

JUSTICE LEGISLATION (MISCELLANEOUS PROVISIONS) BILL (No. 3) 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The purpose of the Bill is to amend legislation administered by the Department of Justice and Attorney-General namely, the *Bail Act 1980*, *Justices Act 1886* and the *Penalties and Sentences Act 1992*.

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 *Bail Act 1980*:
 - to enable a warrant of apprehension to be issued where a person leave the precincts of the court without entering into the required undertaking or signing the necessary undertaking documents;

- to clarify the bail obligations where summary matters have been transmitted to a higher court to be dealt with or, where having been transmitted to a higher court, it decides that the matters should be returned to the court of summary jurisdiction to be dealt with;
- to amend the *Justices Act 1886*:
 - to remove the requirement for specified forms to be signed;
 - to clarify the position regarding part payments so that compensation, restitution and damages payable to a victim are discharged first;
- to amend the *Penalties and Sentences Act 1992*:
 - to amend the definition of “proper officer”;
 - to clarify the position where part payments are accepted after a warrant has been issued but not executed.

These are practical amendments that will simplify current requirements of the legislation and, where relevant, will enable the performance of the requirements electronically instead of by production of hard copy documentation.

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 amendments do not contravene any fundamental legislative principles.

Consultation

The following persons and organisations were consulted:

Chief Justice of Queensland

Chief Judge of District Courts

Chief Stipendiary Magistrate

Director, Legal Aid Queensland

Queensland Police Service

President, Bar Association of Queensland

President, Queensland Law Society

Department of Families, Youth and Community Care

Queensland Transport

Department of Corrective Services

NOTES ON PROVISIONS

Short Title

Clause 1 sets out the short title of the Act.

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

Clause 3 inserts a definition of “precincts”.

Clause 4 inserts new section 27A. The new section enables the issue of a warrant of apprehension of a defendant who leaves the precincts of the court without entering into the required undertaking or signing the necessary undertaking documents.

Clause 5 amends section 28A which enables the issue of a warrant of apprehension of a defendant by a Magistrates Court or Childrens Court to include continuation of bail under the new sections 34A and 34B referred to in clause 7.

Clause 6 enables a police officer to apprehend without warrant, a defendant who has been granted bail but leaves the precincts of the court without entering into the required undertaking or signing the necessary undertaking documents.

Clause 7 inserts new sections 34A and 34B.

Section 651 of the *Criminal Code* enables summary matters to be transmitted to a Supreme or District Court (the “receiving court”) to be dealt with. Where matters are transmitted and the person is already on bail to appear on those charges, currently the person is still under an obligation to appear before the court of summary jurisdiction. The new section 34A addresses the bail provisions in those circumstances so that an obligation to appear before the court of summary jurisdiction becomes an obligation to appear before the “receiving court”.

However, where the receiving court decides for any of the reasons mentioned in s.653(2) of the *Criminal Code* that the summary matters should be decided by the court exercising summary jurisdiction and the receiving court sends them back, the obligation to appear under the original bail undertaking again becomes an obligation to appear before the court of summary jurisdiction.

The provisions have been drafted in this manner so that the bail obligations continue under the original undertaking and obviate the necessity for the court to order, and the defendant to enter into, fresh undertaking. In other words, the original bail undertaking is “rolled over”: the date and the court before which the defendant is required to appear change. A defendant will always be legally represented when this occurs

Clause 8 provides that part 3 amends the *Justices Act 1886*.

Clause 9 amends section 150 to discontinue the requirement for a clerk of the court to sign the written notice of the conviction or order sent by post to the person convicted or against whom the order.

Clause 10 replaces the existing section 175A and inserts a new section 175B.

Section 175A establishes a priority for the allocation of part payments. This amendment elevates compensation, restitution and damages above all other categories. Section 175B provides for the order of satisfaction if amounts are payable under more than 1 decision. It reflects the provisions of ss.112-113 of the *State Penalties Enforcement Bill 1999*. This provision will provide the greatest opportunity for victims of crime to be recompensed before a part payment is allocated against costs, fine or other category.

Clause 11 provides that part 4 amends the *Penalties and Sentences Act 1992*.

Clause 12 amends the definition of “proper officer”. The amendment will allow any proper officer for the relevant jurisdiction to make an appropriate order regardless of where the application is made. For example, where a person makes an application for a fine option order etc. to a proper officer at a place other than the place where the original order was made, the proper officer to whom the application is made can deal with the application in respect of any order(s) made at another place(s).

Clause 13 does away with the requirement for the certificate given by the Department of Corrective Services to be signed to enable certificates to be given electronically.

Clause 14 inserts a new section 185C. This section gives a clear power to a proper officer to recall a warrant and issue a new warrant on part payment of a penalty. The Courts Modernisation Project will enable the automation of this process. The Bill also gives a clear power to a proper officer to recall a warrant and issue a new warrant on part payment of a penalty. The Courts Modernisation Project will enable the automation of this process and it will reduce the incidence of failure to recall warrants where full or part payment has been made.