

JUSTICE AND OTHER LEGISLATION (MISCELLANEOUS PROVISIONS) BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The proposed Bill contains minor or technical amendments to approximately 18 statutes administered by the Department of Justice as well as several other statutes coming under the portfolio responsibilities of the Honourable the Premier, the Honourable the Minister for Transport and Main Roads, the Honourable the Minister for Training and Industrial Relations and the Honourable the Minister for Natural Resources.

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. In particular, it will increase efficiencies in the operation of the Public Trust Office and the Queensland Police Service.

Fundamental legislative principles

Overall this Bill does not contain any significant breaches of fundamental legislative principles.

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
- Crown Solicitor
- Insurance and Superannuation Commission, and
- Australian Taxation Office.

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 or which are related to the administrative functions within the department, and depending on the statute other departments such as the Department of Premier and Cabinet, Department of Transport, the Department of Natural Resources and the Department of Training and Industrial Relations.

Part 1—Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 is the commencement provision which provides various commencement dates for certain parts of the Bill and the remaining parts commence on a date to be fixed by proclamation.

Clause 3 inserts Schedule 1 containing minor amendments to the *Criminal Law Amendment Act 1997*.

Clause 4 inserts Schedule 2 which contain various declaratory provisions.

Part 2—Amendment of *Associations Incorporations Act 1981*

Clause 5 provides for the amendment of the *Associations Incorporations Act 1981*.

Clauses 6 and 7 insert new provisions preventing persons, who had been convicted of an indictable offence or an offence punishable on summary conviction for which the person is sentenced to imprisonment, from eligibility and service as a member of the incorporated association's management committee.

Part 3—Amendment of *Bail Act 1980*

Clause 8 provides for the amendment of the *Bail Act 1980*.

Clause 9 makes a technical amendment to section 29(2) of the statute to confirm the role of the higher court by inserting the term “court” rather than just the Magistrates Court.

Part 4—Amendment of *Bills of Sale and Other Instruments Act 1955*

Clause 10 provides for the amendment of the *Bills of Sale and Other Instruments Act 1955*.

Clauses 11 to 16 inclusive are inserted to clarify the application of the statute to mortgages which are also regulated by the *Consumer Credit Code* (which commenced throughout mainland Australia on 1 November 1996) and thereby avoiding serious conflict and dual regulation.

Part 5—Amendment of *Childrens Court Act 1992*

Clause 17 provides for the amendment of the *Childrens Court Act 1992*.

Clause 18 amends section 20(2) of the statute which enables the court to allow certain persons to be present at a proceeding in relation to a child

including a representative of the mass media. This amendment qualifies this admission into the court by preventing a member of the mass media from being present under Part 6 or 7 of the *Children's Services Act 1965*.

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

Clause 19 provides for the amendment of the *Crimes (Confiscation) Act 1989*.

Clause 20 clarifies the operation of section 40(15) of the statute by omitting “specified property” in paragraphs (c), (d) and (e) and inserting “property mentioned in the order”. This will have the effect of ensuring that these paragraphs correlate with sections 40(3)(a) to (e) of the statute.

Part 7—Amendment of *Criminal Code*

Clause 21 provides for the amendment of the *Criminal Code*.

Clause 22 omits sections 238 to 241 inclusive of the *Criminal Code* and inserts four replacement provisions which deal with the contamination of goods, hoax contamination of goods and dealing in contaminated goods and one section to define “contaminate” and “goods”.

Clause 23 omits section 259 of the *Criminal Code* which is concerned with the examination of accused persons in custody. This amendment will provide the Queensland Police Service with the appropriate authority to call on others to assist in searching prisoners, particularly for those police officers working in the rural and remote parts of the State.

Clause 24 amends section 359 to include an alternative element of intent to cause public alarm or anxiety.

Clause 25 amends section 651 by omitting “28 days” and inserting “1 calendar month”.

Part 8—Amendment of *Criminal Investigation (Extra-Territorial Offences) Act 1985*

Clause 26 provides for the amendment of the *Criminal Investigation (Extra-Territorial Offences) Act 1985*.

Clause 27 updates the legal definition of “appropriate authority” in section 2 of the statute.

Clause 28 provides for the amendment of section 7 in the statute by clearly stating that section 39 of the *Justices Act 1886* need only be used if the owner of the object is unknown or cannot be reasonably located and to provide the Commissioner of Police with the power of delegation under an arrangement made under the statute.

Part 9—Amendment of *Criminal Law Amendment Act 1997*

Clause 29 provides for the amendment of the *Criminal Law Amendment Act 1997*.

Clause 30 inserts new provisions to cater for the summary determination for indictable offences.

Clause 31 inserts a new provision in section 118 which provides that the Supreme and District Courts will still have jurisdiction to deal with simple offences despite the time which has elapsed from the time when the matter of complaint of the charge arose.

Part 10—Amendment of *Evidence Act 1977*

Clause 32 provides for the amendment of the *Evidence Act 1977*.

Clause 33 omits section 55(1) amends the other subsections by inserting new provisions which sets out a new procedure concerning the submission

of evidence on whether a company is not incorporated or registered, or no longer incorporated or registered. This new provision will cover the three situations of summary trials, criminal proceedings and trials on indictment.

Part 11—Amendment of *Jury Act 1995*

Clause 34 provides for the amendment of the *Jury Act 1995*.

Clause 35 amends section 70(1) of the statute to ensure that information which identifies or is likely to identify a person as, or as having been, a juror, in a particular proceeding is confidential information about jury deliberation and therefore covered under the statute. In carrying out this amendment, this statute will totally conform with the draft Bill approved by the Standing Committee of Attorneys-General.

Part 12—Amendment of *Justice Legislation (Miscellaneous Provisions) Act 1996*

Clause 36 provides for the amendment of the *Justice Legislation (Miscellaneous Provisions) Act 1996*.

Clause 37 clarifies the amendment of section 16 of that statute which is concerned with the insertion of the new section 5 of the *Cremation Act 1913* which provides for the conditions to cremate.

Part 13—Amendment of *Justices Act 1886*

Clause 38 provides for the amendment of the *Justices Act 1886*.

Clause 39 amends section 47 of the statute which requires that unless otherwise provided, when assessing penalty in respect of a simple offence,

a circumstance of aggravation should be stated in the complaint except where the circumstance is a previous summary conviction. The purpose of this amendment is to require that, if the circumstance is that the defendant has been previously convicted of an offence, the alleged previous conviction must be stated in a notice served with the complaint.

Clause 40 provides for the amendment of section 54 of the statute to require lodgement within three days of the summons being issued so as to allow the court more time to refer appropriate matters to alternative dispute resolution such as mediation. It strengthens the operation of section 53 of the statute which allows justices (including clerks of the court) to refer appropriate matters to mediation instead of issuing a summons.

Clause 41 amends section 110A of the statute which provides that a written statement shall not be tendered in committal proceedings in lieu of testimony unless “it has been signed by the person making it and it contains a declaration by that person under the *Oaths Act 1867*”. This amendment will give effect to a dual system which will enable the tendering of a statement which contains an acknowledgement by the person making the statement.

Part 14—Amendment of *Juvenile Justice Act 1992*

Clause 42 provides for the amendment of the *Juvenile Justice Act 1992*.

Clause 43 inserts a new provision in section 18F of the statute to provide that the *Worker’s Compensation Act 1990* applies to a child performing work in a program arranged under section 18F.

Clause 44 makes a technical amendment to section 200 of the statute which will place beyond doubt that a court can order a person in charge of a youth detention centre to produce a detained child before the court.

Part 15—Amendment of *Native Title (Queensland) Act 1993*

Clause 45 provides for the amendment of the *Native Title (Queensland) Act 1993*.

Clause 46 ensures that native title rights and interests may continue to be acquired for public purposes under the State Compulsory Acquisition Acts until suitable amendments are made to the *Acquisition of Land Act 1967*.

Part 16—Amendment of *Peace and Good Behaviour Act 1982*

Clause 47 provides for the amendment of the *Peace and Good Behaviour Act 1982*.

Clause 48 amends section 4 of the statute to allow the referral of certain complaints to mediation.

Part 17—Amendment of *Penalties and Sentences Act 1992*

Clause 49 provides for the amendment of the *Penalties and Sentences Act 1992*.

Clause 50 provides for a technical amendment to section 162 so as to place all of the conditional offences into one subsection; that is, into a new subsection 162(b) under the definition of “violent offence”.

Part 18—Amendment of *Public Trustee Act 1978*

Clause 51 provides for the amendment of the *Public Trustee Act 1978*.

Clause 52 inserts a new definition of “common fund” into section 6 of the statute.

Clause 53 amends section 16 of the statute to allow the Official Solicitor to act for clients other than the Public Trustee.

Clause 54 makes an amendment to section 19 which is consequential as a result of the new definition of “common fund” in section 6 of the statute.

Clause 55 makes a technical amendment to section 60 of the statute to enable the Public Trustee to investigate a trust if, in the Public Trustee's opinion, the person's interests are, or may be, adversely affected by the trust's operation.

Clause 56 and 57 amend sections 67 and 68 of the statute to enable a District Court to have a power to make protection orders under the statute.

Clause 58 removes the monetary limitations placed on the Public Trustee in relation to the powers under section 80 of the statute which are concerned with the recovery of property held in trust for an incapacitated person and dealings in such trust properties. Such an amendment will place the Public Trustee on similar footing to the statutory private trustee companies which are licensed under the *Trustee Companies Act 1968*.

Clause 59 inserts an object clause for Part 8 of the statute which deals with "unclaimed property".

Clauses 60 to 67 inclusive insert new provisions to provide for a legislative base to receive unclaimed superannuation benefits as a result of the interface with those provisions in the *Superannuation Industry (Supervision) Act 1993* (Cwlth). Such provisions are necessary to provide a scheme to enable trustees of superannuation companies to pay unclaimed superannuation benefits to the Public Trustee instead of the Commissioner of Taxation.

Clause 68 inserts a new Division 4—Enforcement—in Part 8 of the statute. This Division sets out the various powers and duties of inspectors who are appointed by the Public Trustee to supervise and ensure that the provisions in Part 8 of the statute are being complied with and that unclaimed property is accounted for and either paid or given to the Public Trustee in accordance with the legislative scheme.

Clause 69 and 70 make technical amendments to section 122 and 139 of the statute.

Part 19—Amendment of *Security Providers Act 1993*

Clause 71 provides for the amendment of the *Security Providers Act 1993*.

Clause 72 amends the “Schedule of Disqualifying Offences” in the statute to ensure that it complies with the recent amendments to the *Criminal Code*.

Part 20—Amendment of *Statutory Instruments Act 1992*

Clause 73 provides for the amendment of the *Statutory Instruments Act 1992*.

Clause 74 amends section 61 of the statute by deleting the time period 1 July 1997 and inserting where appropriate the new time period of 1 July 2000. Such an amendment will extend the period by three years which will enable a comprehensive and considered review of subordinate legislation.

Part 21—Amendment of *Succession Act 1981*

Clause 75 provides for the amendment of the *Succession Act 1981*.

Clause 76 inserts a new definition of “stepchild” in section 5 of the statute.

Clause 77 amends section 29 of the statute to clarify that a disposition under section 29 means a disposition of all property or a residuary disposition. Such an amendment will overcome the unintended consequences of the decision of the Queensland Supreme Court in *Re: Harvey* [1992] Qd R 508.

Clauses 78 and 79 provides for a new definition of “stepchild”. Under the current definition of stepchild, the child of a former spouse of a deceased, whether the former spouse is deceased or divorced from the deceased, is not a stepchild for the purposes of Part 4—Family Provision—under the statute although he or she may be able to apply, if under 18, as a dependant. This strict definition has shown to cause hardship and this is clearly noted in the cases of *Re: Marstella* [1989] 1 Qd. R. 638; *Re: Oakley* [1986] 2 Qd. R. 269 and *Re: Burt* [1988] 1 Qd. R. 23.

Clause 80 amends sections 44(3) and (4) and to clarify the operation of this provision.

Part 22—Amendment of *Traffic Act 1949*

Clause 81 provides for the amendment of the *Traffic Act 1949*.

Clause 82 amends the definition of the *transport Act* in section 44P of the *Traffic Act 1949* to refer to the *Motor Accident Insurance Act 1944*. This will enable offences under the *Motor Accident Insurance Act 1944* detected by photographic detection devices to be effectively dealt with. These offences are intrinsically linked to other offences which are detected by these means and may be dealt with accordingly.

Part 23—Amendment of *Transport Infrastructure Act 1994*

Clause 83 provides for the amendment of the *Transport Infrastructure Act 1994*.

Clause 84 to 89 inclusive extends the expiry date by 12 or 24 months (as the case may be) of certain savings and transitional provisions in the *Transport Infrastructure Act 1994* relating to ports.

Part 24—Amendment of *Transport Operations (Passenger Transport) Act 1994*

Clause 90 provides for the amendment of the *Transport Operations (Passenger Transport) Act 1994*.

Clause 91 makes technical amendments to Schedule 1 of the statute.

Part 25—Amendment of *Transport Operations (Road Use Management) Act 1995*

Clause 92 provides for the amendment of the *Transport Operations (Road Use Management) Act 1995*.

Clause 93 extends the expiry date by 12 months of those Acts mentioned in Schedule 2 of that Act.

Part 26—Amendment of *Vexatious Litigants Act 1981*

Clause 94 provides for the amendment of the *Vexatious Litigants Act 1981*.

Clause 95—100 inclusive insert provisions requiring that any application for leave to issue proceedings be done on the papers; would require the Registrar of the Supreme Court to notify relevant parties allowing them the opportunity to respond in writing and upon receipt of all documentation the matter would be referred to a Supreme Court judge for a decision based upon the submitted material. This decision would not be subject to appeal. Overall these provisions will strengthen the underlying policy of the statute.

Part 27—Amendment of *Workcover Queensland Act 1996*

Clause 101 provides for the amendment of *Workcover Queensland Act 1996*.

Clause 102 clarifies the application of the statute to children who preform unpaid work under programmes arranged under the *Juvenile Justice Act 1992*.

Schedule 1

Clause 3 of this Bill provides for minor amendments to the *Criminal Law Amendment Act 1997* which are set out in the attached Schedule.

Schedule 2

Clause 4 of the Bill refers to these declaratory provisions.