

These explanatory notes were replaced on 3 November 2004 and tabled on 9 November 2004. See Votes and Proceedings No. 35

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES

General Outline

Short Title

The short title of the Bill is the *Justice and Other Legislation Amendment Bill 2004*.

Policy Objectives of the Legislation

The objective of the Bill is to make minor amendments to legislation administered by the Attorney-General and Minister for Justice, in order to improve the operation of the system of justice.

Reasons for the Bill

The Attorney-General and Minister for Justice is responsible for the administration of a wide range of legislation. Periodically, these are examined to identify minor amendments which can be made to improve the operation of the legislation and also to clarify the legislation, for example, as the result of judicial decisions. The need for some amendments was identified by members of the community or the judiciary. The Bill also includes amendments suggested by the Queensland Law Reform Commission in their important function of reporting upon and recommending statutory reform.

These minor amendments also include the following non-contentious policy changes:

- to require courts in deciding whether or not to grant bail to an indigenous defendant to take into account the views of a community justice group;
- to provide for the electronic transmission of bench charge sheets;
- to protect from liability those who donate food to a community organisation which is intended to be provided at no cost to the recipient;
- to introduce a scheme for the counselling of jurors;
- to clarify the law in relation to the assessment of damages for wrongful death;
- to simplify the mechanism by which sentencing courts take into account presentence custody; and
- to update the capital and shareholding requirements of two trustee companies.

Achieving the Objective

The Bill achieves the objective by making minor or non-controversial amendments to the legislation as described below.

Administrative Costs and Cost of Implementation to the Government

Nil.

Fundamental Legislation Principles

Two provisions of the Bill need to have retrospective operation. Both are technical corrections and do not adversely affect rights and liberties, or impose obligations on individuals. The first is an amendment of the Coroners Act to include a declaration about the effectiveness of an amendment that contained a numbering error. The second is an amendment of the Civil Liability Act to include a provision excluding the operation of that Act in relation to certain injuries under the *Workers Compensation and Rehabilitation Act 2003*. The amendment needs to have retrospective operation to the commencement of that Act to ensure that there is no gap in coverage.

Consultation

There has been extensive consultation conducted with the Judiciary, the Director of Public Prosecutions, the Queensland Law Society, Bar Association of Queensland, Presidents of affected Tribunals, the Adult Guardian, Legal Aid Queensland, the Public Trustee, and representatives of Perpetual Trustees Australia Limited. The Queensland Law Reform Commission was consulted about the provisions relevant to the reform of the law related to actions for wrongful death.

Notes on Provisions

Part 1—Preliminary

Short title

Clause 1 provides that the short title is the *Justice and Other Legislation Amendment Act 2004*.

Commencement

Clause 2 provides for the commencement of the Act.

Acts Amended in schedule

Clause 3 provides that the schedule amends the Acts mentioned in it.

Part 2—Amendment of Bail Act 1980

Clause 4 provides that this part amends the *Bail Act 1980*.

Clause 5 amends section 6 (Definitions) by inserting definitions of the ‘community justice group’ and ‘defendant’s community’. These definitions are similar to the definitions of the same terms in the *Penalties and Sentences Act 1992*.

Clause 6 amends section 14 (Release of persons apprehended on making of deposit of money as security for appearance) by ensuring that a bench charge sheet may be forwarded by electronic transmission. This amendment clarifies that a bench charge sheet can be forwarded electronically and will assist in the implementation of the Integrated Justice Information Strategy. The clause also amends section 14 to clarify that the description of police officers who may grant bail under section 7 is the same as for the granting of cash bail under section 14.

Clause 7 amends section 15 (Procedure upon application for bail) to require the court when considering whether to grant bail, to have regard to any submissions made by a representative of the community justice group in the defendant's community that are relevant, for example, the defendant's relationship to the defendant's community and any cultural considerations. These provisions are similar to the sentencing guidelines provisions of the *Penalties and Sentences Act 1992* and the *Juvenile Justice Act 1992* that require, where the defendant is an Aboriginal or Torres Strait Islander person, the court to have regard to any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the defendant. The clause requires a representative of the community justice group to advise the court of any situation of conflict arising for any member of the community justice group.

Clause 8 amends section 16 (Refusal of bail) to require the court in deciding to refuse bail to have regard to any submissions made by a representative of the community justice group in the defendant's community that are relevant. The clause requires a representative of the community justice group to advise the court of any situation of conflict arising for any member of the community justice group.

Part 3—Amendment of Births, Deaths and Marriages Registration Act 2003

Clause 9 provides that this part amends the *Births, Deaths and Marriages Registration Act 2003*.

Clause 10 amends section 13 to provide consistency with sections 19 and 20 to reject a prohibited name. Under section 13 of the Act, the parents of a child may apply to change the child's first names within a year of birth.

Section 12 of the Act currently provides that the parents of a child cannot register the name of a child if the name stated in the birth registration is a “prohibited name.” Similarly, sections 19 and 20 of the Act also give the registrar the power to reject an application for a change of name if the name is a prohibited name. The amendment to section 13 gives an equivalent power to reject an application for change of name if the proposed name is a prohibited name.

Clause 11 amends section 15 to ensure that a person is allowed to register a change of their name, if the person has registered the change under a corresponding law or has changed their name by other legal process in another State. A person who has done the latter can have the change noted on their birth or adoption entry under section 20. The restriction means that a person (i) born outside Australia and (ii) who is ordinarily resident in Queensland and (iii) who changed name by deed poll interstate, perhaps many years ago, (the “latter” referred to in the preceding paragraph) cannot register a change of name in the change of name register. Further, the change may not be noted under section 20 because there is no Queensland birth or adoption entry for that person.

This has caused problems for people who are in this category in dealing with the Passports Office. The Passports Office will no longer accept a deed poll as evidence of the change of name - applicants must produce a Change of Name Certificate issued by a State Registrar of Births, Deaths and Marriages.

The amendment therefore removes the restriction in section 15 to enable a change of name to be registered in Queensland by removing the reference to “other legal process in another State”.

Clause 12 amends section 16 to include the factors the registrar may consider in deciding if a person ordinarily resides in Queensland. Section 16 of the Act provides that a person born outside of Australia must ordinarily reside in Queensland before they can register a change of their name.

The concept of ‘ordinarily resides’ creates problems in that every applicant’s circumstances are different. Citizens from overseas countries may argue that they ‘ordinarily reside’ in Queensland even though they only hold a student or other temporary visa. Other State registering authorities have policies that have various requirements, which include that a person must provide evidence of at least 3 months residence in that State at the time of application.

The amendment provides that the registrar may take into account a number of factors when deciding whether a person is ordinarily resident in the State. These will include how long the person has resided in Queensland, whether the person is employed in Queensland and whether the person is enrolled on the electoral roll. The amendment also allows a regulation to prescribe a minimum period of residence for the section and to prescribe “any other consideration” by regulation. These “other considerations” might include whether the person holds Australian citizenship or a permanent resident visa.

Clause 13 amends section 17 to establish the criteria the registrar may consider in deciding if a child ordinarily resides in Queensland. Section 17 of the Act provides that an application may be made to change a child’s name if the child was born outside Australia but ordinarily resides in Queensland. The amendment to section 17 is in similar terms to the amendment to section 16, in that the amendment establishes criteria which the registrar can consider when deciding whether a child is “ordinarily resident” in Queensland.

Clause 14 amends section 19 to allow the registrar to note the change of a person’s name on the entry for the person in the change of name register. Under section 12(2) of the Act, if a birth registration statement states only one name for the child (i.e. only a first name or only a surname); the name is taken, for the Act, to be the child’s surname. This provision is for administrative purposes so that the name can be filed and retrieved efficiently. The amendment inserts the same requirement for section 19 when only one name is provided when registering a change of name.

The amendment also provides that where a person has made an application for change of name more than once, the entry in the Change of Name Register that is being changed must be noted with the new change of name. The entry which relates to the new name must also be noted with the previous details of change of name. This procedure will ensure that there is an audit trail for all changes of name.

Clause 15 amends section 20. Under section 12(2) of the Act, if a birth registration statement states only one name for the child (i.e. only a first name or only a surname); the name is taken, for the Act, to be the child’s surname. This provision is for administrative purposes, so that the name can be filed and retrieved efficiently. The amendment inserts the same requirement for section 20 when only one name is provided when noting a change of name on the birth or adoption of children registers.

Clause 16 amends section 21. Section 21 limits the number of times that a person can apply to change their name in Queensland. The section provides

that an adult cannot change name more than once per year. There is a similar requirement for children's surnames. A Magistrates Court can approve more frequent changes in exceptional circumstances.

Overseas nationals may apply to change name under section 16 or 17 if they were born outside Australia and are ordinarily resident in Queensland. Other States generally require a residency period of only 3 months for overseas nationals before a change of name can be effected and Queensland currently has no statutory residency period for such persons. Consequently, there is the potential for a person to 'forum shop' and change name on a more regular basis than envisaged by the Act.

The amendment therefore provides that the one year limit runs from when the person's change of name was registered under this Act or under a corresponding law, whichever is later in time.

Clause 17 amends section 41 by allowing the registrar to enter application information.

Clause 18 amends section 43 by inserting a definition of registrable event.

Part 4—Amendment of Children Services Tribunal Act 2000

Clause 19 provides that this part amends the *Childrens Services Tribunal Act 2000*.

Clause 20 amends section 11 to ensure that existing members can be reappointed without the need to advertise. Pursuant to section 11 of the *Children Service Tribunal Act 2000*, a member can only be appointed after a process of advertisement for applicants has been completed. There would be more administrative efficiency if existing members could be reappointed without the need for advertisement.

Part 5—Amendment of Civil Liability Act 2003

Clause 21 provides that this part amends the *Civil Liability Act 2003*.

Clause 22 amends section 5 of the Act to preclude operation of the Act to workers' compensation claims under the *Workers' Compensation and Rehabilitation Act 2003* in the same way that claims under the *WorkCover Queensland Act 1996* were excluded by section 5(a) of the Act. The example of application of section 5(a) would correspond to the application of the new section 5(b).

Clause 23 amends the definition of "community work" to include the act of donating food. This clarifies that persons who donate food are able to be considered to be doing community work. As a result, those persons who are providing food on behalf of community organisations on a voluntary basis and who are otherwise within the requirements of the division, will be able to seek exemption under section 39. The liability of community organisations will remain unaffected.

The clause also amends the definition of "volunteer" in section 38 of the Act to provide that persons who donate food are within the definition for the purposes of the division. As a result, despite being provided with indemnity under the proposed amendment to section 39 (below), the person will still be subject to the restrictions otherwise within the division of the Act, for example, with respect to criminal behaviour, intoxication, etc, that apply to volunteers and the protection offered by section 39.

Clause 24 amends section 39 of the Act to provide that persons who donate food in good faith and without reward to community organisations, with the intention that the food will be used for advancement of the community work of the organisation (such as providing assistance to the homeless or disadvantaged by way of food packages or meals), are able to obtain protection from civil liability under the section. At the time of providing the food to the community organisation, the person must provide to the community organisation any necessary information relating to keeping the food fit for human consumption.

Clause 25 amends the Act by inserting a new Part heading to Chapter 5 of the Act, which deals with transitional provisions.

Clause 26 amends the Act by inserting a new Part 2 to Chapter 5 of the Act. This part provides transitional provisions. Section 79 provides amendments to the section 38 definitions of "community work" and "volunteer" which specifically apply to donations of food made in the circumstances mentioned in section 39 on or after commencement of the amendment. Section 80 provides that injuries under the *Workers Compensation and Rehabilitation Act 2003* excluded by the new section 5(b) are excluded no matter when the injury occurred.

Part 6—Amendment of Criminal Code

Clause 27 provides that this part amends the Criminal Code.

Clause 28 amends section 98C(2) (Bribery) to remove any doubt regarding the scope of the offence by clarifying that it covers direct and indirect bribes, i.e. that it is a crime to give (or promise or offer to give) a benefit of any kind to a person in order to influence or affect their election conduct or to a third person in order to influence or affect that first person's election conduct.

Part 7—Amendment of Criminal Law (Rehabilitation of Offenders) Act 1986

Clause 29 provides that this part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Clause 30 amends section 3 (Interpretation) by inserting a definition of “approved form”.

Clause 31 amends section 10 (Permit to disclose convictions) by deleting the word “prescribed” and inserting the word “approved”.

Clause 32 inserts a new section 14 (Approved forms) which permits the chief executive to approve forms for use under the Act.

Part 8—Amendment of Criminal Proceeds Confiscation Act 2002

Clause 33 provides that this part amends the *Criminal Proceeds Confiscation Act 2002*.

Clause 34 amends section 8 (Proceeding other than for offence is not criminal proceeding) by inserting a new heading “Proceedings are civil, not criminal”. A new subsection is also inserted to provide that the *Uniform Civil Procedure Rules 1999*, except to the extent of any inconsistency, apply to proceedings under the Act other than prosecutions for an offence

against the Act. The purpose of the amendment is to clarify that proceedings under the Act, other than prosecutions for an offence against the Act, are civil proceedings and the rules applicable to civil proceedings apply except where they are inconsistent with a provision of the Act.

Clause 35 amends section 29 (Affidavit) to insert the requirements for an affidavit of an authorised commission officer or police officer supporting an application by the State for a restraining order relating to property under the effective control of a prescribed respondent.

Clause 36 inserts new sections 39A – 39D. Section 39A requires the examination of a person to be conducted at the time and place specified in the examination notice. Section 39B provides for the examination to take place in private and provides for the persons who are entitled to be present at the examination. Section 39C provides for the role of the person’s lawyer at the examination. Section 39D provides for a record of the examination to be made under the *Recording of Evidence Act 1962*.

Clause 37 amends section 104 (Meaning of “tainted property”) by inserting a new subsection (5) containing an additional definition of “tainted property” for the purposes of Chapter 3, Part 3. The purpose of the amendment is to include benefits of certain contracts as property which is able to be restrained under Part 3. These particular benefits can be the subject of an application for a special forfeiture order under Chapter 4 of the Act. However, in some cases it may be appropriate for an application for a restraining order to be made before the application for the special forfeiture order is finally decided, for example, because the prescribed respondent has not yet been convicted of the relevant confiscation offence.

Clause 38 inserts new sections 131A – 131D. Section 131A requires the examination of a person to be conducted at the time and place specified in the examination notice. Section 131B provides for the examination to take place in private and provides for the persons who are entitled to be present at the examination. Section 131C provides for the role of the person’s lawyer at the examination. Section 131D provides for a record of the examination to be made under the *Recording of Evidence Act 1962*.

Clause 39 amends section 200 (Application for special forfeiture order) by omitting the words “or alleged confiscation offence”.

Clause 40 amends section 220 (Application of proceeds to satisfy order) to clarify that realised proceeds from the disposal of property means the proceeds remaining after the satisfaction of all registered or statutory encumbrances.

Clause 41 replaces section 258 (Publication of proceedings) with a new section which will enable the Supreme Court to make appropriate orders about the publication of matters arising under the Act once a proceeding has been started under the Act.

Part 9—Amendment of Drug Rehabilitation (Court Diversion) Act 2000

Clause 42 provides that this part amends the *Drug Rehabilitation (Court Diversion) Act 2000*.

Clause 43 amends section 47 (Expiry of Act) by ensuring that the Act expires on 31 December 2006. Pursuant to section 12 of the *Drug Rehabilitation (Court Diversion) Regulation 2000*, the *Drug Rehabilitation (Court Diversion) Act 2000* (the Act) will expire on 13 December 2004. The Act is the legislative framework for the operation of the drug court pilot. The purpose of the amendment is to extend the operation of the Act until the Drug Court can be reviewed.

Part 10—Amendment of Guardianship and Administration Act 2000

Clause 44 provides that this part amends the *Guardianship and Administration Act 2000*.

Clause 45 amends section 18 (Inquiries about appropriateness and competence) by enabling the Registrar to make inquiries prior to a hearing. Currently section 18 of the Act provides that the Tribunal may make inquiries into the appropriateness and competence of proposed guardians or administrators. While the Tribunal may make these inquiries in a hearing, in practice the Registrar initiates the inquiries prior to the Tribunal hearing the matter.

Clause 46 amends section 26 (Automatic revocation of appointment of guardian or administrator) to automatically revoke the appointment of the guardian or administrator on the death of the adult as is the case in the *Powers of Attorney Act* and to require the former guardian or administrator

to notify the Tribunal in writing without delay if the represented person dies. This notification will assist the Registry for administrative purposes to keep its records up to date. There is no penalty for failure to notify. The clause is also amended to ensure that residential service providers are excluded from being eligible to be attorneys or guardians.

Clause 47 amends section 86 (Appointment of president and deputy presidents) to ensure that the president or deputy president can be reappointed without the need to advertise.

Clause 48 amends section 90 (Appointment of other tribunal members) to ensure that other tribunal members can be reappointed without the need to advertise.

Clause 49 amends section 91 (Selection) to ensure that the requirement to advertise before filling positions only applies to new appointments and not to existing members who are reappointed.

Clause 50 amends section 111 to ensure that the Tribunal is able to receive evidence that is recorded on audio or videotape or by another medium.

Clause 51 amends section 145E(2) (Mediator must disclose conflict of interest) to correct a drafting error in earlier amendments. The section provides that the mediator must disclose the issue giving rise to a conflict of interest to the President *constituted for the proceeding* (emphasis added). The words “constituted for the proceeding” are to be omitted as there is only one President.

Clause 52 inserts in Schedule 2, section 1 as a type of matter the acts of withdrawal of money from or depositing money into the adult’s account with a financial institution.

Part 11—Amendment of Jury Act 1995

Clause 53 provides that this part amends the *Jury Act 1995*.

Clause 54 amends section 70 (Confidentiality of jury deliberations) to make it clear that a former member of a jury may disclose information about jury deliberations to a health professional who is treating the former member in relation to issues arising out of the former member’s service on the jury. The amendment also allows the sheriff to disclose to the health professional information advising whether the patient was a former member of a jury.

Part 12—Amendment of Justices Act 1886

Clause 55 provides that this part amends the *Justices Act 1886*.

Clause 56 amends section 142A (Permissible procedure in absence of defendant in certain cases) expressly to extend to cases where a person fails to appear after the person is granted bail, or permitted to go at large without bail.

Part 13—Amendment of Land and Resources Tribunal Act 1999

Clause 57 provides that this part amends the *Land and Resources Tribunal Act 1999*.

Clause 58 amends section 27A (Membership of other decision-making entity) to facilitate the appointment of a presiding member of the Land and Resources Tribunal to act as a member of the Land Court. This is presently prevented by the section.

Clause 59 amends section 39 (General requirements for constituting tribunal for proceeding) to allow a standard panel to be constituted by one or more presiding members and a referee non-presiding member who has been appointed as a mining referee. This would give greater flexibility in constituting a tribunal panel and result in various cost and time savings for tribunal hearings.

Part 14—Amendment of Land Court Act 2000

Clause 60 provides that this part amends the *Land Court Act 2000*.

Clause 61 amends section 16 (Appointment of president and other members of Land Court) to ensure that a member who ceases to be a member remains a member to complete judgments and make ancillary orders.

Clause 62 amends section 42 (Retirement of members) to ensure that a member who retires remains a member to complete judgments and make ancillary orders.

Part 15—Amendment of Magistrates Act 1991

Clause 63 provides that this part amends the *Magistrates Act 1991*.

Clause 64 amends section 23 (Decisions about constituting Magistrates Courts) to provide expressly for the Chief Magistrate to refer to the Advisory Committee the question of which magistrate is to constitute a Magistrates Court at a place where a vacancy arises due to a magistrate's resignation, retirement or removal from office.

Part 16—Amendment of Peace and Good Behaviour Act 1982

Clause 65 provides that the *Peace and Good Behaviour Act 1982* is amended by this Part.

Clause 66 amends section 4 of the Act by replacing the basis for complaint under section 4(2) and providing that a complaint may be made where the intentional conduct of a person directed at the complainant has caused the complainant to fear that the defendant will destroy or damage property which the complainant owns or possesses. The complainant's fear of damage or destruction must be reasonable in the circumstances.

Section 4(3) is also amended to make it clear that any complaint brought under section 4(1) or (2) may be referred to mediation if the complainant consents and if the justice before whom the complaint is made considers the matter would be better resolved by mediation.

Part 17—Amendment to Penalties and Sentences Act 1992

Clause 67 provides that this part amends the *Penalties and Sentences Act 1992*.

Clause 68 amends section 4 (Definitions) by deleting the reference to “(corrective services)” from the definition of “approved form”.

Clause 69 amends section 9(2)(n) by relocating section 2 of the *Penalties and Sentences Regulation 1992* (the Regulation) into the Act.

Clause 70 amends section 15 by relocating section 4 of the Regulation into the Act.

Clause 71 amends section 57 by relocating sections 4, 5 and 6 of the Regulation into the Act.

Clause 72 amends section 67 by relocating sections 13 and 14 of the Regulation into the Act.

Clause 73 amends section 68 by relocating section 8 of the Regulation into the Act.

Clause 74 amends section 114 by relocating section 10 of the Regulation into the Act.

Clause 75 amends section 128 by relocating section 11 of the Regulation into the Act.

Clause 76 amends section 129 by relocating section 11 of the Regulation into the Act.

Clause 77 amends section 135 by relocating sections 13 and 14 of the Regulation into the Act.

Clause 78 amends section 154 to reflect the repeal of section 158.

Clause 79 repeals section 158.

Clause 80 makes a number of amendments to section 161 (Time held in presentence custody to be deducted) to create a simplified mechanism for calculating time spent in custody on remand and how it is to be taken into account on sentence.

Section 161(1) sets out the general principle that will apply to taking into account presentence custody, that is, all time spent in presentence custody

in relation to the offence will form part of the imprisonment served, unless the court otherwise orders.

Section 161(3) now provides that unless the court “otherwise orders” under section 161(1), the court must as part of the sentencing order –

- state the dates between which the offender was held in presentence custody in relation to each offence;
- calculate the period of presentence custody; and
- declare that the presentence custody is to be taken to be imprisonment already served under the sentence.

The obligation in existing section 161(3)(d) has been omitted, as now the court will be required to make the declaration as part of the sentencing order.

The obligation in existing section 161(3)(e) has been omitted and relocated to the new subsection (3C).

New section 161(3A) and (3B) applies to the situation where the court makes an order that all or any of the presentence custody will not form part of the imprisonment served (that is, where the court “otherwise orders” under subsection (1)).

The sentencing court must as part of the sentencing order –

- state the dates between which the offender was held in custody in relation to each offence;
- calculate the period of pre-sentence custody; and
- declare the part of the time that is to be taken to be imprisonment already served under the sentence or declare that no time is taken to be imprisonment already served.

New subsection (3C) requires the court to cause the chief executive (corrective services) to be advised in writing of a declaration made by a sentencing court and its details. This obligation was previously contained in section 161(3).

Section 161(4) has been redrafted to replace the term “series of offences” with “a number of offences” to clarify that a connection between the offences is not required, and to remove the requirement in existing section 161(4)(b) for the offender to be in custody “continuously” from arrest.

New section 161(4A) provides that to assist the court in making the required declarations, the prosecution must provide to the sentencing court a “presentence custody certificate”.

“Presentence custody certificate” is defined in new subsection (10) as a certificate in the approved form, signed by the chief executive (corrective services), that –

- states the offence or offences for which the offender was held in presentence custody; and
- states the dates between which the offender was held in presentence custody in relation to each offence; and
- calculates the period of pre-sentence custody.

The substance of existing sections 161(5) and (6) has been retained, although subsection (6) has been redrafted to reflect the inclusion of a definition of “prosecuting authority” in new subsection (10).

If an error has been made in a declaration, new section 161(7), (8) and (9) provide a mechanism for the prosecution and defence to make a joint application to be filed in the registry for a court to correct a declaration under section 161(5) “on the papers”.

The court may make the declaration on the papers and without the parties attending before it, if the parties propose that the declaration be made in this way, and the application includes written submissions and a draft order.

If the court decides the application is inappropriate for decision without an oral hearing, the court must notify the parties and may set a date for hearing.

Clause 81 inserts a new section 195A to relocate section 7 of the Regulation into the Act.

Clause 82 inserts a new section 197 to provide that the chief executive may approve forms for use under the Act.

Clause 83 inserts a new section 212 containing transitional provisions. (1) provides that a form approved by the chief executive (corrective services) and in force prior to amendment of the Act continues to be an approved form after amendment. (2) provides that the amendment to section 161 applies regardless of when the offences were committed. (3) provides that the amendment to the serious violent offences schedule applies regardless of when the offences were committed.

Clause 84 amends the serious violent offences schedule by deleting Criminal Code section 62 (Unlawful assembly); section 421(2) (Entering or being in premises and committing indictable offence); and section 419(3) (b) (iii) and (iv) (Burglary, where the offender is in company of damaged property). The following Criminal Code offences are being added

to the schedule – 219 (Taking child for immoral purpose); 309 (Conspiring to murder); 364 (Cruelty to children); and 417A (Taking control of aircraft).

Part 18—Amendment to Personal Injuries Proceedings Act 2002

Clause 85 provides that this part amends the *Personal Injuries Proceedings Act 2002*.

Clause 86 amends section 9A of the Act to specifically provide that the making of a complaint to the Health Rights Commission will be a reasonable excuse for delay in forwarding an initial notice under section 9A(2) outside of the applicable timeframe referred to in section 9A(4) of the Act. The provision mirrors that in section 9(6) of the Act, with respect to a reasonable excuse in failing to provide Part 1 of the notice of claim within the timeframe under the Act.

Clause 87 amends Chapter 4 Part 2 of the Act by inserting provisions relating to section 77D of the Act. Section 77D of the Act was inserted by the *Personal Injuries Proceedings Amendment Act 2002*, which made the requirements under the Act to enter into a pre-court procedure retrospective to apply to all personal injury actions that were not otherwise decided, settled, subject to proceedings or in which offers had been made. The purpose of the transitional provisions was to provide legislative guidance on the application of the provisions to those claims which arose before 18 June 2002.

Specifically, section 77D was drafted to provide for the finalisation of entry in to the pre-court procedure under the Act of claims that arose prior to 18 June 2002 and which were subject to the *Limitation of Actions Act 1974* so that the relevant limitation period ended on or after 18 June 2002 but on or before 18 December 2003. It was intended that all possible claims that arose prior to 18 June 2002 were to be within the pre-court procedure, with their rights as to the *Limitation of Actions Act 1974* protected, on or before 18 December 2003.

For those actions concerned, where the limitation period had ended, parties could commence proceedings as of right on or before 18 June 2003 pursuant to subsection (2)(a) if they had given a complying notice of claim prior to commencing proceedings. The provision made no requirement that

the person had to wait 6 months after giving the complying notice of claim before they commenced proceedings.

If the complying notice was either not provided prior to close of business on 18 June 2003, or provided, but no proceedings were started under subsection (2)(a), the party was then required under subsection (2)(b) to seek the leave of the court to commence proceedings. Application for leave to commence proceedings had to be sought within 6 months after giving the complying notice of claim. Commencement of proceedings had to occur by the close of business on 18 December 2003. This allowed a court, on or before 18 December 2003, and to grant leave under section 77D(2)(b) or to make an order under section 18 deeming the notice compliant and then granting leave under section 77D(2)(b). The provision made no requirement that a complying notice of claim be given before 18 June 2003.

Subsection (3) dealt with the instances where proceedings were commenced and parties had not finalised the requirements under chapter 2 part 1, such as the compulsory conference under section 36 of the Act. Where a claim had not proceeded through the procedure, any proceedings started under subsection (2)(a) or (b) was stayed until such time as the requirements were complied with.

In *Patterson v The Baptist Union of Queensland*, the Queensland Court of Appeal placed an interpretation upon section 77D that was not in accordance with the legislative intention of section 77D. Clause 87 inserts an amendment that declares the application of section 77D to be, and as always having been, as stated above.

Part 19—Amendment of Police Service Administration Act 1990

Clause 88 provides that this part amends the *Police Service Administration Act 1990*.

Clause 89 amends section 10.5(3) (Liability for tort generally) by placing the words “by the Crown” after the words “as constituting contributory negligence”.

Part 20—Amendment of Powers of Attorney Act 1998

Clause 90 provides that this part amends the *Powers of Attorney Act 1998*.

Clause 91 amends section 29 (Meaning of eligible attorney) to exclude residential service providers from being eligible to be attorneys for the purposes of the Act.

Clause 92 inserts a new section 59AA (Service provider) to revoke an enduring document if the attorney becomes a residential service provider.

Clause 93 inserts a matter in schedule 2 (Types of matters) to include the acts of withdrawing money from or depositing money into the principal's account, so that financial institutions are clear that attorneys can access financial information and accounts.

Clause 94 inserts into schedule 3 (Dictionary) definitions of resident, residential service provider and service provider.

Part 21—Amendment to Public Trustee Act 1978

Clause 95 provides that this part amends the *Public Trustee Act 1978*.

Clauses 96 to 106 amend the monetary limits imposed in sections 30, 31, 33, 35, 43, 45, 48, 51, 54, 88 and 104 of the Act which relate to the exercise of certain of the Public Trustee's powers.

Part 22—Amendment to Regulatory Offences Act 1985

Clause 107 provides that this part amends the *Regulatory Offences Act 1985*.

Clause 108 amends section 5 (Unauthorised dealing with shop goods) to ensure "price shown" for the purposes of the Act covers bar codes and any

other shop price indicators that operate in conjunction with electronic equipment.

Part 23—Amendment of Succession Act 1981

Clause 109 provides that the *Succession Act 1981* is amended by this Part.

Clause 110 amends section 41 of the Act to correct an error and make it clear that certain persons may apply on behalf of a person under a legal incapacity for adequate provision out of a deceased person's estate or may apply to the court for advice or directions about whether an application for adequate provision should be made.

Part 24—Amendment of Supreme Court Act 1995

Clause 111 provides that this part amends the *Supreme Court Act 1995*.

Clause 112 amends section 18 (Actions how brought) by deleting all references to a trial by jury and inserting reference to the court. This recognises the policy that jury trials are no longer an option in personal injury actions.

Clause 113 amends section 22 (Payment into court in one sum) by deleting all references to a trial by jury and inserting reference to the court. This recognises the policy that jury trials are no longer an option in personal injury actions.

Clause 114 inserts new sections 23A to 23D which implement the recommendations of the Queensland Law Reform Commission into wrongful death.

New section 23A applies where a court is assessing under that division damages in relation to financial benefits lost by a spouse of the deceased person as a result of their death. The section contains definitions of “financial benefits”, “spouse” and “relationship”.

The section abolishes any discount for the possibility of a surviving spouse forming a future relationship. This is because the possibility that the surviving spouse may form a future relationship should have no effect on

the assessment of the surviving spouse's damages. It is made clear that this applies even if the spouse intends to enter into a new relationship.

The section provides for the treatment of any financial benefits the spouse has or is likely to receive as a result of a new relationship the spouse has entered. These financial benefits may be taken into account, even if the relationship has ended, but it cannot be assumed, that the new relationship will necessarily continue or that the spouse will continue to receive the same financial benefits.

New section 23B applies where the court is assessing under the division damages in relation to financial benefits lost by a child of a deceased person as a result of their death.

The section provides as to how the court may treat various contingencies. It provides that if there was a relationship between the deceased parent and the surviving parent immediately before the death of the deceased, that it is irrelevant whether the relationship would have continued but for the death. The section provides that if the relationship between the parents ended before the death, this is irrelevant to the assessment.

Finally, the section provides that the court must not take into account any financial benefits the child has received or may receive from any person other than the deceased person, including as a result of any new relationship the surviving parent has or may enter into.

New section 23C ensures that sections 23A and 23B do not limit other matters the court must or may take into account in assessing damages or the matters the court must not or may not take into account.

New section 23D provides that these provisions apply when a court assesses damages in a proceeding under this division for a person's death after the commencement of section 23D, irrespective of when the proceeding was brought.

Part 25—Amendment of Transport Operations (Road Use Management Act) 1995

Clause 115 provides that this part amends the *Transport Operations (Road Use and Management) Act 1995*.

Clause 116 inserts a new section 131A, which provides an administrative procedure for removing an absolute disqualification imposed before 13

March 2002. The person will be eligible to reapply directly to Queensland Transport for a licence after a period of 5 years, from the start of the disqualification, removing the need to apply first to a court for the removal of the absolute disqualification.

Part 26—Amendment of Trustee Companies Act 1968

Clause 117 provides that this part amends the *Trustee Companies Act 1968*.

Clause 118 replaces section 66B, which prohibited the giving of guarantees. A new section 66B is inserted which provides that estates cannot be liable for payments under a guarantee from a trustee company, except where the guarantee is given on behalf of the estate.

Clause 119 omits from Schedule 2, part 2 the entries for Perpetual Trustees Australia Limited and Perpetual Trustees Queensland Limited and inserts new entries for each which provide that the paid up capital of the company must be at least \$ 2 000 000 and that a member (other than, in the case of Perpetual Trustees Queensland Limited, Perpetual Trustees Australia Limited) must not be the beneficial holder of more than 10% of the capital of the company from time to time.

Schedule – Minor Amendments

Anti-Discrimination Act 1991

Clause 1

This amendment makes a grammatical change to section 181(2)(c) by deleting the word “tribunal” and inserting in its place “tribunal,”

Clause 2

This amendment corrects an error and renumbers section 236H as 263H.

Bail Act 1980

Clause 1

This amendment inserts into the schedule the Racing Act 2002, section 321, 323 or 325.

Births, Deaths and Marriages Registration Act 2002

Clause 1

This amendment corrects an omission by replacing the word “state” in section 44(5).

Clause 2

This amendment corrects section 44(5)(a) by deleting the word “state”.

Clause 3

This corrects the heading to Part 10.

Childrens Court Act 1992

Clause 1

This amendment deletes from section 26(2) reference to the District Court Act 1967 and substitutes reference to “ District Court of Queensland Act 1967”.

Coroners Act 2003

Clause 1

This amendment changes the references to the sections of the *Juvenile Justice Act 1992* used in the definition of custody in section 10(2) of the *Coroners Act 2003* as a result of the renumbering of the provisions of the *Juvenile Justice Act 1992*.

Clause 2

This amendment changes the references to the section of the *Juvenile Justice Act 1992* referred to in the example in section 17(1) of the *Coroners Act 2003* as a result of the renumbering of the provisions of the *Juvenile Justice Act 1992*.

Clause 3

This amendment corrects the citation to the *Child Protection Act 1999* contained in the example in section 17 (1) of the *Coroners Act 2003*.

Clause 4

A new section 107 is inserted. The *Births, Deaths and Marriages Registration Act 2003* amended the *Coroners Act 2003* by inserting a transitional provision into Part 8 of the *Coroners Act 2003*. The provision should have been inserted into Part 6 of the *Coroners Act 2003*. This clause corrects this error and declares the correction to have always been in operation.

Criminal Code

Clause 1 amends section 1 definition of carnal knowledge by removing the first entry.

Clause 2 amends section 6 by inserting a new sub-section to define carnal knowledge to include sodomy.

Criminal Law (Rehabilitation of Offenders) Act 1986

Clauses 1 and 2 correct the numbering of items within item 5.

Criminal Offence Victims Act 1995

Clause 1 amends section 45 of the Act to replace the reference to the “*Criminal Practice Rules 1900*” with the “*Criminal Practice Rules 1999*”.

Clause 2 amends the example in section 17(2) by replacing the word “included” with “includes”.

Criminal Proceeds Confiscation Act 2002

Clause 1 amends section 58(9) by adding “and” at the end of paragraph (a). This had been inadvertently omitted.

Clause 2 amends section 176(4) to correct a grammatical error by replacing “consider” with “considers”.

Clause 3 amends section 234(2) (a) by adding “and” at the end of subparagraph (vi). This had been inadvertently omitted.

Clause 4 amends the definition of “ancillary” in Schedule 6 to delete the note for paragraph (c).

Clause 5 amends the definition of “encumbrance” in Schedule 6 to correct a drafting error by replacing “and” with “or”.

Clause 6 amends the definition of “money laundering” in Schedule 6 to correct a drafting error by replacing “the” with “an”.

Clause 7 amends the definition of “spouse” in Schedule 6 to delete the reference to “a former spouse”.

Clause 8 amends the definition of “weapon” in Schedule 6.

Criminal Law Amendment Act 1892

Clause 1 updates the schedule by removing reference to 1993 and substituting reference to “20”.

Criminal Law (Sexual Offences) Act 1978

Clause 1 corrects the reference in the heading to section 15 to an Act by inserting before the word “Act”, the word “Amendment”.

Dispute Resolution Centres Act 1990

Clause 1 deletes reference to the “*District Court Act 1967*” from section 2(1) and inserts reference to the “*District Court of Queensland Act 1967*”.

District Court of Queensland Act 1967

Clause 1 deletes from section 69(4) reference to “Without affecting the generality of subsection (3), the” and inserts reference to “The”.

Clause 2 replaces the reference in section 87 to the “*Limitations of Action Act 1974*” with a reference to the “*Limitation of Actions Act 1974*”.

Drug Rehabilitation (Court Diversion) Act 2000

Clause 1 makes a grammatical correction to section 23(5).

Evidence Act 1977

Clause 1 inserts after section 136 a new division heading.

Clause 2 corrects the numbering of section 137 by renumbering that section as 136A.

Financial Transaction Reports Act 1992

Clause 1 corrects the reference in the long title to a Commonwealth Act by deleting reference to the “*Financial Transaction Act 1988*” and substituting reference to the “*Financial Transaction Reports Act 1988*”.

Guardianship and Administration Act 2000

Clause 1 corrects the definitions of recognised provision and registrable order in Schedule 4 by deleting reference to “chapter 9” and substituting reference to “chapter 7, part 9”.

Judicial Review Act 1991

Clauses 1 to 5 amend various entries in schedule 3.

Jury Act 1995

Clause 1 corrects the numbering of section 4(3) by renumbering the second paragraph (m) as (n).

Legal Profession Act 2004

Clauses 1 to 3

Section 629 of the *Legal Profession Act 2004* provides for Schedule 2 of the Act to amend section 58 of the *Legal Practitioners Act 1995* and relocate section 58, as amended, to Schedule 3. Where section 629 has been proclaimed and the amendments and relocation have been executed, section 629, Schedule 2 and the reference in Schedule 3 to section 629 are omitted by these clauses.

Powers of Attorney Act 1998

Clause 1 amends section 23(2) by replacing the reference to section 68 in the example and footnote with the correct reference to section 59A.

Clause 2 simplifies section 24 by deleting the rest of the section and the footnote after “the attorney”.

Property Law Act 1974

Clause 1 corrects section 254(2) by replacing the reference to section 260 with a reference to section 350.

Small Claims Tribunals Act 1973

Clause 1 inserts in section 4(1) in the definition of “claimant”, at the end of paragraphs (a) to (f), the word “or”

Clause 2 inserts in section 4(1) in the definition of “respondent”, at the end of paragraph (a), the word “or”

Clause 3 inserts in section 4(1) in the definition of “small claim”, at the end of paragraphs (a)(i) to (iv), the word “or”

Clause 4 amends section 14(3)(a) and (b) by inserting at the end, the word “and”.

Clause 5 amends section 14(3)(b) and the footnote by deleting reference to the “Commissioner for Consumer Affairs” and inserting reference to the “commissioner for fair trading”.

Clause 6 amends section 20(2)(a)(i) to (iv) by inserting at the end of the paragraph the word “or”.

Clause 7 amends section 20(2)(a)(v) by inserting at the end of the paragraph the word “or”.

Clause 8 amends section 20(2)(b) to (e) by inserting at the end of the paragraph the word “or”.

Clause 9 amends section 22(3)(a) by inserting at the end of the paragraph the word “and”.

Clause 10 amends section 23A(3)(c)(i) by inserting at the end of the paragraph the word “and”.

Clause 11 amends section 23A(5) and the footnote by replacing the reference to the *Magistrates Courts Rules 1960* with reference to the *Uniform Civil Procedure Rules 1999*.

Clause 12 amends section 25(1)(a) by inserting at the end of the paragraph the word “and”.

Clause 13 amends section 32(4)(a) by inserting at the end of the paragraph the word “and”.

Clause 14 amends section 33(2)(a) by inserting at the end of the paragraph the word “and”.

Clause 15 amends section 38(3)(a) to (d) by inserting at the end of the paragraphs the word “and”.

Clause 16 amends section 44 by inserting after the words “with respect to” the words “the following”.

Succession Act 1981

Clause 1 amends section 28(a), (b), (c) and (d) by inserting at the end of paragraphs (a) to (d) the word “and”.

Clause 2 amends section 37(2)(a) by inserting at the end of the paragraph the word “or”.

Clause 3 amends section 52(1)(a), (b), (c) and (d) by inserting at the end of paragraphs (a) to (d) the word “and”.

Clause 4 amends section 66(2)(a), (b) and (c) by inserting at the end of paragraphs (a) to (c) the word “and”.

Clause 5 amends section 66(2)(d) (i) by inserting at the end of the paragraph the word “or”.

Vexatious Litigants Act 1981

Clause 1 corrects the reference in section 9(1) (b) to the District Court.