue a compliance notice. A compliance notice is an important tool in ensuring the proper and efficient delivery of funded products and services. The purpose of the notice is to identify and notify the funded entity that a serious concern exists in relation to part of its operations or the way it is providing products or services. The notice then gives the entity an opportunity to rectify the concern.

A compliance notice can be issued even if the entity's funding has been suspended. The compliance notice must state:

- that the chief executive believes a serious concern exists;
- the grounds for the belief;
- the facts and circumstances that support the grounds;
- that the entity must fix the serious concern within a reasonable time;
- that it is an offence not to comply with the notice unless the entity has a reasonable excuse – maximum penalty is 100 penalty units.

The compliance notice may state:

- the steps the chief executive considers necessary to fix the serious concern; and
- that the funded entity must report in writing to the chief executive after taking the steps.

If the entity fails to comply with the notice, the chief executive also has a range of other sanctions he or she may use, including:

- suspending or stopping assistance to the entity despite anything in the funding agreement;
- terminating the funding agreement.

The entity will be informed where the chief executive chooses to exercise these sanctions.

## **Division 3      Interim manger**

### **Subdivision 1    Appointment**

#### **Appointment**

Clause 25 allows the relevant chief executive to appoint a person as an interim manager for funding received by a funded entity. An interim manager is appointed to administer the products and/or services that are provided using departmental assistance.

#### **Basis for appointment**

Clause 26 provides the grounds on which the relevant chief executive can appoint an interim manager.

The chief executive may make the appointment only if they are satisfied that:

- the appointment is reasonably necessary to remedy a serious concern;
- it is essential that a funded product or service continues to be delivered;
- an administrator, liquidator or receiver has not been appointed for the funded entity; and
- it is not more appropriate to take other action or take no action.

The chief executive must also consider the impact for people who use the product or service if it is provided when a serious concern exists, or if it is ceased.

The clause also specifies matters that the chief executive may consider in making the appointment.

#### **Suitability of proposed appointee**

Clause 27 provides that an interim manager may only be appointed if the relevant chief executive is satisfied that the proposed appointee is suitable for the appointment. The clause sets out the matters the chief executive must consider before making the appointment.



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

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

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

### **Terms of appointment**

Clause 28 specifies what matters the appointment of an interim manager must include.

### **Information notice about appointment**

Clause 29 specifies that, immediately after the appointment of an interim manager, a copy of the appointment and an information notice about the decision must be provided to the funded entity.

The information notice must advise the funded entity that they are able to apply for a stay of the appointment if they intend to seek a review of the decision.

### **Informing particular persons about appointment**

Clause 30 provides that before an interim manager exercises a power under the division, the chief executive may direct them to inform people receiving a product or service from the funded entity of their appointment or any variation of their appointment.

This notification may be provided to persons using the funded product or service in a variety of ways for example posting a notice of the appointment at a place at the entity's premises where it is likely to be seen.

### **Initial period of appointment**

Clause 31 specifies that the initial period of appointment for an interim manager must not be longer than 3 months.

### **Variation of appointment**

Clause 32 allows the chief executive to extend or vary the appointment of an interim manager if they are satisfied that it is reasonably necessary in all the circumstances.

However, any one period of extension cannot be more than 3 months and the total period of an appointment (with extensions) cannot be more than 6 months.

If the appointment is varied, the chief executive must give a copy of the variation to the funded entity.

The chief executive must not extend the scope of an interim manager's appointment to include other funding received by the funded entity, by way of a variation.

### **Ending of appointment**

Clause 33 provides that the chief executive can end the interim manager's appointment at any time before the end of the appointment period, if the chief executive is satisfied that the appointment is no longer necessary.

The chief executive must end the interim manager's appointment, by providing notice, if they become aware that the entity is insolvent or is being wound up voluntarily.

If the chief executive ends the appointment, they must give notice of the fact to the funded entity. Persons in receipt of a product or service of the funded entity may also be informed of the end of the appointment in a way the chief executive considers appropriate.

## **Subdivision 2    Function and powers**

### **Application of sdiv 2**

Clause 34 identifies that the functions and powers in the subdivision apply to a person appointed as interim manager for the funding received by a funded entity.

### **Functions**

Clause 35 specifies that the functions of the interim manager under the terms of the appointment are to:

- remedy a serious concern for the funding received by the funded entity; and
- ensure the product or service continues to be delivered by the funded entity.

### **Interim manager's powers**

Clause 36 provides that so far as is necessary to carry out his or her functions, an interim manager may:

- enter the premises of the funded entity;
- use the facilities or things in the premises that (it appears) are intended for use, or are ordinarily used, to provide a funded product or service;
- ask for and accept payments owing to the funded entity;
- do anything in relation to a funded product or service, on behalf of the funded entity, that the funded entity is permitted or required to do; and
- exercise a power given under another Act.

It is intended that these powers be co-operative in nature to enable the interim manager to work with the funded entity to keep the product or service operational and functional. The powers are not meant to be investigative in nature.

### **Direction by chief executive**

Clause 37 specifies that the interim manager is subject to the chief executive's direction in performing his or her functions or exercising his or her powers.

### **Other powers**

Clause 38 provides that the interim manager has any powers of the funded entity that are necessary or convenient to carry out the interim manager's functions. For example, the interim manager may authorise the carrying out of repairs.

### **Limitation on powers under instrument of appointment**

Clause 39 states that the powers conferred in the subdivision can be limited in the instrument of appointment.

### **Production of instrument of appointment for inspection**

Clause 40 provides that an interim manager must comply with a request from a person to produce the interim manager's instrument of appointment if exercising or proposing to exercise a power in relation to that person.

### **Obstructing interim manager**

Clause 41 makes it an offence for a person to obstruct an interim manager in the exercise of their powers unless the person has a reasonable excuse – maximum penalty is 40 penalty units.

If a person has been obstructive, and the interim manager proceeds, the interim manager must warn the person it is an offence to obstruct (unless there is a reasonable excuse) and that the person's conduct is considered to be an obstruction.

## **Subdivision 3 Other matters**

### **Access to information or documents**

Clause 42 enables an interim manager to access information or documents by asking an 'executive officer' (as defined in the clause) of a funded entity

to provide the information or documents the interim manager reasonably needs to carry out his or her functions.

In addition, the chief executive may give access to documents or disclose information to an interim manager that the chief executive considers appropriate for the purposes of the interim manager's appointment.

### **Confidentiality of information or documents of funded entity**

Clause 43 specifies that an interim manager must not disclose confidential information about a funded entity obtained during his or her appointment, except under specified circumstances.

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

### **Remuneration**

Clause 44 states that an interim manager is entitled to be paid the reasonable amount of remuneration agreed with the chief executive who appointed the interim manager.

### **Funded entity liable for remuneration and other costs**

Clause 45 provides that a funded entity is liable for remuneration and other administrative costs of the interim manager. This is an amount that (if not paid) can be recovered by the chief executive.

In practice, the funded entity would be consulted before determining the estimated administrative costs of an interim manager.

### **Accounts and reports**

Clause 46 requires the interim manager to provide to the chief executive who appointed them, the following records and reports about the funded entity:

- records of all amounts received or paid in the course of the appointment; and
- other reports as required by the chief executive.

A copy of each record or report must be given to the funded entity.

## **Compensation**

Clause 47 allows an entity to claim compensation from the State if the entity incurs loss or damage because of the exercise (or purported exercise) of an interim manager's powers.

## **Corporations legislation displacement provision**

Clause 48 provides that section 5G of the *Corporations Act 2001* (*C'wlth*) has effect in relation to the powers of an interim manager.

The clause provides the necessary clarity about how the interim manager powers in the Bill interact with provisions in the *Corporations Act 2001* (*C'wlth*) regarding the execution of documents, the duties of directors and the external administration of corporations.

## **Division 4            Recovery of funding**

### **Recovery of funding**

Clause 49 provides for the recovery of unspent funds and improperly used funds as a debt owing to the State. Unspent funds include funds that have not been spent by a funded entity after funding has been ceased or suspended following a breach of a funding agreement, otherwise stopped or when a funding agreement has ended. Improperly used funds are funds that have been used for a purpose other than that specified in the funding agreement.

## **Part 5                    Investigation and enforcement**

### **Division 1            Preliminary**

#### **Purpose of pt 5**

Clause 50 clarifies that the purpose of the part is to provide the department with appropriate monitoring and enforcement powers to ensure compliance with the Bill and the proper and efficient delivery of funded products and services.

## **Application of pt 5**

Clause 51 provides that the part does not limit a remedy available to a chief executive under a funding agreement, a chief executives other powers, or the powers that may be exercised in relation to a funded entity under another Act.

## **Division 2            General matters about authorised officers**

### **Subdivision 1    Appointment**

#### **Appointment and qualifications**

Clause 52 provides that a chief executive, who has provided funding received by a funded entity, may appoint a public service employee (defined in the *Public Service Act 2008*) or another departmental employee as an authorised officer. However, the appointing chief executive can only appoint a person as an authorised officer if he or she is satisfied that the person has the necessary experience or expertise and any competencies specified in a regulation.

For the purposes of investigating a particular matter, the chief executive may appoint another person (such as a person outside the department). This may be appropriate for example, to investigate a very sensitive or controversial matter, a matter requiring particular expertise or to ensure any perceptions of conflict of interest are reduced.

A person may be appointed as an authorised officer for the Bill and another Act administered by the appointing chief executive's department.

Note that it is not intended that any investigations under the Bill would compromise other investigations of criminal matters.

#### **Appointment conditions and limit on powers**

Clause 53 clarifies that the conditions of appointment of an authorised officer can be stated in their instrument of appointment, a written notice signed by the appointing chief executive or in a regulation.

### **Authorised officer subject to direction**

Clause 54 provides that an authorised officer exercising a power given under the Bill is subject to the directions of their appointing chief executive.

### **Limit on exercise of power or performance of function**

Clause 55 specifies that an authorised officer may only exercise a power or perform a function in relation to the funding an entity receives that is provided by the authorised officer's appointing chief executive.

However, the clause allows an appointing chief executive to direct an authorised officer to exercise a power in relation to funding that is provided by another chief executive, where the appointing chief executive is authorised to do so under clause 106.

### **When office ends**

Clause 56 clarifies when an authorised officer ceases to hold office.

### **Resignation**

Clause 57 states that an authorised officer may resign by a signed written notice given to the appointing chief executive. However, where holding office as an authorised officer is a condition of holding another office, in order to resign, the authorised officer must also resign from the other office.

## **Subdivision 2 Identity cards**

### **Issue of identity card**

Clause 58 provides that the chief executive must issue an identity card to each authorised officer. The clause also states what the identity card must include.

### **Production or display of identity card**

Clause 59 provides a general obligation on an authorised officer to produce their identity card before exercising a power or to have the identity card



clearly visible to the person when exercising a power in the person's presence, except where it is not practicable.

In these cases, the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

### **Return of identity card**

Clause 60 provides that when a person ceases to be an authorised officer, they must return their identity card within 21 days unless they have a reasonable excuse. It is an offence not to comply – maximum penalty is 10 penalty units.

## **Subdivision 3    Miscellaneous provisions**

### **References to exercise of powers**

Clause 61 clarifies the meaning of references to the exercise of a power by an authorised officer under the Bill.

### **Reference to document includes reference to reproductions from electronic document**

Clause 62 clarifies that a reference to a document (in the part) includes an image or writing produced from an electronic document, or one that may be produced from an electronic document with or without the aid of another article or device.

## **Division 3            Entry of places by authorised officers**

### **Subdivision 1    Power to enter**

#### **General power to enter places**

Clause 63 specifies in what circumstances an authorised officer can enter a place, which includes premises or vacant land. An authorised officer can enter a place if:

- the occupier consents to entry, subject to any conditions of the consent; or
- it is a public place and the entry is made when it is open to the public; or
- the entry is authorised by a warrant, subject to the terms of the warrant.

## **Subdivision 2 Entry by consent**

### **Application of sdiv 2**

Clause 64 applies when an authorised officer intends to seek consent of the occupier to enter the place under clause 63(1)(a).

### **Incidental entry to ask for access**

Clause 65 provides that without the occupier's consent or a warrant, and in order to ask the occupier for consent, an authorised officer may enter land around a premises or enter part of a place that the authorised officer reasonably considers members of the public are ordinarily allowed to enter.

### **Matters authorised officer must tell occupier**

Clause 66 sets out what the authorised officer must explain to the occupier of a place, before asking for consent to enter the place.

### **Consent acknowledgement**

Clause 67 specifies that when an occupier provides consent, the authorised officer may ask the occupier to sign an acknowledgement of the consent. The clause lists what the acknowledgment must contain. If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.

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

## **Subdivision 3    Entry under warrant**

### **Application for warrant**

Clause 68 provides for how an authorised officer can apply to a magistrate to enter a place. A sworn written application stating the grounds for the warrant must be provided. If there is insufficient information, a magistrate can refuse to consider the application until all relevant information is provided.

### **Issue of warrant**

Clause 69 provides the circumstances when a warrant can be issued by a magistrate. The clause details the reasonable grounds on which a magistrate must be satisfied before a warrant can be issued.

A warrant can only be issued if a magistrate is satisfied that there are reasonable grounds for suspecting that;

- within the next 7 days there will be a thing or activity that is evidence of:
  - an offence against the Bill;
  - a serious concern relating to the improper use of funding (as mentioned in clause 14(a)) or harm to an individual (as mentioned in clause 14(c)) exists; or
- it is necessary to follow up on a compliance notice; but only if the magistrate is satisfied that non-compliance with a compliance notice is likely to severely affect the delivery of a funded product or service.

If a warrant is issued, the clause specifies the particulars to be included.

### **Electronic application**

Clause 70 provides for an application for a warrant to be made electronically if an authorised officer reasonably considers it necessary because of urgent circumstances or another special circumstance, such as the authorised officer's remote location.

### **Additional procedure if electronic application**

Clause 71 sets out the process for an application and issuing of a warrant made electronically.

### **Defect in relation to a warrant**

Clause 72 clarifies that a defect in a warrant does not invalidate a warrant unless it affects the substance of a warrant in a material way.

### **Entry procedure**

Clause 73 sets out the things an authorised officer must do or make a reasonable attempt to do, before they enter a place with a warrant. These things are:

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

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

## **Division 4                      General powers of authorised officers after entering places**

### **Application of div 4**

Clause 74 clarifies that a power under the division may be used if the authorised officer has entered with the occupier's consent (clause 63(1)(a)) or with a magistrate's warrant (clause 63(1)(c)) and subject to any conditions of the consent or terms of the warrant.

## **General powers**

Clause 75 lists the powers an authorised officer may exercise upon lawful entry to a place. These powers include:

- searching the place;
- inspecting, examining or filming any part of or anything at the place;
- placing an identifying mark in or on anything at the place;
- taking a thing or sample for analysis or testing;
- copying a document, taking a document to another place to copy it or taking a device containing an electronic document to produce it;
  - if the authorised officer takes a document or a device containing a document to copy or produce, they must do so as soon as practicable and return it
- taking into or onto the place any person, equipment and materials the officer reasonably requires for the exercise of a power;
- remaining at the place as long as necessary to achieve the purpose of entry; and
- conferring alone with a person at the place who is using the funded product or service.

## **Power to require reasonable help**

Clause 76 provides that an authorised officer may require a person at the place to provide reasonable help in the exercise of the authorised officer's powers. When making this requirement the authorised officer must warn the person that it is an offence not to comply unless they have a reasonable excuse.

## **Offence to contravene help requirement**

Clause 77 provides that a person required under the Bill to give reasonable help by the authorised officer must comply unless they have a reasonable excuse – maximum penalty is 50 penalty units. The clause confirms that it is a reasonable excuse for a person not to comply with a requirement if that might tend to incriminate the person.

## **Division 5                      Other information-obtaining powers of chief executives and authorised officers**

### **Power to require name and address**

Clause 78 provides that an authorised officer is allowed to ask a person to state their name and address if the authorised officer finds the person committing, or reasonably suspects the person has committed, an offence against the Bill or has caused a serious concern to exist. When making the request, the authorised officer may require proof of the identity of the person.

The authorised officer must warn the person that it is an offence to fail to give their name and address when requested by an authorised officer.

### **Offence to contravene personal details requirement**

Clause 79 provides that a person required under the Bill to give their name and address to an authorised officer must comply unless they have a reasonable excuse – maximum penalty is 50 penalty units.

### **Power to require information**

Clause 80 applies where the chief executive or authorised officer believes an offence against the Bill has been committed or a serious concern exists and an entity may be able to give information about the offence or serious concern.

The clause gives the chief executive or an authorised officer the power to require the entity to provide information related to the offence or serious concern, in a reasonable time and place, by giving a notice to that effect. When making this requirement the authorised officer must warn the person that it is an offence not to comply unless they have a reasonable excuse.

The chief executive or authorised officer may also require the entity to certify a copy of a document as a true copy.

## **Offence to contravene information requirement or certification requirement**

Clause 81 requires a person to comply with an information request or certification requirement unless they have a reasonable excuse. Failure to comply is an offence - maximum penalty is 50 penalty units.

The clause confirms that it is a reasonable excuse for an individual not to comply if complying may incriminate or expose them to a penalty.

## **Division 6                      Miscellaneous provisions relating to chief executives and authorised officers**

### **Subdivision 1      Damage**

#### **Duty to avoid inconvenience and minimise damage**

Clause 82 requires an authorised officer to take all reasonable steps to cause as little inconvenience and do as little damage as possible.

#### **Notice of damage**

Clause 83 specifies what the authorised officer must do if they (or a person acting under their direction) damages something. The clause does not apply to damage if the authorised officer believes it is trivial, or there is no one apparently in possession of the thing or the thing has been abandoned.

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

The notice must include the particulars of the damage and that the entity who suffered the damage may claim compensation.

The authorised officer may delay giving notice of the damage if they reasonably suspect that providing the notice may frustrate or otherwise hinder an investigation by the authorised officer. This delay may only be

for as long as they have the suspicion and remain within the vicinity of the place.

## **Subdivision 2 Compensation**

### **Compensation**

Clause 84 allows an entity to claim compensation from the State if the entity incurs loss because of the exercise (or purported exercise) of a power by or for an authorised officer.

## **Subdivision 3 Other offences relating to chief executives and authorised officers**

### **Giving chief executive or authorised officer false or misleading information**

Clause 85 makes it an offence for a person to give a chief executive or an authorised officer information or a document containing information, that the person knows is false or misleading in a material particular – maximum penalty is 50 penalty units.

The clause applies to information or documents provided in relation to the administration of the Bill whether or not it was provided in response to a specific power under the part.

### **Obstructing authorised officer**

Clause 86 makes it an offence to obstruct an authorised officer or someone helping an authorised officer, in the exercise of a power under the Bill, unless the person has a reasonable excuse – maximum penalty is 50 penalty units.

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



## **Impersonating authorised officer**

Clause 87 makes it an offence to pretend to be an authorised officer – maximum penalty is 50 penalty units.

## **Subdivision 4 Other provisions**

### **Evidential immunity for individuals complying with particular requirements**

Clause 88 applies where an individual is compelled to give or produce information or documents under clause 76 or clause 80.

The clause provides that evidence in or derived from the information or document is not admissible against the individual in any proceeding, to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

## **Part 6 Reviews**

### **Division 1 Reviewable decisions**

#### **Reviewable decisions**

Clause 89 outlines the decisions of the chief executive that can be reviewed (a ‘reviewable decision’) and who can apply for a review (an ‘interested entity’).

The three reviewable decisions and their respective interested entities are:

<b>Reviewable decision</b>	<b>Interested entity</b>
Suspend or stop funding under clause 24(7)(a)	The funded entity whose assistance has been suspended or stopped
Terminate a funding agreement under clause 24(7)(b)	The funded entity whose funding agreement has been terminated

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Appoint a person as interim manager under clause 25	The funded entity who has had an interim manager appointed
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Reviewable decisions are subject to a two-tiered review process: firstly, internal review by the chief executive and secondly, external review by the Queensland Civil and Administrative Tribunal (QCAT).

## **Division 2            Review by chief executive**

### **Application for review**

Clause 90 sets out how an interested entity can apply to the chief executive to review a reviewable decision. It provides that the application must be made within 28 days after the interested entity is given an information notice. However, the interested entity may also apply for a review if the entity was not given an information notice.

The application must be in the approved form, contain enough information for the reviewing chief executive to make a decision and include when the entity became aware of the decision or that it was a reviewable decision.

### **Stay of operation of original decision**

Clause 91 states that, as a general rule, an application to the reviewing chief executive to review a decision does not stay the original decision made by the reviewing chief executive.

However, before a decision takes effect, the reviewing chief executive has discretion to stay the operation of the original decision. In such cases, the chief executive provides a written notice to the interested entity staying the operation of the decision for a stated period. As a further option, the interested entity can apply to QCAT for a stay of the decision.

The reviewing chief executive or QCAT may stay the decision to secure the effectiveness of the review and any later appeal to QCAT. The stay can be granted on conditions the reviewing chief executive or QCAT considers appropriate and has effect for the period stated by the reviewing chief executive or QCAT.

## **Reviewed decision**

Clause 92 clarifies that the reviewing chief executive must ensure the application is not dealt with by the person who made the original decision or a person in a less senior office than the person who made the original decision. The only exception to this is if the reviewing chief executive personally made the original decision.

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

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

Immediately after deciding the application, the reviewing chief executive must give the interested entity a QCAT information notice for the decision.

If the reviewing chief executive does not decide the application within the required 28 days, the chief executive is deemed to have made a review decision confirming the original decision.

## **Division 3            Review by QCAT**

### **Review of reviewed decision**

Clause 93 provides that the interested entity for a reviewed decision may apply to QCAT for a review of the reviewed decision.

## **Part 7                Legal proceedings**

### **Evidentiary provisions**

Clause 94 provides for a number of evidentiary matters and applies to proceedings under the Bill.

The appointment or power of a chief executive, an authorised officer or an interim manager must be presumed unless a party, by reasonable notice,

requires proof of the appointment or the power to do anything under the Bill.

A signature purporting to be that of the chief executive or an authorised officer is evidence of the signature it purports to be.

A certificate signed by the chief executive or authorised officer and stating any of the following is evidence of the matter that:

- a stated document is -
  - an appointment, approval or decision;
  - a direction or requirement;
  - a notice or other document;

made, given, issued or kept under the Bill;

- a stated document is a copy, extract or part of a thing mentioned above;
- on a stated day -
  - a stated person was given a stated notice under the Bill;
  - a stated requirement was made of a stated person; or
  - or during a stated period, an appointment as an authorised officer and/or an interim manager was or was not in force for a stated person

### **Offences under Act are summary**

Clause 95 provides that an offence against the Bill is a summary offence and specifies the time limits within which a proceeding for an offence against the Bill must commence.

The proceeding must commence within the later of the following periods:

- one year after the commission of the offence; or
- six months after the offence comes to the complainant's knowledge, but within two years after the offence is committed.

## **Forfeiture on conviction**

Clause 96 provides that if a person is convicted of an offence against the Bill, a court may order forfeiture to the State (and may make any appropriate order to enforce the forfeiture) of:

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

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

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

## **Dealing with forfeited thing**

Clause 97 provides for the consequences of a forfeiture ordered by the court. The thing becomes the State's property and the State can deal with it as it considers appropriate, including destroying the thing.

## **Responsibility for acts or omissions of representative**

Clause 98 applies in a proceeding for an offence against the Bill where something relevant to the offence has been done or omitted to be done by a representative of a person or corporation.

A 'representative' is defined to mean:

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

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

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

‘State of mind’ is defined to include the person’s knowledge, intention, opinion, belief or purpose and reasons for the intention, opinion, belief or purpose.

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

### **Statement of complainant’s knowledge**

Clause 99 stipulates that in a complaint starting a proceeding for an offence against the Bill, a statement that the matter of the complaint came to the complainant’s knowledge on a stated day, is evidence of when the matter came to the complainant’s knowledge.

## **Part 8                      Miscellaneous provisions**

### **Consistency of funding agreement with Act**

Clause 100 provides that a funding agreement is not void merely because it does not state that the funding provided is subject to the Bill.

A funded entity can not bring a proceeding in relation to the exercise of a power under part 4 or 5 on the grounds that the Bill does not or ought not to apply to the funding they receive.

### **Supervision by authorised officer**

Clause 101 provides that a direction or requirement under the Bill, which allows or requires a person to take action, may also require the person to take the action under an authorised officer’s supervision.

### **Protection from liability for particular persons**

Clause 102 protects a designated person involved in the administration, monitoring or enforcement of the Bill from any civil liability. A designated

person is not civilly liable for an act done or omission made honestly and without negligence under the Bill.

In the clause a designated person means:

- a chief executive;
- an authorised officer;
- a person acting under the authority or direction of an authorised officer; or
- an interim manager.

In the clause civil liability includes liability for the payment of costs ordered to be paid in a proceeding for an offence against the Bill.

### **Delegation by Minister or chief executive**

Clause 103 allows an appropriate Minister or chief executive of a department to delegate functions under the Bill to an appropriately qualified public service employee or other employee of the department.

### **Confidentiality of information**

Clause 104 provides that a person or entity can not share confidential information about an individual with anyone else, other than in specified circumstances - maximum penalty is 40 penalty units.

The clause applies to a person who:

- is or has been:
  - a chief executive of a department providing funding to a funded entity; or
  - an authorised officer; or
  - an interim manager; or
  - a public service employee or a person engaged by a chief executive of a department providing funding to a funded entity, performing functions under or in relation to the administration of the Bill; or
  - a person to whom a chief executive or Minister has delegated a function under clause 103; and

- as a result of a function exercised under part 4 or 5 (whether or not the function was exercised by the person) has gained, gains or has access to confidential information about an individual.

The clause also applies to an entity who receives confidential information about an individual under clause 105(1)(b).

In the clause confidential information includes information about an individual's affairs but does not include:

- information already publicly disclosed (regardless of the size of the audience to whom it was disclosed), unless further disclosure is prohibited by law; or
- information that could not reasonably be expected to identify the individual.

### **Chief executive may share information about funded entity**

Clause 105 clarifies that a chief executive may give information regarding a funded entity, without their consent, to other entities that have an interest in the proper and efficient delivery of a funded product or service or another department providing funding received by the entity. For example, a chief executive may collaborate with other entities providing funding to the funded entity to make long term plans for product or service delivery in particular geographic areas, or to ensure any actions taken in addressing a serious concern are co-ordinated with, or not duplicating actions taken by another entity.

In the clause an 'entity' includes:

- a government entity;
- a statutory body;
- a GOC or a subsidiary; and
- a government entity, statutory body, GOC or subsidiary of a GOC of the Commonwealth or another State.

### **Joint exercise of powers**

Clause 106 applies where a funded entity receives funding from more than one department.



A chief executive of one of the departments may, by providing written consent, authorise the chief executive of another department that funds the entity, to act on their behalf in exercising a power under the Bill.

Nothing under the clause limits the power of a chief executive under the Bill.

For the clause, ‘power’ does not include the power to enter into a funding agreement or provide funding without a funding agreement.

### **Approved forms**

Clause 107 provides that a chief executive of a department that has provided funding received by a funded entity may approve forms for use under the Bill.

### **Regulation-making power**

Clause 108 provides that the Governor-in-Council may make regulations under the Bill. A regulation may impose a penalty of not more than 20 penalty units.

## **Part 9                      Repeals**

Clause 109 provides that the *Community Services Act 2007*, No. 32 and the *Family Services Act 1987*, No. 38 are repealed.

## **Part 10                      Transitional provisions**

### **Division 1                      Definitions for pt 10**

#### **Definitions**

Clause 110 sets out the meaning of the terms used in the part.

## **Division 2            Transitional provisions generally**

### **Subdivision 1      Application of Act to particular agreements**

#### **Act does not apply to continuing agreements**

Clause 111 clarifies that the Bill does not apply to certain agreements made under the *Housing Act 2003* defined in the clause, to ensure consistency with the transitional provisions of that Act.

#### **Act does not apply to housing agreements**

Clause 112 clarifies that the Bill does not apply to specified ‘housing agreements’ as defined in the clause, to ensure consistency with the transitional provisions of the *Housing Act 2009*.

### **Subdivision 2      Provisions for certain written agreements**

#### **Continuation of agreements to enter into written agreement about funding under a funding Act**

Clauses 113 clarifies what follows where money or other assistance has been provided under the *Community Services Act 2007*, *Corrective Services Act 2006* or *Disability Services Act 2006* before a written agreement has been entered into, and the money or other assistance is funding under the Bill.

#### **Continuation of other agreements to enter into written agreement under a funding Act**

Clauses 114 clarifies what follows where money or other assistance has been provided under the *Community Services Act 2007*, *Corrective Services Act 2006* or *Disability Services Act 2006* before a written agreement has been entered into where the money or other assistance is not funding under the Bill.

### **Continuation of written agreements made under funding agreement Act as funding agreements**

Clause 115 clarifies what follows where money or other assistance has been provided under a funding agreement Act where the money or other assistance is funding under the Bill. It also clarifies that the Bill does not apply to contraventions which occurred before commencement but preserves certain powers under the funding agreement Act in these cases.

However, the clause does not apply to specified agreements under the *Housing Act 2003* to ensure consistency with the transitional provisions of that Act.

A funding agreement Act means:

- the *Community Services Act 2007*;
- the *Corrective Services Act 2006*;
- the *Disability Services Act 2006*;
- the *Family Services Act 1987*; or
- the *Housing Act 2003*.

### **Continuation of other written agreements made under funding agreement Act**

Clause 116 clarifies what follows where money or other assistance has been provided under a funding agreement Act where the money or other assistance is not funding under the Bill. These agreements continue in force and are not otherwise subject to the Bill or the funding agreement Act.

## **Subdivision 3 Provisions for other agreements**

### **Continuation of other written agreements as funding agreements**

Clause 117 clarifies what follows where money or other assistance is provided under a written agreement other than under a funding agreement Act (as described above). Where the money or other assistance is funding under the Bill, the agreement is taken to be a funding agreement under the Bill. It also clarifies that the Bill does not apply to contraventions which

occurred before commencement but preserves the terms of the agreement as in force before the commencement.

### **Continuation of funding provided without written agreement**

Clause 118 clarifies what follows where money or other assistance is provided without a written agreement. Where the money or other assistance is funding under the Bill, the entity may continue to receive funding. However, the funding must stop one year after commencement unless the entity enters into a funding agreement.

## **Subdivision 4 Provisions relating to particular leases**

### **Provision for particular existing leases**

Clause 119 deems that specified leases are funding agreements under the Bill. However it clarifies that the Bill does not apply to contraventions which occurred before commencement but preserves the terms of the lease as in force before the commencement.

### **Existing dealings with land may be funding**

Clause 120 clarifies that a Minister may, for 12 months after the commencement, determine that an existing licence, lease or other interest in land provided by a department under a relevant land Act is a provision of funding to which the Bill applies.

## **Subdivision 5 Miscellaneous**

### **Existing requests for funding**

Clause 121 clarifies what follows for requests for funding made before commencement that have not been finally dealt with.

## **References to repealed Acts**

Clause 122 confirms the status of references to repealed provisions of other Acts.

## **Division 3                      Transitional provisions relating to Community Services Act 2007**

### **Approved service providers**

Clause 123 clarifies the status of applications for approval as an ‘approved service provider’ under the *Community Services Act 2007*, that have not been decided or withdrawn at the commencement.

### **Cancellation of approval as service provider**

Clause 124 provides that the approval of a service provider as an ‘approved service provider’ is cancelled on commencement.

## **Division 4                      Transitional regulation-making power**

### **Transitional regulation-making power**

Clause 125 provides for the making of a transitional regulation to ensure any unforeseen matter may be resolved in the transitional phase. This power will expire one year after the commencement.

## **Part 11                      Amendment of Acts**

### **Division 1                      Amendment of this Act**

#### **Act amended**

Clause 126 provides that the division amends the Bill.

## **Amendment of long title**

Clause 127 provides that on commencement the long title of the Bill will be ‘An Act to provide funding by departments to non-government entities and local governments’.

## **Amendment of s4 (Application of Act); Amendment of s9 (Definitions); Renumbering of sch 2 (Dictionary)**

Clauses 128 to 130 provide that on commencement schedule 2 will be ‘the schedule’.

## **Division 2                      Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984**

Clauses 131 and 132 amend the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* to provide that where a grant of aid is ‘funding’ as defined under the Bill:

- the grant of aid is subject to the Bill; and
- the chief executive may only grant the aid if the Minister has approved the grant as required under the Bill.

## **Division 3                      Amendment of Aboriginal Cultural Heritage Act 2003**

Clauses 133 to 134 amend the *Aboriginal Cultural Heritage Act 2003* to provide that the giving of financial or other help which is ‘funding’ as defined under the Bill, is subject to the Bill.

## **Division 4                      Amendment of Casino Control Act 1982**

Clauses 135 to 136 amend the *Casino Control Act 1982* to provide that the giving of financial or other help which is ‘funding’ as defined under the Bill, is subject to the Bill.

## **Division 5                      Amendment of Corrective Service Act 2006**

Clauses 137 to 139 amend the *Corrective Service Act 2006* to remove funding provisions from the Act and allow for funding to be provided in accordance with the Bill.

## **Division 6                      Amendment of Disability Services Act 2006**

Clauses 140 to 159 amend the *Disability Services Act 2006* (“the DSA”).

The DSA will retain the use of terms such as funded service provider and non-government service provider, with amendments as appropriate, for example, to reflect that funded service providers will be funded entities under the Bill. The Bill removes the current pre-approval process and funding provisions from Part 6 and 7 of the DSA, as the Bill now covers how funding is to be provided to non-government service providers.

The head of power allowing a regulation to prescribe certain requirements for funded non-government service providers has been removed from Part 8 of the DSA as have the prescribed requirements in the *Disability Services Regulation 2006*. However, the current prescribed requirements for funded non-government service providers to keep and implement an abuse, neglect and exploitation policy and a complaints policy are considered important safeguards to ensure funded services are safe, accountable and responsive to the needs of people with a disability, and these will be retained in the DSA along with the requirement to keep a register of policies.

The enforcement provisions in Part 11 relating to a contravention of the DSA have been retained (such as a compliance notice, application for a warrant, power to suspend or cancel funding and the authorised officers powers) as these are needed to enforce compliance with important safeguards such as Part 10A of the DSA in relation to restrictive practices and the requirements for criminal history screening. The existing power of authorised officers to enter places where funded disability services are provided without a warrant or the occupier's consent where there is an immediate risk of harm to a person with a disability at the place because of abuse, neglect or exploitation, will be preserved in the DSA because of the vulnerable nature of the client group. However, provisions relating to the misuse of funds and enforcement powers relating to the appointment of an interim manager have been removed from the DSA and are dealt with in the Bill.

## **Division 7                      Amendment of Duties Act 2001**

Clauses 160 to 161 amend the *Duties Act 2001* to provide that duty is not imposed on an instrument or transaction entered into or made under the Bill for providing a housing service.

## **Division 8                      Amendment of Education (General Provisions) Act 2006**

Clauses 162 to 166 amend the *Education (General Provisions) Act 2006* to provide that:

- payment of an allowance or the giving of assistance or a grant which is 'funding' as defined under the Bill, is subject to the Bill; and
- a policy which relates to the provision of 'funding' as defined under the Bill must be consistent with the Bill.



## **Division 9                      Amendment of Fisheries Act 1994**

Clauses 167 to 169 amend the Fisheries Act 1994 to provide that funding provided under the Act which is ‘funding’ as defined under the Bill is subject to the Bill and is subject to Ministerial approval as required under the Bill.

## **Division 10                      Amendment of Forestry Act 1959**

Clauses 170 to 173 amend the *Forestry Act 1959* to provide that the provision of funding under an agreement, a subsidy, or the rendering of assistance, which is ‘funding’ as defined under the Bill, is subject to the Bill and may only be provided subject to Ministerial approval as required under the Bill.

## **Division 11                      Amendment of Gaming Machine Act 1991**

Clauses 174 to 175 amend the *Gaming Machine Act 1991* to provide that an amount paid out of the Sport and Recreation Benefit Fund, community investment fund or gambling community benefit fund, which is ‘funding’ as defined under the Bill, is subject to the Bill.

## **Division 12                      Amendment of Housing Act 2003**

Clauses 176 to 195 amend the *Housing Act 2003* to allow funding to housing service providers to be subject to the Bill. The chief executive’s powers to allocate public housing and provide loans and other housing services to individuals will not be subject to the Bill and will be retained in the *Housing Act 2003*. Relevant enforcement provisions have been retained in these cases.

Monitoring and enforcement provisions relating to the delivery of ‘funding’ as defined under the Bill are repealed from this Act. These matters will be dealt with under the Bill. As provided under the transitional

provisions, ‘assistance agreements’ for the delivery of housing services by registered providers under the *Housing Act 2003* will be funding agreements under the Bill.

Provisions relating to the Queensland Housing Fund, registration of housing service providers and associated prescribed requirements will be retained in the *Housing Act 2003*. However, these provisions are amended to complement the Bill.

## **Division 13            Amendment of Liquor Act 1992**

Clauses 196 to 197 amend the *Liquor Act 1992* to provide that an amount paid out of the community investment fund, which is ‘funding’ as defined under the Bill, is subject to the Bill.

## **Division 14            Amendment of Marine Parks Act 2004**

Clauses 198 to 199 amend the *Marine Parks Act 2004* to provide that an agreement, or other arrangement, which is ‘funding’ as defined under the Bill is subject to the Bill and Ministerial approval as required under the Bill.

## **Division 15            Amendment of Maritime Safety Queensland Act 2002**

Clauses 200 to 201 amend the *Maritime Safety Queensland Act 2002* to provide that an amount payable from the fund which is ‘funding’ as defined under the Bill is subject to the Bill and Ministerial approval as required under the Bill.

## **Division 16            Amendment of Torres Strait Islander Cultural Heritage Act 2003**

Clauses 202 to 203 amend the *Torres Strait Islander Cultural heritage Act 2003* to provide that the giving of financial or other help which is ‘funding’ as defined under the Bill is subject to the Bill.

## **Division 17            Amendment of Transport Infrastructure Act 1994**

Clauses 204 to 205 amend the *Transport Infrastructure Act 1994* to provide that:

- an air transport infrastructure funding program which involves the provision of ‘funding’ as defined under the Bill is subject to the Bill; and
- guidelines developed for assessing funding applications under a program that involves ‘funding’ under the Bill are consistent with the Bill.

## **Division 18            Amendment of Transport Operations (Passenger Transport) Act 1994**

Clauses 206 to 209 amend the *Transport Operations (Passenger Transport) Act 1994* to provide that an amount paid out of the Taxi Industry Security Fund, an agreement providing help from the State for a transport function or an arrangement which is ‘funding’ as defined under the Bill, is subject to the Bill and Ministerial approval as required under the Bill.

## **Division 19      Amendment of Waste Reduction and Recycling Act 2011**

Clauses 210 to 211 amend the *Waste Reduction and Recycling Act 2011* to provide that a provision of funding that is ‘funding’ as defined under the Bill is subject to the Bill.

## **Part 12              Amendment of other Acts**

### **Consequential amendments**

Clause 212 provides that Schedule 1 amends the Acts it mentions.

## **Schedule 1      Consequential amendments of Acts**

### **Housing Act 2003**

These clauses update the *Housing Act 2003* to reflect the terminology used the Bill.

### **Police Service Administration Act 1990**

Section 5AA.14(3)(v), examples for subparagraph (v)

The clause amends the example for subparagraph (v) to remove a reference to the repealed *Family Services Act 1987*.

### **Public Service Act 2008**

### **Section 155A, definition *department of communities***

The clause provides for a new definition of the ‘department of communities’ to mean the department in which the *Disability Services Act 2006* or the Bill is administered.

## **Schedule 2      Dictionary**

Schedule 2 defines terms used in the Bill.

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