

Justice and Other Legislation Amendment Bill 2005

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Attorney-General and Minister for Justice MP

Title of the Bill

Justice and Other Legislation Amendment Bill 2005

Objectives of the Amendments

The amendments achieve three purposes.

First, the amendments support the recently established review of the substituted decision making by the Queensland Law Reform Commission (“Commission”) by ensuring that certain information can be disclosed to the Commission and to impose obligations of confidentiality on the Commission members, consultants and staff in relation to the review.

Second, the amendments introduce certainty about which review mechanism applies to decisions of the Small Claims Tribunal.

Third, the amendments respond to a request of the Scrutiny of Legislation Committee to review the fee regime proposed under the *Professional Standards Act 2004*.

Consistency with Fundamental Legislative Principles

The amendments will allow information about a proceeding or the disclosure of the identity of a person involved in a proceeding before the Guardianship and Administration Tribunal to be provided to members, consultants and staff of the Queensland Law Reform Commission for the purposes of their review of the system for substituted decision-making. Allowing such disclosure may be seen as inconsistent with the right to confidentiality of information of the adult with impaired capacity, a right which is embraced by General Principle 11. However, it is intended that while information about a proceeding will flow to the Commission, the

Commission will be able to publish only de-identified information about a proceeding. It is expected that the Commission will operate on the basis of respecting the confidentiality of information and the privacy of individuals, particularly the primacy of the right of an adult with impaired capacity to confidentiality of information.

Notes on Provisions

Clause 1 inserts after clause 107 of the Justice and Other Legislation Amendment Bill 2005, a new Part 13A which amends the *Guardianship and Administration Act 2000*.

Clause 107A states that Part 13A amends the *Guardianship and Administration Act 2000*.

Clause 107B amends s. 112 of the *Guardianship and Administration Act 2000* to allow a person to publish information about a proceeding or the disclosure of the identity of a person involved in a proceeding to a reviewer and to allow the reviewer to publish de-identified information about a proceeding for the purposes of the substituted decision-making review. A reviewer is defined as a member of the commission, its staff or a consultant.

The Law Reform Commission has recently commenced a review of aspects of the substituted decision-making regime. This is a very important area of the law and touches upon the lives of adults with impaired capacity, their families, friends, health professionals and support networks. It is an area ripe for review, as it has been in operation for a number of years.

The Commission has requested that statutory amendments should be made to ensure that people who make submissions to the review and the members, consultants and staff of the Commission itself do not commit offences against s112. This section prevents the publication of information about a proceeding or the disclosure of the identity of a person involved in a proceeding before the Guardianship and Administration Tribunal. The purpose of this provision is to protect the privacy of those involved in such proceedings, especially the interests of an adult with impaired capacity. It is an extremely important provision in upholding the rights of an adult with impaired capacity to confidentiality of information (consistently with General Principle 11).

For the purposes of assisting the review, a limited exception will be made to s.112 to allow information about a proceeding or the disclosure of the identity of a person involved in a proceeding to a reviewer. A reviewer will be able to publish information about a proceeding for the purpose of a review (but not the identity of a person involved).

The amendments will lapse at the expected end of the review (1 January 2009).

Clause 107C amends section 249 of the Guardianship and Administration Act. Section 249 imposes an obligation of confidence upon a person who gains confidential information because of their involvement in the Act's administration. This section is amended to recognise the fact of the review. The amendments include a definition of "reviewer" to include a member of the commission, its staff or a consultant. The amendments apply the obligation of confidence to reviewers.

Clause 1 also inserts Part 13B in the Bill, which amends the *Judicial Review Act 1991*.

Clause 107D states that Part 13B amends the *Judicial Review Act 1991*.

Clause 107E inserts new part 7 in that Act. The transitional arrangements contained in new section 58 ensure that the insertion in schedule 1, part 1 of item 6AA does not affect a statutory order for review lodged with a registry of a court before the commencement of the section and not heard or decided at the commencement of the section. As the amendment clarifies what was always intended to be the available means of review of a decision of the Small Claims Tribunal, it is appropriate that it operates in relation to applications which have been lodged but have not yet been heard or decided.

Clause 107F amends sch 1, part 1 to insert item 6aa *Small Claims Tribunal Act 1973*, section 19. The amendment restores a reference to section 19 of the Small Claims Tribunals Act that was inadvertently omitted, and possibly repealed, after the reprinting of the Act in 1997.

Clause 2 inserts Part 17A in the Bill, which amends the *Powers of Attorney Act 1998*.

Clause 126A states that Part 17A amends the *Powers of Attorney Act 1998*.

Clause 126B amends section 74 of the Act to recognise the review of substituted decision-making by the Commission and to apply the obligation to preserve confidentiality of information upon a reviewer which is defined to include members, staff and a consultant of the Commission.

Clause 3 amends clause 135 of the Bill, which establishes the power of the Governor in Council to set fees under the *Professional Standards Act 2004* by way of regulation. The amendment provides that the levels of fee authorised are able to be set at levels which cover the costs of administering the Act and funding the council in performance of its functions.

Clause 4 amends clause 136 of the Bill by making a consequential amendment to the amendment of clause 135. The clause deletes the proposed definition of “fee”.