

SUPREME COURT OF QUEENSLAND ACT AND ANOTHER ACT AMENDMENT BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The proposed Bill contains technical amendments to two statutes which are directed at curing an unintended transitional consequence and extending the expiry date for all rules of court.

Reasons for the objectives and how they will be achieved

The proposed Bill contains a transitional provision to deal with one of the consequences of the 1996 amendments which amended the *Cremation Act 1913*, transferred the relevant provisions of the *Cremation Act 1913* to the *Coroners Act 1958*, and then repealed the *Cremations Act 1913* and which will commence on 1 December 1998.

It is an offence to cremate a body without a Permission and Certificate to Cremate. As from 1 December 1998 the pre-conditions for issuing a Permission and Certificate to Cremate will change. However the 1996 amendments did not contain transitional provisions to deal with the situation where an Application for Permission and Certificate to Cremate is made prior to that date but the actual cremation occurs on or after that date. If this situation is not addressed there will be confusion in the funeral industry.

The Bill does contain a provision to extend the expiry date for all civil and criminal rules of court—31 December 1998. The *Civil Justice Reform Act 1998* established a Rules Committee to settle, among other matters, uniform civil court rules. The Act also provided that the existing civil rules of court, including the Supreme Court Rules, will expire on 31 December 1998. The Rules Committee has advised that the uniform civil court rules

will not be ready for approval until at least March 1999. Accordingly, it is proposed to extend the expiry date from 31 December 1998 to 30 June 1999. If the abovementioned expiry date is not deleted and implemented by 31 December 1998, there will be no rules of court from 1 January 1999.

Administrative cost to Government of implementation

There will be no administrative costs to Government arising from the implementation of this Bill.

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.

Parts 3, 5 and 33 of the *Justice Legislation (Miscellaneous Provisions) Act 1996* amended the *Cremation Act 1913*, transferred the relevant provisions of the *Cremation Act 1913* into the *Coroners Act 1958* and then repealed the *Cremation Act 1913*. The amendments are due to commence on 1 December 1998. It is an offence to cremate a body without a Permission and Certificate to Cremate. As from 1 December 1998 the pre-conditions for issuing a Permission and Certificate to Cremate will change. However the 1996 amendments did not contain transitional provisions to deal with the situation where a person dies before 1 December 1998 but the actual cremation occurs on or after that date. If this situation is not addressed there will be confusion in the funeral industry. Part 2 of the Bill addresses this clearly unintended transitional consequence. The retrospective provision therefore does not adversely affect the rights and liberties of citizens.

The Bill does contain a provision to extend the expiry date for all civil rules of court from 31 December 1998 to 30 June 1999. As advised by the Chief Justice, this will enable the Rules Committee to complete its task of developing uniform civil court rules.

Consultation

The representative associations of the funeral industry have been advised of the proposed amendment to the *Coroners Act 1958*.

Part 3 of the Bill provides for the extension of the expiry date for all rules of court from 31 December 1998 to 30 June 1999 and has been inserted at the request of the Chief Justice of the Queensland Supreme Court, Chairperson of the Rules Committee.

NOTES ON PROVISIONS

The Act is divided into three Parts. Parts 2 and 3 contain amending provisions to statutes for which the Department of Justice and Attorney-General has administrative responsibility.

Part 1—Preliminary

Short Title

Clause 1 sets out the short title of the Act.

Part 2—Amendment of Coroners Act 1958

Clause 2 provides for the amendment of the *Coroners Act 1958*.

Clause 3 inserts a new provision (proposed section 62) into the *Coroners Act 1958* to deal with a transitional issue not dealt with in the *Justice Legislation (Miscellaneous Provisions) Act 1996* which made

amendments to the legislation governing cremations (the *Cremation Act 1913*), transferred those provisions into the *Coroners Act 1958*, and then repealed the *Cremation Act 1913*. These amendments are due to commence on 1 December 1998. The transitional issue that was not addressed is what procedures are to be followed if a person dies before 1 December 1998 but the cremation occurs on or after that date.

Proposed sections 62(1) and section 62(2) provide that if a person dies prior to 1 December 1998 then a permission and certificate to cremate can be issued under the previous provisions governing cremations as if the *Justice Legislation (Miscellaneous Provisions) Act 1996* had not been enacted.

Proposed section 62(3) provides that this transitional declaration does not prevent the giving of a permission and certificate to cremate in accordance with the provisions scheduled to commence on 1 December 1998.

Proposed section 62(4) provides that the section expires on 31 March 1999.

Part 3—Amendment of Supreme Court of Queensland Act 1991

Clause 4 provides for the amendment of the *Supreme Court of Queensland Act 1991*.

Clause 5 extends the intended expiry date of certain listed rules under Section 118B of the *Supreme Court of Queensland Act 1991*.