

# **JUSTICE AND OTHER LEGISLATION (MISCELLANEOUS PROVISIONS) BILL 2000**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

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

The Attorney-General is responsible for the administration of over 100 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, an annual 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 that 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.

The amendments have several elements in common:

1. They generally relate to statutes administered by the Attorney-General and Minister for Justice;
2. They have the purpose of increasing operational efficiency;
3. They do not modify the major underlying philosophy or direction of the statutes that are being amended.

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

This Bill makes technical amendments to various statutes which come under the responsibility of the Attorney-General and Minister for Justice and Minister for The Arts and the Premier.

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

This Bill will not result in any costs to government.

### **Fundamental legislative principles**

There are no breaches of fundamental legislative principles.

### **Consultation**

The following persons and organisations have been consulted in respect of particular amendments:

STATUTE NAME	PERSONS/ORGANISATIONS
<i>Evidence Act 1977;</i> <i>Judges (Pensions and Long Leave) Act 1957;</i> <i>Judges (Salaries and Allowances) Act 1967;</i> <i>Oaths Act 1867;</i> and <i>the Supreme Court of Queensland Act 1991.</i>	Chief Justice of Queensland
<i>Property Law Act 1974</i>	Professor W D Duncan, Queensland University of Technology Law School
<i>Trust Accounts Act 1973;</i> and <i>the Trusts Act 1973.</i>	National Institute of Accountants
<i>Trustee Companies Act 1968</i>	Trustee Corporations Association of Australia; and Trust Company of Australia Limited.

## NOTES

The Act has four provisions and a schedule which contains the amendments to various statutes administered by the Attorney-General and Minister for Justice and Minister for The Arts and the Premier.

*Clause 1* is the short title to the statute.

*Clause 2* provides for commencement of the Act on a day to be fixed by proclamation.

*Clause 3* provides for a schedule which amends the Acts mentioned in it.

*Clause 4* repeals the *Australia Acts (Request) Act 1990*. As the Commonwealth Referendum to become a republic, held in November 1999 failed, the trigger for the commencement of the Act will not take place and accordingly the Act has no operation.

## SCHEDULE

### AMENDMENTS OF ACTS

#### *ACTS INTERPRETATION ACT 1954*

Item 1 implements a new provision—section 13B—which fulfils a recommendation in the Queensland Legislative Assembly Members' Ethics and Parliamentary Privileges Committee's 1999 "Report on the Powers, Rights and Immunities of the Legislative Assembly, its Committees and Members" that there be a new provision providing a legal presumption that, in the absence of an express provision to the contrary, a provision in an Act is not inconsistent with the powers, rights and immunities of the Legislative Assembly.

Item 2 omits from section 36 of the Act definitions of the terms “magistrate” and “stipendiary magistrate”.

Item 3 inserts in section 36 of the Act a new definition for the term “magistrate”; and for the term “see” to mean 'has the meaning given by or the same meaning it has in the provision, Act, law or document', and is intended to make clear its current usage in legislation. It also inserts a new definition for Standards Australia to rectify the fact that Standards Association of Australia changed its name to Standards Australia International Limited ACN 087 326 690.

Item 4 makes an amendment to the term “definition” contained in section 36 of the Act.

Items 5 and 6 make amendments to section 38 of the Act which deal with the reckoning of time.

### ***AUSTRALIAN CONSULAR OFFICERS' NOTARIAL POWERS AND EVIDENCE ACT 1946***

Items 1 to 4 inclusive amend the Act to satisfy the April, 1999 Standing Committee of Attorneys-General decision to amend provisions in Commonwealth, State and Territory legislation which provides for the taking of evidence, the service of process and the witnessing of documents by Australian Diplomatic or Consular Officers, to refer to locally engaged staff at Australian overseas posts.

### ***CHILDRENS COURT ACT 1992***

This item amends section 14(3) of the Act to make the correct reference to the *Magistrates Act 1991* instead of the *Stipendiary Magistrates Act 1991*.

## ***CRIMINAL CODE***

The item repeals section 432 of the Criminal Code which creates an offence for any person who pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes, or pretends from the person's skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found.

## ***DRUG REHABILITATION (COURT DIVERSION) ACT 2000***

Item 1 makes a technical amendment to section 7(1)(b) of the Act by inserting a reference to section 413 after the reference to section 340(b).

Item 2 inserts a new provision to ensure that immunity will not result from the mere fact that an admission of the sort described in section 37 of the Act is made if there is independent evidence implicating the accused.

Item 3 amends section 37(3)(b) of the Act to include indictable offences under the *Drugs Misuse Act 1986*. Subsection 37 (3) was intended to restrict the types of offences to which immunity would attach. For example, immunity will not attach to indictable offences unless they are offences which can be dealt with summarily (that is, the types of relevant offences that can bring a person before the drug court anyway). Obviously, it is not intended to give immunity if the offence is too serious to be dealt with in the drug court.

Item 4 corrects the reference to the definition of the term “offender” in the Act.

## ***EVIDENCE ACT 1977***

Item 1 omits the words after the word “proviso” in section 15(2)(c) of the Act.

Item 2 inserts two new provisions in section 15 of the Act. Section 15 of the Act deals with the issue of questioning a person charged in a criminal proceeding. In a 1992 reprint of the Act, the Office of the Queensland Parliamentary Counsel had recast the then existing proviso in section 15(2)(c) in the form of a new sub-section (3) to section 15, the application of which sub-section was limited to s.15(2)(c). This was apparently done in ignorance of the fact that in an earlier case, *R v Saric* (1982) Qd. R. 360, the Queensland Supreme Court had held that the proviso applied, not only to paragraph (c) of sub-section (2) but also to paragraphs (a) and (b).

Item 3 inserts a new provision—section 46B—expressly permitting a court or tribunal to inform itself about an Act or statutory instrument in a way it considers appropriate, supplemented by examples in the Act referring to electronic or printed commercial versions.

Item 4 inserts the new name for Standards Australia which is “Standards Australia International Limited”.

Item 5 makes a technical amendment to section 92(2)(d) of the Act.

### ***EVIDENCE AND DISCOVERY ACT 1867***

Items 1 to 3 inclusive amend the Act to satisfy the April, 1999 decision, at the meeting of the Standing Committee of Attorneys-General, to amend provisions in Commonwealth, State and Territory legislation which provides for the taking of evidence, the service of process and the witnessing of documents by Australian Diplomatic or Consular Officers, to refer to locally engaged staff at Australian overseas posts.

### ***FREEDOM OF INFORMATION ACT 1992***

This item amends section 11(1)(g) of the Act to make the correct reference to the *Magistrates Act 1991* instead of the *Stipendiary Magistrates Act 1991*.

### ***JUDGES (PENSIONS AND LONG LEAVE) ACT 1957***

This item amends section 15 of the Act to provide for flexibility in the taking of additional leave of absence by a judge subject of course to the administrative requirements of the courts.

### ***JUDGES (SALARIES AND ALLOWANCES) ACT 1967***

Items 1 to 5 inclusive amend sections 5(3), 12(1)(c), 12(8)(b) and 13(2)(b) of the Act to reflect the organisational changes to the Industrial Court and the Industrial Relations Commission made by the *Industrial Relations Act 1999* in the same way that section 3A(1) was amended by that Act.

### ***JUDICIAL REVIEW ACT 1991***

This item amends item 5, part 2, Schedule 1 of the Act to make the correct reference to the *Magistrates Act 1991* instead of the *Stipendiary Magistrates Act 1991*.

### ***JUSTICES ACT 1886***

Item 1 amends section section 98Q(1) of the Act which requires that the SETONS clerk send the enforcement notices to the offenders by “certified mail”. As certified mail no longer exists and the fact that under SPER ordinary post will be used, section 98Q is amended by deleting the term “certified mail” and replacing it with the term “ordinary post”.

Item 2 makes a technical amendment to section 142A(2) of the Act.

Item 3 omits section 142A(15) of the Act which provides for the definition of the term “public officer”, but which does not enable Commonwealth officers to take advantage of the procedure contained in the provision. In view of this, the section is omitted.

Items 4 and 5 amend section 222(2) of the Act to require that the appellants must immediately forward the recognisance to the clerk of the court at the place where the decision was given.

### ***LAW REFORM ACT 1995***

This item amends section 18A(1) of the Act to allow for the attachment of Crown employees' wages.

### ***MAGISTRATES COURTS ACT 1921***

This item amends section 17 of the Act to enable bailiffs in the Magistrates Courts to appoint deputies, in similar terms to section 41 of the *District Court Act 1967*.

### ***MAINTENANCE ACT 1965***

This item amends section 98(6) of the Act which requires the Chief Executive to publish in the Gazette, at least once in every year, a list of the names of the reciprocating countries that make provisions for the enforcement in those countries of maintenance orders made in Queensland and vice-versa. The last time a reciprocating country was declared by the Governor-in-Council was on 20 December 1986. Since that time no further notifications have been made and so the purpose of this amendment is to provide that the notification should only be made following any changes to the list of the names of the reciprocating countries.



### ***OATHS ACT 1867***

Items 1 and 2 amend section 17 and the Schedule of the Act to align the position of witnesses taking oaths and affirmation. Currently, section 17 of the Act only permits an affirmation to be made if the judge is satisfied that the person sincerely objects to being sworn on the Bible and it also requires the witness to declare that the taking of any oath is objectionable to them. This amendment is consistent with the tenor of the recommendations of the Chief Justice of the Supreme Court, and the Queensland Law Reform Commission in its 1989 Report on the *Oaths Act*.

### ***PENALTIES AND SENTENCES ACT 1992***

This item makes a technical amendment to section 69(2) of the Act.

### ***PROPERTY LAW ACT 1974***

This item inserts a new provision—section 70A—to clarify a conveyancing situation where a purchaser without default on their own part cannot verify title of a vendor because computers in the Land Titles Office within the Department of Natural Resources are inoperative for any reason. In a published law article<sup>1</sup> by Professor Duncan and Sharon Christensen of the Queensland University of Technology Law School, they suggested that there be an amendment to the Act with a view to clarifying this conveyancing situation which is based on the facts of a reported decision of the Supreme Court of Queensland, Court of Appeal in *Imperial Bros. Pty Ltd v. Ronim Pty Ltd* [1999] 2 Qd R 172; and (1999) Q. Conv. R. 54-523.

---

<sup>1</sup> (2000) “Overcoming the Problems of Showing and Making Cyber Title” in Property Law Journal, Vol 8, Butterworths, pp 38- 48.

### ***PUBLIC TRUSTEE ACT 1978***

Item 1 inserts a new provision—section 17A(1)(a)—to clarify that the Public Trustee has sufficient power to retain or pay out of the management of an estate various expenses and fees.

Item 2 inserts a new provision—section 17A(3)(a)—to clarify the nature of the fees and expenses payable under section 17A of the Act.

Item 3 amends section 19(1)(c) of the Act to allow interest to be credited “at least annually” rather than credited “annually”.

### ***ROYAL QUEENSLAND THEATRE COMPANY ACT 1970***

This item amends section 54 of the Act to delete “financial year” and inserts “year” which has the effect of changing the reporting under the Act to a calendar year making it consistent with how the Queensland Theatre Company operates its finances.

### ***STATE PENALTIES ENFORCEMENT ACT 1999***

These items technical amendments to the Act so as to rectify process design activities which did not occur until after the statute had been passed.

Items 1 to 8 inclusive make technical amendments to the Act.

Item 9 inserts a new provision—section 23(7)—which allows for payment of an instalment by direct debit only if the administering authority is capable of accepting it.

Item 10 amends section 24(3) of the Act because the next item allows an administering authority to give SPER amended particulars for registration.

Item 11 amends section 24 of the Act by inserting provisions which allows an administering authority to give SPER amended particulars for registration.

Item 12 inserts a new provision in section 30 which enables the court to decide an application on written materials in the absence of a party if the court considers it appropriate.

Items 13 to 16 inclusive make technical amendments to the Act.

Item 17 amends section 46(a) of the Act to provide for a fine imposed by a court, excluding ancillary orders or an infringement notice fine. It also gives examples of ancillary orders.

Item 18 amends section 56(2) of the Act by inserting a provision to ensure that an application for cancellation is made within earlier of the following: (a) 14 days after the debtor becomes aware of the debt; (b) 6 months after the issue of the relevant enforcement notice.

Item 19 amends section 58(1) of the Act by inserting a limitation on the time within which the appeal against refusal to cancel an enforcement order could be made.

Items 20 to 31 inclusive make technical amendments to the Act.

Item 32 amends Schedule 2, Dictionary, by inserting definitions for the terms “motor vehicle” and “vehicle”.

Item 33 amends the definition of the term “fine option order”.

## ***STATUTORY INSTRUMENTS ACT 1992***

As a result of the insertion of the new provision—section 13B—into the *Acts Interpretation Act 1954*, it is necessary to amend Schedule 1 to the Act to update the list of provisions of the *Acts Interpretation Act 1954* that apply to statutory instruments.

## ***STIPENDIARY MAGISTRATES ACT 1991***

Items 1 to 11 inclusive delete the term, “stipendiary” from the title to the Act and wherever it appears in the provisions of the Act.

Items 12 to 14 insert transitional provisions as a result of the amendments in items 1 to 11 inclusive.

### ***SUPREME COURT ACT 1995***

Items 1 to 8 inclusive amend the Act to satisfy the April, 1999 Standing Committee of Attorneys-General decision to amend provisions in Commonwealth, State and Territory legislation which provides for the taking of evidence, the service of process and the witnessing of documents by Australian Diplomatic or Consular Officers, to refer to locally engaged staff at Australian overseas posts.

### ***SUPREME COURT OF QUEENSLAND ACT 1991***

This item amends section 14 of the Act by allowing for the appointment of Supreme Court judges from other Australian States and Territories and Federal Court judges as acting judges. The effect of this amendment is to bring these arrangements into line with section 37 of the *Supreme Court Act 1970 (NSW)*.

### ***TRUST ACCOUNTS ACT 1973***

This item amends section 15(1)(d)(ii) and (iii) of the Act, which contain qualification requirements for accountants to conduct audits, to give statutory recognition to appropriately qualified accountants, such as a person who holds a public practising certificate issued by the National Institute of Accountants and has completed a tertiary course of study in accounting with an auditing component.

### ***TRUSTEE COMPANIES ACT 1968***

Items 1 to 8 inclusive make amendment to the licence conditions of trustee companies authorised under the Act. In particular, these clauses remove the requirement to maintain a certain amount being part of the uncalled amount on shares and that such amount cannot be called up except in the case of winding up or dissolution of the company.

## ***TRUSTS ACT 1973***

Item 1 amends section 5 of the Act, which contain qualification requirements for accountants to conduct audits, to give statutory recognition to appropriately qualified accountants, such as a person who holds a public practising certificate issued by the National Institute of Accountants and has completed a tertiary course of study in accounting with an auditing component.

Item 2 amends section 67 of the Act, which is concerned with advertising requirements, to bring it in line with Rule 599 of the Uniform Civil Procedure Rules which deals with the requirement to give notice of intention to apply for probate.