

JUSTICE AND OTHER LEGISLATION (MISCELLANEOUS PROVISIONS) BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The proposed Bill contains minor or technical amendments to a number of statutes administered by the Department of Justice.

Reasons for the objectives and how they will be achieved

The Department of Justice is responsible for the administration of over 170 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, from time to time a 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 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.

These amendments have several elements in common:

1. They relate mostly to statutes administered by the Attorney-General and Minister for Justice;
2. They have the purpose of increasing operational efficiency in various State Government departments;
3. They do not modify the major underlying philosophy or direction of statutes being amended.

Administrative cost to Government of implementation

The amendments will result in some increased efficiencies and savings in the Department of Justice.

Fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. However, the proposed amendment to the *Fair Trading Act 1989* is taken to have commenced on the day of assent of the *Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997*—5 December 1997. Similarly, the proposed technical amendment to the *Legal Aid Queensland Act 1997* will also be retrospective to its commencement date of 1 July 1997.

Consultation

The following bodies/persons have been consulted in relation to that part of this Bill which relates to their concerns/issues:

- Consulting Surveyors Association of Queensland
- Co-operative Council Of Australia
- Crown Law
- Director of Public Prosecutions
- National Institute of Accountants
- Office of Consumer Affairs
- Queensland Law Society Inc
- Queensland Treasury
- Roman Catholic Church.
- Urban Development Institute of Australia

All parties consulted agreed to the content of this Bill so far as it relates to their concerns/issues.

NOTES ON PROVISIONS

The format to this statute follows the same format for previous departmental “Miscellaneous Provisions Acts”; that is:

- There is a long and short title; and
- The Act is divided into Parts, each Part containing within it all the matters (amendments) relevant to a statute for which the Department of Justice has administrative responsibility.

Part 1—Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 is the commencement provision which provides that certain Parts and the Schedules commence on the day of assent, and that the remaining provisions commence on a day to be fixed by proclamation.

Clause 3 states that schedules 1 and 2 amend the Acts mentioned in them.

Part 2—Amendment of *Bail Act 1980*

Clause 4 provides for the amendment of the *Bail Act 1980*.

Clause 5 amends section 10(1) by including the words “or in connection with a criminal proceeding” to the expression “held in custody on a charge of an offence”. The purpose of the amendment is to make section 10(1) consistent with section 8(1) and ensure that section 10(1) will apply to applications for bail pending an appeal to the District Court pursuant to section 222 of the *Justices Act 1886*.

Clause 6 inserts five new provisions concerned with generally—the Review of Certain Bail Decisions. The purpose of the first provision, which inserts the proposed section 19B, is to allow both the Crown and the

accused to apply to a reviewing court for a review of a bail decision. This Review mechanism does not apply to decisions made by the Supreme Court, or a decision about bail under section 10(2) or a decision by a magistrate acting as a reviewing court. This provision does not limit a person's right to make successive bail applications or to make an application for bail pursuant to section 19 (Application re refusal or conditions of bail). It does not limit the Crown's right to apply to a Court to revoke bail granted to a person.

In the second provision, a new section 19C, provides a procedure for a telephone review by a Magistrate of a bail decision made by a police officer or justice, in circumstances where there is no magistrate in the vicinity immediately available to review the decision. After receipt of the defendant's written application to contact a magistrate by telephone to review the decision, the police officer or justice must explain to the magistrate the circumstances relevant to the bail decision. The magistrate is then required to perform certain tasks with respect to the review of the decision. This section does not apply to a bail decision made by a police officer on the arrest of the defendant, if the defendant can be brought before a magistrate by 4 pm on the day after the defendant's arrest.

With respect to the third provision, a new section 19D, it allows the defendant or the Crown to seek a further review by the Supreme Court after a magistrate has reviewed a bail decision. Such a review may only occur with the leave of the Supreme Court.

The fourth provision inserts a new section 19E which allows for the release of a person on bail to be deferred if the Crown indicates to the Court or person who made the bail decision that a review of the bail decision will be sought. The release of the person will be delayed until the review is completed, a police officer or person appearing on behalf of the Crown gives a written notice that the review will not be proceeded with, or 72 hours elapses, whichever occurs first.

The fifth provision, a new section 19F, states that the preceding new provisions [new sections 19B to 19E] do not affect the power of the Supreme Court under section 10 or any other power of a court to grant, enlarge, vary or revoke bail under other provisions of this or any other Act.

Part 3—Amendment of *Cooperatives Act 1997*

Clause 7 provides for the amendment of the *Cooperatives Act 1997*.

Clause 8 clarifies the definition of “trading cooperative” and inserts an additional requirement enabling a regulation to be made which may prescribe a lesser number of members than 5 persons to form a trading cooperative. Such a requirement will enable persons to form a trading cooperative for the purpose of gaining greater economic benefits and efficiency with respect to their core trading activities.

Clause 9 rephrases part of the definition of “non-trading cooperative”.

Clause 10 amends section 16(3)(c) by inserting an additional requirement enabling a regulation to be made which may prescribe a lesser number of members than 5 persons to attend a formation meeting of a proposed cooperative.

Clause 11 amends section 17 by inserting a new requirement enabling the registrar to approve a disclosure statement with or without conditions.

Clause 12 amends section 19(1)(c)(ii) by inserting an additional requirement enabling a regulation to be made which may prescribe a lesser number of members than 5 persons to sign the application for registration of the proposed cooperative.

Clause 13 amends section 68(3)(b) by inserting an additional requirement enabling a regulation to be made which may prescribe a lesser number of members than 5 persons who may carry on business as a cooperative.

Clause 14 amends section 72 to enable a cooperative to set its regular subscription based on patronage.

Clause 15 amends section 76 to ensure that when it repays the amount paid up on the shares held by expelled members, it does not adversely affect the financial position of the cooperative.

Clause 16 amends section 133 by updating the appropriate reference.

Clause 17 deletes the phrase, “in the approved form”, from section 135 as the prescribed particulars are contained in the Regulation.

Clause 18 amends section 143 to provide for disclosure to proposed members as well as to existing members and will avoid the conflicting duty

to give two copies of the last annual report of the cooperative to proposed members.

Clause 19 amends section 149 to ensure that a cooperative is not required to prepare a disclosure statement regarding the issue of bonus shares to a member.

Clause 20 amends section 170 to insert a new subsection which provides that a cooperative must not purchase shares or repay amounts paid up on shares if the cooperative is likely to become insolvent as a result of such purchase or repayment or is insolvent.

Clause 21 inserts a new provision which provides that a member who has sold or transferred or disposed of the beneficial interest in the member's shares is not entitled to vote.

Clause 22 inserts a new provision which will allow a cooperative that has fewer than 50 members to pass an ordinary resolution by a simple majority without the need to convene a general meeting if all the members sign a document containing a statement that they are in favour of the resolution.

Clause 23 replaces the old provision—section 198—with a new one to ensure that certain time periods may also apply to the first annual general meeting.

Clause 24 amends section 204 by clarifying the time period as to the recording of minutes of each general meeting, board meeting and subcommittee meeting in the appropriate records eg minute book.

Clause 25 amends section 207 to provide that the majority of directors must be member directors.

Clause 26 inserts a new subsection in section 209 to provide that in a quorum of directors, the number of member directors must outnumber independent directors by at least 1 or the greater number specified in the rules.

Clause 27 is amended in a similar manner to that mentioned in *Clause 24*; that is, a time period for the recording of minutes is inserted in section 210(6).

Clause 28 inserts an entire new division—Division 1A—Secretary—dealing with the appointment of a secretary.

Clause 29 makes minor amendments to section 242 as well as clarifying the requirement to provide consolidated accounts.

Clause 30 inserts a new provision to prohibit the use of the word “cooperative”, the abbreviation “co-op” or words importing a similar meaning by persons other than a cooperative or entities mentioned in section 245(6).

Clause 31 makes a technical amendment to section 252 to require a deposit-taking cooperative to continue to have rules to accept money on deposit.

Clause 32 amends section 259 so as to extend its scope to employees and therefore enabling the issue of debentures to members and to employees.

Clause 33 provides for the amendment of section 266 to clarify the issue of bonus shares on the basis of business done with the cooperative or on the basis of shares held by the member and the issue of a limited dividend for shares held by the member.

Clause 34 inserts a new provision which requires the new body to give the registrar a copy of its new certificate of registration or incorporation. Currently, there is no obligation to advise the registrar that a cooperative has transferred its incorporation.

Clause 35 makes a technical amendment to section 330 by providing that section 588G of the *Corporations Law* -Director’s duty to prevent insolvent trading by company- should apply to all cooperatives.

Clause 36 inserts additional matters which a foreign cooperative must file with the registrar.

Clause 37 amends section 373 to adjust the manner in which a Queensland cooperative and a foreign cooperative may undertake a merger or a transfer of engagements as well as enabling the local and foreign registrars to approve with or without conditions.

Part 4—Amendment of *Crimes (Confiscation) Act 1997*

Clause 38 provides for the amendment of the *Crimes (Confiscation) Act 1997*.

Clause 39 amends section 13 by inserting two new subsections

regarding the definition of “tainted property” to include the tainted property mentioned in sections 90 and 92 in relation to which the offence is committed or intended to be committed.

Clause 40 amends section 40 to ensure that it is the only section in the Act under which provision may be made for meeting out of property that is the subject of a restraining order expenses mentioned in subsection 18(b)—legal expenses.

Clause 41 amends subsection 43(8) in a technical manner so as to give priority to subsection 40(18); to avoid any conflict between sections 40 and 43; and to ensure that property cannot be released for legal expenses under any application unless the conditions in subsection 40(19) are satisfied.

Part 5—Amendment of *Judges (Pensions and Long Leave) Act 1957*

Clause 42 provides for the amendment of the *Judges (Pensions and Long Leave) Act 1957*.

Clause 43 makes it clear that section 2C (Minimum benefit payable) of the *Judges (Pensions and Long Leave) Act 1957* does not apply to an acting Supreme Court or District Court judge; however, the department will discharge its obligation under the Commonwealth’s *Superannuation Guarantee (Administration) Act 1992* in respect of the acting Judge’s service, by payment of the appropriate amount into the State Public Sector Superannuation Scheme as stated in the Superannuation (State Public Sector) Deed 1990.

Part 6—Amendment of *Justices Act 1886*

Clause 44 provides for the amendment of the *Justices Act 1886*.

Clause 45 inserts a new provision to enable an amount of a charge to be prescribed under a regulation for the issue of certain warrants. The effect of this amendment is that the amount recoverable under a warrant of execution

or a warrant that authorises a person's imprisonment issued under the *Justices Act 1886* or another Act for the non-payment of a penalty is increased by the amount of the charge. It enables warrants that are not issued under section 98S of the Act, under the Self-Enforcing Ticketable Offence Notice System, to be treated in the same manner as warrants issued under that system. Section 98S(3) enables an execution fee to be added to the amount owing for an offence under Part 4A of the Act.

Part 7—Amendment of *Land Sales Act 1984*

Clause 46 provides for the amendment of the *Land Sales Act 1984*.

Clause 47 makes a minor amendment to section 6 (Interpretation) by deleting the comma.

Clause 48 amends subsection 9(3)(f) updates the reference in that subsection to section 10A(1).

Clause 49 amends subsection 10(1)(b)(ii) by updating the reference to subsection 10A(3)(b).

Clause 50 amends section 10A (Purchaser must be given registrable instrument of transfer and other documents) by requiring that the vendor give the purchaser a copy of the “as constructed” plan and a statement by a licensed surveyor only in circumstances where the vendor has not already given the purchaser a copy of the plan of survey for the proposed allotment sealed by the local government. The clause also makes consequential amendments and renumbers the section.

Part 8—Amendment of *Property Law Act 1974*

Clause 51 provides for the amendment of the *Property Law Act 1974*.

Clause 52 amends subsection 61(2)(a) by making a technical amendment so as to require that a cheque used in the settlement of the sale of land may be “a financial institution cheque drawn on itself”. This amendment follows the same policy underlying the enactment of the

Miscellaneous Acts (Non-Bank Financial Institutions) Act 1997. Moreover, the term “financial institution” is defined in section 36 of the *Acts Interpretation Act 1954* to include amongst other things banks, building societies and credit unions.

Part 9—Amendment of *Roman Catholic Church (Incorporation of Church Entities) Act 1994*

Clause 53 provides for the amendment of the *Roman Catholic Church (Incorporation of Church Entities) Act 1994*.

Clause 54 omits section 2 which provided that the Act commenced on the date of proclamation.

Clause 55 inserts into section 3 (Definitions) a number of important new definitions which will help to improve the operation of the Act. It also omits from section 3 (Definitions) the following definitions, “bishop” and “officer”. The unnecessary words, ‘the Code of’, have also been omitted from this section. Similarly, it amends the definition of “church entity” to embrace religious institutes such as an Institute of Consecrated Life or a Society of Apostolic Life and “a juridic person, or the person’s competent authority”. Finally, it amends the current definition of “incorporated church entity” by expanding on that definition to include that in part 5, an “incorporated church entity” means an AI Act corporation, or an RECI Act corporation that is not established under this Act.

Clause 56 amends the heading of section 4, (Interpretation and application of Code of Canon Law), by omitting unnecessary words and recasts the language so that the wider concept of ‘canon law’ is referred to, rather than the narrower “Code of Canon Law”.

Clause 57 amends section 8 (Certificate of incorporation) by omitting unnecessary words.

Clause 58 amends section 9 (Request to incorporate church entity) by inserting new subsection 9(2A). Essentially, this subsection requires the bishop or Corporation of the Bishops to obtain written consent from the religious institute’s competent authority before asking the chief executive to incorporate a religious institute or an associated entity of a religious institute. This procedure has always accorded with Church protocol but it is

considered necessary for clarity and certainty that such a requirement be included in the Act. This amendment also amends subsection 9(3) by inserting new paragraphs (e) and (f).

Clause 59 amends section 11 (Composition of corporation) by omitting unnecessary words.

Clause 60 inserts the following new sections after section 11:

new section 11A (Vesting of assets). This section states that on the establishment of a church entity as a corporation under part 3, the church entity's assets vest in the corporation. On the establishment of an associated entity as a corporation under part 3, the assets mentioned in paragraphs (a) and (b) of subsection 11A(2) vest in the corporation.

new section 11B (Transfer of rights and liabilities). This section provides that on the establishment of a church entity as a corporation under part 3, the rights and liabilities of the entity become the rights and liabilities of the corporation, and a legal proceeding by or against the entity that has not been finished before the establishment may be continued and finished by or against the corporation.

Clause 61 amends section 13 (Person acting for corporation) by omitting unnecessary words.

Clause 62 inserts two new subsections in section 16 (Request to establish existing church corporation under this part). Subsection 16(2A) provides that if the existing church corporation is a religious institute or an associated entity of a religious institute, a request for establishment may be made only if the religious institute's competent authority has given written consent to the making of the request. Subsection 16(2B) states that the consent must be given to the bishop or Corporation of the Bishops proposing to make the request. The amendment also inserts new paragraph (d) in subsection 16(3).

Clause 63 amends section 18 (Composition of corporation) by omitting unnecessary words.

Clause 64 amends section 20 (Person acting for existing church corporation) by omitting unnecessary words.

Clause 65 inserts a new subsection in section 21 (Establishment under this part does not affect legal personality etc.). Subsection 21(4) is a

savings provision which provides that the assets held by the existing church corporation immediately before its establishment are, on the establishment, taken to be the assets of the corporation established under part 4.

Clause 66 amends section 27 (Restriction on powers) by omitting unnecessary words.

Clause 67 amends section 28 (Persons having dealings with incorporated church entities etc.) by omitting unnecessary words.

Clause 68 amends existing subsection 33(3) by recasting the current wording to omit unnecessary words, and providing in paragraph (b) of subsection 33(3) that the request may only be made if the religious institute's competent authority has given written consent to the relevant person to the making of the request for dissolution. This amendment also amends section 33(4)(e) by omitting unnecessary words as well as inserting a new paragraph (f) in subsection 33(4).

Part 10—Amendment of *Vexatious Litigants Act 1981*

Clause 69 provides for the amendment of the *Vexatious Litigants Act 1981* (VLA). The VLA, among other things, requires that there be a register (maintained in the Registry of the Supreme Court of Queensland) or “orders” that a person who has been declared to be vexatious shall not be able to institute proceedings without leave of the court. Under the Act as it now stands, vexatious litigants can continuously apply to the Court in relation to their order without sanction. The purpose of this amendment is to regulate the manner in which vexatious litigants apply for leave to institute proceedings or procure process.

Clause 70 is a consequential amendment due to the insertion of new section 4A (Application to vary or revoke s 3 order).

Clause 71 makes a minor amendment to section 3 (Declaration of vexatious litigants upon application by public official) by making reference to Cairns.

Clause 72 inserts new section 4A (Application to vary or revoke s 3 order). This new section is analogous to section 9A (Application for leave), whereby applications under sections 3(3) and 4 by vexatious litigants are to

be determined by a judge on the papers.

Schedule

MINOR AMENDMENTS

This schedule makes discrete technical amendments to the *Associations Incorporation Act 1981*, *Childrens Court Act 1992*, *Criminal Code*, *Criminal Investigation (Extra-Territorial Offences) Act 1985*, *Evidence Act 1977*, *Fair Trading Act 1989*, *Hire-Purchase Act 1959*, *Jury Act 1995*, *Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997*, *Legal Aid Queensland Act 1997*, *Penalties and Sentences Act 1992*, *Stipendiary Magistrates Act 1991* and the *Trustee Companies Act 1968*.

Several minor technical amendments are made to certain provisions in the *Associations Incorporation Act 1981*.

Section 21E(2) of the *Childrens Court Act 1992* is amended by way of rephrasing a clause within the provision.

A definition of “summary offence” is inserted in Section 651 of the *Criminal Code* to give effect to the purpose of Sections 651 and 652 as well as giving jurisdiction to the District court for summary drug offences and for indictable drug offences which can be dealt with summarily.

The appropriate reference to the “commissioner of the Police Service” is made in section 2 of the definition of the term, “appropriate authority” under the *Criminal Investigation (Extra-Territorial Offences) Act 1985*.

A minor technical amendment is made to the heading of section 107 of the *Evidence Act 1977*.

The amendment to the *Fair Trading Act 1989* amends section 86 by increasing the penalty to 540 penalty units ensuring consistency with sections 82 and 84 of that Act.

Section 2 of the *Hire-Purchase Act 1959* is amended by the insertion of another provision which provides that certain transactions do not come

within the definition of the pivotal term in the statute—“hire-purchase agreement”. This amendment is necessary to facilitate complex financing arrangements [which may involve international financing facilities] for major infrastructure projects undertaken in the State by both the public and private sectors. Without undermining the underlying consumer protection policy in this statute, the State Government wants to ensure that the financing of these major infrastructure projects, which can technically take the form of a “hire-purchase agreement”, is neither restricted nor inhibited by this statute.

A new provision—Section 74A—is inserted in the *Jury Act 1995* provides that if a District Court registrar at a courthouse has performed a function or exercised a power that was assigned, or delegated, under the Act to a deputy sheriff then such performance of the function or exercise of the power is valid as if the District Court registrar were a deputy sheriff.

A minor technical amendment is made to the *Justice and Other Legislation (Miscellaneous Provisions) Act 1997*.

Minor technical amendments are made to various provisions in the *Legal Aid Queensland Act 1997* for the purpose of clarifying the corporate status of the body corporate.

The *Penalties and Sentences Act 1992* is amended in subsection 56(2) by the removal of the requirement that the offender be notified of the right to apply for a fine option order.

A minor technical drafting amendment is made to subsection 18(3) of the *Stipendiary Magistrates Act 1991*.

The amendments to the *Trustee Companies Act 1968* are to ensure that the current licence conditions are necessary in regards to the more recent developments in the *Corporation Law* and the overall scheme for the supervision of trustee companies. Accordingly, there is an omission of certain conditions dealing with amounts remaining uncalled on shares actually held in the company.

UNIFORM AMENDMENTS OF CERTAIN ACTS TO BROADEN RANGE OF PERSONS WHO MAY AUDIT

This schedule contains amendments to various statutes to give statutory recognition to the National Institute of Accountants.

Statutory recognition to the National Institute of Accountants will introduce greater competition within the accounting profession and therefore adherence to the principle of competitive neutrality.

Specifically, the purpose of the various amendments is to give statutory recognition to appropriately qualified accountants in various items of Queensland legislation by amending those Acts which contain qualification requirements for accountants to conduct audits. The Acts amended are as follows:

- *Associations Incorporation Act 1991*
- *Charitable Funds Act 1958*
- *Collections Act 1966*
- *Gaming Machine Act 1991*
- *Security Providers Act 1991*
- *Trust Accounts Act 1973.*
- *Trusts Act 1973*

This statutory recognition for members of the National Institute of Accountants is achieved by amending the abovementioned statutes to expressly recognise members of the National Institute of Accountants who hold a current public practice certificate issued by the institute and who have satisfactorily completed an auditing component of a course of study in accountancy at a tertiary level conducted by institutions prescribed under section 1280(2) of the *Corporations Law*.

