

JUSTICE LEGISLATION (MISCELLANEOUS PROVISIONS) BILL 1996

EXPLANATORY NOTES*

GENERAL OUTLINE

Objectives of the Legislation

The objective of this Bill is to provide for a number of minor or technical amendments to a range of statutes administered by the Department of Justice or related to its responsibilities. This type of Bill is often referred to as an “omnibus Bill” and is directed at curing anomalies, correcting minor errors, repealing obsolete provisions and generally tidying up the Department of Justice’s list of statutes.

The legislative amendments have several elements in common:

1. They relate to statutes administered by the Attorney-General and Minister for Justice or to other statutes having a direct impact on his portfolio;
2. They have the purpose of increasing operational efficiency in various State Government departments and some industry sectors, for example, statutory trustee companies;
3. They do not modify the underlying philosophy or direction of the statutes that are being amended.

* These Explanatory Notes relate to the Bill as introduced into the Legislative Assembly. This Bill was amended in Committee—see Endnotes.

Reasons for the objectives and how they will be achieved

The Department of Justice is responsible for the administration of approximately 170 statutes and, as a result, there is a necessity for a large number of minor or technical amendments to be regularly made to various legislative provisions to ensure that the statutes continue to operate in the manner intended and are maintained in an up-to-date form.

To ensure this occurs, an annual Departmental Miscellaneous Provisions Bill is prepared so that the minor or technical amendments needed can be effected by means of one statute. This ensures that much needed statutory reform is not delayed and that the time of the Parliament is not unnecessarily expended on dealing with a number of disparate pieces of legislation, each of which would be of a relatively minor nature.

Generally, these types of Bills include provisions of a technical, discrete and minor nature. However, departures from this convention may be justified under appropriate circumstances.

Administrative cost to Government of implementation

The amendments to the various statutes in this Bill will not involve any significant additional governmental expenditure. More importantly, some of the amendments are made for the purpose of deriving future budgetary savings for the Department of Justice and ultimately a lowering of overall costs for the administration of justice throughout Queensland, but without diminishing service delivery. However, it is impossible to quantify with any precision the extent of these particular savings.

Fundamental legislative principles

Section 4 (3)(g) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation adversely affects rights and liberties, or imposes obligations, retrospectively.

Retrospective laws are generally passed to validate past actions, correct defects in legislation or confer benefits retrospectively.

The deeming provision in Part 19 of this Bill relating to the commencement of a particular amendment to the *Juvenile Justice Legislation Amendment Act 1996* has, in effect, a retrospective application, as explained below in the notes on the clauses dealing with this Part—Part

19. This retrospectivity could be characterised as a machinery matter, given its genesis.

Further, the amendments to the *Law Reform Act 1995* in Part 20 will have retrospective effect. Unintended anomalies created by the repeal of the *Wages Attachment Act 1936* in the *Statute Law Revision Act (No 2) 1995* resulted in registrars of Magistrates Courts continuing to make orders in reliance on powers in repealed provisions.

Consultation

The following bodies and persons have been consulted in connection with those parts of the proposed Bill which relate to their concerns/issues: Litigation Reform Commission, the Trustee Corporations Association of Australia (Queensland Branch), Acting Public Trustee, Queensland Police Service, Director of Public Prosecutions, Chief Justice of the Supreme Court, Chief Judge of the District Courts and the Queensland Law Society Inc.

NOTES ON PROVISIONS

The format to this statute follows the same format for previous departmental “Miscellaneous Provisions Acts”; that is:

- There is a long and short title; and
- The Act is divided into Parts, each Part containing within it all the matters (amendments) relevant to a statute for which the Department of Justice has administrative responsibility or which are related to the administrative functions within the department.

Part 1—Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 is the commencement provision which provides that, other than expressly provided, this Act commences on a date to be fixed by proclamation. Parts 12, 19 and 20 of the Act will commence, in effect, on the date of assent in accordance with the provisions of the *Acts Interpretation Act 1954* and they will then apply in accordance with their tenor.

Part 2—Amendment of *Cooperative and Other Societies Act 1967*

Clause 3 provides for this Bill to amend the *Cooperative and Other Societies Act 1967*.

Clause 4 omits the previous Section 8 and inserts a new section which provides that the Department of Justice's annual report for a financial year must include a report on the operation of the *Cooperative and Other Societies Act 1967*.

Part 3—Amendment of *Coroners Act 1958*

Clause 5 provides for the amendment of the *Coroners Act 1958*.

Clause 6 amends the long title to the *Coroners Act 1958* in view of the repeal of the *Cremation Act 1913*.

Clause 7 inserts a regulation-making power.

Clause 8 inserts a new provision which provides that a reference in a statute or document (as defined in the *Acts Interpretation Act 1954*) is taken to be a reference to the *Coroners Act 1958*.

Part 4—Amendment of *Court Funds Act 1973*

Clause 9 provides for the amendment of the *Court Funds Act 1973*. This statute creates suitors' funds in the Supreme and District Courts. Presently, there is no such fund for the Magistrates Courts. The purpose of these amendments is to create a single suitors' fund for all levels of courts, that is, the Supreme, District and Magistrates Courts.

Clause 10 inserts new definitions for "Court", "order" and "registrar". It also inserts a definition for "suitors fund" which simply refers to the revised new Section 5.

Clause 11 replaces Sections 5 and 6 with a new Section 5 which establishes a Court Suitors Fund and provides that amounts paid to a court (Supreme, District and Magistrates Courts) to the credit of a cause, matter or an account relating to a proceeding in the court must be paid into the fund.

Clause 12 and 13 are consequential amendments to Sections 7 and 9 because of the insertion of the new Section 5.

Clause 14 inserts a transitional provision following the consolidation of the Supreme Court Suitors' Fund and District Courts Suitors' Fund by the establishment of a single suitors fund pursuant to the new Section 5.

Part 5—Amendment of *Cremation Act 1913*

Clause 15 provides for the amendment of the *Cremation Act 1913*.

Clause 16 amends Section 5 to provide that the permission and certificate to cremate can be signed by a doctor other than the doctor who has completed the medical certificate of the cause of death required under the *Registration of Births, Deaths and Marriages Act 1962*.

Clauses 17 and 18 make minor technical amendments.

Clause 19 inserts a new provision which has the same purpose as Regulation 5 of the Cremation Regulations 1987 made under the statute.

Clause 20 relocates Sections 5, 5A, 6, 7, 8, and 8A into the *Coroners Act*

1958. Furthermore, one of the purposes of this Act is to repeal the *Cremation Act 1913*: see Part 33 of the Act.

Part 6—Amendment of *Crimes (Confiscation) Act 1989*

Clause 21 provides for the amendment of the *Crimes (Confiscation) Act 1989*.

Clause 22 omits the definition “police officer” and accordingly, as a result of the *Acts Interpretation Act 1954*, the term means a police officer as defined in the *Police Service Administration Act 1990*.

Part 7—Amendment of *Criminal Law (Rehabilitation of Offenders) Act 1986*

Clause 23 provides for the amendment of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Clause 24 provides for an amendment to Section 9A(1) of the statute requiring that all applicants for the position, office or status mentioned in item 6 of Column 1, which pertains to the Department of Families, Youth and Community Care, disclose all of their criminal history or convictions in relation to contraventions of any provision of law committed in Queensland or elsewhere. (It should also be noted that both the Queensland Police Service and the Queensland Corrective Services Commission have identical disclosure requirements as those contained in this amendment.)

Part 8—Amendment of *Crown Proceedings Act 1980*

Clause 25 provides for amendment of the *Crown Proceedings Act 1980*.

Clause 26 clarifies the operation of Section 9(2) of the Act by removing any doubt that it applies only to procedural provisions and not to substantive ones. In other words, the Crown in right of the State of Queensland is not required to comply with a provision of an Act or law that does not otherwise bind the Crown. Section 9(2) of the Act is in all material respects identical with Section 64 of the *Judiciary Act 1903* (Cwlth).

Part 9—Amendment of *Dispute Resolution Centres Act 1990*

Clause 27 provides for the amendment of the *Dispute Resolution Centres Act 1990*.

Clause 28 updates the reference in Section 33 of the Act by inserting the *Corporations Law*—the primary legislative component of the National Scheme for Corporations Law.

Clause 29 omits the previous Section 39 and inserts a new section which provides that the Department of Justice’s annual report for a financial year must include a report on the operation of the *Dispute Resolution Centres Act 1990*.

Part 10—Amendment of *District Courts Act 1967*

Clause 30 provides for the amendment of the *District Courts Act 1967*.

Clauses 31 to 34 inclusive amend Sections 29, 80, 83 and 118(3) of the Act because the requirement to lodge a security deposit for appeals was abolished in the Supreme Court Rules in 1993.

Part 11—Amendment of *Drugs Misuse Act 1986*

Clause 35 provides for the amendment of the *Drugs Misuse Act 1986*.

Clause 36 repeals Section 5(2) of the Act so as to dispense with the need to obtain the consent of the Director of Public Prosecutions for proceeding with a charge of trafficking in a dangerous drug.

Part 12—Amendment of *Electoral Act 1992*

Clause 37 provides for the amendment of the *Electoral Act 1992* and for the commencement of Part 12 on the date of assent of this Act.

Clause 38 inserts a new definition of “register of special postal voters”.

Clause 39 provides for a new Part 4A, which inserts a new Section 67A establishing legislatively the register of special postal voters. The new Section 67A requires the Electoral Commission of Queensland (ECQ) to keep, or “arrange to be kept”, the register. This expanded requirement is to reflect the current practical arrangements where the list of special postal voters is in fact kept by the Australian Electoral Commission and provided to the ECQ at election time.

Clause 40 replaces Section 105(3)(a) of the *Electoral Act 1992* so that one category of special postal voter is an elector whose name is on the register of special postal voters. More importantly, the new Section 105(3)(a) makes it clear that, in order to be on the register, an elector must have -

- (a) applied in writing; and
- (b) satisfied the Commission that the person’s registered address as shown on the electoral roll is more than 15 km by the nearest practicable route from a polling booth.

The effect of this amendment is to replace the phrase “real place of living” with the concept of the voter’s “registered address as shown on the electoral roll”, thus addressing the concerns of the Court of Disputed Returns in its judgment of 8 December 1995 in the Mundingburra Petition on this point.

Part 13—Amendment of *Evidence Act 1977*

Clause 41 provides for the amendment of the *Evidence Act 1977*.

Clause 42 amends Section 93A(1)(b) of the Act by removing a limitation on the admissibility of certain pre-trial statements by children under the age of 12 years.

Part 14—Amendment of *Freedom of Information Act 1992*

Clause 43 provides for the amendment of the *Freedom of Information Act 1992*.

Clause 44 amends Section 108 of the Act by providing that it is sufficient compliance with the annual reporting requirement under the statute if the Department of Justice's annual report for a financial year includes such matters relating to that requirement.

Part 15—Amendment of *Funeral Benefit Business Act 1982*

Clause 45 provides for the amendment of the *Funeral Benefit Business Act 1982*.

Clause 46 omits the previous Section 13 and inserts a new section which provides that the Department of Justice's Annual Report for a financial year must include a report about the operation of the *Funeral Benefit Business Act 1982*.

Clause 47 omits the previous subsection 52(17) and inserts new subsections which update that subsection by inserting the appropriate references to the *Corporations Law*.

Clause 48 omits the previous subsection 56(12) and inserts new subsections which update the reference to the *Corporations Law*.

Part 16—Amendment of *Judges (Pensions and Long Leave) Act 1957*

Clause 49 provides for the amendment of the *Judges (Pensions and Long Leave) Act 1957*.

Clause 50 omits the previous subsection 15(2) and inserts a new subsection which clarifies the previous subsection so that judges are allowed to take leave after the first seven years of service as leave accrues, and are not required to wait until the second and subsequent full periods of service are completed.

Part 17—Amendment of *Jury Act 1995*

Clause 51 provides for the amendment of the *Jury Act 1995*.

Clause 52 inserts a new provision into Section 53 to provide that members of a jury are entitled to separate for the purpose of obtaining meals, unless the judge orders the jurors not to separate because it may prejudice a fair trial.

Part 18—Amendment of *Justices Act 1886*

Clause 53 provides for the amendment of the *Justices Act 1886*.

Clause 54 inserts a new provision allowing clerks of the court to deal with non-contentious matters (for example, adjournment and consent orders) that would otherwise be required to go before a stipendiary magistrate.

Clause 55 amends Section 23E(1) to remove an unnecessary phrase.

Clause 56 inserts a new provision which provides for affidavit material to be filed in summary proceedings such as the tendering of experts' reports

and allowing the making of directions in relation to the filing and serving of documents and material.

Clause 57 amends Section 88 to allow adjournments without requiring formal appearances (for example, by correspondence).

Clause 58 amends Section 98L which has the effect of enabling the issuing authority to withdraw the infringement notice after 28 days from service, without first having to issue a reminder notice.

Clause 59 inserts a new provision in Section 147A to cover the situation where the defendant has been sentenced upon a wrong premise brought about by the deceit of the defendant (for example, use of an alias) and, as a consequence, an incorrect penalty has been applied.

Clause 60 amends Section 222 to abolish the requirement to lodge a security deposit for appeals.

Clause 61 amends Section 266 to provide that a regulation about costs includes the power to provide for a scale of costs under the *Justices Act 1886*.

Part 19—Amendment of the *Juvenile Justice Legislation Amendment Act 1996*

Clauses 62 and 63 insert a new definition for the expression “changeover day”, which definition was originally inserted into Section 73 of the *Corrective Services (Administration) Act 1988* by Section 103 of the *Juvenile Justice Legislation Amendment Act 1996* (“the Act”). In the original definition, the term was expressed to be a day fixed by regulation. The *Juvenile Justice Amendment Regulation 1996* (“the Regulation”), made on 15 August 1996, (the date of assent of the Act), fixed the changeover day as 15 August 1996. However, it was purported to be made pursuant to the *Juvenile Justice Act 1992* whereas it should have been made under the *Corrective Services (Administration) Act 1988* as the context in which Section 103 of the Act is located would indicate.

Nevertheless, in the interim it has been considered that the effectiveness of the Regulation has been protected by the operation of Section 31 of the

Statutory Instruments Act 1992. This provision in the Bill clarifies the position.

Part 20—Amendment of *Law Reform Act 1995*

Clause 64 provides for amendment of the *Law Reform Act 1995*. Part 8 has retrospective effect to 28 November 1995 because the previous statute containing this power (*Wages Attachment Act 1936*) was repealed by the *Statute Law Revision Act (No 2) 1995*, which came into effect on 28 November 1995.

Clause 65 amends the long title to the *Law Reform Act 1995*.

Clause 66 makes a technical amendment to Section 2 of the Act.

Clause 67 provides for the renumbering of Part 8 as Part 9.

Clause 68 inserts a new Part 8—Attachment of Wages. This Part 8 of the Act enables a court or registrar of a court to make an order to enable the wages of public service employees to be attached.

Part 21—Amendment of *Law Reform Commission Act 1968*

Clause 69 provides for this Bill to amend the *Law Reform Commission Act 1968*.

Clause 70 omits the previous subsection 15(1) and inserts a new subsection which provides that the Department of Justice's Annual Report for a financial year must include a report about the operations of the *Law Reform Commission Act 1968*.

Part 22—Amendment of *Legal Practitioners Act 1995*

Clause 71 provides for this Bill to amend the *Legal Practitioners Act 1995*.

Clause 72 amends the long title to the Act.

Clause 73 provides for a technical amendment to Section 2 of the Act.

Clause 74 inserts a new Division 1A into the Act which contains relevant definitions.

Clause 75 amends Section 5 and provides for the omission of unnecessary phrases.

Clause 76 provides for the amendment to Section 6 by the omission of unnecessary phrases.

Clause 77 to Clause 85 inclusive make amendments to Sections 7, 8, 9, 12, 13, 14, 15, 16 and 17 of the Act to enable clerks of the Magistrates Courts to tax a bill of costs, particularly in those matters coming under the *Justices Act 1886*.

Part 23—Amendment of *Magistrates Courts Act 1921*

Clause 86 provides for the amendment of the *Magistrates Courts Act 1921*

Clause 87 amends Section 45 to abolish the requirement to lodge a security deposit for appeals under that Act.

Part 24—Amendment of *Oaths Act 1867*

Clause 88 provides for this Bill to amend the *Oaths Act 1867*.

Clauses 89 and 90 provide for the amendment to Sections 29 and 30 of the Act to omit the term “foreigner” and insert more appropriate language so as to cater for persons who may not speak English fluently, even though they may have been born in Australia.

Part 25—Amendment of *Penalties and Sentences Act 1992*

Clause 91 provides for the amendment of the *Penalties and Sentences Act 1992*.

Clause 92 provides for the amendment to Section 186 of the Act so that when “part payments” are made under the Act the effect that the default imprisonment is rounded down to the nearest “full day” imprisonment. In other words, any fractional effect is disregarded.

Part 26—Amendment of *Property Law Act 1974*

Clause 93 provides for this Bill to amend the *Property Law Act 1974*.

Clause 94 inserts a new provision which has the effect of clarifying the provisions under the *Property Law Act 1974* relating to Enduring Powers of Attorney by permitting a donee of a Power of Attorney to mortgage property or to provide a guarantee on behalf of the donor of the Power of Attorney.

Part 27—Amendment of *Public Trustee Act 1978*

Clause 95 provides for this Bill to amend the *Public Trustee Act 1978*.

Clause 96 omits the previous Section 17 and inserts a new section which provides that the fees and charges to be charged by the Public Trustee in relation to the duties and services of the Public Trustee are to be determined by the Public Trustee having regard to certain conditions. They are to be notified by gazettal notice. This clause also provides for priority of the Public Trustee’s fees and charges in relation to the administration of an estate and that the Public Trustee is entitled to costs and allowances for the acting or representation as if the official solicitor or lawyer were a lawyer in private practice and not a public service officer.

Clause 97 amends Section 18 of the Act to clarify the nature of the fees paid or retained out of an estate under administration by the official solicitor or lawyer of the Public Trustee.

Clause 98 amends Section 26 of the Act to enable the Minister to extend the time after 31 August of every year in which to provide the Minister with a balance sheet and accounts which are to be laid before Parliament.

Clauses 99 and 100 make technical amendments to Sections 27 and 142 of the Act respectively.

Clause 101 inserts a transitional provision as a result of the omission of the previous Section 17 of the Act and the insertion of a new Section 17.

Part 28—Amendment of *Queensland Law Society Act 1952*

Clause 102 provides for the amendment of the *Queensland Law Society Act 1952*.

Clause 103 amends Section 50 of the Act, which requires the Queensland Law Society and its officers to maintain confidentiality in respect of information and documents, by enabling the Society to report to the Australian Securities Commission particulars from the register of practitioners dealing in excluded mortgages and particulars of any breach by a practitioner of the *Rules of the Queensland Law Society* relating to mortgage investments or the conditions of any Australian Securities Commission Class Order Exemption during the currency of such Class Order Exemption. Excluded mortgages are defined in Section 24A of the Act.

Part 29—Amendment of the *Retirement Villages Act 1988*

Clause 104 provides for this Bill to amend the *Retirement Villages Act 1988*.

Clause 105 omits the previous Section 59 and inserts a new section

which provides that the Department of Justice's Annual Report for a financial year must include a report about the operation of the *Retirement Villages Act 1988*.

Part 30—Amendment of *Stipendiary Magistrates Act 1991*

Clause 106 provides for this Bill to amend the *Stipendiary Magistrates Act 1991*.

Clause 107 inserts a new provision which provides for deciding whether remuneration is payable to a clerk of the court, the *Public Service Management and Employment Act 1988* applies to that person while acting as a magistrate.

Part 31—Amendment of *Travel Agents Act 1988*

Clause 108 provides for this Bill to amend the *Travel Agents Act 1988*.

Clause 109 omits the previous Section 48 and inserts a new section which provides that the Department of Justice's Annual Report for a financial year must include a report on the operation of the *Travel Agents Act 1988*.

Part 32—Amendment of *Trustee Companies Act 1968*

Clause 110 provides for the amendment of the *Trustee Companies Act 1968*.

Clauses 111 to 114 inclusive provide for the amendment to Sections 12, 13, 28 and 31 of the Act for the purposes of updating the monetary amounts in relation to the administration of small estates, unadministered

balances, general powers and discretionary expenditure under the Act.

Clause 115 provides for the amendment to Schedule 2 of the Act by deleting from the conditions and licences of the statutory trustee companies under the Act the requirement to have local directors appointed to the boards of those statutory trustee companies.

Part 33—Repeal of *Cremation Act 1913*

Clause 116 provides for this Bill to repeal the *Cremation Act 1913*. Part 5 of this Bill, in particular clause 20, provides for the insertion of the provisions of the *Cremation Act 1913* as amended by this Bill into the *Coroners Act 1958*.

Amendments agreed to in Committee

1. Clause 62—

At page 28, line 13, ‘the day before’—

omit, insert—

‘on’.

2. Clause 63—

At page 28, line 16, ‘73’—

omit, insert—

‘72A’.