

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2013

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

Justice and Other Legislation Amendment Bill 2013

Objectives of the Amendments

The objectives of the amendments are to:

- clarify that section 23(1)(b) of the Criminal Code , as amended by the *Criminal Code and Other Legislation Amendment Act 2011*, does not change the circumstances in which a person is criminally responsible;
- clarify the operation of the new 80% mandatory minimum non-parole scheme for drug traffickers;
- allow for the further clarification of the definition of ‘community legal service’ used in the *Personal Injuries Proceedings Act 2002* and the *Legal Profession Act 2007*;
- respond to an issue in relation to section 706 of the *Legal Profession Act 2007* raised by the Queensland Law Society in its submission on the Bill to the Legal Affairs and Community Safety Committee (the Committee);
- clarify the Chief Magistrate’s powers under section 12 of the *Magistrates Act 1991*; and
- ensure the protection of the interests of the child when an application or referral under the *Child Protection Act 1999* is sought to be withdrawn under the *Queensland Civil and Administrative Tribunal Act 2009*.

Achievement of the Objectives

The amendments achieve these objectives by:

- inserting a note to section 23(1)(b) of the Criminal Code to confirm that the provision, as amended by the *Criminal Code and Other Legislation Amendment Act 2011*, did not intend to change the circumstances in which a person is criminally responsible;

- amending the *Drugs Misuse Act 1986*, the *Corrective Services Act 2006* and the *Penalties and Sentences Act 1992* to clarify the operation of the new 80% mandatory minimum non-parole scheme for drug traffickers;
- relocating the definition of ‘community legal service’ from the *Personal Injuries Proceedings Act 2002* to the *Legal Profession Act 2007*, recognising a family violence prevention legal service in the definition and providing for further clarification by regulation;
- providing that stated inadvertent breaches of the Act are not required to be reported under section 706 of the *Legal Profession Act 2007*;
- clarifying that the Chief Magistrate’s powers under section 12 of the *Magistrates Act* are confined to administrative functions; and
- ensuring that applications or referrals made under the *Child Protection Act 1999* cannot be withdrawn without the leave of the Queensland Civil and Administrative Tribunal.

Alternative Ways of Achieving Policy Objectives

Legislative amendment is the only way of achieving these policy objectives.

Estimated Cost for Government Implementation

The proposed amendments will not impose any additional cost on Government.

Consistency with Fundamental Legislative Principles

The *Criminal Law and Other Legislation Amendment Act 2013* (the Amending Act) received assent on 13 August 2013. The Amending Act includes amendments to the *Penalties and Sentences Act 1992* and the *Corrective Services Act 2006* to implement the Government’s commitment that drug traffickers sentenced to immediate full-time imprisonment serve a minimum non-parole period of 80% of the sentence imposed. Those provisions commenced upon assent.

The new 80% non-parole regime applies to drug traffickers serving a term of imprisonment for an offence committed after commencement; that is, for offences committed after 13 August 2013.

In order to ensure the mandatory nature of the new 80% non-parole regime, consequential amendments to the *Penalties and Sentences Act 1992* were made. These amendments related to the court ordered parole provisions and the serious violent offences regime. However, those amendments resulted in the unintended situation where offenders convicted and sentenced for drug trafficking committed prior to 13 August 2013 were no longer subject to court ordered parole or the serious violence offences regime. The amendments to the *Drugs Misuse Act 1986*, *Corrective Services Act 2006* and the *Penalties and Sentences Act 1992* during consideration in detail of the Bill are proposed to rectify this anomaly. This requires the amendments to date from 13 August 2013.

Amendment 5 provides for the definition of ‘community legal service’ in the *Legal Profession Act 2007*. The definition provides that a community legal service is an organisation that meets certain stated criteria in the definition and satisfies any other

criteria prescribed under a regulation. It may also be organisation prescribed under a regulation. It may be argued that this pays insufficient regard to the institution of Parliament by allowing the delegation of legislative power. However, community legal centres are readily identified in the community and professionally. There are special arrangements for the issue of practising certificates and professional indemnity insurance for their legal officers. These regulation-making powers have been included in response to representations from stakeholders. They will allow further criteria to be prescribed for greater certainty as to those organisations that are to be regarded as community legal services and will ensure that an organisation that is appropriate for recognition as community legal service is not unintentionally excluded.

Consultation

The Bar Association of Queensland requested the amendment to section 23 of the Criminal Code. There has been no consultation on the other amendments.

NOTES ON PROVISIONS

Amendment 1 is a consequential amendment to section 184(5) of the *Corrective Services Act 2006* given the insertion of new section 182A inserted into the *Corrective Services Act 2006* by the *Criminal Law and Other Legislation Amendment Act 2013*.

Amendment 2 inserts a note to section 23(1)(b) of the Criminal Code to confirm that the provision, as amended by the *Criminal Code and Other Legislation Amendment Act 2011* (the 2011 amendment), enshrined the common law position with regards to the excuse of accident in Queensland and did not intend to change the law in this regard. The 2011 amendment did not intend to change the circumstances in which a person is criminally responsible.

Amendment 3 amends section 5 (Trafficking in Dangerous Drugs) of the *Drugs Misuse Act 1986*. The amendment reflects new section 182A of the *Corrective Services Act 2006* as inserted by the *Criminal Law and Other Legislation Amendment Act 2013*. New section 182A provides that an offender sentenced to a term of actual imprisonment for an offence of drug trafficking must serve a minimum non-parole period of 80% of the term of imprisonment. The amendment to section 5 of the *Drugs Misuse Act 1986* complements this provision and recognises that new section 182A of the *Corrective Services Act 2006* commenced on 13 August 2013.

Amendment 4 is consequential on the definition 'community legal service' being moved from the *Legal Profession Regulation 2007* to the *Legal Profession Act 2007* under amendment 8.

Amendment 5 amends section 706 of the *Legal Profession Act 2007* which requires a relevant entity to report suspected offences that come to its attention in administering the Act to the appropriate authority. This amendment will ensure that inadvertent breaches of Part 2.2 of the Act by persons employed by or appointed to government entities engaged in legal practice for the entities need not be reported.

Amendment 6 is a technical amendment as a consequence of amendment 7.

Amendment 7 is consequential on the omission of the definition of 'community legal service' from the *Legal Profession Regulation 2007* by amendment 9.

Amendment 8 provides for the definition of ‘community legal service’ in the *Legal Profession Act 2007*, as a more appropriate location, rather than cross-referring, as currently in the Bill, to a definition under the *Personal Injuries Proceedings Act 2002*. In response to a recommendation of the Committee and submissions to the Committee on the Bill, the amendment also recognises a family violence prevention legal service and provides for organisations to be prescribed as community legal services and further criteria for community legal services to be prescribed by regulation.

Amendment 9 makes amendments to the *Legal Profession Regulation 2007* as a consequence of amendment 8.

Following further consultation with the Chief Magistrate, amendments 10-13 clarify that the Chief Magistrate’s powers under section 12 of the *Magistrates Act* are confined to administrative functions.

Amendment 14 amends the *Penalties and Sentences Act 1992*.

Section 4 (Definition) is amended to omit the phrase “drug trafficking offence”. This definition is no longer necessary because of the subsequent amendments to sections 160C – 160E.

Section 160A (Application of ss 160B-160D) is amended to insert a new example, namely new section 5(2) and (3) of the *Drugs Misuse Act 1986*.

Sections 160C-160E are amended to omit reference to a drug trafficking offence given the revised approach to the provision of the new drug trafficking 80% non-parole period scheme.

Schedule 1 (Serious Violent Offences) to the *Penalties and Sentences Act 1992* is amended to reinsert section 5 (Trafficking in Dangerous Drugs) of the *Drugs Misuse Act 1986*. This is necessary given the revised approach to the provision of the new drug trafficking 80% non-parole period scheme. The transitional provision recognises the unintended omission of the offence of drug trafficking from Schedule 1 as of 13 August 2013.

Amendment 15 is consequential to amendment 8. Section 67A of the *Personal Injuries Proceedings Act 2002* will now cross refer to the definition of ‘community legal service’ in the *Legal Profession Act 2007*.

Clause 146 of the Bill amends section 46 of the *Queensland Civil and Administrative Tribunal Act 2009* to allow a party to withdraw an application or referral without needing to obtain the leave of the tribunal except in the case of proceedings under particular sections of the *Disability Services Act 2006*, the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*. Amendment 16 includes applications or referrals made under the *Child Protection Act 1999* in the list of exceptions contained.

Amendment 17 amends the long title of the Bill.