

JUSTICE AND OTHER LEGISLATION (MISCELLANEOUS PROVISIONS) BILL (No. 2) 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The proposed Bill contains minor or technical amendments to approximately 47 statutes administered by the Department of Justice.

Reasons for the objectives and how they will be achieved

The Department of Justice is responsible for the administration of over 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.

To ensure this occurs, from time to time a 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 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.

These amendments have several elements in common:

1. They relate mostly to statutes administered by the Attorney-General and Minister for Justice;
2. They have the purpose of increasing operational efficiency in various State Government departments;
3. They do not modify the major underlying philosophy or direction

of statutes being amended.

Administrative cost to Government of implementation

The amendments will result in increased efficiencies and greater flexibility in various State Government departments and agencies.

Fundamental legislative principles

Clause 58 of the Bill operates retrospectively. This is essential to validate the service of notices under part 4A of the *Justices Act 1886* from 1 July 1992.

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. This Bill corrects a defect in the *Justices Act 1886* by creating a scheme for the service of notices under part 4A. It also validates past actions which took place on the assumption that the decision in *Gem Po-Chioh Cheong v Webster Ex Parte Gem Po-Chioh Cheong* [1986] 2 Qd R 374, extended to service under Part 4A.

Consultation

The following bodies/persons have been consulted in relation to that part of this Bill which relates to their concerns/issues:

- The Public Trustee
- Queensland Police Service
- Director of Public Prosecutions
- Office of Consumer Affairs
- Queensland Law Society Inc
- Girl Guides Association (Queensland, Australia)

All parties consulted agreed to the content of this Bill so far as it relates to their concerns/issues.

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.

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.

Clause 3 inserts a schedule containing amendments to the Acts mentioned in it.

Part 2—Amendment of *Associations Incorporation Act 1981*

Clause 4 provides for the amendment of the *Associations Incorporation Act 1981*.

Clauses 5 and 6 extend the time period for holding subsequent annual general meetings from three months to six months after the end of the Association’s previous financial year.

Part 3—Amendment of *Burials Assistance Act 1965*

Clause 7 provides for amendment of the *Burials Assistance Act 1965*.

Clause 8 makes a technical amendment to section 4(2) by ensuring that the chief executive is acting on behalf of the State.

Clause 9 inserts a new provision containing a scheme to create a charge and a right of reimbursement by the chief executive in respect of the burial expenses. This scheme is effectuated by the chief executive giving a written notice to a financial institution about the charge.

Part 4—Amendment of *Classification of Computer Games and Images Act 1995*

Clause 10 provides for the amendment of the *Classification of Computer Games and Images Act 1995*.

Clauses 11 and *12* make technical amendments to sections 19 and 32 of the Act.

Clause 13 makes amendments to definitions “child abuse computer game” and “objectionable computer game”.

Clause 14 directs that the redundant attachment to the Act be omitted in the next reprint.

Part 5—Amendment of *Classification of Films Act 1991*

Clause 15 provides for the amendment of the *Classification of Films Act 1991*.

Clause 16 makes a technical amendment to the definition of “child abuse film”.

Part 6—Amendment of *Classification of Publications Act 1991*

Clause 17 provides for the amendment of the *Classification of Publications Act 1991*.

Clause 18 makes technical amendments to the definitions of “child abuse photograph” and “child abuse publication”.

Clause 19 inserts a new Part into the statute—“Part 2A—Protection of Children and Families by conditions for Displaying Certain Unrestricted Publications”. The purpose of this new Part is to place restrictions on the display of unrestricted publications. By way of background, Queensland adopts the National Scheme of Classifications of Publications prescribed in the National Classification Code contained in the *Classification (Publications, Films and Computer Games) Act 1995* (Cth). This Commonwealth Act also allows the Minister to determine classification guidelines to assist the Classification Board in applying the criteria in the Code.

The current classification guidelines applying to unrestricted materials place no restrictions on display. As a consequence these publications are deemed suitable for display in a public place. This Part 2A establishes a scheme in which the publications classification officer may by gazette notice make an order prohibiting the display of a specified unrestricted publication for sale at any public place to which children have access unless the publications are concealed by a cover or rack or other thing; or the rack or other thing is at least 1.5 metres above the floor or ground; or cannot be seen without being handled. The scheme also provides for an appeal mechanism and a register of the display orders.

Clause 20 provides for an offence provision and relevant defences.

Part 7—Amendment of *Cooperatives Act 1997*

Clause 21 provides for the amendment of the *Cooperatives Act 1997*.

Clause 22 inserts a new subsection to section 245 of the Act enabling the

registrar to register a name that contains an unsuitable name, if the Minister is satisfied the name is suitable for registration in the particular circumstances; eg, the use of the unsuitable name “university” in the name “University of Queensland Rowing Cooperative”.

Part 8—Amendment of *Crimes (Confiscation) Act 1989*

Clause 23 provides for the amendment of the *Crimes (Confiscation) Act 1989*.

Clause 24 makes a technical amendment to section 51 of the statute by omitting certain redundant definitions.

Clause 25 amends Schedule 2 of the statute to include, amongst other things, various censorship statutes. The effect of this is that it will enable the confiscation of the proceeds of contraventions of these statutes.

Part 9—Amendment of *Director of Public Prosecutions Act 1984*

Clause 26 provides for the amendment of the *Director of Public Prosecutions Act 1984*.

Clause 27 amends section 11 of the statute in a technical manner as well as enabling the Director to give guidelines to an employee about confidential information.

Clause 28 inserts a new provision prohibiting current and former employees within the Office of the Director of Public Prosecutions from disclosing confidential information that came to the person’s knowledge because of the employment. This provision also provides for the situation when confidential information can be disclosed.

Part 10—Amendment of *District Courts Act 1967*

Clause 29 provides for the amendment of the *District Courts Act 1967*.

Clauses 30 and 31 amend the long and short titles to this statute.

Clause 32 inserts a new Division within Part 2 of the statute dealing with the establishment of the “District Court” and various provisions which are concerned with the establishment of same.

Clause 33 provides for the omission of section 16 of the statute dealing with the retirement of judges.

Clause 34 provides the transitional arrangements for the commencement of Part 2, division 1 of the statute.

Part 11—*Evidence Act 1977*

Clause 35 provides for the amendment of the *Evidence Act 1977*.

Clause 36 provides for the amendment of the definition “approved person” by removing the requirement for notice to be given by regulation and inserting the ability of the Minister to declare by Gazette notice. This will provide for greater flexibility given the inevitable state of change of the structure of the public sector and therefore the “approved person”.

Part 12—Amendment of *Fair Trading Act 1989*

Clause 37 provides for the amendment of the *Fair Trading Act 1989*.

Clauses 38 and *39* increase the penalties under sections 82 and 84 of the statute respectively.

Part 13—Amendment of *Girl Guides Association Act 1970*

Clause 40 amends the *Girl Guides Association Act 1970*.

Clauses 41 and *42* make amendments to the long and short titles to this statute.

Clauses 43 to *51* inclusive make various technical amendments to the statute by, amongst other things, omitting “Girl Guides Association (Queensland, Australia)” and inserting “Guides Queensland”; omitting “Secretary” and inserting “executive officer”; and streamlining the powers of Guides Queensland entering into a proposed lease, mortgage, or sale of real property.

Part 14—Amendment of *Justices Act 1886*

Clause 52 provides for the amendment of the *Justices Act 1886*.

Clause 53 amends section 22B by inserting a new subsection which makes a technical amendment as to where the holding of a Magistrates Court should take place.

Clauses 54 to *56* inclusive install a new scheme for the undertaking of mediation within the Magistrates Courts.

Clause 57 makes a technical amendment to section 98B of the statute.

Clause 58 establishes a scheme for service under Part 4A of the statute. The scheme is based on the provisions of the *Acts Interpretation Act 1954*, but modifies the application of the postal service provisions, to provide that documents served by post are taken to have been effected at the time at which the letter would be delivered in the ordinary course of post. The return of a notice sent to the address given by the alleged offender or the address of the registered owner of a vehicle will not invalidate service. The amendment removes service of notices in the SETONS scheme from the application of section 39A(1)(b) of the *Acts Interpretation Act 1954*.

Clause 59 makes an amendment to section 98N of the statute which enables recovery of the costs of serving reminder notices under the

SETONS scheme.

Clause 60 makes a technical amendment to section 147 of the statute.

Clause 61 provides for the insertion of a new section 159 which gives sufficient power to enable taxation of costs within the Magistrates Courts.

Clause 62 makes a technical amendment to section 179 of the statute.

Clause 63 amends section 222 of the statute. The effect of this amendment is that appeals will be held in the major centre closest to the facility at which the prisoner is incarcerated, having a resident District Court Judge.

Part 15—Amendment of *Juvenile Justice Act 1992*

Clause 64 provides for the amendment of the *Juvenile Justice Act 1992*.

Clause 65 amends section 55(2) of the Act. The effect of this amendment is that an infringement notice can be served on a child. This will enable police to deal with minor breaches such as failing to wear a bicycle helmet.

Part 16—Amendment of *Law Reform Commission Act 1968*

Clause 66 provides for the amendment of the *Law Reform Commission Act 1968*.

Clause 67 amends section 3 of the statute by removing the upper limit on the number of members to the Commission.

Part 17—Amendment of *Legal Aid Act 1997*

Clauses 68 provides for the amendment of the *Legal Aid Act 1997*.

Clauses 69 and 70 extend the scope of coverage of sections 80 and 82. This will mean that section 80 [which deals with indemnification and protection for liability] covers members of the Board.

Part 18—Amendment of *Mobile Homes Act 1989*

Clause 71 provides for the amendment of the *Mobile Homes Act 1989*.

Clauses 72 and 73 make technical amendments to the statute. These amendments will provide that a mobile home park owner who has failed to comply with section 4 of the Act continues to commit an offence for which the park owner may be prosecuted.

Part 19—Amendment of *Penalties and Sentences Act 1992*

Clause 74 provides for the amendment of the *Penalties and Sentences Act 1992*.

Clause 75 inserts a new provision to enable the issue of a summons or warrant for the return of the offender to be dealt with under section 147 of the statute.

Part 20—Amendment of *Prisoners (Interstate Transfer) Act 1982*

Clause 76 provides for the amendment of the *Prisoners (Interstate Transfer) Act 1982*.

Clauses 77 and 78 make technical amendments to the statute by giving

recognition to the fact that the Australian Capital Territory Government has passed an equivalent statute.

Part 21—Amendment of *Public Trustee Act 1978*

Clause 79 provides for the amendment of the *Public Trustee Act 1978*

Clauses 80 to 82 inclusive make technical amendments to the Act by lowering the period for reporting unclaimed monies from six years to two years. In doing so this reflects the trend towards shortening the period in line with other States such as Victoria.

Part 22—*Queensland Law Society Act 1952*

Clause 83 provides for the amendment of the *Queensland Law Society Act 1952*.

Clause 84 inserts a new provision which enables the chairperson of the Tribunal or a member of the Tribunal chosen by the chairperson to make directions about the conduct of a charge to be heard by the Tribunal.

Clause 85 inserts a new provision enabling legal practitioners to advise clients of the existence of insurance policies as an alternative to the current requirements of section 24B.

Part 23—Amendment of *Security Providers Act 1993*

Clause 86 provides for the amendment of the *Security Providers Act 1993*.

Clause 87 makes a technical amendment to section 41 of the statute.

Part 24—Amendment of *Travel Agents Act 1988*

Clause 88 provides for the amendment of the *Travel Agents Act 1988*.

Clauses 89 and 90 insert a whole new scheme for inspectors' powers under the statute. In other words it revises and inserts, amongst other things, the standard model for inspectors' powers used under other more recent statutes.

Part 25—Amendment of *Trusts Act 1973*

Clause 91 provides for the amendment of the *Trusts Act 1973*.

Clause 92 provides for the amendment of section 21 of the statute by giving authorised trustee investment status to a common fund established under the *Public Trustee Act 1978*.

SCHEDULE**MINOR AMENDMENTS**

This Schedule makes discrete technical amendments to various Acts. An explanation of some of the more significant amendments in this Schedule is provided in the following paragraphs.

One of the amendments to the *Cooperatives Act 1997*—item 4—rephrases and inserts an appropriate definition for the court of another State as defined in that statute.

Under the amendments to the *Criminal Code*, items 15 to 19 inclusive provide for the amendment of sections 651—Supreme Court and District Court may decide summary offences—and 668D to ensure that a sentence

and any order under that section 651 is a sentence for the purposes of section 668D—Right of Appeal—of the *Criminal Code*; and that section 651 is subject to section 652—Proceedings to transmit summary charge.

The amendments to the *Fair Trading Act 1989* make technical amendments to the statute by omitting any reference to the terms “Consumer Affairs Bureau” and “bureau” and inserting the term “Office of Consumer Affairs”.

An amendment to the *Storage Liens Act 1973*—item 4—inserts the ability of the chief executive to approve forms under that statute.