

# **JUSTICE LEGISLATION (MISCELLANEOUS PROVISIONS) BILL (No. 2) 1999**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The purpose of the Bill is to amend various items of legislation administered by the Department of Justice and Attorney-General. Some of the more important Acts amended include the Criminal Code, *Bail Act 1980*, *District Court Act 1967*, *Penalties and Sentences Act 1992*, *Supreme Court of Queensland Act 1991* and the *Stipendiary Magistrates Act 1991*.

#### **Reasons for the objectives and how they will be achieved**

The Department of Justice and Attorney-General is responsible for the administration of a large number of statutes. From time to time, particular departmental statutes require amendment to ensure that the statutes continue to operate in the manner intended.

This departmental miscellaneous provisions Bill has been prepared so that necessary amendment 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.

The main objectives of the Bill are:

- to amend the *Criminal Code* to clarify the jurisdiction of Magistrates Court to hear and determine a charge under s.339(1) (assault occasioning bodily harm)
- to amend the *District Courts Act 1967* to remove jurisdiction from the Supreme Court to the District Court to deal with riot

related offences for which the maximum penalty is life imprisonment and other offences relating to

- Carrying or sending dangerous goods in a vehicle (s.317A);
- Obstructing rescue or escape from unsafe premises (s.318);
- Intentionally endangering safety or persons travelling by railway (s.319);
- Endangering safety of persons travelling by aircraft (319A).
- to amend the penalty for the offence of abduction of a child under 16 in section 363A of the *Criminal Code* from 2 to 7 years
- to amend s 364 (Cruelty to children under 16) of the *Criminal Code* by raising the penalty imposed under this section from 5 years to 7 years
- to amend the *Criminal Code* to implement the recommendations of the Members Ethics and Parliamentary Privileges Committee Report No. 28 titled, “*Report on a matter of privilege-Matter referred to the committee on 21 April 1998*” dated 25 March 1999. The amendments to s.56A (Disturbance in House when Parliament not sitting) and 56B (Going armed to Parliament House) rectify anomalies between the penalty provisions of sections 56 (Disturbing the Legislature), 56A and 56B
- to make minor amendments to the *Bail Act 1980*
- to amend the *Criminal Code* to enable higher courts to remit back to a Magistrates Court, summary matters transferred to the higher court where the higher court has already dealt with the matter before it on indictment
- to amend the *District Court Act 1967*, *Supreme Court of Queensland Act 1991* and the *Stipendiary Magistrates Act 1991* to provide protection and immunity to judges and magistrates in the performance or exercise of an administrative function or power conferred upon them under an Act.
- to amend the *Supreme Court of Queensland Act 1991*, *District Court Act 1967* and *Magistrates Courts Act 1921* to facilitate the Uniform Civil Procedure Rules which will commence on 1 July 1999

- to amend section 13A of the *Penalties and Sentences Act* 1992 to clarify how and when a person's undertaking of cooperation under section 13A is to be tendered to the Judge and to provide the court with a power to restrict publication of the fact that a sentence is being reduced under this section.

These are practical amendments that will, among other things, clarify the position on some ambiguous provisions, justifiably increase the penalties for some criminal offences, and transfer jurisdiction to deal with some offences to the District Court. The jurisdictional change will allow a less expensive means of disposing of those matters, at the same time reducing the burden on the Supreme Court to enable it to deal with the more important criminal cases. The result will be to achieve greater efficiency and effectiveness in our courts in the disposition of certain criminal matters.

### **Administrative cost to Government of implementation**

There are no increases in administrative costs. Indeed, the amendments may reduce the cost of conducting legal proceedings associated with the amendments.

### **Fundamental legislative principles**

The proposed amendment to section 13A of the *Penalties and Sentences Act* will curtail the liberty of the press to publish details of access to section 13A. In this sense, it could be said that the amendment affects "rights". However, in giving "sufficient regard" to fundamental legislative principles, it is sometimes necessary to balance conflicting rights. The right of the press to publish such details must be balanced with the right of a person to cooperate with law enforcement authorities without fearing the threat of violence or intimidation. On balance, the amendment is sensible, justifiable and in the public interest.

If amendments to the *Supreme Court of Queensland Act* 1991 to facilitate the Uniform Civil Procedure Rules are not passed by 1 July 1999 there will be an element of retrospectivity. Clauses 33, 34, 37 to 41, and 46 to 48 are expressed to commence on 1 July 1999. The amendments are necessary to clarify the power of the Rules Committee to make rules regarding the enforcement of non-money orders (a term defined in this Bill) and to ensure consistency between the Act and the Uniform Civil Procedure

Rules. The commencement of these amendments from 1 July 1999 will remove any doubt in relation to these issues from the commencement of the Uniform Civil Procedure Rules. These amendments are essentially declaratory, and will not adversely affect rights and liberties, or impose obligations, retrospectively

### **Consultation**

The following persons and organisations were consulted:

Director, Legal Aid Queensland  
President, Queensland Council for Civil Liberties  
Chief Judge of District Courts  
Queensland Police Service  
Chief Stipendiary Magistrate  
President, Bar Association of Queensland  
President, Queensland Law Society  
Program Director, Juvenile Justice Branch, Department of Families,  
Youth and Community Care  
Director of Public Prosecutions  
Deputy Director of Public Prosecutions  
Chief Justice of Queensland  
Registrar, Supreme Court  
Sheriff, Supreme Court  
Senior Judge Administrator, Supreme Court  
President, Court of Appeal  
Principal Adviser, Policy Co-ordination, Queensland Corrective  
Services Commission  
Rules Committee

## NOTES ON PROVISIONS

### Short Title

*Clause 1* sets out the short title of the Act.

*Clause 2* is the commencement provision which provides that sections 33, 34, 37 to 41 and 46 to 48 commence on 1 July 1999 immediately after the commencement of the *Civil Justice Reform Act 1998*. The remaining provisions of the Act commence on a day to be fixed by proclamation.

*Clause 3* provides that part 2 amends the *Bail Act 1980*.

*Clause 4* amends section 17 by inserting a new subsection (7). The practice in the higher courts is that, at the end of each sittings, an endorsement is made on each indictment where matters are stood over to the next sittings (and so on from sittings to sittings until the matter is finally disposed of). This ties up officers from the registry and from the Office of the Director of Public Prosecutions for some days. The proposed amendment will both clarify, and continue the utility of, section 17 of the *Bail Act* but enable the discontinuance of the this time-consuming and unnecessary practice.

*Clause 5* amends section 28A to address the situation where a defendant is granted bail by the Supreme Court, but the next court appearance is in the Magistrates Court. Where the bail requires the defendant to appear in the Magistrates Court, if the defendant does not appear, the Magistrate can forfeit the bail undertaking under s.31 and also issue a warrant under s.28A for the apprehension of the defendant without the necessity to go back to the Supreme Court for an order to issue a warrant.

*Clause 6* provides that part 3 amends the Criminal Code.

*Clause 7* increases the penalty for an offence under s 56A (Disturbance in House when Parliament not sitting) from \$100 to 100 penalty units and the term of imprisonment from 6 calendar months to 2 years.

*Clause 8* increases the penalty for an offence against s 56B (Going armed to Parliament House) from \$100 to 100 penalty units and the term of imprisonment from 6 calendar months to 2 years.

*Clause 9* makes the offence under s 363A (Abduction of child under 16) a crime instead of a misdemeanour and increases the penalty from 2 years to 7 years.

*Clause 10* increases the penalty for the offence under s 364 (Cruelty to children under 16) from 5 years to 7 years.

*Clause 11* amends s 552B (Charges of indictable offences that may be dealt with summarily). *The Criminal Law Amendment Act 1997* amended the *Criminal Code* by inserting a new Chapter 58A (Indictable offences dealt with summarily). Chapter 58A consolidated various provisions located throughout the Code dealing with the summary determination of indictable offences. Chapter 58A was not intended to substantially change the jurisdiction of Magistrates Courts with the exception of increasing the maximum penalty that could be imposed by a stipendiary magistrate from 2 years to 3 years (s 552H).

Section 552B of Chapter 58A lists those indictable offences that may be dealt with summarily at the election of the defendant. Subsection 552B(1)(i) states that a Magistrates Court has jurisdiction over an offence involving an assault if the assault is:

- without a circumstance of aggravation,
- not of a sexual nature,
- not an assault mentioned in section 552A (Charges of indictable offences that must be dealt with summarily on prosecution election), and
- the maximum penalty for the offence is not more than 7 years.

An unintended consequence of this new provision is that it has caused ambiguity regarding the jurisdiction of magistrates to deal with an offence under section 339(1) of the Criminal Code (Assault occasioning bodily harm). Prior to the amendment Magistrates Courts had jurisdiction (subject to certain statutorily defined limitations) to deal with this offence.

The ambiguity stems from the issue of whether an assault occasioning bodily harm constitutes an assault with a circumstance of aggravation. This has resulted in a significant number of magistrates declining to deal with the offence thereby necessitating hearing in the District Court. As a consequence, there have been increased costs to the criminal justice system (due to the need for a committal hearing and determination by the District

Court) and unnecessary delay in the finalisation of criminal matters.

The amendment removes the ambiguity and makes it plain that a Magistrates Court can deal with these offences.

*Clause 12* makes a heading change to section 651 to ‘court neutralise’ the section and a consequential amendment to subsection 651(1). The clause also omits subsection 651(6) and makes a renumbering change. This amendment is consequential on the insertion of new section 653.

*Clause 13* amends section 652 which is consequential on the amendment to section 651 to ‘court neutralise’ the section.

*Clause 14* inserts new s 653 (Remission of proceedings to court exercising summary jurisdiction.) Under existing ss.651-652 of the *Criminal Code*, where an indictment has been presented against a person in either the Supreme or District Court, and summary matters are pending in a Magistrates Court, the summary matters can be transferred to a Supreme or District Court where the person wants to plead guilty to the summary offences.

However, if the matter on indictment has already been dealt with by the higher court, or the higher court decides that the transferred matters are not appropriate to be dealt with by the higher court, there is no express power for the higher court to remit the summary matters back to the Magistrates Court to be dealt with according to law.

The amendment ensures that the power exists for a higher court to remit a summary matter back to a court exercising summary jurisdiction to be dealt with according to law.

*Clause 15* amends section 668D (Right of appeal) to ‘court neutralise’ the section which is consistent with the approach generally taken in the *Criminal Code*.

*Clause 16* inserts new chapter 73 – TRANSITIONAL PROVISION FOR JUSTICE LEGISLATION (MISCELLANEOUS PROVISIONS) ACT (No. 2) 1999. This is a transitional provision relating to matters referred to in *Clause 11* where the defendant has already been committed for trial or sentence in the District Court. The transitional provision enables a judge of District Courts to send the matters back to a Magistrates Court to be dealt with according to law if the judge considers that they are matters to be dealt with appropriately by the Magistrates Court.

*Clause 17* provides that part 4 amends the *District Court Act 1967*.

*Clause 18* inserts a new s 28AA granting protection and immunity to a judge of District Courts following concern that was expressed by judges about the potential personal liability of judges who authorise the use of surveillance and listening devices and perform or exercise other administrative functions or powers conferred on them under an Act. In the absence of any specific legislative provisions, judges are exposed to potential personal liability. Federal judges exercising these functions and powers are granted immunity in like situations. Accordingly, the amendment provides the same protection and immunity to judges in the performance or exercise of administrative functions as they have in judicial proceedings in their courts.

*Clause 19* amends s 61 to transfer jurisdiction from the Supreme Court to the District Court for the following offences:

- Unlawful assembly, riot and mutiny (section 92(3)(b) of the *Corrective Services Act 1988*);
- Rioters remaining after proclamation ordering them to disperse (section 64 of the Criminal Code);
- Rioters demolishing buildings, etc (section 65 of the Criminal Code);
- Carrying or sending dangerous goods in a vehicle (section 317A of the Criminal Code);
- Obstructing rescue or escape from unsafe premises (section 318 of the Criminal Code);
- Intentionally endangering safety or persons travelling by railway (section 319 of the Criminal Code);
- Endangering safety of persons travelling by aircraft (section 319A of the Criminal Code).

*Clause 20* amends s 77 of the Act in relation to costs in proceedings commenced in the Supreme Court that could have been brought in a District Court. Where a proceeding is remitted to the District Court, costs incurred before the order will only be assessed as if proceedings had been commenced in the Supreme Court if the Court orders. In the absence of a specific order costs must be assessed on the basis that proceedings were



started in the District Court.

*Clause 21* amends s 78 of the Act. It has the same effect as the amendment to s 77 for proceedings remitted from a District Court to a Magistrates Court.

*Clause 22* amends s 97 of the Act to extend the circumstances in which a court can make an order referring parties to an ADR process. The various courts' Acts presently enable referral to ADR by consent or when the court requires the parties to attend for the purpose of an order being made.

*Clause 23* replaces s 129 of the *District Court Act*. The present provision is limited to contempt in the face of the court. This provision confirms that judges of the District Court can also punish for other contempts, such as failure to comply with an order of the court and failure to comply with an undertaking to the court. District Court judges are conferred the same power as a Supreme Court judge to punish for the contempts referred to in ss129(1).

*Clause 24* provides that part 5 amends the *Magistrates Courts Act 1921*.

*Clause 25* amends section 29 of the Act to extend the circumstances in which a court can make an order referring parties to an ADR process.

*Clause 26* amends s 45A to omit the words "order made" from the section. The effect of the amendment is that the section will simply refer to a "judgment in a proceeding for a minor debt". This is consistent with the omission of s 131 of the *Supreme Court of Queensland Act* by clause 45. The use of the term "judgment order" is not being incorporated in the Uniform Civil Procedure Rules, as envisaged when the *Civil Justice Reform Act 1998* was passed. It is necessary for consistent terminology to be used in courts' legislation.

*Clause 27* amends s 50 of the Act in a manner consistent with the new s 129 of the *District Court Act*. It makes it clear that a person can be punished for contempts in addition to contempt in the face of the court, such as failing to comply with an order of the court. A maximum penalty of 3 years imprisonment is provided for contempt that is not in the face of the court.

*Clause 28* amends s 52 of the Act, consistent with the amendment contained in clause 26.

*Clause 29* provides that part 6 amends the *Penalties and Sentences Act 1992*.

*Clause 30* recasts section 13A (Cooperation with law enforcement authorities to be taken into account) to clarify how and when a person's undertaking of cooperation with law enforcement authorities is to be tendered to the Judge, and provides the court with a power to restrict any publication of the fact that a sentence is being reduced under this section. Power is also given to prohibit the publication of the name and address of any witness to the proceeding. The purpose of the amendment is to rectify a substantial problem in the operation of the current section. The provision is intended to facilitate recognition of assistance to the authorities through reduced sentences, however, in its current operation, tends to highlight that circumstance which raises concerns about the safety of the person being sentenced.

*Clause 31* provides that part 7 amends the *Stipendiary Magistrates Act 1991*.

*Clause 32* inserts a new s 21A, consistent with the amendment contained in clause 18.

*Clause 33* provides that part 8 amends the *Supreme Court of Queensland Act 1991*.

*Clause 34* amends the title of the Act. The *Civil Justice Reform Act 1998* amended the title of the Act to provide that the Act related to certain matters, including "enforcement of money orders." No provision was made in the *Civil Justice Reform Act* for the enforcement of other types of orders, for example, orders for the recovery of possession of land. This amendment clarifies that the Act provides for the enforcement of orders generally.

*Clause 35* inserts a new s 27A consistent with the amendment contained in clause 18.

*Clause 36* amends s 75 of the Act. This amendment is consistent with the change in terminology referred to in the explanation for clause 26.

*Clause 37* amends s 83 so that the section will now refer to "an order" instead of "a judgment order".

*Clause 38* replaces s 84, consistent with the amendment contained in clause 26.

*Clause 39* amends s 86 by replacing references to “an enforcement debtor” with references to “a person”. This extends the scope of the section to orders other than a money order.

Clause 40 amends section 93A to clarify that enforcement warrants can be obtained to enforce orders apart from money orders.

The reference in s 93A(2)(a) to “property exempted under the Uniform Civil Procedure Rules” is replaced by a reference to “exempt property”, which is defined in the dictionary.

The types of orders that can be included in an enforcement warrant are extended to include warrants authorising the delivery of possession of land, and the seizure and detention of property.

A new section 93(3) is inserted to enable enforcement warrants to include orders directed at enforcing orders that include both a money and non-money component, for example, an order for the recovery of possession of land and an amount for damages.

*Clause 41* replaces section 93B (1). The new s 93B(1) limits the scope of the section to the enforcement of money orders.

*Clause 42* inserts new subdivisions 4 into Division 5 of Part 7 of the Act. This subdivision contains provisions dealing with the power of the court to enforce compliance with subpoenas or orders to attend to give evidence and to produce documents, and to arrest absconding defendants.

New s 93I enables a court to issue a warrant for the arrest of an individual who fails to comply with a subpoena or order of the court requiring their attendance, and their detention until released by the court.

New s 93J enables a court to issue a warrant for the arrest of an officer of a corporation where a corporation fails to comply with a subpoena and their detention until released by the court.

New s 93K provides that failure to comply with a subpoena is contempt of court. A person who fails to comply with a subpoena may be punished for contempt of court.

New s 93L enables a warrant to be obtained from a justice of the Supreme Court where it is established that a defendant to a claim has absconded, or is about to abscond, and the absence of the defendant would materially prejudice the plaintiff in prosecuting the proceedings or enforcing

a judgment against the defendant. Provisions enabling the arrest of absconding defendants by way of writ of *capias ad respondendum* have been contained in Part 5, Divisions 12 and 13 of the *Supreme Court Act 1995* and Order 78 of the Rules of the Supreme Court. The writ of *capias ad respondendum* is abolished by s 129 of the *Supreme Court of Queensland Act 1991*. As provisions for the arrest of absconding defendants are being continued in the Uniform Civil Procedure Rules, it is appropriate that authority for the exercise of this power is included in the *Supreme Court of Queensland Act*.

*Clause 43* renumbers section 93I and 93J, as inserted by the *Civil Justice Reform Act 1998*.

*Clause 44* provides that a registrar of the Supreme, District, or Magistrates Courts may delegate the registrar's powers to an appropriately qualified employee in the court registry who is a public service officer.

*Clause 45* is identical to the amendment in clause 25.

*Clause 46* omits s 131 of the Act. This section is unnecessary. As noted under clause 26 above, the term "judgment" is being retained in the Uniform Civil Procedure Rules.

*Clause 47* amends schedule 1 of the Act. Section 20 is amended to clarify that rules of court can be made about the enforcement of orders other than money orders. The *Civil Justice Reform Act 1998* limited the subject matter for rules about enforcement to the enforcement of money orders.

*Clause 48* amends the dictionary to provide for definitions of "exempt property", "money order" and "non-money order" that are consistent with the definitions developed by the Rules Committee for the Uniform Civil Procedure Rules.

The definition of "enforcement warrant" is amended so that it extends to non-money orders.

The definition of "registrar" is extended to the Magistrates Courts.

The Schedule makes a number of minor grammatical amendments to the Criminal Code and rectifies the insertion of incorrect headings.