

Court and Civil Legislation Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Court and Civil Legislation Amendment Bill 2017.

Policy objectives and the reasons for them

The principal purposes of the Bill are to amend legislation within the justice portfolio to improve the efficiency and effectiveness of the courts and agencies and clarify, strengthen and update that legislation.

The Bill provides for amendments to:

- streamline various court and tribunal processes and clarify court powers and jurisdiction;
- increase the age limit for acting magistrates to 75 years;
- provide for enhanced equity and clarity as to the basis of payments from the Appeal Costs Fund (ACF);
- make Queensland's classification legislation consistent with national scheme legislation;
- modernise the eligibility requirements for the chief executive officer (CEO) of Legal Aid Queensland (LAQ);
- strengthen the Ombudsman's functions and powers in the interests of enhanced integrity and accountability and the protection of complainants and witnesses;
- facilitate the making of domestic violence notations on a person's criminal history or a formal record of conviction;
- clarify the functions and powers of the Public Guardian in relation to a relevant child under the *Child Protection Act 1999* (Child Protection Act);
- clarify, update and strengthen legislation for the regulation of the legal profession;
- expand secrecy provisions and facilitate disclosure of personal information in certain cases;
- limit the effect of statutory instruments in relation to contracts or dealings concerning property;
- give permanent effect to a transitional regulation under the *Retail Shop Leases Act 1994* (RSL Act) and correct an inadvertent omission from the *Retail Shop Leases Amendment Act 2016* (RSLA Act);
- in place of various requirements for the publication of matters and notices in the Queensland Government Gazette (gazette), allow for online website notification;
- clarify when the stepchild relationship ends (for family provision applications) and revoke certain dispositions in a will upon the end of a de facto relationship;
- remove the requirement that the delegation of the administration of a trust is to be made by power of attorney executed as a deed; and
- remove redundant legislation and make minor and technical amendments of a correcting or clarifying nature.

Achievement of policy objectives

The Bill achieves these objectives by amendments to:

- the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (ATSIC Act) to remove the requirement for gazettal of notices of appointment and revocation for community justice group members and instead require a written notice to be given to the member and the notice to be published on the Queensland Courts website;
- the *Acts Interpretation Act 1954* (AI Act) to provide that approved forms can be notified by publication on a local government website in the case of local government, and a stated website for all other entities, instead of in the gazette;
- the *Anti-Discrimination Act 1991* (AD Act) (section 119) to correct an editorial matter by replacing references to subsections with references to paragraphs;
- the *Appeal Costs Fund Act 1973* (ACF Act) to:
 - remove redundant provisions relating to the administration of the ACF;
 - clarify that the circumstances in which a person convicted on indictment is entitled to payment from the ACF includes where an appeal succeeds on the ground that there was a miscarriage of justice; and
 - clarify that, where a new trial is ordered, the costs recoverable from the ACF are those that the ACF Board considers have been thrown away, or partly thrown away, and were reasonably incurred in the initial proceedings;
- the *Civil Proceedings Act 2011* (CP Act) to remove unnecessary references to a business carried on “under a style” and replace outdated references to the now repealed *Navigation Act 1912* (Cwth);
- the *Classification of Computer Games and Images Act 1995* (Computer Games Act), the *Classification of Films Act 1991* (Films Act) and the *Classification of Publications Act 1991* (Publications Act) (Queensland Classification Acts) to align with corresponding Commonwealth legislation and remove all references to classification officers (see below for detail);
- the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*; the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*; the *Companies (Application of Laws) Act 1981*; the *Futures Industry (Application of Laws) Act 1986* and the *Securities Industry (Application of Laws) Act 1981* (five companies Acts) for their repeal, where the arrangements they supported have been superseded;
- the *Court Funds Act 1973* (CF Act) to provide for the preamble to mention the Magistrates Courts (to reflect that the Magistrates Courts are covered by the CF Act) and update a reference to the District Court as a fused court (which it has been since 1997);
- the *Evidence Act 1977* (Evidence Act) to authorise both the chief executive (the department) and the State Archivist to certify copies of State letters patent and to allow the State Archivist to delegate the certification powers to an officer of the Queensland State Archives office;
- the *Information Privacy Act 2009* (IP Act) to ensure that the Act does not restrict disclosure of personal information to the Australian Security Intelligence Organisation (ASIO) in appropriate cases;

- the *Invasion of Privacy Act 1971* (IoP Act) to create an exception to the offence for using a ‘listening device’ to record a private conversation where police and emergency services communications centre operators record private conversations between individuals while operating the open microphone (‘open mic’) function of a government network radio in circumstances associated with risk to the safety and wellbeing of a public safety entity officer;
- the *Justices of the Peace and Commissioners for Declarations Act 1991* (JPCD Act) to no longer require notification in the gazette of the appointment, registration, resignation or disqualification of a person as a Justice of the Peace (JP) or Commissioner for Declarations (C Dec), and instead require such matters to be published on the department’s website;
- the *Land Court Act 2000* (LC Act) to:
 - ensure that orders of the Land Appeal Court may be enforced in the Supreme Court;
 - remove any doubt as to the power of the Land Appeal Court to make declarations;
 - to provide for the appointment of acting judicial registrars on a full-time or part-time basis; and
 - ensure that the Land Appeal Court has the jurisdiction and power to award costs in respect of a previous Land Court hearing where the Land Court had not previously determined costs;
 - strengthen the alternative dispute resolution processes with a view to ensuring so far as possible persons attending have the authority to settle the matter;
 - incorporate into the LC Act the provisions in the *Land Court Act (Transitional) Regulation 2017*; and
 - rectify two numbering errors;
- the *Legal Aid Queensland Act 1997* (LAQ Act) to:
 - provide that the CEO of LAQ does not need to be a lawyer but instead a person who has qualifications, experience or standing appropriate to perform the functions of the CEO; make consequential amendments to ensure that, if a non-lawyer CEO is appointed, his or her functions in relation to the provision of legal services and as holder of LAQ’s principal’s practising certificate are the responsibility of a LAQ lawyer with appropriate experience and qualifications;
 - extend the secrecy provisions to: approved students, volunteers and researchers, and external legal practitioners who conduct reviews of legal assistance decisions; and enable LAQ to disclose information or documents about clients to third parties where a client consents or directs the disclosure; and
 - require the LAQ Board’s approval for a LAQ lawyer to engage in paid employment other than for LAQ, only if the lawyer is seeking to practise as a lawyer or engage in other legal work externally;
- the *Legal Profession Act 2007* (LP Act) to:
 - clarify that employees or agents of public service offices, as defined in the *Public Service Act 2008*, are ‘government legal officers’ for the purposes of the LP Act and are not required to hold a current practising certificate when engaged in legal work in the course of their employment;

- allow an incorporated legal practice (ILP) to be a Queensland Law Society (QLS) member to allow the QLS's Professional Standards Scheme to extend to ILP entities;
- provide that an ILP going into liquidation or some other form of external administration is a show cause event and suitability matter for a legal practitioner director;
- provide that the disclosure requirements in relation to costs do not apply in relation to certain bankruptcy trustee clients;
- exclude, from the duty of the QLS, the Bar Association of Queensland (BAQ) and the Legal Services Commission (LSC) to report the suspected commission of offences to an appropriate authority, inadvertent breaches by in-house legal officers of corporations of practising certificate requirements; and
- replace an incorrect reference to 'manager' with the correct word 'receiver' in section 517;
- the *Magistrates Act 1991* (Magistrates Act) to increase the age limit for acting magistrates to 75 years and provide that service as a magistrate in Gympie constitutes regional experience for the purpose of a transfer decision;
- the *Ombudsman Act 2001* (Ombudsman Act) to:
 - improve the Ombudsman's ability to protect complainants and witnesses and obtain and control the release of sensitive information;
 - include, as a function of the Ombudsman, the provision of advice or training to agencies to improve the quality of their decision-making and administrative practices and procedures;
 - provide the ombudsman with a power to direct the principal officer of a local government to table a report by the Ombudsman about the local government at a local government meeting;
 - provide that a person may not be employed as an officer of the Ombudsman if the person does not consent to a criminal history check; and
 - clarify that a corporation may be appointed to undertake strategic reviews (under the Ombudsman Act) of the Ombudsman Office and increase the interval between strategic reviews under the Ombudsman Act from five to seven years;
- the *Penalties and Sentences Act 1992* (P and S Act) to: allow domestic violence notations to be administratively made on a person's criminal history or a formal record of conviction where the person is convicted of an offence for which the charge has been noted as a domestic violence offence (unless the court orders that a notation not be made because it is not satisfied that the offence is a domestic violence offence); clarify that the prosecution bears the onus of proving that an offence is a domestic violence offence; and clarify that domestic violence notations do not apply to a person's traffic history;
- the *Professional Standards Act 2004* (PS Act) to provide that notices under the Act which are subordinate legislation are to be notified on the Queensland legislation website, rather than be gazetted; and consistent with other state and territory jurisdictions, provide for the Minister (rather than the Professional Standards Council of Queensland) to gazette the extension of a professional standards scheme;

- the *Property Law Act 1974* (PL Act) to prohibit statutory instruments (other than prescribed subordinate legislation) from rendering void, unenforceable or subject to termination, contracts or dealings concerning property that are made, entered into or effected contrary to the statutory instrument;
- the *Prostitution Act 1999* (Prostitution Act) to:
 - remove the requirement that an application for variation be treated as if it were an application for a certificate;
 - enable the Governor in Council to appoint a member of the Prostitution Licensing Authority (Authority) to act as chairperson when the chairperson is unavailable;
 - remove the ‘chief executive, or a person nominated by the chief executive’ as a member of the Authority;
 - revert the quorum at a meeting of the Authority from ‘half the number of members plus one’ to five members; and
 - enable the Authority to approve all forms under the Prostitution Act, with limited exceptions; and clarify that ‘chief executive’ means of the department (and not the Authority);
- the *Public Guardian Act 2014* (PG Act) to clarify: that the functions and powers of the Public Guardian in relation to a relevant child can be exercised from the time an application for an order under the Child Protection Act is filed until the application is finalised and arrangements are no longer in place for that child; and that it is the Public Guardian who is responsible for the termination of community visitor appointments;
- the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) to: remove the requirement for a person wishing to enforce a final decision of the Queensland Civil and Administrative Tribunal (QCAT) to obtain a certified copy of the decision from the QCAT registry for filing in the registry; and remove unnecessary references to ‘style’ in relation to business names;
- the RSL Act to:
 - give permanent effect to a transitional regulation for clarifying that the RSL Act will continue to apply to 1000m² plus leases and employee/agent leases entered into before commencement of the RSLA Act; and
 - correct an inadvertent omission (effected by the RSLA Act) to reinstate a provision clarifying when a lessee can terminate a retail shop lease based on a defective disclosure statement given by the lessor;
- the *Right to Information Act 2009* (RTI Act) and IP Act to effect amendments of a technical nature, providing clarification in some areas and promoting consistency in the language used under the two Acts; the RTI Act to prevent the release of documents associated with the administration of a judicial appointments process; and to clarify that a corporation may be appointed to undertake a strategic review of the Office of the Information Commissioner (OIC);
- the *Succession Act 1981* (Succession Act) to clarify when the stepchild relationship ends (for family provision applications) and to revoke certain dispositions in a will upon the end of a de facto relationship;

- the *Supreme Court Library Act 1968* to provide a statutory indemnity from civil liability for members of the Supreme Court Library Committee (SCLC);
- the *Trusts Act 1973* (Trusts Act) to: achieve consistency with the *Powers of Attorney Act 1998* (PA Act) by removing the requirement that the delegation of the administration of a trust is to be made by power of attorney executed as a deed; and provide for the publication of a notice of a proposed distribution of trust property or an estate (in a notice of intention to apply for a grant of probate) in a publication approved by the Chief Justice under a practice direction; or otherwise for a notice of a proposed distribution of trust property or an estate to be published in a newspaper circulating throughout the State and sold at least once each week; and
- the *Vexatious Proceedings Act 2005* (VP Act) to allow vexatious litigants' applications for leave to institute proceedings, to be dealt with without an oral hearing and with or without their consent.

The Bill also amends new section 149A of the *Public Service Act 2008* (inserted by the *Industrial Relations Act 2016*) to correct a typographical error, replacing 'systemic' with 'systematic'.

Queensland Classification Acts amendments

- ***To align with recent changes to Commonwealth classification legislation***

Australia's scheme for classifying computer games, films and publications (the National Classification Scheme (NCS)) is a cooperative arrangement between the Commonwealth and state and territory governments. The NCS is underpinned by an Intergovernmental Agreement on Censorship (IAC). The IAC was signed in 1995 and is supported by a legislative framework comprising the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth) (the Commonwealth Act) and complementary state and territory legislation.

The NCS provides classification information to consumers about computer games, films, and publications to allow them to make informed decisions about consuming classifiable content. It is based on principles, set out in the National Classification Code (Code), that adults should be able to read, hear, see and play what they want, while recognising that minors should be protected from material likely to harm or disturb them and everyone should be protected from exposure to unsolicited material that they find offensive. Under the Commonwealth Act, the Commonwealth Classification Board (the Classification Board) has responsibility for making classification decisions. The Commonwealth Act provides that the Classification Board is required to classify computer games, films and publications in accordance with the Code. The Commonwealth Classification Review Board (the Review Board) is responsible for reviewing the classification decisions of the Board if an eligible person applies for review under section 42 of the Commonwealth Act.

Under the NCS, state and territory governments have responsibility for enforcing the decisions of the Classification Board and the Review Board. In Queensland, enforcement legislation relevant to the NCS is contained in the Computer Games Act, the Films Act and the Publications Act. The Office of Fair Trading (OFT) is responsible in Queensland for conducting enforcement activity relating to classifications.

On 11 September 2014, the *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Act 2014* (Cwlth) (the Commonwealth Amendment Act) received assent. That Act made amendments to the Commonwealth Act which

were agreed to by states and territories. The Commonwealth Amendment Act implemented reforms recommended by the Australian Law Reform Commission to:

- broaden the scope of existing exempt film categories and simplify exemption arrangements for festivals and cultural institutions ('conditional cultural exemptions');
- enable the classification of certain content using classification tools such as online questionnaires that deliver automated decisions ('approved classification tools');
- require the display of classification markings on all classified content ('classification markings');
- expand the exemptions to the modification rules under which computer games and films, subject to certain types of modifications, are not required to be re-classified ('modification rules'); and
- enable the Commonwealth Department of Communications and the Arts (Commonwealth Department) to notify law enforcement authorities of potential refused-classification content, without having the content classified first, to expedite the removal of extremely offensive or illegal content from distribution.

The Bill amends the Queensland Classification Acts to maintain consistency with the Commonwealth Act, as amended by the Commonwealth Amendment Act. These amendments are set out below.

Amendments relating to conditional cultural exemptions

The Commonwealth Amendment Act inserted new part 1A, division 2 into the Commonwealth Act to provide for 'conditional cultural exemptions'. These exemptions are narrow exemptions and apply only to relevant showings of an unclassified computer game, film or publication at a registered event (Commonwealth Act, section 6C) or by an approved cultural institution (Commonwealth Act, section 6E).

Under part 7 of the Computer Games Act, part 7 of the Films Act and section 37 of the Publications Act, classification officers can grant exemptions for computer games, films and publications. Because the scheme for conditional cultural exemptions is intended to be nationally consistent, the Bill omits the exemption provisions of the Queensland Classification Acts. The Bill amends each Queensland Classification Act to provide that the Acts do not apply to a computer game, film or publication to the extent that they are subject to a conditional cultural exemption. The Bill also provides that the director of the Classification Board's classification call-in powers do not extend to computer games, films or publications to the extent that they are subject to a conditional cultural exemption.

Amendments relating to approved classification tools

The Commonwealth Amendment Act inserted new part 2, division 2AA into the Commonwealth Act to provide for computer games, films or publications to be classified using an 'approved classification tool'. Classification tools are approved by the Commonwealth Minister and are published on the department's website. Ordinarily, the Classification Board meets to consider all applications to classify computer games, films or publications. Under the new provisions of the Commonwealth Act, classification tools may be used to classify material instead of requiring the Classifications Board to meet and make a classification decision (Commonwealth Act, section 22CF). The Classification Board is still able to, on its own initiative or on application, revoke a classification decision made by a tool and substitute its own decision (Commonwealth Act, section 22CH). This allows the Classification Board to maintain control over classification decisions.

The Bill makes amendments to various provisions throughout the Computer Games Act, the Films Act and the Publications Act to reflect that classification decisions may now be made under classification tools and that these decisions are taken to be decisions of the Classification Board.

Amendments relating to classification markings

The Commonwealth Amendment Act inserted section 8(3A) into the Commonwealth Act which requires that all classified content and advertisements must display any applicable consumer advice and markings determined under the Commonwealth Act. Queensland Classification Acts already contain a number of offences relating to the sale, exhibition and demonstration of content that does not display its determined consumer advice or markings. For example, it is an offence to sell computer games (Computer Games Act, section 14) and films (Films Act, section 29) unless their containers or wrappers display their consumer advice and markings determined under the Commonwealth Act. The Commonwealth Act requires that all classified computer games and films have determined consumer advice and markings (Commonwealth Act, sections 20 and 22CF). Unrestricted publications do not always have determined markings and consumer advice. Ordinarily, the Classification Board determines markings and consumer advice for computer games, films and publications. The amendments contained in the Commonwealth Amendment Act now allow approved classification tools to determine markings and consumer advice.

Only minor amendments are required to the Queensland Classification Acts to bring the definition of ‘consumer advice’ into line with that term’s meaning under the Commonwealth Act. The Bill inserts notes into various provisions of the Computer Games Act, the Films Act and the Publications Act, which refer to the term ‘consumer advice’. These notes clarify that consumer advice includes consumer advice determined under an approved classification tool pursuant to the Commonwealth Act, section 22CF(5), and that this consumer advice is taken to be the consumer advice determined by the Classification Board.

Amendments relating to modification rules

The Commonwealth Act (section 21(1)) provides that, when a computer game or film is modified, it becomes unclassified, unless the modification is a permissible modification under section 21(2). The Commonwealth Amendment Act expanded the number of permissible modifications by inserting new sections 20A, 21(2)(ba) and 21(3) into the Commonwealth Act. Some of the permissible modifications include the addition or removal of an advertisement, the addition or removal of navigation functions or a format change from 2D to 3D (or vice versa).

Currently, the Computer Games Act and the Films Act make it an offence to do things such as demonstrate, sell, or exhibit a computer game or film if the computer game or film has been altered or added to. The Bill amends sections 10A and 21A of the Computer Games Act and sections 21 and 36A of the Films Act to provide that it is not an offence to sell, demonstrate or exhibit a computer game or film which has been modified in a permissible way as set out in the Commonwealth Act.

• Removal of redundant references to the ‘classification officer’ positions

The Queensland Classification Acts establish the positions of computer games classification officer (Computer Games Act, sch 2), films classification officer (Films Act, section 4) and publications classification officer (Publications Act, section 6) (the classification officers). Each

classification officer is required to be an officer of the department responsible for administering the Act.

Each classification officer has a number of slightly different powers depending on the Act ranging from classification decision-making powers to enforcement powers.

Many of the powers of classification officers pre-date the 1995 signing of the IAC, which made the Commonwealth responsible for making classification decisions. The role of classification officers with classification decision-making powers is inconsistent with the NCS and with the role of the Classification Board and Review Board as classification decision-makers. Classification officers have not been appointed, nor made classification decisions, under the Queensland Classification Acts for many years. Instead, complainants who lodge complaints with the OFT about computer games, films and publications are advised to refer their complaint to the Classification Board. Once referred, the Classification Board can consider whether the content is unclassified (and, therefore, whether it should be classified), or whether the classification previously given to the content continues to be appropriate. The classification officers currently have no role in classifying content in Queensland and the decision-making powers of classification officers are no longer required.

All classification officers have varying enforcement powers under each of the Queensland Classification Acts. Presently these enforcement powers are not exercised by classification officers but are exercised by inspectors and departmental staff of the OFT. Because inspectors and departmental officers can exercise the enforcement powers of the classification officers, the enforcement powers of classification officers are no longer required.

The Bill amends the Computer Games Act, the Films Act and the Publications Act to remove references to classification officers and provide that inspectors and departmental employees who hold ministerial delegations are directly responsible for classification enforcement decisions.

The Bill also makes consequential amendments to the Criminal Code (Code) to remove references to classifications officers. Sections 228A to 228H of the Code contain a number of offences and defences relating to child exploitation material. Section 228E contains two defences to the offences in sections 228A to 228DC. One defence applies if a classification officer has either granted an exemption to an entity by a classification officer under one of the Queensland Classification Acts (section 228E(3)). The other defence applies if the classification officer or the Classification Board has classified the material as something other than refused classification (RC) (section 228E(5)). The Bill also aligns the defences in section 228E with the exemption and classification decision-making scheme provided for in the Commonwealth Act.

- ***Other minor amendments to the Queensland classification Acts***

The Bill makes a number of minor amendments to the Queensland Classification Acts to: reflect that various terms in the Acts should take their meaning from the Commonwealth Act; ensure that conduct which is permissible under the Commonwealth Act is not prohibited under the Queensland Classification Acts; and update various provisions of the Acts with current drafting practice.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than through legislative amendment.

Estimated cost for government implementation

There are no implementation costs for government.

Consistency with fundamental legislative principles

Appeal Costs Fund Act 1973

It is proposed to amend section 22 of the ACF Act to: clarify that the circumstances in which a person convicted on indictment is entitled to payment from the ACF includes where an appeal succeeds on the ground that there was a miscarriage of justice (the first amendment); and to clarify the basis for payment under section 22 by reference to costs the ACF Board considers have been thrown away, or partly thrown away and were reasonably incurred in the initial proceedings (the second amendment). The proposed transitional provision (which will apply both of these amendments to applications submitted, but not determined, prior to commencement) arguably raises a fundamental legislative principle issue regarding retrospectivity.

However, the retrospective operation of the first amendment is justified as it is beneficial in nature (i.e. it will clarify that the grounds on which a person convicted on indictment can claim from the ACF include where an appeal against the conviction based on miscarriage of justice is successful). The retrospective operation of the second amendment is also justified on the basis that it aligns with current practice of the ACF Board; and is consistent with the underlying premise of appeal costs fund legislation that reimbursement should be determined by reference to costs thrown away.

Queensland Classification Acts

The transitional provisions for the Computer Games Act (new section 86), the Films Act (new section 82) and the Publications Act (new section 47) provide that on commencement any exemption granted by a classification officer under those Acts ends. This automatic ending may potentially infringe the fundamental legislative principle that legislation should have sufficient regards to the rights and liberties of individuals. However, the potential infringement is justified where: classification officers granted exemptions from the Acts ordinarily for specific events; no exemptions have been granted for a number of years; the previously-granted exemptions were time-limited (meaning that existing exemptions are unlikely to be of any effect at the commencement of the Bill); and the ending of any existing exemptions is necessary to ensure that all exemptions from the Queensland Classification Acts are dealt with under the provisions of the Commonwealth Act.

Information Privacy Act 2009

The proposed amendments to the IP Act (to allow the disclosure of personal information to ASIO) potentially infringe the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals with respect to privacy and confidentiality rights. The potential breach is justified, however, in the interests of national security and on the basis that disclosure will only be allowed in limited circumstances. Further, ASIO is subject to robust accountability and oversight mechanisms, designed to ensure maximum transparency, consistent with the requirements of national security, including parliamentary oversight of its intelligence activities, ministerial accountability (see, for example, the Attorney-General's Guidelines on Security Intelligence which set out the Attorney-

General's expectations of ASIO in the collection and handling of personal information) and independent oversight by the Inspector-General of Intelligence and Security and the Australian National Audit Office.

Invasion of Privacy Act 1971

The IoP Act creates an offence where a 'listening device' records a private conversation, unless an exception applies. The proposed amendment will create an exception to this offence where police and emergency services communications centre operators record private conversations between individuals while operating the 'open mic' function of a government network radio in circumstances associated with risk to the safety and wellbeing of a public safety entity officer. For example, where an officer has been lost and efforts are being made to confirm the officer's safety and wellbeing.

The proposed amendment potentially breaches the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals, particularly in relation to the right to privacy. However, the potential breach is justified on the basis that it is necessary to ensure officer safety and as use of the remote activation feature will be used only in limited circumstances.

Legal Profession Act 2007

The amendment to the LP Act (to provide that an ILP going into liquidation or some other form of external administration is a show cause event and suitability matter for a legal practitioner director) raises an issue regarding potential adverse impact on the rights of individuals in that, arguably, legal practitioner directors could be penalised for circumstances outside of their control. However, this potential is ameliorated as the directors will be afforded a right to be heard, and will have the opportunity to present their case as to why those circumstances should not affect their right to practise.

Ombudsman Act 2001

Criminal history

New sections 78A-78C of the Ombudsman Act enable the Ombudsman to obtain information from the Police Commissioner about the criminal history of a person who is being considered for employment or secondment as an officer of the Ombudsman. 'Criminal history' is defined in schedule 3 to include convictions that have become spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986* and charges. In relation to prospective officers, the request for information from the Police Commissioner may only be made with the consent of the relevant person.

These provisions are required primarily because the Ombudsman has oversight of child safety complaints and complaints about state schools and officers may have direct or indirect contact with and access to personal details about children and young people. Because Ombudsman officers could be expected to deal with a range of matters and may not be confined to dealing with only one particular type of complaint, it is necessary for all prospective officers to be subject to the same screening regime. The provisions also include the following safeguards:

- the person to which the criminal history information relates must be given the information and a reasonable opportunity to make representations to the Ombudsman about the information before the Ombudsman uses the information; and

- the Ombudsman must ensure the criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested from the Police Commissioner.

New section 78C(2) includes a new offence for a person who possesses criminal history information because the person is or was the Ombudsman or an officer of the Ombudsman and, directly or indirectly, discloses a person's criminal history information to another person. This offence is appropriate as a safeguard for the protection of criminal history information obtained by the Ombudsman and to deter unlawful disclosure of a person's criminal history.

Jurisdiction of courts

New section 92A ensures that a person who is, or was, an officer of the Ombudsman or the Ombudsman cannot be called to give evidence or produce a document in any proceeding in relation to a matter coming to the person's knowledge while performing functions under the Ombudsman Act. The provision potentially breaches the fundamental legislative principle that legislation should not oust the jurisdiction of the courts. However, the potential breach is justified on the basis that the proposed amendment will overcome concerns that the existing lack of protection undermines the secrecy provision and could lead to a reluctance on the part of witnesses to provide information to the Ombudsman. The provision is consistent with Ombudsman legislation in every other Australian jurisdiction and section 29(4) of the repealed *Parliamentary Commissioner Act 1974* (which was replaced by the Ombudsman Act in 2001). The provision is also subject to a number of exceptions in new section 92A(2).

Abrogation of the privilege against self-incrimination

The amendment to section 30 clarifies that self-incrimination is not a reasonable excuse for a person not to comply with an investigation requirement. The abrogation of the privilege against self-incrimination is necessary because the information would generally be peculiarly within the knowledge of the person from whom it is requested and would otherwise be difficult to establish and it is in the public interest to ensure accountability of government. As a safeguard, the amendment to section 48 provides that the information or document and other evidence directly or indirectly derived from the information or document, is not admissible in any proceeding as evidence against the individual unless it pertains to the falsity or misleading nature of the information or document.

Local government

The replacement of section 50 allows the Ombudsman to direct the principal officer of a local government to table a report received from the Ombudsman at a local government meeting to ensure it is placed on the public record. This provision could adversely affect the rights of an individual who is named in a report tabled at a local government meeting. However, the Ombudsman will take into account the rights and liberties of individuals named in a report before deciding whether to require that a report be tabled. Further safeguards include section 55 of the Ombudsman Act which provides that the Ombudsman must not make adverse comment about a person unless, before the report is prepared, the Ombudsman gives the person an opportunity to make submissions about the proposed adverse comment. If the person makes submissions and the Ombudsman still proposes to make the adverse comment, the Ombudsman must ensure the person's defence is fairly stated in the report. Section 25 of the Ombudsman Act also requires the Ombudsman to comply with natural justice when conducting an investigation.

Supreme Court Library Act 1968

The amendments to the SCL Act provide for immunity from civil liability for members of the SCLC in relation to acts done, or omissions made in good faith under, or for the purposes of the SCL Act. The amendments are potentially inconsistent with the fundamental legislative principle that requires legislation to not ‘confer immunity from proceeding without adequate justification’.

This immunity is considered justified because it is appropriate that the members of statutory bodies are not exposed to liability for carrying out their statutory functions. Similar protection applies to the members and employees of other statutory bodies. The immunity does not deprive a person who has suffered harm or damage of the right to seek redress for any civil wrong, but expressly provides that liability that may have attached to a SCLC member instead attaches to the SCLC.

Trusts Act 1973

The amendments to the Trusts Act remove the requirement for a delegation of a power of attorney to be executed as a deed. The amendments also remove doubt by providing that delegations that have been made using the approved form for a general power of attorney under the PA Act are as valid and effective as if the delegation had been made by power of attorney executed as a deed under previous section 56. The retrospective nature of the amendments is justified as they will ensure that the intent of delegations that were made in good faith using the approved form under the PA Act is achieved, and will provide certainty in the administration of trusts by persons who have relied on delegations.

Vexatious Proceedings Act 2005

The amendment to the VP Act will allow applications by vexatious litigants to be dealt with by the Supreme Court on the papers without an oral hearing, with or without the consent of the applicant.

This amendment potentially breaches the fundamental legislative principle of the right of an applicant to have an adequate opportunity to present their case to the decision-maker. The amendment is, however, justifiable on the basis that the Supreme Court will only be empowered to dismiss an application without an oral hearing in situations where there is already a court-ordered vexatious proceedings order in place, and the applicant is seeking leave to bring a proceeding under section 11 of the VP Act. Allowing the court to decide the matter on the papers increases the efficiency of the courts, and better distributes the courts’ resources. The applicant in these circumstances will not be disadvantaged by the matter being heard on the papers, as all material facts relating to the application will be required to be filed at the court at the time such an application is made. Further, the Court will be required to give the applicant a copy of the order dismissing their application, along with the reasons for the decision.

Consultation

The following stakeholders were consulted on the amendments contained in the Bill expected to be of interest to them and any comments were taken into account in finalising drafting of the Bill: the Chief Justice; the Rules Committee; the President of the Land Court; the Chief Magistrate; the QLS, the BAQ; the LAQ Board; the LSC; the ACF Board; the Public Trustee of Queensland; the SCLC; the Ombudsman; the OIC; the Local Government Association of Queensland; the Commonwealth Attorney-General; the Prostitution Licensing Authority; the Professional Standards Authority; the Children’s Court President; the Director of Child

Protection Litigation; the Office of the Public Guardian; QUT Commercial & Property Law Research Centre; the Shopping Centre Council of Australia; the National Retail Association; the Property Council of Australia and Lease 1.

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 repealing five companies Acts and the amendments to the Queensland Classification Acts.

Repeal of redundant companies legislation

The Bill repeals five companies Acts, where the arrangements which these Acts supported have been superseded – initially with a uniform legislation scheme in 1991, and subsequently by the Commonwealth *Corporations Act 2001* following a referral of powers to the Commonwealth by the States. Three other states have already repealed their equivalent of these Acts.

Queensland Classification Acts

The Queensland Classification Acts are being amended to make them more consistent with the Commonwealth Act (as described above).

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Court and Civil Legislation Amendment Act 2017*.

Clause 2 provides for commencement of the stated provisions.

Subclause (1) provides that section 220 is taken to have commenced on 25 November 2016, being the date of commencement of the RSLA Act.

Subclause (2) provides that section 203 commences on the commencement of the *Planning (Consequential) and Other Legislation Amendment Act 2016*, section 363.

Subclause (3) provides that the following provisions will commence on a day to be fixed by proclamation: Part 2; sections 149 to 151; section 153; section 155 and section 252.

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

Clause 3 states that the part amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Clause 4 amends section 20 to replace the current requirement for the Minister to appoint and revoke the appointment of members of community justice groups by gazette notice.

The amendments provide that:

- the Minister may appoint the members of a community justice group by publishing notice of the appointments on the Queensland Courts website and must give each member written notice of their appointment; and
- if the Minister decides that a member of a community justice group is no longer eligible or suitable for appointment, the Minister must revoke the member's appointment by written notice given to the member and publish notice of the revocation on the Queensland Courts website.

Part 3 Amendment of Acts Interpretation Act 1954

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

Clause 6 amends section 48 (Forms-notification and availability) to provide for forms and new versions of forms to be notified on a relevant website (as defined) as an alternative to the gazette. For a form, or new version of a form, approved or made available by a local government, the relevant website is the website of the local government. For other entities, the relevant website is: the whole-of-government website (as defined); the website of the approving entity; or, for an approving entity that does not have a website, the website of the relevant department (as defined) or a website identified on the relevant department's website as the website for this purpose.

Clause 7 inserts: new section 52A (Evidentiary provision) which provides for certificates purporting to be signed by or for an approving entity and stating certain matters in relation to an approved form to be evidence of those matters; and new section 52B which provides a regulation-making power for the Act because a regulation is contemplated under the definition ‘whole-of-government website’.

Clause 8 makes transitional provision to allow for the approval or availability of a form, approved or made available but not notified before commencement, to be notified under amended section 48 (that is, either by gazette notice or on a relevant website).

Part 4 Amendment of Anti-Discrimination Act 1991

Clause 9 states that the part amends the *Anti-Discrimination Act 1991*.

Clause 10 provides for amendments of a technical nature to section 119 of the Act, replacing incorrect references to subsections with the correct paragraph references.

Part 5 Amendment of Appeal Costs Fund Act 1973

Clause 11 states that the part amends the *Appeal Costs Fund Act 1973*.

Clause 12 amends section 5 (Appeal Costs Fund) to remove the provisions in subsections 5(4) to (7), which have become redundant due to administration and process changes.

Clause 13 amends section 22 (Abortive proceedings and new trials after proceedings discontinued) to clarify the grounds on which an applicant is entitled to payment from the ACF to include where an appeal against the conviction on indictment succeeds on the ground that there was a miscarriage of justice and a new trial is ordered.

This clause further amends section 22 to clarify that the costs for which an applicant can seek reimbursement, and is entitled to be paid from the ACF, are the costs the board considers have been thrown away, or partly thrown away. Costs throw away in relation to proceedings are defined to include costs that are reasonably incurred but are wasted, because: the proceedings are rendered abortive, the conviction is quashed or the hearing of the proceedings is discontinued.

Clause 14 inserts new section 31 which provides that the amendments apply to applications submitted, but not decided, prior to the commencement of the provision.

Part 6 Amendment of Civil Proceedings Act 2011

Clause 15 states that the part amends the *Civil Proceedings Act 2011*.

Clause 16 amends section 71 following the replacement of the *Navigation Act 1912* (Cwlth) by the *Navigation Act 2012* (Cwlth)).

Clause 17 as for clause 16.

Clause 18 as for clause 16.

Clause 19 as for clause 16.

Clause 20 as for clause 16.

Clause 21 removes a redundant reference.

Clause 22 removes a redundant reference.

Clause 23 cross-references definitions from section 76 in the dictionary (at schedule 1).

Part 7 Amendment of Classification of Computer Games and Images Act 1995

Clause 24 states that the part amends the *Classification of Computer Games and Images Act 1995*.

Clause 25 replaces section 2A. The replacement section, as well as providing that the Act does not apply to an exempted computer game (as under the current section), also provides that the Act does not apply in relation to a showing of a computer game that is subject to a ‘conditional cultural exemption’ in relation to the relevant showing.

Clause 26 amends section 3 (Definitions and dictionary) to remove the reference to ‘dictionary’ in the heading because schedule 2 to the Act is the dictionary.

Clause 27 omits sections 4 to 8 as a consequence of the removal of the position of the computer games classification officer.

Clause 28 amends section 8A (Calling in computer game for reclassification by board) as a consequence of the removal of the position of the computer games classification officer.

Clause 29 amends section 8B (Obtaining copies for review) as a consequence of the removal of the position of the computer games classification officer.

Clause 30 amends section 8C (Calling in unclassified computer game for classification) to provide that the director of the Classification Board cannot exercise the director’s call-in power under the section if the computer game is subject to a conditional cultural exemption in relation to its publication. The clause makes amendments to section 8C to make its language consistent with the director’s call-in powers contained in section 24 of the Commonwealth Act, and as a consequence of the removal of the position of the computer games classification officer.

Clause 31 amends section 10 (Restriction on public demonstration of MA 15+ or R 18+ computer game). Section 10(5) requires a public demonstrator of a game classified as MA 15+ or R 18+ to display the determined markings for the game before the game is demonstrated. If a computer game had a particular classification, and was later revoked under section 22B(3) of the Commonwealth Act, a 30 day grace period applies. The grace period allows the demonstrator to display the applicable markings for the previous classification for up to 30 days before being required to display the applicable markings for the game’s new classification. The amendments also apply section 10 where a computer game’s classification is revoked and re-decided under section 22CH(1) of the Commonwealth Act where the game was originally classified by an approved classification tool.

Clause 32 amends section 10A (Prohibition against demonstration of certain classified computer games) to provide that the prohibition against demonstrating classified computer games other than in the form in which they were classified does not apply if the computer game is modified in a way mentioned in section 20A(2)(a), (d) or (e) or section 21(2)(a), (b), (ba) or (3) of the Commonwealth Act.

Clause 33 amends section 10B (Computer game available for playing on pay and play basis to bear determined markings and consumer advice). Section 10B(4) contains a similar 30 day grace period as in section 10. The amendments also apply section 10B(4) where a computer game's classification is revoked and re-decided under section 22CH(1) of the Commonwealth Act where the game was originally classified by an approved classification tool.

Clause 34 amends section 12 (Advertisement to contain determined markings and consumer advice). Section 12(3) contains a similar 30 day grace period as in sections 10 and 10B. The amendments also apply section 12(3) where a computer game's classification is revoked and re-decided under section 22CH(1) of the Commonwealth Act where the game was originally classified by an approved classification tool.

Clause 35 amends section 13 (False advertising of computer games). Section 13(3) contains a similar 30 day grace period as in sections 10, 10B and 12. The amendments also apply section 13(3) where a computer game's classification may also be revoked and re-decided under section 22CH(1) of the Commonwealth Act where the game was originally classified by an approved classification tool.

Clause 36 amends section 13B (Power to require certain advertisements to be submitted for approval) to remove the reference to the computer games classification officer.

Clause 37 amends section 13C (Defence to prosecution under section 13B) to bring the drafting of that section into line with current drafting practice and to remove reference to the computer games classification officer.

Clause 38 amends section 14 (Markings and consumer advice on containers). Section 14(3) contains a similar 30 day grace period as in sections 10, 10B, 12 and 13. The amendments also apply section 14(3) where a computer game's classification is revoked and re-decided under section 22CH(1) of the Commonwealth Act where the game was originally classified by an approved classification tool.

Clause 39 amends section 15 (Display of classifications notices) to align the definition of 'classifications notice' with the definition in the Commonwealth Act.

Clause 40 amends section 21 (Sale of improperly marked classified computer games). Section 21(3) contains a similar 30 day grace period as in sections 10, 10B, 12, 13 and 14. The amendments also apply section 21(3) where a computer game's classification is revoked and re-decided under section 22CH(1) of the Commonwealth Act where the game was originally classified by an approved classification tool.

Clause 41 amends section 21A (Prohibition against selling certain classified computer games) to provide that the prohibition against selling classified computer games other than in the form in which they were classified does not apply if the computer game is modified in a way mentioned in section 20A(2)(a), (d) or (e) or section 21(2)(a), (b), (ba) or (3) of the Commonwealth Act.

Clause 42 amends section 29 (No liability in certain circumstances) to remove the reference to the repealed *Classification of Publications Ordinance 1983* (ACT).

Clause 43 replaces section 42 (Additional power of inspector to seize computer games) to remove references to the computer games classification officer and vest the computer games classification officer's existing powers in an inspector appointed under the Act.

Clause 44 omits part 7 (Exemptions) because the computer games classification officer will no longer exist to grant exemptions under the Act. Instead, the scheme for conditional cultural exemptions under the Commonwealth Act will apply.

Clause 45 amends section 62 (Evidentiary provisions) to remove references to the computer games classification officer and to bring the references to a document purporting to be a certificate into line with the matters about which a certificate may be issued under the Commonwealth Act, section 25 or 87.

Clause 46 amends section 63 (Indictable offences and summary offences) to clarify that the Minister may authorise a person generally, or in relation to a stated complaint, to commence summary proceedings under the *Justices Act 1886* for offences against the Act.

Clause 47 amends section 66 (Classified computer games not indecent or obscene) to provide that a computer game, to the extent that is subject to a conditional cultural exemption in relation to a relevant showing, is not indecent or obscene material for the purposes of the Criminal Code.

Clause 48 omits section 68 (Delegation by computer games classification officer) because there will be no computer games classification officer from whom powers may be delegated.

Clause 49 amends section 69A (Protection of officials from liability) to remove reference to the computer games classification officer and to bring the drafting of that section into line with current drafting practice.

Clause 50 inserts new part 9, division 4 (sections 83 to 86) as transitional provisions for the *Court and Civil Legislation Amendment Act 2017*.

New section 83 (Definition for division) provides a definition for the term 'repealed' for the division.

New section 84 (Classification of computer games under repealed s 5) provides that, if a computer game immediately before the commencement had a classification given under repealed section 5, the classification, and any consumer advice for the computer game determined under section 20 of the Commonwealth Act (as applied by repealed section 5(3)), are taken from commencement to have been given under the Commonwealth Act. It also provides that, if a computer game is later classified under the Commonwealth Act, the deeming provision stops having effect.

New section 85 (Application of particular modifications of computer games for ss 10A and 21A) provides that amended sections 10A(3) and 21A(3), to the extent that they provide that a modification of a computer game, as mentioned in section 20A(2)(a), (d) or (e) or section 21(2)(ba) or (3) of the Commonwealth Act, does not cause the computer game to become unclassified, only apply to computer games classified on or after 1 January 2013. This is consistent with the transitional provisions for the Commonwealth Amendment Act.

New section 86 (Ending of exemptions given under repealed s 58 or 59) provides that, if any exemptions given were under repealed sections 58 or 59, they end on commencement.

Clause 51 amends schedule 2 (Dictionary) to provide new definitions for ‘advertisement’, ‘classified’, ‘inspector’, ‘relevant showing’, and ‘subject to a conditional cultural exemption’. It also amends the definition of ‘consumer advice’, ‘exempt computer game’ and ‘review board’ and omits the definition of ‘computer games classification officer’.

Part 8 Amendment of Classification of Films Act 1991

Clause 52 states that the part amends the *Classification of Films Act 1991*.

Clause 53 replaces section 2A. The replacement section, as well as providing that the Act does not apply to a film that is an exempt film (as under the current section), also provides that the Act does not apply in relation to a relevant showing of a film to the extent that it is subject to a conditional cultural exemption in relation to the relevant showing.

Clause 54 amends section 3 (Definitions) to provide new definitions for ‘advertisement’, ‘classifications notice’, ‘inspector’, ‘relevant showing’ and ‘subject to a conditional cultural exemption’. The clause amends the definition of ‘consumer advice’, ‘exempt film’ and ‘review board’ and omits the definition of ‘synopsis’. The clause relocates the definitions into the dictionary at schedule 1 of the Act.

Clause 55 amends section 4 (Inspectors and films classification officer) to remove the references to the films classification officer and to bring the drafting of that section into line with current drafting practice.

Clause 56 omits section 4A (Delegation by films classification officer) because there will no longer be a films classification officer from whom powers can be delegated.

Clause 57 amends section 21 (Prohibition against exhibition of certain films in public places) to provide that the prohibition against demonstrating classified films, other than in the form in which they were classified, does not apply if the film is modified in a way mentioned in section 20A(2)(a) to (e) or section 21(2)(a) to (d) or (3) of the Commonwealth Act.

Clause 58 amends section 25CA (Calling in classified film for classification) of the Act to provide that the director of the Classification Board cannot exercise the director’s call-in power under the section if the film is subject to a conditional cultural exemption in relation to its publication. The clause makes amendments to section 25CA to make its language consistent with the director’s call-in powers under the Commonwealth Act. The clause also amends the section as a result of the removal of the position of the films classification officer.

Clause 59 amends section 25CB (Calling in film for reclassification) to remove reference to the films classification officer.

Clause 60 amends section 25CC (Obtaining copies for review) to remove reference to the films classification officer.

Clause 61 amends section 25D (Power to require certain advertisements to be submitted for approval) to remove reference to the films classification officer.

Clause 62 amends section 25E (Defence to prosecution under section 25D) to bring the drafting of that section into line with current drafting practice and to remove reference to the films classification officer.

Clause 63 amends section 27 (Advertisement to contain determined markings and consumer advice). Section 27(4) contains a similar 30 day grace period for films as in sections 10, 10B, 12, 13, 14 and 21 of the Computer Games Act for computer games. The amendments also apply section 27(4) where a film's classification is revoked and re-decided under section 22CH(1) of the Commonwealth Act if the film was originally classified by an approved classification tool.

Clause 64 amends section 28 (False advertising of films prohibited). Section 28(1A) contains a similar 30 day grace period as is contained in section 27. The amendments also apply section 28(1A) (which is renumbered to be 28(3) by the Bill) where a film's classification is revoked and re-decided under section 22CH(1) of the Commonwealth Act if the film was originally classified by an approved classification tool.

Clause 65 amends section 29 (Markings and consumer advice on containers). Section 29 prohibits a person from displaying for sale, or attempting to display for sale, a film unless its container, wrapper or casing bears any applicable determined markings and consumer advice. Section 29 does not currently permit the application of the 30 day grace period for films which have their classifications revoked under section 22B(3) or revoked and re-decided under section 22CH(1) of the Commonwealth Act. The amendment brings section 29 into line with the application of this grace period applicable for sections 27 and 28.

Clause 66 amends section 36 (Display and sale of improperly marked classified films). Section 36 prohibits a person from displaying for sale, or attempting to display for sale, a classified film if its container, wrapper or casing bears a mark or other matter indicating that the film is not classified or that it has a classification other than its classification under the Commonwealth Act. Section 36 does not currently permit the application of the 30 day grace period for films which have their classifications revoked under section 22B(3) or revoked and re-decided under section 22CH(1) of the Commonwealth Act. The amendment brings section 36 into line with the application of this grace period applicable for sections 27, 28 and 29.

Clause 67 amends section 36A (Prohibition against sale of certain films) to correct an error in section 36A(3) and to provide that the prohibition against the sale of modified films does not apply in relation to an alteration or addition of a film that consists of a modification mentioned in the Commonwealth Act, section 20A(2)(a) to (e) or 21(2)(a) to (d) or (3).

Clause 68 replaces section 52 (Additional power of inspector to seize films) to remove references to the films classification officer and vest the film classification officer's powers in an inspector appointed under section 4(1) of the Act.

Clause 69 omits part 7 (Exemptions) because the films classification officer will no longer exist to grant exemptions under the Act. Instead, the scheme for conditional cultural exemptions in part 1A, division 2 of the Commonwealth Act will apply.

Clause 70 amends section 60 (Evidentiary provisions) to remove references to the films classification officer and to bring the references to a document purporting to be a certificate into line with the matters about which a certificate may be issued under the Commonwealth Act sections 25 and 87.

Clause 71 amends section 61 (Indictable offences and summary offences) to clarify that the Minister may authorise a person generally, or in relation to a stated complaint, to commence summary proceedings under the *Justices Act 1886* for offences against the Act.

Clause 72 amends section 64 (Certain classified films not indecent or obscene) to provide that, to the extent that a film is subject to a conditional cultural exemption in relation to a relevant showing, the film is not an indecent or obscene publication for the purposes of the Criminal Code.

Clause 73 amends section 66A (Protection of officials from liability) to remove the reference to the films classification officer and to bring the drafting of that section into line with current drafting practice.

Clause 74 inserts new part 9, division 6 (sections 81 and 82 as transitional provisions for the *Court and Civil Legislation Amendment Act 2017*).

New section 81 (Application of particular modifications of films for ss 21 and 36A) provides that sections 21 and 36A, to the extent that they provide that a modification of a film as mentioned in section 20A(2)(a), (d) or (e) or 21(2)(ba) or (3) of the Commonwealth Act does not cause the film to become unclassified, only apply to films classified on or after 1 January 2013. This is consistent with the transitional provisions for the Commonwealth Amendment Act.

New section 82 (Ending of exemptions given under repealed s 57 or 59A) provides that if any exemptions given were under repealed sections 57 or 59A, they end on commencement. New section 82 also provides a definition for the term ‘repealed’.

Clause 75 inserts new schedule 1 (Dictionary) as a consequence of the definitions in section 3 being relocated into a new dictionary schedule.

Part 9 Amendment of Classification of Publications Act 1991

Clause 76 states that the part amends the *Classification of Publications Act 1991*.

Clause 77 inserts new section 2A (Application of Act) to provide that the Act does not apply in relation to a relevant showing of a publication to the extent that it is subject to a conditional cultural exemption in relation to the relevant showing.

Clause 78 amends section 3 (Definitions) to provide new definitions for ‘advertisement’, ‘classified’, ‘inspector’, ‘relevant showing’, ‘subject to a conditional cultural exemption’ and ‘submittable publication’. The clause amends the definitions for ‘prohibited publication’ and omits the definitions for ‘approved wholesaler’, ‘child abuse photograph’, ‘classification guidelines’, ‘classified Code’, ‘code of conduct’, ‘interim prohibited publication’, ‘QCAT information notice’ and ‘retail seller’. The clause also relocates the definitions into the dictionary at schedule 1 of the Act.

Clause 79 omits section 4 (Classification under Commonwealth Act) because classification decisions (as contemplated under the section) will no longer be capable of being made under

the Act. All classifications of publications will be decided in accordance with the provisions of the Commonwealth Act.

Clause 80 amends section 5 (Inspectors) to bring the drafting of that section into line with current drafting practice.

Clause 81 omits sections 6 to 8 which deal with the functions and powers of the publications classification officer because that position is being removed.

Clause 82 omits section 9 (Classification of publications) which deals with the power of the publications classification officer to classify publications because that position is being removed.

Clause 83 amends section 9A (Power to require publisher to submit application for classification of a publication) of the Act to provide that the director of the Classification Board cannot exercise the director's call-in power under the section if the publication is subject to a conditional cultural exemption in relation to its publication. The clause makes amendments to section 9A to make its language consistent with the director's call-in powers contained in the Commonwealth Act. The clause also amends the section as a result of the removal of the position of the publications classification officer.

Clause 84 amends section 9B (Power to require certain advertisements to be submitted for approval) to remove reference to the publications classification officer.

Clause 85 amends section 9C (Defence to prosecution under section 9A or 9B) to remove reference to the publications classification officer and to bring the drafting of that section into line with current drafting practice.

Clause 86 omits sections 10 and 11 as a result of the removal of the position of the publications classification officer.

Clause 87 omits part 2A (Protection of children and families by conditions for displaying certain unrestricted publications) which deals with the power of the publications classification officer to make certain orders limiting the display and sale of certain specified unrestricted publications from a public place. The provisions are omitted because the publications classification officer is being removed.

Clause 88 amends section 12 (Sale etc. of prohibited publication or child abuse photograph) to remove the reference to 'child abuse photograph'. When the Act was first enacted in 1991, the term 'publication' was defined as a 'book, paper magazine or other written or pictorial matter'. The term 'child abuse publication' relied on this definition of 'publication' for its interpretation. In 1993, it was considered that a single photograph was incapable of being a 'child abuse publication' because of the definition of 'publication'. Because of this, the *Consumer Law (Miscellaneous Provisions) Act 1993* was enacted to insert a definition for the term 'child abuse photograph'. In 2005, the *Tourism, Fair Trading and Wine Industry Development Legislation Amendment Act 2005* was enacted which amended the definition of 'publication' to mirror the Commonwealth Act's definition. The Commonwealth definition for 'publication' is much broader and allows for a single image to be considered a 'publication'. Because of this, the term 'child abuse photograph' is no longer required as a photograph depicting child abuse is capable of being considered a 'child abuse publication'.

Clause 89 amends section 14 (Possession of child abuse publication or child abuse photograph) to remove the reference to ‘child abuse photograph’ consistent with the amendment to section 12.

Clause 90 amends section 15 (Exhibition or display of prohibited publication or child abuse photograph) to remove the reference to ‘child abuse photograph’ consistent with the amendment to section 12.

Clause 91 amends section 16 (Leaving prohibited publication or child abuse photograph in or on public place) to remove the reference to ‘child abuse photograph’ consistent with the amendment to section 12.

Clause 92 amends section 18 (Procurement of minor for RC publication or child abuse photograph) to remove the reference to ‘child abuse photograph’ consistent with the amendment to section 12.

Clause 93 replaces section 19 (Distributors, retail sellers and advertisers not liable in certain circumstances) as a result of the omission of sections 7 and 8 and the repeal of the *Classification of Publications (Approval of Codes of Conduct) Order 1992*.

Clause 94 amends section 20 (Leaving prohibited publication or child abuse photograph in or on private premises) to remove the reference to ‘child abuse photograph’ consistent with the amendment to section 12.

Clause 95 omits section 20C (Offence to contravene a display order for an unrestricted publication) which makes it an offence to contravene a display order made by the publications classification officer under section 11B. The provision is omitted because the publications classification officer and Part 2A of the Act (which relates to display orders) are being removed.

Clause 96 amends section 20E (Consumer advice for unrestricted publications) to clarify that consumer advice, determined under section 20(2) of the Commonwealth Act, includes consumer advice determined under an approved classification tool pursuant to the Commonwealth Act section 22CF(5).

Clause 97 amends section 28 (Additional power of inspector to seize publications) to remove the references to the publications classification officer and vest the film classification officer’s powers in an inspector appointed under the Act.

Clause 98 amends section 32 (Evidentiary provisions) to remove references to the publications classification officer and to bring the references to a document purporting to be a certificate into line with the matters about which a certificate may be issued under the Commonwealth Act section 25 or 87.

Clause 99 amends section 33 (Indictable offences and summary offences) to remove the reference to ‘child abuse photograph’ because that term has been removed from the offence provisions of the Act under these amendments. The clause also clarifies that the Minister may authorise a person generally, or in relation to a stated complaint, to commence summary proceedings under the *Justices Act 1886* for offences against the Act.

Clause 100 amends section 34 (Forfeiture) to remove the reference to ‘child abuse photograph’ because that term has been removed from the offence provisions of the Act consistent with the amendment to section 12.

Clause 101 amends section 35 (Return of seized publications or photographs) to remove the reference to ‘photograph’ as a consequence of the removal of the term ‘child abuse photograph’ consistent with the amendment to section 12.

Clause 102 amends section 36 (Unrestricted publication not indecent or obscene) to provide that, to the extent that a publication is subject to a conditional cultural exemption in relation to a relevant showing, the publication is not indecent or obscene material for the purposes of the Criminal Code.

Clause 103 omits section 37 (Exemptions) because the publications classification officer will no longer exist to grant exemptions.

Clause 104 amends section 39 to remove the references to the publications classification officer and to bring the drafting of that section into line with current drafting practice.

Clause 105 inserts new part 6, division 4 (sections 45 to 47) as transitional provisions for the *Court and Civil Legislation Amendment Act 2017*.

New section 45 (Definition for division) provides a definition of ‘repealed’ for the division.

New section 46 (Classification of publications under repealed s 9) provides that a publication that immediately before commencement had a classification given under repealed section 9(1) from the commencement is taken to have been given under the Commonwealth Act. It also provides that, if a publication is later classified under the Commonwealth Act, the transitional provision stops having effect.

New section 47 (Ending of exemption given under repealed s 37) provides that an exemption given, and in force, under repealed section 37 ends on commencement.

Clause 106 inserts new schedule 1 (Dictionary) as a consequence of the relocation of the definitions from section 3 into a new dictionary schedule.

Part 10 Amendment of Court Funds Act 1973

Clause 107 states that the part amends the *Court Funds Act 1973*.

Clause 108 amends the long title of the Act to provide that it applies to the custody and investment of money paid into the Supreme Court, the District Court and Magistrates Courts.

Clause 109 amends section 4 (Definitions) to correct a drafting error referring to the District Court as ‘a District Court’ and to include a Magistrates Court within the definition of a court for section 4.

Part 11 Amendment of Criminal Code

Clause 110 states that the part amends the Criminal Code.

Clause 111 amends section 1 (Definitions) to omit the definition of ‘classification officer’. The clause also inserts a reference to the definition for the ‘Commonwealth Classification Act’ in amended section 207A. This is a consequence of amendments made to the Computer Games Act, the Films Act and the Publications Act in this Bill.

Clause 112 amends section 207A (Definitions for this chapter) to omit the definition of ‘classification officer’. The clause also inserts a definition for the ‘Commonwealth Classification Act’. This is a consequence of amendments made to the Computer Games Act, the Films Act and the Publications Act in this Bill.

Clause 113 amends section 228E (Defences for sections 228A–228DC) which provides a range of defences for offences about conduct relating to child exploitation material (child exploitation material offence). The clause amends section 228E(3) to remove the references to exemptions granted by classification officers because the power of classification officers to grant exemptions under the Computer Games Act, the Films Act and the Publications Act are removed by the Bill. Instead, the clause amends section 228E(3) to provide that it is a defence to show that the material the subject of the alleged child exploitation material offence is: subject to a conditional cultural exemption for a relevant showing; and that the person alleged to commit the offence engaged in the conduct that is alleged to constitute the child exploitation material offence for the purpose of the relevant showing. The clause also amends the references in section 228E to a ‘certificate’. This is to align the definition of a certificate, which is capable of evidencing a particular piece of material’s classification, with the Commonwealth Act section 25 or 87. The clause also inserts definitions for the terms ‘relevant showing’ and ‘subject to a conditional cultural exemption’.

Clause 114 amends section 228H (Possession etc. of child exploitation material by law enforcement officer) which provides that law enforcement officers are not criminally responsible for child exploitation material offences in certain circumstances. The clause removes the references to a ‘classification officer’. The clause extends the definition of ‘law enforcement officer’ so the definition applies to inspectors appointed under the Computer Games Act, the Films Act and the Publications Act. This is because inspectors will exercise all enforcement powers of classification officers under the amendments contained in the Bill. The expanded definition of ‘law enforcement officer’ will allow inspectors to possess and distribute material that may be child exploitation material to the Classification Board without being criminally responsible for a child exploitation material offence.

Part 12 Amendment of Evidence Act 1977

Clause 115 states that the part amends the *Evidence Act 1977*.

Clause 116 amends section 58 to authorise both the chief executive (of the department) and the State Archivist to certify copies of State letters patent; and to allow the State Archivist to delegate the certification powers to an appropriately qualified officer of the Queensland State Archives.

Part 13 Amendment of Information Privacy Act 2009

Clause 117 states that the part amends the *Information Privacy Act 2009*.

Clause 118 amends section 45 (Making access or amendment applications for children) making an amendment of a drafting nature to the definition of ‘parent’ in subsection (2).

Clause 119 amends section 53 (Noncompliance with application requirement) to clarify that an application which complies with all relevant application requirements may still be outside the scope of the Act under section 52.

Clause 120 amends section 88 (Deletion of irrelevant information) to provide that the agency or Minister may give access to a copy of a document with irrelevant information deleted only if it is reasonably practicable to do so. If not, access to the entire document may be refused.

Clause 121 amends section 89 (Deletion of exempt information) to provide that access to a copy of a document with exempt information deleted, must be provided if it is practicable to do so. If not, access to the entire document may be refused.

Clause 122 amends section 90 (Deletion of contrary to public interest information) to provide that access to a copy of a document with public interest information deleted must be provided if it is practicable to do so. If not, access to the entire document may be refused.

Clause 123 amends section 94 (Internal review) to clarify that, despite section 27A of the AI Act, an internal review application must not be decided by a person who made the reviewable decision, or is less senior than that person.

Clause 124 amends section 95 (Decisions that may not be reviewed) to provide consistency between access and amendment decisions.

Subclause (2) clarifies that decisions made by a principal officer personally may not be internally reviewed.

Subclause (3) clarifies that a decision by a Minister personally may not be internally reviewed.

Clause 125 amends section 115 (Requiring a search) to clarify that the information commissioner may require an agency or Minister to conduct further searches

Clause 126 amends section 127 (Vexatious applicants) to clarify that, ‘abuse of process’ for an access or amendment application, includes harassing or intimidating an individual or an employee of an agency in relation to an access or amendment action.

Clause 127 amends section 135 (Performance monitoring and support functions) to ensure consistency in the Information Commissioner’s functions under the RTI Act and the IP Act . It provides that the Information Commissioner’s powers include identifying and commenting on legislative and administrative changes that would improve the administration of the Act.

Clause 128 amends schedule 3, s 2 (IPP 2 – Collection of personal information (requested from individual)) to provide that certain requirements which would otherwise apply to the collection of personal information do not apply in the context of delivering an emergency service.

Clause 129 amends schedule 3, section 11 (IPP 11 – Limits on disclosure) to provide an additional exception to the prohibitions on disclosure contained in Information Privacy Principle (IPP) 11. The amendment permits agencies which are subject to the IPPs to disclose personal information to the ASIO if a number of conditions are satisfied. These conditions are that (i) ASIO has requested the agency to provide the personal information; (ii) the disclosure is made to an officer or employee of ASIO authorized in writing by the director-general of ASIO to receive the personal information; and (iii) an officer or employee of ASIO, authorized in writing by the director-general of ASIO, has certified in writing that the personal information is required in connection with ASIO’s performance of its functions.

Subclause (2) amends section 11(3) to replace the words ‘to the agency’ with ‘by the agency.’ IPP 11 sets out the limits on disclosure of personal information. It provides that an agency having control of a document containing an individual’s personal information must not disclose the information to an entity unless one of a number of exceptions applies. IPP 11(3) provides that, if an agency discloses personal information as permitted under IPP 11, it must take all reasonable steps to ensure the relevant entity will not use or disclose the information for a purpose other than the purpose for which the information was disclosed to the agency.

The intent of IPP 11(3) is that the disclosing agency should take reasonable steps to ensure the receiving entity only uses the information for the purpose for which it was disclosed. This amendment is required to achieve this intention.

Clause 130 amends schedule 5 (dictionary) to provide definitions for the new terms ‘ASIO’ and ‘director-general’ of ASIO.

Subclause (2) updates a renumbered provision reference in the definition ‘reviewable decision’.

Subclause (3) provides that a decision about access to all or part of a document is a reviewable decision for paragraph (f) of the definition of *reviewable decision*. This ensures review rights continue where access to part of a document is refused. Because of this amendment, references to section 89 and 90 decisions are omitted in the subclause (4).

Part 14 Amendment of Invasion of Privacy Act 1971

Clause 131 states that the part amends the *Invasion of Privacy Act 1971*.

Clause 132 amends section 43 (Prohibition on use of listening devices) to provide an additional exception to the offence under the section. Section 43 provides that a person is guilty of an offence if a person uses a listening device to overhear, record, monitor or listen to a private conversation. ‘Listening device’ and ‘private conversation’ are defined in the Act.

The Queensland Police Service, the Queensland Fire and Rescue Service and the Queensland Ambulance Service - collectively known as public safety entities - are progressively adopting use of a government network radio. This facility allows public safety entities communications centre operators (CCOs) to activate an ‘open mic’ function on a selected officer’s radio, allowing the operator to monitor conversations within range of the radio microphone. A government network radio would fall within the definition of ‘listening device’ in the Act. Remote activation of the ‘open mic’ function is likely to occur infrequently and only in an

emergency but could, for example, be used by CCOs to conduct a welfare check on an officer attending a high risk call with whom contact has been lost.

The clause will provide that no offence is committed where a CCO for a public safety entity records a private conversation between individuals whilst operating the ‘open mic’ function of a government network radio. The exception is limited to circumstances where: a duress alarm has been activated; the CCO has been contacted by the officer for assistance; or the CCO has reasonable grounds to believe there may be a risk to an individual’s life, health or safety.

Part 15 Amendment of Justices of the Peace and Commissioners for Declarations Act 1991

Clause 133 states that the part amends the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Clause 134 inserts a definition of *Queensland Government website* into section 3 (Definitions).

Clause 135 amends section 21 (Registration of justices of the peace and commissioners for declarations) to provide that the registrar must publish, on the Queensland Government website, notice of the appointment and registration of a person as a JP or C Dec.

Clause 136 amends section 23 (Resignation) to provide that: on receiving the person’s written resignation, the registrar must publish notice of the resignation on the Queensland Government website and remove the person’s registered particulars from the register; and the person ceases to hold office as a JP or C Dec when the person’s written resignation is given to the registrar.

Clause 137 amends section 24 (Revocation of appointment) to provide that: on receiving a notice of revocation of appointment of a person as a JP or C Dec, the registrar must: give the person a copy of the notice; publish the notice on the Queensland Government website; and remove the person’s registered particulars from the register; and the person ceases to hold office when the notice is published on the Queensland Government website.

Clause 138 amends section 25 (Prohibition on acting in office) to provide, as under the previous clause, for when the registrar receives a notice prohibiting an appointed JP or C Dec from acting in the office for a period.

Clause 139 amends section 26 (Notification of cessation of office) to provide for notice of cessation of office to be published on the Queensland Government website.

Part 16 Amendment of Land Court Act 2000

Clause 140 states that the part amends the *Land Court Act 2000*.

Clause 141 amends section 7A (Land Court has power of the Supreme Court) to correct two inaccurate cross-references in sub-sections (2) and (4).

Clause 142 inserts new section 28A (Acting judicial registrars) to provide for the appointment of acting judicial registrars on a full-time or part-time basis.

Clause 143 amends section 37 (ADR process applies to proceedings started under this part) to strengthen ADR processes for Land Court proceedings by requiring that each party to a proceeding who participates in a relevant ADR process must be prepared to identify and discuss the issues in dispute in an attempt to negotiate a settlement and, if the party is represented by a lawyer or agent, the lawyer or agent must have authority to settle the matter or issues. If it is not practicable for the lawyer or agent to have that authority, the lawyer or agent must have the authority to make a recommendation to the party about settling the matter or any issue discussed.

Clause 144 inserts new part 2, division 2 (new sections 52A and 52B) incorporating the provisions of the *Land Court Act (Transitional Regulation) 2017* (which is due to expire on 23 July 2017) as to the application of the Act to the performance of a function conferred on the Land Court under a recommendatory provision (as defined).

Clause 145 inserts new section 57A (Costs) which clarifies the Land Appeal Court's powers in relation to costs. In particular, subsection (2) makes it clear that the Land Appeal Court has jurisdiction to order costs for the proceeding in which the decision appealed against was made, whether or not the court or tribunal that made the decision appealed against made an order for costs or had the power to make an order for costs.

Clause 146 amends section 72 (Application of certain provisions of pt 2 to Land Appeal Court) to clarify that Land Appeal Court has powers under three additional sections - sections 7A (Land Court has power of the Supreme Court), 7B (Land Court order may be enforced in Supreme Court) and 33(5) (Land Court may make declarations). The section omits the application of section 34, which provides for a power to order costs as the court considers appropriate, as this is provided for in the new section 57A.

Part 17 Amendment of Legal Aid Queensland Act 1997

Clause 147 states that the part amends the *Legal Aid Queensland Act 1997*.

Clause 148 amends section 45 (General powers) as a consequence of the omission of part 3.3, division *al Profession Act 2007*.

Clause 149 amends section 55 (Delegation of board's powers) to provides at the LAQ Board cannot delegate its powers under new section 73A.

Clause 150 amends section 65 (Qualifications for appointment) replacing the requirement that the CEO of LAQ is to be a lawyer with at least 5 years' experience to instead require that the person be appropriately qualified to perform the functions of the chief executive officer.

Clause 151 amends section 67 (Chief executive officer's responsibilities as a consequence of the CEO potentially not being a lawyer.

Clause 152 amends section 71 (External employment) to require LAQ Board approval for a LAQ lawyer to engage in external employment only if the LAQ lawyer is seeking to engage in other legal work.

Clause 153 inserts new section 73A (Holding of practising certificates) which provides for the LAQ Board to nominate a person (of appropriate seniority and experience and approved by the

Attorney-General) as the person to hold the principal's practising certificate for LAQ where the LAQ CEO is not a lawyer.

Clause 154 amends section 82 (Secrecy) to make approved students, volunteers, researchers and external review officers subject to secrecy requirements and enable LAQ to disclose information or documents about clients to third parties where a client consents or directs this disclosure.

Clause 155 omits the definition 'appropriately qualified' as the term is already defined in the AI Act.

Part 18 Amendment of Legal Profession Act 2007

Clause 156 states that the part amends the *Legal Profession Act 2007*.

Clause 157 includes in the definition of 'suitability matter' in section 9 whether the person is or has been a legal practitioner director of an ILP while the practice is or was an externally-administered body corporate under the Corporations Act.

Clause 158 inserts a note in section 12 (Meaning of *government legal officer* and *engaged in government work* and related matters) in relation to the *Public Service Act 2008*, section 22.

Clause 159 amends section 311 (Exceptions to requirement for disclosure) to include certain trustees under the *Bankruptcy Act 1966* (Cwlth) in exceptions to the requirements on law practices in relation to costs disclosure.

Clause 160 amends section 330 (Bills) to allow a law practice to give a bill electronically if the client consents.

Clause 161 replaces an incorrect reference to 'manager' in section 517 (Power of receiver to take possession of regulated property) with the correct reference to 'receiver'.

Clause 162 amends section 684 (Membership of law society) to provide that an ILP can be a member of the QLS.

Clause 163 amends section 706 (Duty of relevant entities to report suspected offences) to exclude the reporting of inadvertent breaches, by in-house legal officers of corporations, of the obligation to hold a practising certificate.

Clause 164 inserts new chapter 10, part 6 (new sections 784 and 785) to make transitional provision for a person who: before the commencement is, or has been, a legal practitioner director of an ILP while the practice is or was an externally-administered body corporate under the Corporations Act; and is a local legal practitioner or a locally registered foreign lawyer.

Clause 165 includes in the definition of 'show cause event' in the dictionary (at Schedule 2) a person being a legal practitioner director of an ILP that becomes an externally-administered body corporate under the Corporations Act.

Part 19 Amendment of Magistrates Act 1991

Clause 166 states that the part amends the *Magistrates Act 1991*.

Clause 167 amends section 6 (Appointment of acting magistrates) to increase the age limit for acting magistrates to 75 years.

Clause 168 amends the definition of ‘regional Queensland’ in section 21 (Transfer policy) so that service as a magistrate in Gympie constitutes regional experience.

Clause 169 inserts new part 10, division 9 (new sections 71 and 72) to make transitional provision: for section 6, so that a reference in the definition ‘retired magistrate’ to a person who ceases to be a magistrate includes a person who had ceased, before the commencement, to be a magistrate; and for section 21, for past service of a magistrate in Gympie.

Part 20 Amendment of Ombudsman Act 2001

Clause 170 states that the part amends the *Ombudsman Act 2001*.

Clause 171 amends section 5(b) (Objects of Act) to refer to ‘administrative practices and procedures’ to ensure consistency with section 6 of the Ombudsman Act, as amended.

Clause 172 amends section 6 (How objects are to be achieved) to include that the objects of the Ombudsman Act are to be achieved by authorising the Ombudsman to make recommendations to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices and procedures; and to provide advice, training, information or other help to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices and procedures. This is in addition to the Ombudsman’s authority to investigate administrative actions of agencies.

Clause 173 amends section 12 (Functions of ombudsman) to clarify that the Ombudsman’s functions include providing advice, training, information or other help to agencies to improve their administrative practices and procedures.

Clause 174 amends section 24 (Investigations generally) to provide that the principal officer of an agency must give the Ombudsman reasonable help in the conduct of an investigation conducted informally.

Clause 175 amends section 30 (Compliance with investigation requirement) to clarify that it is not a reasonable excuse for a person not to comply with an investigation requirement that complying with the investigation requirement might tend to incriminate the person.

Clause 176 omits section 38(1)(g) and inserts new subsection 38(1A) to provide that a person is in contempt of the Ombudsman if the person publishes, or permits or allows to be published, information or the contents of a document if the Ombudsman has made an order under section 91 of the Ombudsman Act prohibiting such publication.

Clause 177 amends section 47 (Protection of person helping ombudsman) to provide that a person must not cause, or threaten, attempt or conspire to cause, detriment to another person

because, or in the belief that, any person has made or may make a complaint to the Ombudsman or has or intends to assist the Ombudsman. Contravention of this provision is an offence with a maximum penalty of 100 penalty units. An attempt to cause detriment includes an attempt to induce a person to cause detriment.

Clause 178 replaces section 48 (Inadmissibility of particular information given under investigation requirement) to confer a wider immunity than current section 48 of the Ombudsman Act. Whereas the current section 48 only relates to documents, under replacement section , information (which includes documents) given by an individual under an investigation requirement and the fact of that giving (primary evidence) and any information obtained as a direct or indirect result of primary evidence (derived evidence) is not admissible in any proceeding as evidence against the individual. Replacement section 48 does not prevent primary or derived evidence being admitted as evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

Clause 179 amends section 49(1) (Investigations to which div 1 applies) to clarify that part 6, division 1 applies to an investigation of administrative action of an agency, other than an investigation started because of a parliamentary reference.

Clause 180 replaces section 50 (Report and recommendation) to bring the drafting of that section into line with current drafting practice and provide the Ombudsman with a power to direct the principal officer of a local government to table a report received from the Ombudsman at a meeting of the local government.

Clause 181 amends section 51 (Action after report making recommendations) to bring the drafting of that section into line with current drafting practice.

Clause 182 inserts new sections 78A-78C into part 8, division 2 (Staff of the office). New section 78A provides that a person may not be employed under section 76 or section 78, or seconded under section 77 as an officer of the Ombudsman, if the person does not consent to a criminal history check. To decide if a person is suitable to be employed or seconded as an officer of the Ombudsman, the Ombudsman may obtain a report on the criminal history of a person under new section 78B. The use of this power is limited to circumstances where the person has given the Ombudsman written consent for the request. Criminal history is defined in the dictionary to include charges and convictions. Before using the information to decide if a person is suitable to be employed or seconded, the Ombudsman must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Ombudsman about the information. New section 78C provides for confidentiality of criminal history information. The Ombudsman must ensure a report on a person's criminal history is destroyed as soon as practicable after it is no longer needed for the purposes for which it was requested. Disclosure, except as permitted under new section 78C(3), is an offence with a maximum penalty of 100 penalty units.

Clause 183 amends section 83 (Strategic review of ombudsman office) to provide that strategic reviews of the Ombudsman office are to be conducted at least every seven years, as opposed to the current interval of at least every five years. The clause also provides that a corporation is an appropriately qualified person to undertake the strategic review where a director, employee or member of staff of the corporation is appropriately qualified to undertake the review.

Clause 184 amends section 91 (Prohibiting publication of information) to provide that the Ombudsman may prohibit the publication of information or the contents of a document produced to the Ombudsman and information or the contents of a document provided to an agency or person by the Ombudsman.

Clause 185 inserts a new section 92A (Protection in particular proceedings) to provide that the Ombudsman, former Ombudsman, officers of the Ombudsman and former officers of the Ombudsman cannot be called to give evidence or produce a document in court or in any proceedings, in respect of any matter coming to his or her knowledge in the exercise of his or her functions under the Act, except for those proceedings provided for in subsection (2).

Clause 186 inserts new part 12, division 4 (new section 111) (which is a transitional provision for section 48 (Inadmissibility of particular documents given under investigation requirement). New section 48 (see above) which confers a wider immunity than section 48 currently, applies only to information given under an investigation requirement after commencement. Former section 48 will continue to apply to documents of the relevant type given under an investigation requirement before commencement.

Clause 187 amends the dictionary in schedule 3 to insert a new definition of ‘criminal history’. ‘Criminal history’ is defined to include convictions that have become spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986* and charges.

Part 21 Amendment of Penalties and Sentences Act 1992

Clause 188 states that the part amends the *Penalties and Sentences Act 1992*.

Clause 189 amends section 12A (Convictions for offences relating to domestic violence) to allow domestic violence notations to be administratively made on a person’s criminal history or a formal record of conviction (rather than through the making of a specific additional court order), provided the person is convicted of an offence for which the charge has been noted as a domestic violence offence. The court will, however, have power to make an order that a notation not be made if it is not satisfied that the offence is a domestic violence offence. Section 12A is also amended to clarify: that the prosecution bears the onus of proving that an offence is a domestic violence offence; and that domestic violence notations do not apply to a person’s traffic history.

Part 22 Amendment of Professional Standards Act 2004

Clause 190 states that the part amends the *Professional Standards Act 2004*.

This part amends the relevant sections to replace references to gazette with references to notification. These amendments are consequential, resulting from amendments made to the *Statutory Instruments Act 1992* which provide that notification of subordinate legislation is by publication of the legislation and its publication date on the Queensland legislation website, rather than gazettal.

Clause 191 amends section 15 (Commencement of schemes) to replace the references to ‘gazetted’ with references to ‘notified’.

Clause 192 amends section 16 (Challenges to schemes) to replace the reference to ‘gazetted’ with a reference to ‘notified’.

Clause 193 amends section 18 (Amendment and revocation of schemes) to update a note to remove reference to gazettal.

Clause 194 amends section 18A (Notice of revocation of scheme) to replace the reference in subsection (1) to ‘gazettal’ with reference to ‘notification’.

Clause 195 amends section 18B (Termination of operation of interstate schemes in this jurisdiction) to replace the references to ‘gazetted’ with references to ‘notified’.

Clause 196 amends section 33 (Duration of scheme) to provide for the Minister (rather than the council) to gazette the extension of a professional standards scheme.

Clause 197 amends section 43 (Functions of council) as a consequence of notices under the Act being able to be notified.

Part 23 Amendment of Property Law Act 1974

Clause 198 states that the part amends the *Property Law Act 1974*.

Clause 199 amends section 57A (Effect of Act or statutory instrument) which was enacted to minimise the circumstances in which a contract or dealing concerning property could be found to be impliedly illegal for failure to comply with a statutory instrument.

Existing section 57A(1) prevents a statutory instrument from rendering a contract or dealing concerning property that is made, entered into or effected contrary to the statutory instrument, void or unenforceable, unless the statutory instrument is made by the Governor in Council and expressly provides for this result. The clause replaces section 57A(1) with a new subsection which strengthens the prohibition by providing that a statutory instrument, other than prescribed subordinate legislation, cannot render void or unenforceable a contract or dealing concerning property that is made, entered into or effected contrary to the statutory instrument. The subsection also provides that, in relation to a contract for the sale of land, a statutory instrument cannot give a party a right to terminate the contract because of another party’s failure to comply with the statutory instrument. The purpose of the amendment is to ensure that any such provisions (other than prescribed subordinate legislation) will be contained in primary legislation which is appropriately subject to the scrutiny of Parliament.

Clause 200 inserts new part 24 (Transitional provisions for Court and Civil Legislation Amendment Act 2017) which contains new section 357. New section 357 provides that for a statutory instrument, other than subordinate legislation, the amendments to section 57A apply from commencement, regardless of when the statutory instrument was made. However, they apply only to a contract or dealing made, entered into, or effected on or after the commencement. For subordinate legislation, amended section 57A: applies on and from a day that is one year after the commencement or a day prescribed by regulation, whichever is the earlier (relevant day); but does not apply in relation to a contract or dealing concerning property if the contract or dealing was made, entered into or effected before the relevant day.

Part 24 Amendment of Prostitution Act 1999

Clause 201 states that the part amends the *Prostitution Act 1999*.

Clause 202 amends section 46 (Variation of certificate) to replace subsection (3) with new subsections (3) to (5). New subsection (3) requires the Authority to consider the application for variation and either vary the certificate or refuse to vary the certificate. New subsection (4) provides that, if the Authority decides to vary the certificate, the Authority must promptly vary the certificate. New subsection (5) provides that, if the Authority decides to vary the certificate, the Authority must give the applicant a notice stating the decision and, subject to section 138, the reasons for the decision.

Clause 203 makes a consequential amendment to section 64E (Development approval suspended until review decided) as a result of the amendment to section 64A(2) under the *Planning (Consequential) and Other Legislation Amendment Act 2016*, section 363.

Clause 204 amends section 102 (Membership).

Subclause (1) amends section 102(1) to remove ‘the chief executive, or a person nominated by the chief executive’ as a member of the Authority. As a result of the removal there is no longer a distinction between an ‘appointed member’ and ‘member’ of the Authority.

The provision removes the reference to ‘on the recommendation of the Minister’ under new section 102(1) to reflect that the Governor in Council appoints members of the Authority on advice from the Executive Council.

The provision replaces the requirement for the chairperson to be an ‘independent, respected’ member of the community nominated by the Premier with the requirement that the chairperson is to be an ‘independent and appropriately qualified’ member of the community nominated by the Premier. This change is consistent with current drafting practice and retains the requirement for the chairperson to be independent.

The provision amends new section 102(1)(g) in relation to the Authority members who are two persons who represent community interests. The reference to ‘who, in the Minister’s opinion’ is removed to reflect that the Governor in Council appoints members of the Authority on advice from the Executive Council. The reference to ‘are qualified’ is removed for consistency with new section 102(1)(f).

Subclause (2) amends section 102(2) to replace the reference to ‘appointed members’ with ‘members’ as a consequence of the amendment to section 102(1).

Subclause (3) amends section 102(3) to replace the reference to ‘subsection (1)(b)(vii)’ with ‘subsection (1)(g)’ as a consequence of the renumbering in section 102(1).

Clause 205 amends section 103 (Term of appointment) as a consequence of the amendment to section 102(1).

Clause 206 amends section 104 (Remuneration) as a consequence of the amendment to section 102(1).

Clause 207 amends section 106 (Vacation of office) as a consequence of the amendment to section 102(1).

Clause 208 inserts new section 106A (Acting chairperson) to provide that the Governor in Council may appoint a member of the Authority to act as chairperson during a vacancy in the office of chairperson and during all periods when the chairperson is absent from duty or, for another reason, cannot perform the functions of the office.

Clause 209 amends section 107 (Meetings) by changing the quorum at a meeting of the Authority from ‘half the number of members plus 1’ to 5 members. The amendment will revert the number of members required to form a quorum back to 5, which was the number required before the addition of the ‘chief executive’ as ninth member of the Authority under the *Public Safety Business Agency Act 2014*, section 174.

Clause 210 replaces section 139 (Approval of forms). New subsection (1) enables the Authority to approve a form for use under the Act, other than under section 108D(1), 110KC(1) or 110R(3) which provide for the disclosure of a change in the extended criminal history of a member of the Authority, executive director or staff member of the office of the Authority to be in the approved form. New subsection (2) provides that the chief executive of the department may approve a form for use under section 108D(1), 110KC(1) or 110R(1).

Clause 211 inserts new part 9, division 8 (new section 164).

New section 164 (Application of Act to application for variation not decided before commencement) provides transitional arrangements for an application for variation that was made under section 46 of the pre-amended Act but not decided before the commencement.

New subsection (1) states that an application made under the pre-amended Act, section 46 but not decided before the commencement must be dealt with as if it had been made under section 46 as in force after the commencement.

New subsection (2) states that if the Authority had given the commissioner particulars of the application under applied section 39(1) and the commissioner had not reported to the Authority under applied section 39(3), the commissioner’s obligations under applied section 39 end.

New subsection (3) inserts definitions for ‘applied section 39’ and ‘pre-amended Act’. ‘Applied section 39’ means section 39 as applied under the pre-amended Act, section 46(3). ‘Pre-amended Act’ means this Act as in force before the commencement.

Clause 212 removes the definition of ‘appointed member’ under schedule 4 (Dictionary) as a consequence of the amendment to section 102(1).

Part 25 Amendment of Public Guardian Act 2014

Clause 213 states that the part amends the *Public Guardian Act 2014*.

Clause 214 amends section 52 (When is a child a ‘relevant child’). The definition of ‘relevant child’ is used in the Act for the purposes of the powers and functions of community visitors. The amendments clarify that the term relevant child in section 52 of the Act applies from the time an application is filed with the Childrens Court to obtain an order under the Child

Protection Act and that the child continues to be a relevant child until after the application is finalised and/or an order, intervention or agreement is no longer in place for the child, or when the public guardian believes it is appropriate to finish providing particular help to the child. For example, to help a child in circumstances where the child is no longer subject of an application for an order and there is an appeal of a decision made in respect of the application for an order.

Clause 215 amends section 113 (Duration of appointment as a community visitor). Subsection 113(6) and 113(7) are amended to replace references to the ‘chief executive’ with a reference to the ‘public guardian’ consistent with section 109 of the Act, which provides that it is the public guardian who is responsible for the appointment of community visitors.

Part 26 Amendment of Queensland Civil and Administrative Tribunal Act 2009

Clause 216 states that the part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 217 replaces sections 131 and 132.

New section 131 omits the requirement that a person wishing to enforce a final decision of QCAT that is a monetary decision must file a certified copy of the decision and an affidavit about the amount not paid in the registry of a court of competent jurisdiction. New section 131 provides that, for the purposes of enforcing a final decision of QCAT which is a monetary decision to the extent the decision requires payment of an amount to a person, a copy of the final decision must be filed in the registry of a court of competent jurisdiction and, on filing, the decision is taken to be a money order of the court in which it is filed and may be enforced accordingly.

New section 132 omits the requirement that a person wishing to enforce a final decision of QCAT that is not a monetary decision or that is a monetary decision to the extent the decision does not require payment of an amount to a person, must file a certified copy of the decision and an affidavit about the non-compliance with the decision in the registry of the relevant court. New section 132 provides that, for the purposes of enforcing a final decision of QCAT which is not a monetary decision or which is a monetary decision to the extent the decision does not require payment of an amount to a person, a copy of the final decision must be filed in the registry of a relevant court and, on filing, the decision is taken to be a non-money order of the relevant court in which it is filed and may be enforced accordingly.

Clause 218 removes redundant references.

Part 27 Amendment of the Retail Shop Leases Act 1994

Clause 219 states the part amends the *Retail Shop Leases Act 1994*.

Clause 220 corrects an inadvertent omission (effected by the RSLA Act) to reinstate a provision clarifying when a lessee can terminate a retail shop lease based on a defective disclosure statement given by the lessor.

Clause 221 provides for a technical amendment of a drafting nature.

Clause 222 gives permanent effect to the a *Retail Shop Leases (Transitional) Regulation 2016* clarifying that the RSL Act will continue to apply to leases with a floor area of more than 1000m² and leases where the business is conducted by a lessee as the lessor's employee or agent entered into before commencement of the RSLA Act.

Part 28 Amendment of Right to Information Act 2009

Clause 223 states that the part amends the *Right to Information Act 2009*.

Clause 224 amends section 33 (Noncompliance with application requirement) to clarify that an application which complies with all relevant application requirements may still be outside the scope of the Act.

Clause 225 amends section 38 (Transfer of application) to provide clearer wording, replacing the expression 'information for' with the more commonly used 'information of'.

Clause 226 amends section 59 (No processing charge for personal information) to provide clearer wording, replacing the expression 'information for' with the more commonly used 'information of'.

Clause 227 amends section 70 (Precautions) to provide clearer wording, replacing the expression 'information for' with the more commonly used 'information of'.

Clause 228 amends section 73 (Deletion of irrelevant information) to clarify that the agency or Minister may give access to a copy of a document with irrelevant information deleted only if the agency or Minister considers it is reasonably practicable to give access to the copy. If not, access to the entire document may be refused.

Clause 229 replaces section 74 (Deletion of exempt information) and section 75 (Deletion of contrary to public interest information). The amended sections provide that, for a document containing exempt information/public interest information, the agency or Minister must only provide access to a copy of the document from which exempt information/public interest information has been deleted if it is practicable to do. If not, access to the entire document may be refused.

The clause also inserts a new section 75A (Deletion of contrary to child's best interests information) and a new section 75B (Deletion of contrary to applicant's best interests information – relevant healthcare information). They provide for the subject information as sections 74 and 75 in provide for exempt information and public interest information, respectively.

Clause 230 amends section 80 (Internal review) to clarify that, despite section 27A of the *Acts Interpretation Act 1954*, an internal review must not be decided by a person who made the reviewable decision or a person less senior than that person.

Clause 231 amends section 81 (Decisions that may not be reviewed) to clarify that a decision made by a principal officer personally, or by a Minister personally, may not be internally reviewed.

Clause 232 amends section 102 (Requiring a search) to clarify that in conducting a review of a decision to refuse access to a document, the information commissioner may require an agency or a Minister to conduct further searches.

Clause 233 amends section 107 (Information commissioner to ensure proper disclosure and return of documents) to allow the commissioner to destroy copies of documents provided for an external review at the end of a review.

Clause 234 amends section 114 (Vexatious applicants) to replace an incorrect reference to 'information commission' with the word 'commissioner'.

Clause 235 amends section 128 (Support functions) to provide consistency between the Information Commissioner's functions under this Act and the IP Act. It provides that the Information Commissioner's functions include commenting on any issues relating to the administration of right to information or privacy in the public sector environment. Subsection (2) provides that this new subsection does not limit existing functions.

Clause 236 amends section 186 (Strategic review of office) to provide that a corporation is an appropriately qualified person to undertake the strategic review, if a director, employee or member of staff of the corporation is appropriately qualified to undertake the review.

Clause 237 inserts new chapter 7, part 5 (new section 206B) in relation to the amendment below providing for the Act to not apply to stated documents relating to judicial appointments. Such documents created or received on or after 15 July 2016 are taken to always to have been documents to which this Act does not apply.

Clause 238 amends Schedule 1 to insert section 16 which provides for the Act to not apply to stated documents relating to judicial appointments.

Clause 239 amends Schedule 3, section 12 (Information disclosure of which prohibited by Act) to use clearer language, replacing the words 'personal information for' with the words 'only personal information of'.

Clause 240 amends Schedule 4 (Factors for deciding the public interest).

Subclause (1) amends part 2, item 9 to reflect that a deceased person cannot have personal information, and that a deceased person cannot be an individual.

Subclause (2) amends part 3, item 5 to reflect that a deceased person cannot have personal information, and that a deceased person cannot be an individual.

Subclause (3) inserts the word 'whom' after 'person by' in part 4, section 7(2), (3)(b) and (4) to provide clearer language.

Clause 241 amends and renumbers Schedule 6 (Dictionary).

Subclause (1) inserts definitions for Schedule 1, section 16.

Subclause (2) amends the definition of 'eligible family member' to provide consistency between the RTI Act and the IP Act.

Subclause (3) updates a cross-reference in the definition ‘reviewable decision’.

Subclause (4) amends the definition of ‘reviewable decision’ to include a decision refusing access to part of a document under section 47.

Subclause (5) removes sections 74 and 75 from paragraph (h) of the definition of ‘reviewable decision’ as a result of the amendment in subclause (4).

Subclause (6) renumbers schedule 6 as schedule 5.

Part 29 Amendment of the Succession Act 1981

Clause 242 states that the part amends the *Succession Act 1981*.

Clause 243 corrects a cross reference.

Clause 244 is consequential on the insertion of new section 15B.

Clause 245 corrects a cross reference.

Clause 246 inserts new section 15B which provides for the effect of a de facto relationship on a will.

Clause 247 amends section 40A to clarify when a step-relationship ends (for family provision applications) where the deceased and the stepchild’s parent have been in a spousal relationship, other than through marriage.

Part 30 Amendment of Supreme Court Library Act 1968

Clause 248 states that the part amends the *Supreme Court Library Act 1968*.

Clause 249 inserts new section 13B which provides that a member of the SCLC is not civilly liable for an act done, or omission made, in good faith under the Act. The new section also provides that, if new section 13B(1) prevents a civil liability attaching to a member, the liability will attach to the SCLC instead.

Part 31 Amendment of Trusts Act 1973

Clause 250 states that the part amends the *Trusts Act 1973*.

Clause 251 amends section 56 (Power to delegate trusts) which confers a power on trustees to delegate the administration of a trust in limited circumstances. The amendment removes the requirement that the power of attorney be executed as a deed.

Clause 252 amends section 67 (Protection of trustees by means of advertisements) to provide for the publication of a notice of a proposed distribution of trust property or an estate (in a notice of intention to apply for a grant of probate) in a publication approved by the Chief Justice under a practice direction; or otherwise for a notice of a proposed distribution of trust property

or an estate to be published in a newspaper circulating throughout the State and sold at least once each week.

Clause 253 inserts new part 13 (Validation provision for Court and Civil Legislation Amendment Act 2017) which contains new section 123 (Validation of execution of power of attorney for section 56). Section 123 provides for the situation where, before the commencement of the amendments to section 56, a trustee purported to make a delegation under section 56 by a power of attorney using the approved form under the PA Act, section 11. The section states that such power of attorney is taken to be, and to always have been, as valid as if it had been executed as a deed under previous section 56.

Part 32 Amendment of Vexatious Proceedings Act 2005

Clause 254 states that the part amends the *Vexatious Proceedings Act 2005*.

Clause 255 replaces subsection 12(2) so that the Supreme Court may dismiss, without an oral hearing, an application of a person, who is subject to a vexatious proceedings order, for leave to institute a proceeding. In line with the previous subsection 12(2), if the court considers an oral hearing is necessary, the application may be dismissed even if the applicant does not appear at the hearing.

Under new subsection 12(3), if the court dismisses the application, the court must give the applicant a copy of the order dismissing the application and the Court's reasons.

Clause 256 inserts new section 16A as a transitional provision. New section 16A provides that the pre-amended Act continues to apply in relation to applications which have been made under section 11 of the Act, but have not yet been decided at the time of commencement of the amendment to section 12 of the Act.

Part 33 Repeals

Clause 257 repeals the listed legislation.

Part 34 Other amendments

Clause 258 states that schedule 1 amends the legislation it mentions.