

Justice and Other Legislation Amendment Bill 2004

Explanatory notes for amendments to be moved during consideration in detail by The Honourable Rod Welford MP

Title of the Bill

Justice and Other Legislation Amendment Bill 2004.

Objectives of the Amendments

The amendments to the *Justice and Other Legislation Amendment Bill 2004* (the Bill) have the following purposes:-

- amend the *Criminal Proceeds Confiscation Act 2002* (CPC Act) to amend the definition of property in Chapter 2 to include as a person's property any property over which that person has effective control. The amendment will allow a restraining order to be obtained over property under the effective control of a person suspected of engaging in serious crime related activities; and
- amend the *Land Court Act 2000* to clarify that a member of the Land and Resources Tribunal can be appointed on a part-time basis to the Land Court, and
- amend the *Supreme Court Act 1995* to clarify, for the benefit of a child, that the damages being assessed in their favour in an action for the wrongful death of one of their parents, should not be reduced because any relationship between their parents had ended.

Achievement of the Objectives

Criminal Proceeds Confiscation Act 2002

The objects are achieved by amending section 19 of the CPC Act to include in the meaning of "property" of a person, any property belonging to someone else over which the person has effective control. This will allow

property over which the prescribed respondent has effective control to be restrained in the same manner as property held in his or her own name.

The provision is necessary to deal with the not uncommon situation of crime bosses placing crime derived assets in the names of others, usually family, associates or business structures to create an air of legitimacy and reduce the strict legal connection between the person engaging in illegal activity and the asset.

Supreme Court Act 1995

The objectives are achieved by amending the proposed new section 23B of the *Supreme Court Act 1995* to ensure that a court in assessing damages for a child does not reduce the assessment only by reason that any relationship between the child's parents has ended before the wrongful death of one of them.

Estimated Cost for Government Implementation

Nil.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

The amendments to the CPC Act have been developed in consultation with the Crime and Misconduct Commission, Director of Public Prosecutions and the Department of the Premier and Cabinet. Queensland Treasury was also consulted about the proposal. The Queensland Law Reform Commission and the Supreme Court have been consulted about the amendment to the *Supreme Court Act 1995*.

Notes on Provisions

Amendment 1 amends clause 2 of the Bill, which is the commencement provision of the Bill. The effect of this amendment is that the amendments to the CPC Act, as inserted by amendments 2 and 3, will commence on assent.

Amendment 2 omits clause 35 of the Bill to delete the amendment to section 29(c) of the CPC Act and inserts new clause 35 into the Bill containing an amendment to the CPC Act.

New clause 35 inserts new paragraph (iii) into section 19(a) of the CPC Act. New section 19(a)(iii) provides that the property of a person includes the property of someone else that is under the effective control of the person.

Amendment 3 inserts new clause 36A into the Bill containing amendments to the CPC Act.

New clause 36A amends section 87 of the CPC Act which provides for the enforcement of orders against property under effective control of a person (the controlling person). Section 87 currently treats the property under effective control as not being the property of the controlling person. Following the amendment to section 19 of the CPC Act, property of a person will include property which is under their effective control. It is therefore necessary to make consequential changes to section 87. Clause 36A(1) of the Bill will insert the word “other” into section 87(4) after the words “to which”. Clause 36A(2) deletes a phrase and inserts the words “property to the extent stated in the declaration.”. Clause 36A(3) omits the words “as if the property were the controlling person’s property”.

Amendment 4 inserts in clause 61 an amendment to allow members of the Land and Resources Tribunal to be appointed to the Land Court on a part-time basis.

Amendment 5 amends clause 114 of the Bill to delete a phrase and inserts the words “any damages assessed must not be reduced because”. This clarifies that the intention of the clause is to ensure that the court in assessing damages for a child in an action for the wrongful death of one of their parents does not reduce the damages because the relationship between the parents has ended before the wrongful death of one of them.