

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The primary objective of the *Justice and Other Legislation Amendment Bill 2003* (the Bill) is to provide for amendments to a range of statutes administered by the Department of Justice and Attorney-General. A number of amendments relate to statutes administered by other Departments.

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 this occurs, an annual *Justice Legislation Amendment Bill* is prepared so that minor or technical amendments can be effected through one statute. This ensures that much needed statutory reform is not delayed and that the time of the Parliament is not wasted on dealing with a number of minor statutory amendments.

The majority of the amendments contained in the Bill have several elements in common:

- they generally relate to statutes administered by the Attorney-General and Minister for Justice; and
- they do not modify the major underlying policy or direction of the statutes that are being amended.

The Bill amends the following Acts:

- *Aboriginal Land Act 1991*
- *Adoption of Children Act 1964*
- *Anti-Discrimination Act 1991*
- *Appeal Costs Fund Act 1973*

- *Bail Act 1980*
- *Births, Deaths and Marriages Registration Act 2003*
- *Civil Liability Act 2003*
- *Coroners Act 2003*
- *Criminal Code*
- *Criminal Proceeds Confiscation Act 2002*
- *District Court of Queensland Act 1967*
- *Electoral Act 1992*
- *Evidence Act 1977*
- *Industrial Relations Act 1999*
- *Judges (Pensions and Long Leave) Act 1957*
- *Justices Act 1886*
- *Land and Resources Tribunal Act 1999*
- *Legislative Standards Act 1992*
- *Mineral Resources Act 1989*
- *Personal Injuries Proceedings Act 2002*
- *Public Trustee Act 1978*
- *State Penalties Enforcement Act 1999*
- *Supreme Court Act 1995*
- *Supreme Court of Queensland Act 1991*
- *Torres Strait Islander Land Act 1991*

Although the majority of the proposed amendments are of a minor nature, there are a number of significant amendments such as the amendment to the *Civil Liability Act 2003*.

Estimated costs for government implementation

Any financial impact from the development and implementation of activities or initiatives in the Bill will be met from existing budget allocations.

Consistency with fundamental legislative principles

Does the Bill have sufficient regard for the rights and liberties of individuals?

The proposed amendments to the various statutes are largely consistent with fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992*. However, a number of amendments are retrospective and therefore may potentially breach the principle of not adversely affecting the rights and liberties of individuals retrospectively. These amendments are set out below –

The proposed amendment to the *Evidence Act 1977* to validate certified copies of letters patent by Clerks of the Executive Council is retrospective. However, section 58 of the *Evidence Act 1977* is largely a procedural provision designed to assist the court, providing that certified copies of letters patent are, in the absence of evidence to the contrary, conclusive evidence of the matter contained therein. There is no question as to the validity of the letters patent themselves and the amendment simply reflects the actual existing practice. Further, it is not anticipated that such an amendment would have a significant effect on rights and liberties of individuals.

The amendment of section 9 of the *Personal Injuries Proceedings Act 2002* potentially breaches a fundamental legislative principle in that it retrospectively affects the right of a respondent to a claim to be advised of that claim within one month of the claimant "consulting" a lawyer. This breach is considered justified as the result of the amendment will be a reduction in the number of unnecessary claims currently being notified to respondents.

Over reporting occurs currently as claimants are correctly advised by lawyers that, upon merely seeking information about the possibility of making a claim, the timeframe of one month to lodge the Notice of Claim form commences. This consultation may not even include any form of substantial legal advice on prospects of success or investigation of the claim.

The result of the over reporting is that respondents are required to enter into the procedure under the Act (thereby incurring costs) for a claim that is not proceeded with following due consideration by the claimant. The respondent can not recover any costs incurred in this time.

The amendment will afford claimants the opportunity to consult a number of lawyers if they so desire, and to properly consider whether they wish to make a claim, prior to doing so. If the person instructs the lawyer to

act, the time frame will commence. It must also be noted that the amendment does not alter the longer nine month period for notification. Accordingly, the respondent will not be placed at any greater disadvantage than any other respondent where the claimant does not consult a lawyer.

The amendment to section 9A has the same effect and result as the amendment to section 9.

The proposed amendment to the *State Penalties Enforcement Act 1999* to validate any infringement notices issued by police officers under the Act for offences under the *Motor Accident Insurance Act 1994* is retrospective. The amendment is justified on the basis that there is no suggestion that the offence in question was not committed. The issue is that the infringement notice, which could have been validly issued by an authorised person, was invalidly issued by police officers, through a legislative oversight. Further, pursuant to the Act, offenders have the right to elect to have the matter of the offence decided in a Magistrates Court.

The proposed amendment to the *Supreme Court Act 1995* includes the validation of the appointments and previous actions of persons who have been performing the duties of registrar of the Supreme Court in the districts constituted under section 286 but who may not have been appointed by the Governor in Council. Such validation is retrospective but is reflective of the actual existing practice and would not significantly affect the rights and liberties of individuals.

CONSULTATION

Community and Government

A consultation draft of the Bill was sent to:

- The Chief Justice, the Chief Judge, and the A/Chief Magistrate
- The Director of Public Prosecutions
- The Bar Association of Queensland
- The Crime and Misconduct Commission
- The Queensland Law Society
- Legal Aid Queensland
- The Commissioner of Police

Consultation has been undertaken with:

- Officers of other relevant departments and agencies

- The Chairperson and Members of the Appeal Costs Board
- The Anti-Discrimination Commission Queensland
- The President of the Anti-Discrimination Tribunal
- The Principal Registrar of the Supreme Court
- The State Penalties Enforcement Registry
- The Office of the Commonwealth Director of Public Prosecutions
- The President of the Land and Resources Tribunal
- The Public Trustee
- The Government Superannuation Office
- The Electoral Commission
- The Industrial Registrar
- The President of the Australian Plaintiff Lawyers Association

The comments of those consulted have informed the drafting of the Bill.

RESULTS OF CONSULTATION

There is complete support for all the amendments except for the amendment to the *Civil Liability Act 2003*. The Australian Plaintiff Lawyers Association does not support the removal of the ability to claim damages for the costs of raising a child.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides for commencement. The amendments to the *Coroners Act 2003* will commence on the day the *Coroners Act*, section 96

commences. The native title amendments will commence on assent. The remaining provisions will commence on a date to be fixed by proclamation.

PART 2—AMENDMENT OF ABORIGINAL LAND ACT 1991

Clause 3 provides that the *Aboriginal Land Act 1991* is amended by this Part.

Clause 4 amends section 60 by the insertion of a definition of “Minister”. As a result of the transfer of administrative responsibility for the Aboriginal and Torres Strait Islander Land Tribunals to the portfolio of the Attorney-General and Minister for Justice on 1 January 2003, the amendment is required to preserve the requirement for the Tribunals to make recommendations to the Minister for Natural Resources and Mines on matters relevant to the granting of claimable land.

Clause 5 amends section 61 as per clause 4.

Clause 6 amends section 62 as per clause 4.

Clause 7 amends section 109 as per clause 4.

Clause 8 amends section 116 as per clause 4.

Clause 9 amends section 117 as per clause 4.

PART 3—AMENDMENT OF ADOPTION OF CHILDREN ACT 1964

Clause 10 provides that the *Adoption of Children Act 1964* is amended by this Part.

Clause 11 inserts amendments that are consequential to the enactment of the *Births, Deaths and Marriages Registration Act 2003*.

Clause 12 makes the Act consistent with the equivalent provisions of the *Births, Deaths and Marriages Act 2003*.

Clause 13 inserts amendments that are consequential to the enactment of the *Births, Deaths and Marriages Registration Act 2003*.

PART 4—AMENDMENT OF ANTI-DISCRIMINATION ACT 1991

Clause 14 provides that the *Anti-Discrimination Act 1991* is amended by this Part.

Clause 15 amends section 139 of the Act to provide that the Anti-Discrimination Commissioner (the Commissioner) must reject a complaint if it is trivial. Currently, the complaint must be dismissed if it is frivolous, vexatious, misconceived or lacking in substance. This addition will allow the Commissioner to reject applications that are inconsequential to conserve the resources of the Anti-Discrimination Commission.

Clause 16 amends section 145(4)(a) of the Act to correct a typographical error.

Clause 17 amends section 166 of the Act to provide that the Commissioner may give an extension of time in which the complainant is entitled to require the Commissioner to refer a matter to the Anti-Discrimination Tribunal (the Tribunal) because the matter cannot be resolved by conciliation. Currently, the Tribunal must grant the extension of time. If the Commissioner has the power to extend, the matter will ultimately be referred to the Tribunal more expeditiously.

Clause 18 amends section 168 of the Act to provide the complaint lapses if it is trivial. The amendment is consequential to the amendment in clause 15 above.

Clause 19 amends section 215A of the Act to provide that the Tribunal may dismiss a complaint if it is trivial. Currently, the Tribunal may dismiss the complaint if it is frivolous, vexatious, misconceived or lacking in substance. This addition will allow the Tribunal to dismiss complaints that are inconsequential to conserve the resources of the Tribunal.

Clause 20 amends section 249 of the Act to provide that the *Anti-Discrimination Tribunal Rule 1993* may specify a matter as a non-contentious matter.

Clause 21 amends section 257 of the Act to provide that the Registrar of the Tribunal or a person who performs the functions or exercises the powers of the Registrar must satisfy the eligibility requirements of section 250(2). Currently the Act does not specify any compulsory qualifications for the Registrar. Since all Tribunal members must be a barrister, solicitor or legal practitioner of not less than 5 years standing of the High Court or the Supreme Court of the State or another State, and the Registrar will act as a Tribunal member in hearing non-contentious matters (see clause 22 below), it is appropriate that the Registrar also satisfy these requirements. The current Registrar of the Tribunal satisfies these requirements so that no rights are affected by the amendment.

Clause 22 inserts section 257A of the Act to provide that the Registrar may perform the functions and exercise the powers of the Tribunal in relation to non-contentious matters. It is proposed non-contentious matters will involve only routine matters determined at directions hearings, such as discovery and the filing of material. Increases in Tribunal workload mean it is essential that more cost efficient methods of dealing with directions hearings be instigated. This will be facilitated by the Registrar hearing non-contentious matters. The section also provides that in exercising powers in relation to a non-contentious matter the Registrar is taken to be, and anything done by the Registrar is taken to be done by, the Tribunal.

PART 5—AMENDMENT OF APPEAL COSTS FUND ACT 1973

Clause 23 provides that the *Appeal Costs Fund Act 1973* is amended by this Part.

Clause 24 amends section 5(3) by omitting the words ‘and (8)’. The amendment is consequential to the amendment provided by clause 25.

Clause 25 amends section 6 of the Act by deleting section 6(8) of the Act which provides for the payment of fees and allowances to the Appeal Costs Board. The amendment provides that appointments to the Appeal Costs Board are not remunerated. This amendment brings the Appeal Costs Boards into line with other statutory bodies within the Department of Justice and Attorney-General portfolio where members do not receive remuneration, for example, the Barristers Board, the Solicitors Board and the Justices of the Peace Advisory Council. The members are currently

entitled to payment of \$41 per meeting of two hours duration or less. The Board meets every month for approximately one hour and the Chair of the Board has advised that neither of the members have claimed nor been remunerated for the amount to which they are entitled.

PART 6—AMENDMENT OF BAIL ACT 1980

Clause 26 provides that the *Bail Act 1980* is amended by this Part.

Clause 27 inserts a new section 33D into the Act to clarify that where a court has power to issue a warrant for the arrest of a person who has failed to appear before the court, the court may delay the issue or execution of the warrant to allow the person a further opportunity to appear before the court.

Clause 28 amends the Schedule to the Act and the Schedule heading, to refer to section 14A of the Act as well as to section 14. Both sections 14 and 14A of the Act refer to certain offences listed in the Schedule for which cash bail is not available. Currently, the Schedule only refers to section 14. To correct this legislative oversight, the schedule is amended to refer to sections 14 and 14A.

PART 7—AMENDMENT OF BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT 2003

Clause 29 provides that the *Births, Deaths and Marriages Registration Act 2003* is amended by this Part.

Clause 30 inserts a provision that requires the registrar to give notice to the applicants if the registrar chooses a name for the child.

Clause 31 inserts a requirement that the application be in the approved form.

Clause 32 provides that a minor who is married may apply for a change of name in the same way as an adult.

Clause 33 provides that an application must be made in the approved form. It also provides that the provision does not apply to a minor who is married.

Clause 34 provides that a minor who is married may apply for a change of name in the same way as an adult.

Clause 35 narrows the category of person to whom a delegation may be given, and provides that a delegation may be given to an “appropriately qualified person.”

Clause 36 continues the provisions in the *Registration of Births, Deaths and Marriages Act 1962* regarding commemorative birth certificates. It provides that a commemorative birth certificate is a commercial activity for the purposes of the *Constitution of Queensland Act 2001*.

Clause 37 amends the heading to section 57.

Clause 38 inserts a new section 57A which provides that the amendment of section 37 by clause 35 does not affect any delegations existing immediately before the commencement of the amendment.

PART 8—AMENDMENT OF CIVIL LIABILITY ACT 2003

Clause 39 provides that the *Civil Liability Act 2003* is amended by this Part.

Clause 40 amends section 4 of the Act by inserting a subsection into the application provision of the Act to provide that Chapter 2, part 5 only applies to acts or omissions on or after the date of commencement of the subsection.

Clause 41 inserts a new part 5 into Chapter 2 of the Act. The part is in response to the High Court majority decision in the case of *Cattanach v. Melchior*. The section provides that, if a child is born as a result of a negligent act or omission, then a court is unable to award any damages amount for the costs ordinarily associated with rearing or maintaining a child. The negligent act or omission must be done or omitted to be done by a person performing a procedure to effect removal of the ability of a person to procreate.

PART 9—AMENDMENT OF CORONERS ACT 2003

Clause 42 provides that the *Coroners Act 2003* is amended by this Part.

Clause 43 amends section 96 of the Act. At common law the coroner does not have any jurisdiction over a stillborn child once it is established that the child was stillborn. This is reflected in the *Coroners Act 2003*. This amendment amends section 96 of the *Coroners Act 2003* to provide that section 95 (which deals with authority to dispose of a body generally) also applies to a stillborn child. This will ensure that the current practice where a cause of death certificate is required for the disposal of the body of a stillborn child will continue.

PART 10—AMENDMENT OF CRIMINAL CODE

Clause 44 provides that the Criminal Code is amended by this Part.

Clause 45 amends section 140 which provides that a person who attempts, in any way not specifically defined in this Code, to obstruct, prevent, pervert, or defeat, the course of justice is guilty of a misdemeanour. Section 140 is amended to remove the necessity for the prosecution to prove that no other offence in the Criminal Code applies before a person could be convicted of attempting to pervert the course of justice.

Section 140 is also amended to redefine the offence as a crime and to increase the maximum penalty from 2 years to 7 years. This brings the punishment of this offence into line with other administration of justice offences contained in the Criminal Code such as retaliation against witnesses (section 119B), corruption of jurors (section 122), fabricating evidence (section 126), corruption of witnesses (section 127) and conspiring to defeat justice (section 132) all which carry a maximum penalty of 7 years.

Clause 46 amends section 552B of the Criminal Code to enable an offence against section 328A(2) to be dealt with summarily. Section 328A(1) creates the offence of dangerous operation of a vehicle. An offence against section 328A(1) is already able to be dealt with summarily under section 552B(j). Section 328A(2) sets out circumstances of aggravation of the offence under section 328A(1) and provides that if the

offender was adversely affected by an intoxicating substance or has previously been convicted of an offence against section 328A then the offender is guilty of a crime which carries a maximum penalty of 5 years imprisonment. Under section 552D a Magistrate must abstain from dealing summarily with a charge under section 552B if satisfied that the defendant may not be adequately punished upon summary conviction. Consequently, the amendment will allow for the summary disposition of the less serious examples of section 328A(2) offences.

PART 11—AMENDMENT OF CRIMINAL PROCEEDS CONFISCATION ACT 2002

Clause 47 provides that the *Criminal Proceeds Confiscation Act 2002* is amended by this Part.

Clause 48 makes a technical amendment to section 68 of the Act by inserting a new subsection (1) to provide for the making by the Supreme Court of an exclusion order.

Clause 49 replaces existing section 69 of the Act with new section 69 which provides what is an exclusion order. Previously section 69 stated what matters were required to be contained in an exclusion order.

Clause 50 makes a technical amendment to section 73 of the Act by inserting a new subsection (1) to provide for the making by the Supreme Court of an innocent interest exclusion order.

Clause 51 replaces existing section 74 of the Act with new section 74 which provides what is an innocent interest exclusion order. Previously section 74 stated what matters were required to be contained in an innocent interest exclusion order.

Clause 52 amends the heading to section 81 of the Act to correct an incorrect reference to Division 3. The section appears in Division 2.

Clause 53 makes a minor technical amendment to section 155 of the Act by replacing “order under section 158 (an “innocent interest exclusion order”)” with “innocent interest exclusion order”.

Clause 54 makes a technical amendment to section 158 of the Act by inserting a new subsection (1) to provide for the making by the Supreme Court of an innocent interest exclusion order.

Clause 55 replaces existing section 159 of the Act with new section 159 which provides what is an innocent interest exclusion order. Previously section 159 stated what matters were required to be contained in an innocent interest exclusion order.

Clause 56 makes a minor technical amendment to section 165 of the Act by replacing the words from “an order under section 167” with “a third party order or a buy-back order”.

Clause 57 makes a technical amendment to section 167 of the Act by inserting a new subsection (1) to provide for the making by the Supreme Court of a third party order.

Clause 58 replaces existing section 168 of the Act with new section 168 which provides what is a third party order. Previously section 168 stated what matters were required to be contained in a third party order.

Clause 59 makes a technical amendment to section 169 of the Act by inserting a new subsection (1) to provide for the making by the Supreme Court of a buy-back order.

Clause 60 replaces existing section 170 of the Act with new section 170 which provides what is a buy-back order. Previously section 170 stated what matters were required to be contained in a buy-back order.

Clause 61 amends section 171(3) of the Act by correcting a typographical error.

Clause 62 amends section 174(5)(b) of the Act by replacing the words from “court that made the restraining order” with “Supreme Court”. Only the Supreme Court is empowered to make restraining orders.

Clause 63 amends section 176(2)(b) of the Act by replacing the words from “court that made the restraining order” with “Supreme Court”. Only the Supreme Court is empowered to make restraining orders.

Clause 64 amends section 195(2) of the Act to make it clear that the reference to court in section 195(2) is a reference to the court that quashed the conviction or upheld the appeal referred to in section 195(1).

Clause 65 amends section 247(2)(a) of the Act by inserting the word “document” after the word “transaction” at the end of section 247(2)(a). The section should have referred to an essential customer-generated financial transaction document and not to an essential customer-generated financial transaction.

Clause 66 omits the definitions of “buy-back order”, “exclusion order”, “innocent interest exclusion order”, “special forfeiture order”, and “third party order” in Schedule 6 and inserts new definitions.

The definition of “relevant person” in Schedule 6 is also amended by correcting an incorrect reference to part 6 in paragraph (b) of the definition. The reference should be to Part 7.

PART 12—AMENDMENT OF DISTRICT COURT OF QUEENSLAND ACT 1967

Clause 67 provides that the *District Court of Queensland Act 1967* is amended by this Part.

Clause 68 provides for the insertion of a new section 27(2) into the Act which ensures that there is a general power in the Supreme Court to deal with a District Court matter where no District Court judge is available and the matter is to be heard urgently.

Clause 69 amends section 118(2) of the Act to clarify the circumstances in which a person is entitled to appeal, as of right, from a judgment of the District Court to the Court of Appeal. The section makes it clear that an appeal will lie where judgment is given for an amount equal to or more than the Magistrates Court jurisdictional limit or where the judgment relates to a claim for, or relating to, property that has a value equal to or more than the Magistrates Courts jurisdictional limit.

The previous section 118(2)(b) allowed an appeal if the judgment involves “directly or indirectly any claim, demand or question in relation to any property or right with a value equal to or more than the Magistrates Courts jurisdictional limit”. Section 118(2) has been interpreted variously as allowing an appeal on the basis of the amount originally claimed, the amount the Court of Appeal could potentially order on appeal or where there is a live contention that there should be a judgment in excess of the Magistrates Courts jurisdictional limit. The amendment is to overcome the difficulties associated with these interpretations and to clarify when an appeal will be available.

PART 13—AMENDMENT OF ELECTORAL ACT 1992

Clause 70 provides that the *Electoral Act 1992* is amended by this Part.

Clause 71 inserts a word omitted in error.

Clause 72 amends sections 161B(1) and 161B(2) to expressly state that the how-to-vote cards and statutory declaration must be lodged with the Electoral Commission by 5pm on the Friday that is 7 days before polling day. Currently the how-to-vote cards and statutory declaration must be lodged at least 7 days before polling day. The amendment is to make the deadline for lodgement clear.

PART 14—AMENDMENT OF EVIDENCE ACT 1977

Clause 73 provides that the *Evidence Act 1977* is amended by this Part.

Clause 74 amends section 58 of the Act. Section 58, as it currently stands, provides that in any proceeding where it is sought to prove any letters patent issued by the Crown in relation to the State, a copy of the letters patent, certified by the chief executive of the department dealing with matters under the *Constitution of Queensland 2001* shall be evidence of the matters contained therein. The amendment confers a power on the chief executive to certify copies of letters patent and provides that the power may be delegated. Section 57 of the *Public Service Act 1996* specifically provides that a chief executive may delegate powers under an Act. However, doubt has arisen about whether section 58, confers a specific power on the chief executive which can be delegated.

Clause 75 amends section 110 to update a reference.

Clause 76 amends the heading to Part 9.

Clause 77 inserts a new section 137 and declares that the chief executive has always had the powers mentioned in clause 74. The amendment is intended to have retrospective operation to cure any potential invalidity attaching to copies of letters patent previously certified by a delegate of the chief executive. Since 1995, Clerks of the Executive Council have been certifying copies of letters patent for the purposes of section 58 pursuant to an instrument of delegation. This retrospective amendment is to validate

any certifications to ensure that they are effective for the purposes of section 58.

PART 15—AMENDMENT OF INDUSTRIAL RELATIONS ACT 1999

Clause 78 provides that the *Industrial Relations Act 1999* is amended by this Part.

Clause 79 amends section 341 of the Act and provides that, upon deciding an appeal, the Industrial Court may direct an industrial magistrate to issue a warrant for an appellant's arrest. The Industrial Court may make such a direction only if the appellant was serving a term of imprisonment under the decision appealed, was released from custody pending determination of the appeal, and after the appeal the appellant is still required to serve some time in prison.

PART 16—AMENDMENT OF JUDGES (PENSIONS AND LONG LEAVE) ACT 1957

Clause 80 provides that the *Judges (Pensions and Long Leave) Act 1957* is amended by this Part.

Clause 81 inserts a new definition of proved incapacity in section 2 of the Act. The definition refers to section 61 of the *Constitution of Queensland Act 2001* which sets out the grounds for removing judges from office. Those grounds are proved misbehaviour justifying removal from the office or proved incapacity to perform the duties of the office.

Further, the clause amends the definition of notional pension in section 2 of the Act. The amendment is consequential to the amendment to section 16 of the Act (explained below).

Clause 82 amends section 5 so that, in so far as it provides for judges who are retired from office, it reflects the removal process provided for in section 61 of the *Constitution of Queensland Act 2001*. Under section 61 a judge may be removed for proved incapacity. Under section 61(4)

incapacity is proved if the Legislative Assembly accepts a finding of a tribunal that, on the balance of probabilities, the judge is incapable of performing the duties of the office. The requirement for a medical practitioner to certify as to the judge's permanent disability or infirmity is deleted for judges removed from office on the basis of proved incapacity. To ensure consistency with the wording used in the *Constitution of Queensland Act 2001*, the term "retired" is replaced with the term "removed".

Clause 83 amends section 7 of the Act. The amendment is consequential to the amendment to section 16 of the Act (explained below).

Clause 84 amends section 16 so that the section refers to the *Constitution of Queensland Act 2001* as the Act under which a judge may be removed on the basis of proved incapacity. The section is also amended to remove the term "permanent disability or infirmity" and replace it with the term "proved incapacity". This is necessary to reflect the wording in the *Constitution of Queensland Act 2001*.

PART 17—AMENDMENT OF JUSTICES ACT 1886

Clause 85 provides that the *Justices Act 1886* is amended by this Part.

Clause 86 amends section 47 of the Act to remove the requirement for a notice alleging a previous conviction to be served at the same time as a complaint where the complaint is by way of notice to appear. The amendment will allow a notice alleging a previous conviction to be served either with the notice to appear or a reasonable time before the time appointed for the defendant's appearance.

The amendment overcomes the difficulties which arise in relation to the requirement in sections 47(4) and (5) that a notice alleging previous convictions is to be served at the same time as a complaint, where the complaint is by way of notice to appear. Notices to appear are routinely used to institute proceedings for unlicensed or drink driving including random breath testing operations where multiple offenders are identified. In these circumstances it is impractical to take a person back to the station to check criminal histories or to wait for checks to be done over the police radio. It also has the potential to defeat the purpose of issuing a notice to appear, which is to ensure that a defendant is not arrested and detained in police custody.

Clause 87 amends section 103(1) by deleting the words “upon oath being made before them substantiating the matter of complaint to their satisfaction ” and inserting a new section 103(1A) which states that before issuing a warrant, the justices must be satisfied from information given on oath that the complaint is substantiated. Section 103 deals with the procedure to be adopted when a defendant, charged with an indictable offence, fails to appear in court in response to a summons. A magistrate may issue a warrant to apprehend a defendant if satisfied by information given on oath that the complaint is substantiated. The amendment makes it clear that a deponent is not required to personally attend court to give evidence that a complaint is substantiated but may provide an affidavit sworn outside court.

Clause 88 amends section 142(1)(b) to make it clear that a deponent is not required to personally attend court to give evidence that a complaint is substantiated but may provide an affidavit sworn outside court. Section 142 deals with the non-appearance by a defendant summonsed to appear in relation to a simple offence. A Magistrate may issue a warrant to apprehend a defendant if satisfied by information given on oath that the complaint is substantiated.

Clause 89 amends section 147A(2) by inserting an example that an order may be varied to change the defendant’s name. The example is inserted to overcome the problem of Magistrates not permitting rectification of the record under section 147A (2) in those circumstances. The intent of the amendment is to ensure that the court record is correct and that antecedent reports and criminal histories presented to the court in subsequent matters are accurate.

PART 18—AMENDMENT OF LAND AND RESOURCES TRIBUNAL ACT 1999

Clause 90 provides that the *Land and Resources Tribunal Act 1999* is amended by this Part.

Clause 91 inserts new section 27A into the Act. This new section makes it clear that a person’s appointment as a presiding member of the Land and Resources Tribunal does not preclude the person from being appointed to another decision making entity (not being a court). Sub-section (2) outlines the conditions under which the appointment must be made. These

are that the appointment must be on a part-time basis, must not involve a conflict of interest with the person's appointment to the Land and Resources Tribunal and must not include any salary or allowances other than expense reimbursement. Sub-section (3) defines "decision making entity" for the section.

Clause 92 inserts new section 53A into the *Land and Resources Tribunal Act 1999*. This new section ensures that the Land and Resources Tribunal has jurisdiction to arbitrate matters arising under "contract conditions" under 675 of the *Mineral Resources Act 1989*. Section 363 of the *Mineral Resources Act 1989* already provides the substantial jurisdiction of the Tribunal to hear and determine actions, suits and proceedings arising in relation to exploration or mining or to any claim, licence or lease granted or issued under the *Mineral Resources Act 1989* or any other Act relating to mining. However under section 675(1)(b)(ii) of the *Mineral Resources Act 1989* these contract conditions required to be complied with by one or more of the consultation and negotiation parties are not included as conditions of the mining tenement. New section 53A expressly provides that the Tribunal has jurisdiction to determine matters arising between the consultation and negotiation parties under these contract conditions.

Clause 93 provides that Schedule 2 to the Act is amended by including new dot point 3. This provides that the agreement resulting from a right to negotiate process under the *Commonwealth Native Title Act 1993* is a 'negotiated agreement' for the purposes of section 52 of the Act. The effect of this amendment is to provide an exclusive jurisdiction to the Land and Resources Tribunal for disputes arising under these "section 31" agreements and that a party to such an agreement under the Commonwealth right to negotiate process may apply to the Tribunal for an order enforcing such an agreement, deciding a matter arising under the agreement or making a declaration about the interpretation of the agreement. The jurisdiction granted to the Land and Resources Tribunal is exclusive of the jurisdiction of any other court or tribunal.

Clause 94 amends the definition of "native title (mining) provisions" in the Dictionary contained within Schedule 4 of the Act to reflect amendments made by the *Natural Resources and Other Legislation Amendment Act 2003* which inserted new Division 5 into Part 19 of the *Mineral Resources Act 1989*. Division 5 of Part 19 provides transitional provisions for Part 19 to affect the State's decision after 31 March 2003 to resume using the Commonwealth right to negotiate process for grants of mining tenements over land subject to native title.

PART 19—AMENDMENT OF LEGISLATIVE STANDARDS ACT 1992

Clause 95 provides that the *Legislative Standards Act 1992* is amended by this Part.

Clause 96 amends section 22(1) of the Act to require the production of explanatory notes for all Bills and not only for Government Bills presented to the Legislative Assembly by a Minister. This amendment is in response to recommendations in the Scrutiny of Legislation Committee's Report No.18 on the operation of the explanatory notes system.

Clause 97 amends section 23(1) of the Act to include an express obligation to declare (where applicable) that a Bill is national scheme legislation and to provide a brief explanation of the scheme. For these purposes, national scheme legislation is legislation where there is an agreement between Executive Governments to progress complementary Commonwealth/State arrangements or uniform or substantially uniform state/territory legislation. This amendment is in response to recommendations in the Scrutiny of Legislation Committee's Report No.18 on the operation of the explanatory notes system.

PART 20—AMENDMENT OF MINERAL RESOURCES ACT 1989

Clause 98 provides that the *Mineral Resources Act 1989* is amended by this part.

Clause 99 amends section 175 of the Act. These amendments complement section 10A of the Act that already provides that in section 169 of the Act that a reference to the owner of land is taken to include a reference to any registered native title body corporate or any registered native title claimant under the Commonwealth *Native Title Act 1993* in relation to any of the land. By making this amendment a person identified in the native title protection conditions as a native title party for an exploration permit can avail themselves of section 175 which allows the mining registrar to taken action to ease concerns and recommend actions to the Minister.

Clause 100 amends section 223 of the Act. These amendments complement section 10A of the Act that already provides that in section 217 of the Act a reference to the owner of land is taken to include a reference to any registered native title body corporate or any registered native title claimant under the Commonwealth *Native Title Act 1993* in relation to any of the land. By making this amendment a person identified in the native title protection conditions as a native title party for a mineral development licence can avail themselves of section 223 which allows the mining registrar to taken action to ease concerns and recommend actions to the Minister.

Clause 101 of the Bill amends section 363(2) of the Act. This clause inserts new section 363(2)(ea) which clarifies that the explorer or the native title party identified in native title protection conditions imposed either on a prospecting permit under section 25AA, an exploration permit under section 141AA or a mineral development licence under section 194AAA has standing before the Land and Resources Tribunal for any dispute or other matter arising between the explorer or the native title party under the native title protection conditions.

Clause 102 of the Bill amends the definition of “native title provisions” contained in the Dictionary in the Schedule to the Act to include Division 5 of Part 19 to reflect that those amendments made by the *Natural Resources and Other Legislation Amendment Act 2003* which inserted Division 5 into Part 19 of the Act. Division 5 of Part 19 provides transitional provisions for Part 19 to affect the State’s decision after 31 March 2003 to resume using the Commonwealth right to negotiate process for grants of mining tenements over land subject to native title.

PART 21—AMENDMENT OF PERSONAL INJURIES PROCEEDINGS ACT 2002

Clause 103 provides that the *Personal Injuries Proceedings Act 2002* is to be amended by this Part.

Clause 104 amends section 9(3)(b) of the Act by altering the time at which the limitation period for providing part 1 of a Notice of Claim commences. Pursuant to the Act prior to amendment, the timeframe for the limitation commenced at the instant a claimant consulted a lawyer about the possibility of seeking personal injury damages. The amendment allows

a claimant to consult a number of lawyers prior to making a decision to engage a lawyer to pursue a claim for personal injury damages on their behalf. The amendment does not affect the limitation period under section 9(3)(a) of the Act.

Clause 105 amends section 9A(4)(b) by altering the time limit in the same way as clause 78 amends section 9(3)(b) of the Act. The amendment does not affect the limitation period under section 9A(4)(a) of the Act.

Clause 106 inserts a new Part 4 and section 82 in Chapter 4. The new section 82 provides that the amendment to section 9(3)(b) outlined in clause 104 applies to claims that arose prior to the amendment. Further, the amendment to section 9A(4)(b) outlined in clause 105 applies to claims that arose after 9 April 2003.

PART 22—AMENDMENT OF PUBLIC TRUSTEE ACT 1978

Clause 107 provides that the *Public Trustee Act 1978* is amended by this Part.

Clause 108 amends sections 59(6) and 59(6A) to reflect the current terms to describe party and party and solicitor and client costs. With the introduction of the *Uniform Civil Procedure Rules 1999*, those terms are outdated and have been replaced by standard and indemnity costs.

Clause 109 amends section 95 of the Act to authorise the Public Trustee to give written consent to a prisoner bringing or defending any action of a property nature, or for the recovery of any debt or damage, after any such action has been brought or defended by a prisoner, without first obtaining the Public Trustee's consent. The amendment is as a result of decisions of the Court of Appeal in *Fitzpatrick v Jackson* (1989) 2 Qd R 542 and *Tyler v Krause and Ors* [2002] QCA 295 which held that the requirement to obtain consent in section 95 was a condition precedent to the bringing of the action and proceedings commenced without such consent are a nullity. The amendment removes a potential injustice that may result from a failure to obtain the written consent when a limitation period has expired. In *Tyler v Krause and Ors* the Court of Appeal commented that the resulting injustice merits the attention of the legislature.

PART 23—AMENDMENT OF STATE PENALTIES ENFORCEMENT ACT 1999

Clause 110 provides that the *State Penalties Enforcement Act 1999* is amended by this Part.

Clause 111 inserts section 118(7) into the Act to provide that the amount of an unpaid fine is taken to be satisfied at the end of the period stated in a good behaviour order if no action is taken under section 118(5) during that period for a contravention of a good behaviour order.

Clause 112 amends section 144(b) to correct a typographical error.

Clause 113 amends section 157 of the Act to include in section 157(3) a notice of intention to suspend a driver licence. The amendment will remove the necessity for prosecutors to adduce evidence to prove the date and the address to which such a notice was sent. Currently such matters are adduced by oral evidence. Under the amendment a certificate signed by the registrar of the State Penalties Enforcement Registry is evidence that a notice of intention to suspend a driver licence was served on a person in a stated way on a stated day.

Clause 114 amends the heading to Part 10.

Clause 115 inserts a new section 173 into the Act to validate infringement notices issued by police officers for offences against the *Motor Accident Insurance Act 1994* (MAIA). Police officers have been issuing infringement notices under the *State Penalties Enforcement Act 1999* for offences including the driving of an uninsured motor vehicle under the MAIA. Prior to a 19 December 2002 amendment, schedule 5 of the *State Penalties Enforcement Regulation 2000* provided that an authorised person for the issue of infringement notices under the MAIA and the *Motor Accident Insurance Regulation 1994* is a person authorised under section 20(2) of the *Transport Operations (Road Use Management) Act 1995*. Section 20(2) does not include police officers who are made authorised officers for that Act under section 20(1). Therefore police officers were not authorised to issue infringement notices for offences against the MAIA. This problem also affected infringement notices issued under the previous SETONS scheme provided for under Part 4A of the *Justices Act 1886*. The amendment retrospectively validates infringement notices issued by police officers for offences against the MAIA which were issued before 19 December 2002.

PART 24—AMENDMENT OF SUPREME COURT ACT 1995

Clause 116 provides that the *Supreme Court Act 1995* is amended by this Part.

Clause 117 inserts a new section 286A into the Act to provide that the registrar, or the person who is performing the duties of registrar, of the Magistrates Court in the Supreme Court district constituted under section 286, may perform the functions and exercise the powers of the registrar and the deputy sheriff of the Supreme Court. Under section 286 non-permanent Supreme Courts are constituted. Section 286(3) provides for the Governor in Council to appoint a registrar to such Supreme Court districts. This amendment will allow registrars of Magistrates Courts to be appointed as registrars of the Supreme Court without the need for Governor in Council approval. Under section 286, the person appointed is always the registrar of the Magistrates Court. Registrars of Magistrates Courts move from court to court on a regular basis. A new Governor in Council approval is required each time a registrar changes. This amendment removes this administrative burden by allowing an automatic appointment of registrars of Magistrates Courts.

Clause 118 inserts a new section 304 into the Act to validate the previous actions of persons who have been performing the duties of registrar or deputy sheriff of the Supreme Court in the districts constituted under section 286 but who may not have been appointed by the Governor in Council.

PART 25—AMENDMENT OF SUPREME COURT OF QUEENSLAND ACT 1991

Clause 119 provides that the *Supreme Court of Queensland Act 1991* is amended by this Part.

Clause 120 amends section 11 of Schedule 1 of the Act. The purpose of the amendment is to expand the rule making power of the Governor in Council to make a rule or rules concerning expert evidence. Pursuant to section 118(2) of the Act, any rule must be approved by the Rules Committee, prior to being made.

**PART 26—AMENDMENT OF TORRES STRAIT
ISLANDER LAND ACT 1991**

Clause 121 provides that the *Torres Strait Islander Land Act 1991* is amended by this Part.

Clause 122 amends section 57 by the insertion of a definition of “Minister”. As a result of the transfer of the administrative responsibility for the Aboriginal and Torres Strait Islander Land Tribunals to the portfolio of the Attorney-General and Minister for Justice on 1 January 2003, the amendment is required to preserve the requirement for the Tribunals to make recommendations to the Minister for Natural Resources and Mines on matters relevant to the granting of claimable land.

Clause 123 amends section 58 as per clause 122.

Clause 124 amends section 59 as per clause 122.

Clause 125 amends section 106 as per clause 122.

Clause 126 amends section 113 as per clause 122.

Clause 127 amends section 114 as per clause 122.