

JUSTICE LEGISLATION (MISCELLANEOUS PROVISIONS) BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The proposed Bill contains minor or technical amendments to a number of statutes directed at curing anomalies, correcting minor errors, repealing obsolete provisions and generally tidying up the Department of Justice and Attorney-General's list of statutes.

Reasons for the objectives and how they will be achieved

The Department of Justice and Attorney-General is responsible for the administration of over 90 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:

- They relate to statutes administered by the Honourable the Attorney-General and Minister for Justice and Minister for The Arts;
- They have the purpose of increasing operational efficiency within the Department of Justice and Attorney-General;

- They do not modify the major underlying philosophy or direction of the statutes that are being amended.

Administrative cost to Government of implementation

The amendments will result in some increased efficiencies and savings in the Department of Justice and Attorney-General.

Fundamental legislative principles

Section 4(3)(e) of the *Legislative Standards Act 1992* provides for a legislative mechanism to determine whether legislation has sufficient regard to the rights and liberties of individuals and that one such criterion is whether the legislation does not adversely affect the rights and liberties, or impose obligations, retrospectively.

Retrospective laws are passed to validate past actions, correct defects in legislation or confer benefits retrospectively. Such laws are not permitted if they will adversely affect the rights and liberties of citizens, but are permissible if their purpose is to correct unintended consequences of legislation.

The Bill proposes to provide that Legal Aid Queensland is an exempt public authority for the purposes of the *Corporations Law*. The new provision is taken to have commenced on 1 July 1997. This provision does not adversely affect the rights and liberties of citizens.

Consultation

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

- Director of Public Prosecutions
- Queensland Police Service
- Queensland Treasury
- Queensland Association of Permanent Building Societies
- The Chief Stipendiary Magistrate

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 and Attorney-General has administrative responsibility.

Part 1—Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 states that the schedule amends the Acts mentioned in it.

Part 2—Amendment of Bail Act 1980

Clause 3 provides for the amendment of the *Bail Act 1980*

Clause 4 amends section 10(1) by including the words “or in connection with a criminal proceeding” to the expression “held in custody on a charge of an offence”. The purpose of the amendment is to make section 10(1) consistent with section 8(1) and ensure that section 10(1) will apply to applications for bail pending an appeal to the District Court pursuant to section 222 of the *Justices Act 1886*.

Clause 5 inserts four new provisions concerned with the Review of Certain Bail Decisions. The purpose of the first provision, which inserts the proposed section 19B, is to allow both the Crown and the accused to apply

to a reviewing court for a review of a bail decision. In the case of a review sought by the Crown, the Crown must take reasonable steps to ensure that the defendant is informed of the time and place for the hearing of the application. The reviewing court can be given additional or substitute evidence or information. This Review mechanism does not apply to decisions made by the Supreme Court, or a decision about bail made under section 10(2) or a decision by a magistrate acting as a reviewing court. This provision does not limit a person's right to make successive bail applications or to make an application for bail pursuant to section 19 (Application re refusal or conditions of bail). It does not limit the Crown's right to apply to a Court to revoke bail granted to a person.

In the second provision, a new section 19C, allows the defendant or the Crown to seek a further review by the Supreme Court after a magistrate has reviewed a bail decision. Such a review may only occur with the leave of the Supreme Court.

The third provision inserts a new section 19D, which ensures that a reviewing court has the power to issue a warrant to apprehend a defendant.

The final provision, a new section 19E states that the preceding new provisions [new sections 19B to 19D] do not affect the power of the Supreme Court under section 10 or any other power of a court to grant, enlarge, vary or revoke bail under other provisions of this or any other Act.

Part 3—Amendment of Crimes (Confiscation) Act 1989

Clause 6 provides for the amendment of the *Crimes (Confiscation) Act 1989*.

Clause 7 amends section 13 by inserting new subsections regarding the definition of "tainted property" to include the tainted property mentioned in sections 90 and 92 in relation to which the offence is committed or intended to be committed. Under the current section, if a person is convicted of an offence against section 92 of being in possession of property reasonably suspected of being tainted property the Court of Appeal has held that the property is not actual tainted property and cannot be forfeited because its possession was an element of the offence. Another odd effect of the decisions is that the property must be returned to the convicted person who

is then at risk of being charged again with a new offence. This amendment ‘over-rules’ those decisions.

Clause 8 amends section 40 to ensure that it is the only section in the Act under which provision may be made for meeting out of property that is the subject of a restraining order expenses mentioned in subsection 18(b)—legal expenses.

Clause 9 amends subsection 43(8) in a technical manner so as to give priority to subsection 40(18); to avoid any conflict between sections 40 and 43; and to ensure that property cannot be released for legal expenses under any application unless the conditions in subsection 40(19) are satisfied.

Clause 10 corrects a technical error in section 90(2)(a).

Part 4—Amendment of Financial Transaction Reports Act 1992

Clause 11 provides for the amendment of the *Financial Transaction Reports Act 1992*.

Clause 12 amends subsection 6(1) allowing the Queensland Crime Commission (QCC) or an authorised QCC officer carrying out an investigation arising from, or relating to the matters referred to in, information relating to the reports of suspected transactions to receive further information so as to enable the QCC to adequately discharge its functions.

Part 5—Amendment of Judges (Pensions and Long Leave) Act 1957

Clause 13 provides for the amendment of the *Judges (Pensions and Long Leave) Act 1957*.

Clause 14 makes it clear that section 2C (Minimum benefit payable) of the *Judges (Pensions and Long Leave) Act 1957* does not apply to an acting Supreme Court or District Court judge.

Part 6—Amendment of Justices Act 1886

Clause 15 provides for the amendment of the *Justices Act 1886*.

Clause 16 amends section 39 to enable investigative officers within relevant departments [such as the Office of Fair Trading] to make, in appropriate circumstances, applications under section 39 which empowers the court to order delivery of certain property.

Clause 17 inserts a new provision to enable an amount of a charge to be prescribed under a regulation for the issue of certain warrants. The effect of this amendment is that the amount recoverable under a warrant of execution or a warrant that authorises a person's imprisonment issued under the *Justices Act 1886* or another Act for the non-payment of a penalty is increased by the amount of the charge. It enables warrants that are not issued under section 98S of the Act, under the Self-Enforcing Ticketable Offence Notice System, to be treated in the same manner as warrants issued under that system. Section 98S(3) enables an execution fee to be added to the amount owing for an offence under Part 4A of the Act.

Part 7—Amendment of Property Law Act 1974

Clause 18 provides for the amendment of the *Property Law Act 1974*.

Clause 19 amends subsection 61(2)(a) by making a technical amendment so as to require that a cheque used in the settlement of the sale of land may be “a financial institution cheque drawn on itself or a bank”. This amendment follows the same policy underlying the enactment of the *Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997*. Moreover, the term “financial institution” is defined in section 36 of the *Acts Interpretation Act 1954* to include amongst other things banks, building societies and credit unions.

SCHEDULE

MINOR AMENDMENTS

This schedule makes discrete technical amendments to the *Criminal Code*, *Criminal Investigation (Extra-Territorial Offences) Act 1985*, *Evidence Act 1977*, *Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997*, *Legal Aid Queensland Act 1997*, *Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997* and *Stipendiary Magistrates Act 1991*

A definition of “summary offence” is inserted in Section 651 of the *Criminal Code* to give effect to the purpose of Sections 651 and 652 so that jurisdiction is given to the District Court for proceedings under those sections in relation to summary drug offences and for indictable drug offences which can be dealt with summarily.

The appropriate reference to the “commissioner of the police service” is made in section 2 of the definition of the term, “appropriate authority” under the *Criminal Investigation (Extra-Territorial Offences) Act 1985*.

A minor technical amendment is made to the heading of section 107 of the *Evidence Act 1977*.

Section 61 of the *Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997* has been omitted as the proposed scale of costs, yet to promulgated under the *Justices Act 1886*, will not necessitate taxation of costs by the clerk of the court. There is also a minor amendment to renumber a provision.

Minor technical amendments are made to various provisions in the *Legal Aid Queensland Act 1997* for the purpose of clarifying the corporate status of the body corporate.

As a result of the amendment to section 61(2)(a) of the *Property Law Act 1974*, it is necessary to omit section 24 of the *Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997*.

A minor technical drafting amendment is made to subsection 18(3) of the *Stipendiary Magistrates Act 1991*.