

Aboriginal, Torres Strait Islander and Remote Communities (Justice Initiatives) Amendment Bill 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The object of this Bill, as a further step in the development of the initiative to reform the *Criminal Code*, is to provide that Justices of the Peace in Aboriginal, Torres Strait Islander and remote communities can hear and determine certain indictable offences summarily.

Reasons for the objectives and how they will be achieved

Under section 552C of the *Criminal Code* (recently inserted by the *Criminal Law Amendment Act 1997*) the summary hearing and deciding of an indictable offence under the new Chapter 58A must be by a Magistrate (because the maximum penalty that could be imposed is 3 years imprisonment). Justices of the Peace would retain the power to conduct an examination of witnesses and to commit for trial or sentence. They would also retain all necessary powers in relation to bail and remand matters.

The Bill will provide a limited jurisdiction to Justices of the Peace who are not magistrates where (a) if a matter under section 552A and 552B of the *Criminal Code* is an offence involving property, the value of the property or damage to or destruction of property is not more than \$2500; and (b) in any case, the Justice of the Peace is satisfied that he or she can adequately deal with the matter by not imposing a penalty of more than six months imprisonment or 100 penalty units (\$7500).

The jurisdiction will only be exercised by appropriately qualified 'Justices of the Peace (Magistrates Court)' (appointed under section 15 of the *Justices of the Peace and Commissioners for Declarations Act 1991*) and who are appointed by the Attorney-General to do so.

Administrative cost to Government of implementation

Justices of the Peace (Magistrates Court) who have performed such duties do so on a voluntary basis and are not remunerated. The cost of ongoing training and refresher courses will, at this stage, be absorbed by the Department of Justice.

Fundamental legislative principles

The draft Bill does not infringe fundamental legislative principles. Indeed, by ensuring that appropriately qualified Justices of the Peace are appointed to hear and determine indictable offences summarily in Aboriginal and remote areas it enhances the prospect of local traditions and customs being represented in the Criminal Justice system to the extent that they are not in conflict with its underlying laws and principles.

Consultation

Extensive consultation has been undertaken with the Department of Families, Youth and Community Care and the Department of Police concerning the training of Justices of the Peace (Magistrates Court).

The Department of Justice has given priority to the training of Aboriginal and Torres Strait Islander people to facilitate their appointment as Justices of the Peace (Magistrates Courts) in remote communities throughout Queensland. A three-year training program was funded by Treasury and is completed. Training has taken place in 38 communities with 161 persons being trained and 112 Justices of the Peace (Magistrates Court) being appointed.

Throughout the training program continual consultation took place with local communities, the Aboriginal Justice Advisory Committee (AJAC), the Department of Families, Youth and Community Care, the Aboriginal Coordinating Council (ACC), and the Queensland Police Service. Trainers consulted with elders and local council members before initiating programs to ensure that special cultural considerations were taken into account when programs were delivered.

Consultation has taken place between officers of the Office of Aboriginal and Torres Strait Islander Affairs, the Attorney-General and senior officers of the Department of Justice in relation to the use of trained Justices of the Peace in the communities.

To date the use of Justices of the Peace in local Magistrates Courts has been limited. The training of Justices of the Peace also created the option of communities convening Community Courts under the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* for the purposes of hearing breaches of by-laws passed by local Aboriginal or Islander Councils. However, due to shortcomings in the legislative provisions governing Community Courts and difficulties in Councils adequately resourcing and administering them, many communities have chosen not to establish Community Courts.

It has been decided to pilot the use of Justices of the Peace to convene Magistrates Courts on two remote Aboriginal and Torres Strait Islander communities, namely Kowanyama and Thursday Island. The pilots will examine the benefits of using Justices of the Peace to constitute Magistrates Courts in the communities.

The pilots will establish whether the use of local Justices of the Peace will aid in a more efficient system of justice. Quicker response times may have a deterrent effect for offenders. Further, the pilot will study the effect of culturally appropriate processes and sentencing. The Pilot will also identify whether a court convened by local Justices of the Peace is likely to engender a greater level of community acceptance than a court convened by a visiting Magistrate once a month.

A training proposal has been drafted concerning the pilot. Trainers from the Department of Justice have liaised with the Kowanyama Aboriginal Community via the Aboriginal Co-Ordinating Council at Cairns. Discussions have taken place with Council Chairmen in relation to Thursday Island. Training dates have been arranged for refresher training in June 1997.

NOTES ON PROVISIONS

Short Title *Aboriginal, Torres Strait Islander and Remote Communities (Justice Initiatives) Amendment Bill 1997*

Clause 1 sets out the Act's short title.

Clause 2 provides for the commencement of the Act on a day to fixed by proclamation.

Clause 3 provides that the Act amends the *Criminal Code*.

Clause 4 replaces section 552C of the *Criminal Code* (Summary hearing of indictable offence must be by magistrate). The new section 552C (Constitution of Magistrates Court) will enable Magistrates Courts to be constituted by either a Magistrate or by Justices of the Peace (Magistrates Court). It will limit the jurisdiction of Justices of the Peace (Magistrates Court) to dealing with indictable offences summarily where the defendant pleads guilty and, if the offence involves property, the value of the property or of damage to or destruction of property is not more than \$2500 and, where the Justices consider that they may adequately punish by imposition of a penalty of not more than the maximum allowed under section 552H. The section will further provide that the Attorney-General has authority to appoint a Justice, who is appropriately qualified, for a place, to be notified by Gazette Notice.

Clause 5 replaces section 552H of the *Criminal Code* (Maximum punishment of indictable offences that are dealt with summarily). The new section 552H (Maximum penalty for indictable offences dealt with summarily) will provide that the maximum penalty that a Magistrate can impose is the lesser of (i) 100 penalty units or 3 years imprisonment or (ii) the maximum had the offence been dealt with on indictment. On the other hand, the maximum penalty that Justices of the Peace (Magistrates Court) can impose is the lesser of (i) 100 penalty units or 6 months imprisonment or (ii) the maximum had the offence been dealt with on indictment.

SCHEDULE

CONSEQUENTIAL AMENDMENTS

1. A number of sections in Chapter 58A of the *Criminal Code* (Indictable Offences Dealt With Summarily) are consequently amended by omitting ‘Magistrate’ and inserting ‘Magistrates Court’. This reflects the replacement of section 552C (in clause 4) which will enable Magistrates Courts to be constituted by either a Magistrate or by Justices of the Peace (Magistrates Court) as opposed to solely by Magistrates, as was previously the case under section 552C.

2. This amendment replaces sub-section 552D(2), again to reflect the replacement of section 552C, so that whether the court is constituted by a Magistrate or by Justices, then if the court abstains from jurisdiction, the proceeding must be conducted as a committal proceeding.