



Speech by

Hon. Kerry Shine

MEMBER FOR TOOWOOMBA NORTH

Hansard Thursday, 19 April 2007

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. KG SHINE (Toowoomba North—ALP) (Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland) (12.30 pm): I move—

That the bill be now read a second time.

This bill contains miscellaneous amendments to statutes in the Justice portfolio to improve operational efficiency of the legislation. I seek leave to incorporate the remainder of my speech in *Hansard*.

Leave granted.

Indeed, the Bill amends 28 pieces of Justice portfolio legislation, as well as the *Juvenile Justice Act 1992*, the *Corrective Services Act 2006*, the *Mental Health Act 2000* and the *Industrial Relations Act 1999*.

I will now outline some of the more significant amendments contained in the Bill.

The Bill creates a new role in the Magistrates Court jurisdiction, that of judicial registrar.

Judicial registrars will be authorised to hear less complex matters usually determined by Magistrates.

It is proposed judicial registrars will determine:

- minor debt claims and small claims (claims under \$7,500 in value);
- civil chamber applications;
- domestic violence adjournments, temporary orders and orders by consent;
- bail applications where the prosecution does not oppose the granting of bail;
- “hand-up” committal hearings (where there is no oral evidence or cross-examination of witnesses) and where the defendant consents to committal for trial or sentence;
- examinations under the Commonwealth Corporations Act; and
- mentions.

These amendments are designed to enhance the administration of justice in the busiest court jurisdiction in Queensland by allowing Magistrates to focus on more complex and contested cases.

A number of amendments in this Bill are designed to facilitate access to justice and equitable mechanisms for the administration of justice over long distances.

Amendments to the *Bail Act 1980* will enable bail to be granted by a Magistrate upon an application made and considered by telephone or other form of communication.

In remote locations police face driving long distances, often at night, to have a person brought before a court where a Magistrate is located.

The amendment will be of benefit to defendants who live in remote communities.

They will not need to travel to a place where a Magistrates Court sits to have their bail applications heard, but can remain in their own community.

The second significant amendment to the *Bail Act 1980* concerns the requirement that a defendant in a bail undertaking shall provide the defendant’s residential address and an address for service within 25 kilometres of the court before which the defendant is required to appear.

On a strict interpretation, this means that a defendant who does not provide both addresses has not entered into the bail undertaking and should not be released from custody.

The 25-kilometre requirement is onerous on persons living a long way from the court house. The Bill removes that distance requirement.

The Act is also amended to provide that the address for service and the residential address may be the same address.

Further amendments to assist in the provision of justice to those in remote communities are contained in the amendments to the *Justices Act 1886* which will enhance the current provisions allowing bail applications and sentencing by video link.

The Act presently allows for video link between a Magistrates Court and the defendant where the defendant is at a correctional facility or at another place appointed for the holding of a Magistrates Court.

The Act is amended to provide that the video link may be used where the defendant is at any place the Magistrate considers to be suitable for the conduct of the proceeding and where video link facilities are available.

Examples given in the Bill include a place in a State Government or local government building.

For instance, on many Torres Strait Islands video link facilities are only available in hospitals or council offices.

The cost and danger of travel to a court house in this region can be overcome by the use of video link facilities to connect such places with the court.

As has been demonstrated by the Queensland Government's response to the Federal WorkChoices legislation, we are committed to ensuring fair workplaces for all Queenslanders.

An unintended result of the interaction of provisions in the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* meant that there had been confusion about whether the Anti-Discrimination Commission Queensland had jurisdiction to accept all complaints of discrimination on the basis of trade union activity in the pre-work and work area.

Amendments to the *Anti-Discrimination Act 1991* in this Bill will remove this confusion and ensure that all complaints may be accepted.

The Bill also amends the *Guardianship and Administration Act 2000* by recognising the decision of the Supreme Court in 2003 in *The Adult Guardian v. Hunt*, so that the tribunal will exhaust as possibilities all available and appropriate family members before the Adult Guardian is appointed as guardian.

The making of interim orders by the Guardianship and Administration Tribunal is an important function and one that has been exercised carefully by the tribunal in the past.

Interim orders provide protection of the adult's interests until the final hearing and as such should be relatively short in duration.

This Bill seeks to abridge the maximum time an interim order can be made from six months to three months.

The Bill also amends this Act to provide that before the Tribunal makes an interim order it must be satisfied on reasonable grounds that there is an immediate risk of harm to the health, welfare or property of the adult concerned as a result of abuse, exploitation or neglect of, including self neglect by, the adult.

This Bill also amends the Act to enable the Tribunal to make binding directions to guardians and administrators whose appointment has been revoked or otherwise ended.

This will ensure that a guardian or administrator whose appointment has ended must still comply with the Tribunal's directions to provide information about the adult to the new appointee or to the Tribunal.

Other amendments to the *Guardianship and Administration Act* are minor and technical in nature and are proposed to improve the operation of the Act.

The Bill also proposes to amend the *Children Services Tribunal Act 2000* to improve the efficiency and timeliness of the operation of the children services tribunal by clarifying the existing processes and procedures of the Tribunal.

This includes the operation of the Tribunal when constituted by two members, the withdrawal and dismissal of review applications and the ability of the Tribunal to give decisions orally and to confirm them in writing when necessary.

Procedures are also clarified in relation to the circumstances in which the confidentiality orders may be made and the capacity of the President of the Tribunal to consent to the publication of de-identified information.

This Bill also amends the *Professional Standards Act 2004* by inserting provisions to allow for the option of "costs inclusive" insurance policies to comply with provisions of the Act for professionals to have capped liability.

The amendment is consistent with the agreement reached with all other State and Territory Attorneys-General in April 2006 to introduce legislation to cater for "costs inclusive" insurance policies and follows a draft prepared by the National Parliamentary Counsel's Committee.

New South Wales, Victoria, Tasmania and South Australia have already introduced legislation to this effect.

The Bill contains a number of minor amendments relating to the Drug Court.

The *Drug Court Act 2000* will be amended to clarify eligibility requirements.

An amendment is also proposed to allow regulations to be made to indicate the Magistrates Courts from which a person who appears to be eligible may be referred for an indicative assessment of drug dependency.

Another amendment is the inclusion of a provision which prevents a person from being referred for an indicative assessment if the maximum number of active Intensive Drug Rehabilitation Orders, "IDROs", made by the drug court (as prescribed under regulation) has been exceeded.

Amendments to change references to "a Magistrate" to "a Drug Court Magistrate" are included to clarify that referrals for assessment of an eligible person under Part Four of the Act to determine their suitability for rehabilitation can only be made by Drug Court Magistrates.

The Bill also contains an amendment to clarify the procedure in the Drug Court when committing an offender to the Supreme Court following termination of a rehabilitation program, which results in the revocation of a conviction and vacation of an IDRO.

An amendment is also proposed to the *Corrective Services Act 2006* to ensure an IDRO is included as an exception to automatic cancellation of a parole order.

This means that if a person is sentenced to an IDRO for offences that occurred while the offender was on parole then the parole order is not cancelled and the offender is not returned to prison.

If it were otherwise this would frustrate the effect of the IDRO.

The amendment is not intended to make any change to the eligibility provisions of the *Drug Court Act*. A person will continue to be ineligible for an IDRO if they are on parole.

However, a person may be eligible if they have completed a term of imprisonment (including the parole period) but the person committed the offences for which they are seeking an IDRO while on parole.

Various amendments are made to the *Births, Deaths and Marriages Registration Act 2003* to facilitate the registry's operations.

One of the more significant amendments concerns the registration of births.

At present, where the Registrar-General receives an application signed by only one parent the Registrar-General is under an obligation to make investigations of the whereabouts of the other parent and his or her willingness to sign the application.

This can be very difficult if not impossible where the signing parent is unable or unwilling to provide information about the whereabouts of the other parent or where the requirement for the other parent to sign would cause unwarranted distress.

For instance, where the mother is in a domestic violence situation or where contact by the mother of the father may breach a domestic violence order.

The Bill amends the Act to take account of this and allow registration where only one parent has signed the application to register a birth, provided these circumstances are met.

However, the Bill will require—provided that it won't cause unwarranted distress—that where an address of the parent who did not sign the application is given to the Registrar-General, the Registrar-General is obliged to write to that parent and given him or her the opportunity to sign the application prior to the registration of the child's birth.

A further amendment to the Act allows a change of name to be noted more than once in one year if the name has been previously changed by deed poll, under a corresponding law or other legal process, or where a change of name has come about by repute or usage following marriage.

This is not presently allowed by the Act and has caused difficulties for people who need to register previous and current changes of name within one year.

The amendment will therefore assist people to comply with proof of identity requirements for applications for official documents such as passports.

It will also assist government agencies in following the audit trail of name changes and encourage people to register their changes of name.

The Bill includes amendments to allow on-line lodgement of marriage certificates and death certificates.

The Registrar-General may require such lodgement where it is reasonably practicable to lodge in that manner.

The Registry will continue to receive paper marriage certificates, which is a requirement under the *Commonwealth Marriage Act 1961*, but some marriage celebrants, for easier administration, will also lodge certificates electronically.

An amendment is made to the Act to clarify that the Registrar-General must keep written policies of who may obtain information and certificates from the Registry.

At present the Registrar-General is obliged to provide a copy of such statements to those who request them.

A further amendment will provide that the Registrar-General is not obliged to provide a copy of a statement in order to protect persons for whom the Registrar-General holds information from unjustified intrusion on their privacy or to prevent the information being obtained fraudulently or improperly.

The Bill improves two minor operational matters for the courts.

The Bill allows the Chief Magistrate to appoint an Acting Deputy Chief Magistrate and ensures that members, lawyers, agents or witnesses involved in a proceeding before the Land Appeal Court have the same privileges, protection and immunity as if the proceeding were in the Supreme Court.

The Bill alters the process for appointment of animal valuers and Clerks and Assistant Clerks of Court so that these appointments will be made in future by the Chief Executive rather than the Governor-in-Council. This amendment will be administratively more efficient.

There are a number of minor technical amendments to the *Electoral Act 1992* and the *Referendums Act 1997* in relation to procedural issues for the Court of Disputed Returns and appeals from its decisions.

Other minor and technical amendments are made in the schedule to the Bill.

I commend the Bill to the House.