

Justice and Other Legislation Amendment Bill 2019

Explanatory Notes

FOR

Amendments to Be Moved During Consideration in Detail by The Honourable Stirling Hinchliffe MP.

Title of the Bill

Justice and Other Legislation Amendment Bill 2019 (the Bill).

Objectives of the Amendments

The objectives of the amendments to the Bill to be moved during consideration in detail are to:

- refine the amendments to the *Coroners Act 2003* (Coroners Act) to ensure that they achieve their intended purpose, including to clarify that the types of preliminary examinations able to be performed are limited to those exhaustively listed in the Coroners Act; and to clarify that a coroner can reopen, under the current Coroners Act, all inquests into deaths heard or part-heard under the repealed *Coroners Act 1958* (repealed Coroners Act), regardless of whether a fire was involved;
- remove the amendment to section 552BB (Excluded offences) of the Criminal Code which expands summary disposition of indictable offences relating to property by increasing the definition of ‘prescribed value’ from \$30,000 to \$80,000;
- make amendments to the *Human Rights Act 2019* (HR Act) to allow for one Minister to prepare a human rights certificate for subordinate legislation that has more than one responsible Minister; and add a regulation-making power that facilitates an exemption for certain types of subordinate legislation from the requirement for a human rights certificate (where they do not directly or indirectly limit any human rights);
- clarify the amendments to the *Legal Profession Act 2007* (LP Act) to ensure that the Queensland Law Society's (QLS) existing power to investigate the affairs of a law practice is not limited to the investigation of a trust account; and

- refine the amendments to the *Magistrates Courts Act 1921* (MC Act) to ensure the amendments as drafted achieve their intended purpose, being to clarify that the Magistrates Courts do have jurisdiction to order recovery of good and chattels.

Achievement of the Objectives

The objectives will be achieved by amending:

- the Coroners Act by:
 - amending clause 28 of the Bill, which creates a new section 11AA (Preliminary Examinations), to replace the words ‘any of’ at subsection (3) with the word ‘only’ to clarify that the list of procedures able to be performed is exhaustive; and
 - removing the transitional provisions at clause 40 of the Bill in relation to the application of the repealed Coroners Act to fires that occurred prior to the commencement of the Coroners Act;
- clause 51 of the Bill to omit subclause (1) which amends the definition of ‘prescribed value’ in section 552BB (Excluded offences) of the Criminal Code;
- section 41 of the HR Act to insert new subsection (1A) providing that if there is more than one responsible Minister for subordinate legislation, the human rights certificate for the legislation may be prepared by one of the responsible Ministers under the authority of the other responsible Ministers;
- section 41 of the HR Act to insert new subsection (4A) providing that section 41 does not apply to a proclamation or other instrument that fixes a single day for the commencement of all provisions of an Act that are not in force, or an instrument other than a regulation of a type prescribed by regulation; and inserting new subsection (4B) providing that the Minister may only make such a regulation if satisfied that it will not directly or indirectly limit a human right;
- section 263(5) of the LP Act to replace the term ‘trust account investigation’ with ‘part 3.3 investigation’, with necessary consequential amendments; and
- section 4 of the MC Act to include specific reference to claims related to the detention and delivery of goods and chattels.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no additional costs to government in implementing the amendments.

Consistency with Fundamental Legislative Principles

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) –

Coroners Act 2003*Preliminary examinations*

Amendments to allow certain suitably qualified persons to conduct certain preliminary examinations in relation to a death, upon the death being reported to a coroner, may depart from the principle that legislation should only make rights and liberties dependent on administrative power if the power is sufficiently defined and subject to appropriate review (section 4(2)(a) and 3(a) of the *Legislative Standards Act 1992*). As outlined in the explanatory notes of the Bill, this is because in undertaking these examinations, the rights of family members or other interested persons may be engaged.

As also outlined in the explanatory notes for the Bill, the power is appropriately limited and defined in a number of ways, including, for example, that a person performing an examination must either be a doctor approved by the State Coroner, or a suitably qualified person acting under the supervision of an approved doctor. The amendment to be moved during consideration in detail further ensures that the power is appropriately limited and defined by clarifying that the types of preliminary examinations are specifically defined and exhaustively listed. The amendment is therefore considered justified.

Application to pre-commencement fires

The amendments to be moved during consideration in detail will ensure that coroners can reopen, under the current Coroners Act, all inquests into deaths heard or part-heard under the repealed Coroners Act, regardless of whether a fire was involved. Retaining the existing transitional provisions in relation to pre-commencement fires could cast doubt on whether the new powers of re-opening apply to inquests into fires resulting in deaths. In order to remove any doubt, Amendment 2 removes the existing transitional provision in the Coroners Act in relation to pre-commencement fires. This amendment constitutes a potential breach of the fundamental legislative principles that legislation provide appropriate protection against self-incrimination and not adversely affect rights retrospectively (section 4(2)(a), (3)(f) and (3)(g) of the *Legislative Standards Act 1992*).

Unlike the repealed Act, the current Coroners Act includes a power to compel a witness at an inquest to give self-incriminating evidence. As mentioned in the explanatory notes for the Bill, abrogating the privilege against self-incrimination is necessary to help a coroner find out what actually happened to cause a death, which supports the coroner making recommendations or comments to prevent similar deaths happening in the future. The Coroners Act includes appropriate safeguards. The coroner may not require a person to give evidence that may incriminate them unless satisfied it is in the public interest. Further, evidence given is not admissible against a person in any criminal proceeding, with the exception of perjury. Derivative evidence is not admissible against the person.

As previously stated in the explanatory notes for the Bill the potential use of coercive powers in new or re-opened inquests for deaths that occurred prior to the commencement of the current Coroners Act is justified to ensure that all deaths, including those involving fires, receive the benefit of the new coronial regime,

consistent with the objectives of the current Coroners Act and in line with community expectations.

All other amendments are consistent with fundamental legislative principles.

Consultation

On 28 November 2019, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice introduced the Bill into the Queensland Parliament. The Bill was referred to the Legal Affairs and Community Safety Committee (the Committee) for detailed consideration.

The Committee invited submissions to the Bill, which closed on 6 January 2020. The Committee published submissions from six legal and community stakeholders. On 17 January 2020, the Committee also conducted a public hearing into the Bill and received oral submissions from representatives of the QLS and the Queensland Human Rights Commission. The Committee tabled its report on 21 February 2019.

The amendment to the MC Act is being progressed in response to issues raised by the Caxton Legal Centre as part of its submission to the Committee.

The amendment to expand summary disposition of indictable offences relating to property under the Criminal Code is being removed in response to issues raised during examination of the Bill by the Committee. In light of the submissions of key stakeholders further engagement will be undertaken on this issue.

Consultation has also been undertaken with the State Coroner and Queensland Health in relation to the amendments to the Coroners Act; the Chief Magistrate in relation to amendments to the MC Act; and the QLS in relation to the amendments to the LP Act.

NOTES ON PROVISIONS

Amendment 1 amends clause 28, which creates a new section 11AA (Preliminary Examinations), to replace the words ‘any of’ at subsection (3) with ‘only’, to clarify that the list of procedures able to be performed is exhaustive.

Amendment 2 removes clause 40 from the Bill, thereby removing the current transitional provisions in the Coroners Act in relation to the application of the *Coroners Act 1958* to *pre-commencement fires*.

Amendment 3 inserts clause 40A before clause 41 of the Bill, omitting section 100 of the Coroners Act (When repealed Act still applies) in its entirety.

Amendment 4 makes a consequential amendment to clause 41 of the Bill to reflect the proposed amendments to clause 40 and section 100 of the Coroners Act.

Amendment 5 amends clause 51 to omit the amendment to the definition of ‘prescribed value’ in subclause (1).

Amendment 6 amends clause 51 as a consequence of Amendment 5.

Amendment 7 amends section 41 of the HR Act (Human rights certificate for subordinate legislation) to insert new subsection (1A) providing that, if there is more than one responsible Minister for subordinate legislation, the human rights certificate for the legislation may be prepared by one of the responsible Ministers under the authority of the other responsible Ministers, and amends subsections (2)(a) and (2)(b) to reflect this change by replacing ‘in the responsible Minister’s opinion’ with ‘in the opinion of the Minister preparing the certificate’.

New subsection (4A) provides that section 41 does not apply to a proclamation or other instrument that fixes a single day for the commencement of all provisions of an Act that are not in force, or an instrument other than a regulation of a type prescribed by regulation. New subsection (4B) provides that a Minister may recommend the making of such a regulation only if the Minister is satisfied that an instrument of that type will not directly or indirectly limit a human right.

Amendment 8 amends clause 141 (Amendment of s 263 (Investigations)) as a consequence of Amendment 9.

Amendment 9 amends clause 141 (Amendment of s 263 (Investigations)) to include new subclauses (2) and (3) which omit references to ‘*trust account investigation*’ in section 263(5) and inserts reference to ‘*part 3.3 investigation*’.

Amendment 10 amends clause 144 (Amendment of sch 2 (Dictionary)) to omit the definitions of ‘*levy*’ and ‘*trust account investigation*’ and to insert reference to ‘*part 3.3 investigation*’.

Amendment 11 makes consequential amendments to clause 144 (Amendment of sch 2 (Dictionary)) as a consequence of Amendment 10.

Amendment 12 amends clause 148 (Amendment of s 4 (Jurisdiction of Magistrates Courts)) as a consequence of Amendment 13.

Amendment 13 amends clause 148 (Amendment of s 4 (Jurisdiction of Magistrates Courts)) to include reference to claims for the detention of goods or chattels in subsection (1)(a) and to include in subsection (1)(c) reference to actions in which a person has an equitable claim or demand against another person where the relief sought is by delivery of possession of good or chattels in relation to a right, security, interest, encumbrance, charge or lien. This amendment also includes a new subsection (2) which outlines how the Magistrates Courts' jurisdiction is to be determined for a claim for detention of good or chattels under subsection (1).

Amendments 14 and 15 make consequential changes to clause 218 (Subordinate legislation amended) as a result of Amendment 17.

Amendments 16 and 17 amend Schedule 1 (Subordinate legislation amended) to reflect that the Schedule now includes amendments to the LP Act. These changes are consequential to the change in terminology from '*trust account investigation*' to '*part 3.3 investigation*'.

Amendment 18 amends the long title of the Bill to include reference to the HR Act.