

~~I will now take members briefly through the components of the bill because I know that they are very interested in them. The referral of power is proposed in two manners. Firstly, the bill proposes an initial text based referral through reference to the text of the proposed Commonwealth bill as tabled in the Tasmanian Legislative Assembly on 5 July 2011. The text based method was chosen as one of the strongest ways to safeguard the states rights with the referral of power by restricting the power of the Commonwealth parliament in the drafting of its proposed bill.~~

~~The bill also contains a subject matter amendment reference for the Commonwealth parliament. This has been constrained by proposing amendments only being made under certain circumstances. The bill goes further in restricting this subject matter amendment reference by carving out specific areas which do not fall into the proposed amending power of the Commonwealth parliament.~~

~~COAG has also agreed to an intergovernmental agreement for this project. This agreement governs the ministerial voting procedures for making any amendments to the Commonwealth Business Names Registration Bill the subject of the initial text based reference.~~

~~I now turn to those provisions in the bill which propose to allow the chief executive of my department to transfer existing Queensland Business Names Register data to the Australian Securities and Investments Commission. The transfer of this data is for the purposes of establishing or maintaining the proposed new national online register to be managed by ASIC.~~

~~The bill proposes also to allow the chief executive to give ASIC notice, to be allowed under the proposed Commonwealth transitional act, that a business name is to be held and not registered on the ASIC register. The purpose of this notice is to reserve a proposed business name where my department has received an application to register a business name before the commencement of the national scheme and a decision has not been reached at that time. Once a decision is reached to grant the registration of the proposed name, the chief executive will notify ASIC to do so on the national register.~~


~~In allowing this transfer of information, the bill proposes to provide officers of my department with protection from civil liability for acts or omissions made honestly and without negligence when carrying out these functions. I do note this provision is a standard provision in Queensland legislation when carrying out such functions. An aggrieved person is also not prevented from bringing an action in relation to this transfer of information as any liability attaches to the state.~~

~~At its core, registration of a business name is about ensuring there is no confusion in the marketplace for consumers and this is done by ensuring identical names are not registered. So, if a business goes to register a new name and there is an identical match, that business can then think of a way of distinguishing the name. One common way this might occur is by using their state of origin in brackets following their business name.~~

~~I will now provide members with some brief comments regarding the remaining elements of the bill. The bill proposes to repeal the current Business Names Act 1962 and its regulation, but in doing so it allows certain provisions to continue in their operation. This continuation is to allow for those applications received by my department but not decided at the commencement of the national register, referred to as the 'changeover day'. These continued provisions work in tandem with the proposed Commonwealth Transitional Act and proposed business names held under that proposed act.~~

~~Finally, the bill proposes several consequential amendments to the Queensland statute book referring to the proposed national ASIC Business Names Register and the Commonwealth legislation.~~

First Reading

~~ **Hon. PT LUCAS** (Lytton—ALP) (Deputy Premier and Attorney General, Minister for Local Government and Special Minister of State) (3.45 pm): I move—~~

~~That the bill be now read a first time.~~

~~Question put—That the bill be now read a first time.~~


~~Motion agreed to.~~

~~Bill read a first time.~~

~~**Mr DEPUTY SPEAKER** (Mr O'Brien): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs, Police, Corrective Services and Emergency Services Committee.~~

CIVIL PROCEEDINGS BILL

Message from Governor

~~ **Hon. PT LUCAS** (Lytton—ALP) (Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State) (3.45 pm): I present a message from Her Excellency the Governor.~~

The Deputy Speaker read the following message—

MESSAGE

CIVIL PROCEEDINGS BILL 2011

Constitution of Queensland 2001, section 68

I, PENELOPE ANNE WENSLEY, Governor, recommend to the Legislative Assembly a Bill intituled

A Bill for an Act to provide for various matters concerning civil proceedings and proceedings in relation to contempt of court in the Supreme Court, the District Court and the Magistrates Courts, to repeal the *Supreme Court Act 1995*, to amend the *Associations Incorporation Act 1981*, the *Births, Deaths and Marriages Registration Act 2003*, the *Civil Liability Act 2003*, the *Cremations Act 2003*, the Criminal Code, the *District Court of Queensland Act 1967*, the *Electoral Act 1992*, the *Evidence Act 1977*, the *Information Privacy Act 2009*, the *Judges (Pensions and Long Leave) Act 1957*, the *Jury Act 1995*, the *Justices Act 1886*, the *Justices of the Peace and Commissioners for Declarations Act 1991*, the *Land Court Act 2000*, the *Law Reform Act 1995*, the *Magistrates Act 1991*, the *Magistrates Courts Act 1921*, the *Queensland Civil and Administrative Tribunal Act 2009*, the *Retirement Villages Act 1999*, the *Right to Information Act 2009*, the *Succession Act 1981* and the *Supreme Court of Queensland Act 1991*, and to make minor and consequential amendments of the Acts mentioned in a schedule.


(sgd)

GOVERNOR

Date: 22 Aug 2011

Tabled paper: Message from the Governor recommending the Civil Proceedings Bill 2011.

Introduction and Referral to the Legal Affairs, Police, Corrective Services and Emergency Services Committee

 **Hon. PT LUCAS** (Lytton—ALP) (Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State) (3.47 pm): I present a bill for an act to provide for various matters concerning civil proceedings and proceedings in relation to contempt of court in the Supreme Court, the District Court and the Magistrates Courts, to repeal the Supreme Court Act 1995, to amend the Associations Incorporation Act 1981, the Births, Deaths and Marriages Registration Act 2003, the Civil Liability Act 2003, the Cremations Act 2003, the Criminal Code, the District Court of Queensland Act 1967, the Electoral Act 1992, the Evidence Act 1977, the Information Privacy Act 2009, the Judges (Pensions and Long Leave) Act 1957, the Jury Act 1995, the Justices Act 1886, the Justices of the Peace and Commissioners for Declarations Act 1991, the Land Court Act 2000, the Law Reform Act 1995, the Magistrates Act 1991, the Magistrates Courts Act 1921, the Queensland Civil and Administrative Tribunal Act 2009, the Retirement Villages Act 1999, the Right to Information Act 2009, the Succession Act 1981 and the Supreme Court of Queensland Act 1991, and to make minor and consequential amendments of the acts mentioned in a schedule. I table the bill and explanatory notes. I nominate the Legal Affairs, Police, Corrective Services and Emergency Services Committee to consider the bill.

Tabled paper: Civil Proceedings Bill 2011.

Tabled paper: Civil Proceedings Bill 2011, explanatory notes.

Our court system ensures that our democracy is fair. Our justice system must be reviewed regularly to ensure it is modern, up to date and is responsive to the needs of our society. Although most disputes are resolved without recourse to the courts, when matters proceed to the courts, the rules of procedure which apply to litigation must be easy to understand, streamlined and effective. They need to provide for, as much as is possible, the simple, timely, and cost-effective resolution of disputes.

The main purpose of the bill is the enactment of a new Civil Proceedings Act to apply to civil proceedings in the Supreme, District and Magistrates Courts. The new Civil Proceedings Act incorporates and modernises procedural and substantive law from the Supreme Court Act 1995 and integrates civil procedure provisions from the Supreme Court of Queensland Act 1991.

012 The proposed new Civil Proceedings Act will give effect to the recommendations of the Rules Committee, established under the Supreme Court of Queensland Act 1991. One of the functions of the Rules Committee, which comprises representatives of the Supreme, District and Magistrates courts, is to 'advise the Minister about the repeal, reform or relocation of the provisions of the Supreme Court Act 1995'. In the performance of this function in 2002, the Rules Committee embarked on a review of the Supreme Court Act 1995. This review was conducted by former Justice the Hon. Glen Williams AO, SC and the Hon. Justice Margaret Wilson.

In 2004, the Rules Committee instructed the Office of the Queensland Parliamentary Counsel on the preparation of a draft Civil Proceedings Bill. In late 2010, the Rules Committee conducted public consultation on a draft Civil Proceedings Bill and its draft advice to the Attorney-General on the bill, which was prepared by His Honour Judge Douglas McGill SC.

The proposed Civil Proceedings Act is the culmination of extensive research and extensive consultation. The result is a clear, logically ordered, modern set of provisions which has received the support of stakeholders and will provide clarity to persons accessing the civil jurisdictions of our courts.

There are related and consequential amendments in the bill providing for: the repeal of the Supreme Court Act 1995 and repeal of obsolete provisions of the Supreme Court of Queensland Act 1991; the Supreme Court of Queensland Act 1991 to only contain provisions specific to the Supreme Court and not to other courts; and amendments to the District Court of Queensland Act 1967 and the relevant Magistrates courts legislation to harmonise the provisions common to all three courts and to assist in the integration, consistency and effectiveness of the court registries. I am grateful to present and former members of the Rules Committee and thank them for their dedication in completing this substantial body of work.

The bill also includes amendments to other statutes within the justice portfolio which are desirable to be progressed at this time. The bill also proposes amendments to the Births, Deaths and Marriages Registration Act 2003 to ensure the integrity of the information provided to the registrar about the burial or cremation of a deceased person. The amendments will clarify that the person in charge of a crematorium or cemetery where a deceased is cremated or buried must provide notice of the cremation or burial to the registrar. This will be used to verify the information provided by the funeral director or other person who arranges for the disposal of the deceased person's body.

The amendments will also require the person in charge of a crematorium or cemetery to lodge the notice electronically unless, because of the location or some other exceptional circumstances, electronic lodgement is not possible. There will also be amendments to the Cremations Act 2003 to ensure that the person in charge of a crematorium labels a person's ashes with prescribed identifying information. These amendments will ensure greater peace of mind to grieving families.

The bill also amends the Retirement Villages Act 1999 to clarify the circumstances in which the exit fee must be calculated on a daily pro rata basis. An exit fee is the amount paid by a resident to the scheme operator upon the resident leaving the village. The amendments will apply where an exit fee is calculated with regard to the length of time the resident has resided in their unit. In such instances, the longer a resident stays in the village, usually the higher the exit fee will be. Where a daily pro rata does not apply, a resident leaving the village after one year and one day could pay an exit fee based on two whole years of occupation—or, depending on the specific terms of the contract, the first year and part of that second year such as a month or quarter. Under the daily pro rata method, only the actual, exact length of occupation would be used to calculate the exit fee, being in that instance one year and one day.

A daily pro rata method will apply to an existing residence contract where the contract is silent as to the method of calculation. In such cases, a daily pro rata method will apply by default. The amendments will not affect existing contracts where the resident and operator have expressly agreed on a different method of calculation. For contracts signed after the commencement of this section—that is, for all future contracts—the daily pro rata method will be mandatory and cannot be contracted out of. The amendments will commence on proclamation, thereby giving scheme operators time to revise their residence contracts to incorporate this new mandatory requirement. These amendments will provide fairness and certainty for retirement village residents in how their exit fee will be calculated, and afford an even playing field for all villages in relation to the method used to calculate this fee.

The bill also amends the Associations Incorporation Act 1981 to allow associations to transition seamlessly to the Commonwealth Corporations Act 2001 or the Corporations (Aboriginal and Torres Strait Islander) Act 2006. The Associations Incorporation Act currently provides a simple and inexpensive mechanism for small non-profit groups to incorporate. However, when associations grow in size and financial turnover, it may be more appropriate for some of them to choose to incorporate as a company limited by guarantee or an Indigenous corporation. Being a company limited by guarantee makes it easier for associations to operate across borders, as associations may ordinarily only operate in the jurisdiction in which they are registered.

As there is presently no mechanism under the Associations Incorporation Act to effect such a transition, an association must separately incorporate a company limited by guarantee, transfer its existing assets and membership to the new entity, and then wind up the association. Such a process can be prohibitively expensive due to transfer duty and capital gains tax costs.

The amendments provide a process for the chief executive—or the minister in the case of an association incorporated under the Religious Educational and Charitable Institutions Act 1861—to authorise the transfer. Once this authority has been obtained, the association may apply for the actual transfer under the relevant Commonwealth corporations legislation. Transfer duty and capital gains tax are not payable under this transfer process because the assets of the association continue to be owned by the same body, despite the change of corporate status. These amendments will provide significant financial savings to Queensland associations wishing to transition.

The Information Privacy Act 2009 regulates the fair collection and handling in the public sector environment of personal information. However, it is not intended to deter agencies from lawfully cooperating with agencies performing law enforcement functions in the performance of their functions. Current provisions define 'law enforcement agency' restrictively so that only Queensland agencies fit within the definition. The effect of the current provisions is that agencies providing personal information

to law enforcement agencies of the Commonwealth—for example, the Australian Federal Police—or other states or territories may breach the act. While some interstate agencies may obtain the information using compulsory powers, this option is not available to all relevant agencies with law enforcement functions.

The current position appears to reflect a drafting oversight. For example, National Privacy Principle 2 in schedule 4 of the act, which applies to Queensland Health, is not subject to these limitations. The proposed amendments do not oblige Queensland agencies to disclose personal information to the additional entities; it simply permits them to do so if they are satisfied the disclosure is necessary for one of the specified functions or purposes.

The bill also amends the Right to Information Act 2009 and the Information Privacy Act 2009 to allow the Information Commissioner to approve leave for her deputies, consistent with the practice in many private and public organisations. The proposed amendments will also remove the requirement for the Information Commissioner to apply to the minister for recreational leave, sick leave and the like. They are aligned with provisions related to the Ombudsman, another statutory body within my portfolio.


The new provision will allow the Information Commissioner to take leave in accordance with her entitlements. As would be expected of someone in her role, the Information Commissioner values integrity and accountability highly. She will work with the Auditor-General to implement rigorous procedures within her office to ensure there is adequate accountability in respect of her own leave arrangements. These new provisions do not in any way change the leave entitlements of the Information Commissioner or her deputies.

The act also contains other technical and facilitative amendments. The bill amends the Electoral Act 1992 to clarify the operation of a provision that allows for enrolment up to the day before polling day, and to provide for a regulation-making power to specify departments and state public authorities that may receive electoral roll information and the purposes for which the information may be received.

The bill amends the Justices of the Peace and Commissioners for Declarations Act 1991 to allow justices of the peace and commissioners for declarations to record details of any identification documentation sighted in the performance of their duties.

Finally, the bill amends the Queensland Civil and Administrative Tribunal Act 2009 to provide that a member whose term of appointment has expired can continue to sit as a member for the purpose of finalising a proceeding.

First Reading

 **Hon. PT LUCAS** (Lytton—ALP) (Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State) (3.57 pm): I move—

That the bill be now read a first time.

Question put—That the motion be agreed to.

Motion agreed to.

Bill read a first time.


Mr DEPUTY SPEAKER (Mr O'Brien): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs, Police, Corrective Services and Emergency Services Committee.

~~LOCAL GOVERNMENT ELECTORAL BILL~~

~~Second Reading~~

~~Resumed from p. 2586, on motion of Mr Lucas~~

~~That the bill be now read a second time.~~

 **Mrs CUNNINGHAM** (Gladstone Ind) (3.57 pm): ~~I rise to speak to the Local Government Electoral Bill 2011. In doing so, I want to place on the record my appreciation to local government as a sphere of government. I think most communities would say without hesitation that it is the sphere of government they feel most involved in and the one they can most influence.~~

~~Prior to the amalgamations I had two local authorities in my electorate—the Gladstone City Council and the Calliope Shire Council. After the amalgamations there was an additional council added, although it is not in my electorate but in the electorate of Burnett—the Miriam Vale Shire Council. There remains to this day in the community a reasonably high level of disquiet in relation to the amalgamation and a perception—and, for some, a reality—that services have not improved as a result. So this legislation in some measure will address that perception, and I believe in some people's minds it will reinforce that perception. The minister's second reading speech states—~~

~~The message coming through was loud and clear: The community wanted an efficient and transparent electoral framework.~~