




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 23 March 2017

COURT AND CIVIL LEGISLATION AMENDMENT BILL

Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (3.16 pm): I present a bill for an act to amend the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984, the Acts Interpretation Act 1954, the Anti-Discrimination Act 1991, the Appeal Costs Fund Act 1973, the Civil Proceedings Act 2011, the Classification of Computer Games and Images Act 1995, the Classification of Films Act 1991, the Classification of Publications Act 1991, the Court Funds Act 1973, the Criminal Code, the Evidence Act 1977, the Information Privacy Act 2009, the Invasion of Privacy Act 1971, the Justices of the Peace and Commissioners for Declarations Act 1991, the Land Court Act 2000, the Legal Aid Queensland Act 1997, the Legal Profession Act 2007, the Magistrates Act 1991, the Ombudsman Act 2001, the Penalties and Sentences Act 1992, the Professional Standards Act 2004, the Property Law Act 1974, the Prostitution Act 1999, the Public Guardian Act 2014, the Queensland Civil and Administrative Tribunal Act 2009, the Retail Shop Leases Act 1994, the Right to Information Act 2009, the Succession Act 1981, the Supreme Court Library Act 1968, the Trusts Act 1973, the Vexatious Proceedings Act 2005 and the legislation mentioned in schedule 1 for particular purposes, and to repeal the Classification of Publications (Approval of Codes of Conduct) Order 1992, the Companies (Acquisition of Shares) (Application of Laws) Act 1981, the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981, the Companies (Application of Laws) Act 1981, the Futures Industry (Application of Laws) Act 1986, the Land Court (Transitional) Regulation 2017, the Retail Shop Leases (Transitional) Regulation 2016 and the Securities Industry (Application of Laws) Act 1981. I table the bill and explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Court and Civil Legislation Amendment Bill [\[508\]](#).

Tabled paper: Court and Civil Legislation Amendment Bill, explanatory notes [\[509\]](#).

I am pleased to introduce the Court and Civil Legislation Amendment Bill 2017. The bill proposes miscellaneous amendments to over 30 acts within the Justice portfolio and across a broad spectrum of subject matter. Some of the proposals were previously included in the lapsed Justice and Other Legislation Amendment Bill 2014. I will briefly outline some of the more significant amendments.

The significant focus of the bill is on improving the efficiency and effectiveness of the courts and agencies and otherwise clarifying, strengthening and updating the diverse Justice portfolio legislation. Starting with the administration of courts and tribunals, the bill amends the Land Court Act 2000 to: ensure that the orders of the Land Appeal Court may be enforced in the Supreme Court; clarify the powers and jurisdiction of the Land Appeal Court; allow for the appointment of part-time or acting judicial registrars; strengthen the alternative dispute resolution processes in the Land Court; and incorporate the provisions of the Land Court Act (Transitional) Regulation 2017 in relation to the application of the act to the exercise by the court of its administrative functions such as the hearing of mining lease and environmental authority objection applications under the mining and environment legislation.

In relation to the administration of justice, the bill also amends: the Magistrates Act 1991 to increase the age limit for acting magistrates to 75 years; the Vexatious Proceedings Act 2005 to allow vexatious litigants' applications for leave to institute proceedings to be dealt with without an oral hearing and with or without the applicant's consent; and the Appeal Costs Fund Act 1973 to: remove redundant provisions relating to the administration of the Appeal Costs Fund; clarify, where a new trial is ordered, that the costs that are recoverable from the fund are those costs that the Appeal Costs Fund Board considers have been thrown away or partly thrown away and were reasonably incurred in the initial proceedings; and clarify that the circumstances in which a person convicted on an indictment is entitled to payment from the fund includes where an appeal succeeds on the ground that there was a miscarriage of justice.

The bill also amends the Penalties and Sentences Act 1992 to reduce the administrative burden on courts by removing the requirement for a specific order for domestic violence notations which reflect the context of criminal offending and instead allowing domestic violence notations to be automatically made on a person's criminal history or a formal record of conviction, provided the person is convicted of an offence for which the charge has been noted as a domestic violence offence. There will, however, be provision for the court to make an order that a notation not be made if it is not satisfied that the offence is a domestic violence offence. The amendment in the bill will also not affect the process for making domestic violence notations against a person's past criminal convictions in section 12A.

Amendments are also made to section 12A of the Penalties and Sentences Act to clarify that the prosecution bears the onus of proving that an offence is a domestic violence offence and that domestic violence notations do not apply to a person's traffic history.

A substantial part of the bill relates to amendments to the Classification of Computer Games and Images Act 1995, the Classification of Films Act 1991 and the Classification of Publications Act 1991—Queensland classification acts. These amendments are intended to align each of those acts with corresponding Commonwealth legislation and remove all references to classification officers. By way of background, the Australian National Classification Scheme is led by the Commonwealth under the Classification (Publications, Films and Computer Games) Act 1995. Under the national scheme, the Commonwealth makes classification decisions about content, and states and territories have enacted legislation to ensure compliance with Commonwealth decisions.

In 2014 a number of amendments were made to Commonwealth legislation to make changes to how classification decisions are made; create a number of additional exemptions for content under the national scheme; and make a number of other minor changes. The amendments in the bill will better align Queensland's classification enforcement legislation with the Commonwealth legislation following these amendments.

The bill also removes provision for the appointment of classification officers under the Queensland classification acts. These officers were previously appointed to exercise classification decision-making powers for content. These officers are no longer appointed, and their removal reflects that Queensland's role in the national scheme is focused on the enforcement of Commonwealth classification decisions. The bill also includes amendments to the legislation governing various statutory offices and entities and regulatory schemes within the Justice portfolio.

Importantly, the bill makes amendments to strengthen the Ombudsman Act 2001 following consideration of the recommendations made in the 2011-12 Strategic Review of the Office of the Queensland Ombudsman and subsequently supported by the then Legal Affairs and Community Safety Committee in its 2012 report No. 15 titled *Report on the strategic review of the Office of the Queensland Ombudsman*. These amendments include: requiring agencies to give the Ombudsman reasonable help in the conduct of informal investigations; strengthening the Ombudsman's ability to protect complainants and witnesses; improving the Ombudsman's ability to obtain and control the release of sensitive information; and enabling the Ombudsman to require the principal officer of a local government to table a report by the Ombudsman about the local government at a local government meeting.

In relation to strategic reviews, the bill clarifies that a corporation may be appointed to undertake strategic reviews of the Ombudsman Office and the Office of the Information Commissioner under the Right to Information Act 2009 and increases the interval between strategic reviews under the Ombudsman Act from five to seven years.

The bill also provides for governance changes under the Prostitution Act 1999 to: allow for the appointment of a member of the Prostitution Licensing Authority as acting chairperson; remove the chief executive as a member of the authority; and reduce the quorum for meetings of the authority. Other more significant amendments in the bill include: amendments to the Legal Aid Queensland Act 1997 to modernise the eligibility requirements for the Chief Executive Officer of Legal Aid Queensland and provide for the necessary arrangements where the CEO is not a lawyer; and clarify and strengthen the

confidentiality provisions; various amendments to the Legal Profession Act 2007 to clarify its operation, strengthen the regulatory regime and remove unnecessary administrative requirements; providing a statutory indemnity from civil liability for members of the Supreme Court Library Committee under the Supreme Court Library Act 1968; and amending the Public Guardian Act 2014 to clarify that the functions and powers of the Public Guardian in relation to a relevant child can be exercised from the time an application for an order under the Child Protection Act 1999 is filed until the application is finalised and arrangements are no longer in place for that child.

With regard to the disclosure of information, there are amendments to: the Right to Information Act 2009 to prevent the release of documents associated with the administration of the judicial appointments protocol; ensure that the Information Privacy Act 2009 does not restrict the disclosure of personal information to the Australian Security Intelligence Organisation, ASIO, in appropriate cases; and the Invasion of Privacy Act 1971 to provide that no offence is committed by police or emergency services communications centre operators who record private conversations in circumstances associated with risk to the safety and wellbeing of a public safety entity officer.

The bill also includes amendments directed to clarifying and streamlining aspects of Queensland's succession, trust and property legislation. The bill amends the Succession Act 1981 to: clarify, for family provision applications, that the relationship of stepchild and step-parent stops when the civil partnership or de facto relationship between the deceased and the stepchild's parent ends; and provide for the effect of the end of a de facto relationship on a will, in line with the current provisions for revocation of a will, on the ending of a marriage or civil partnership.

The bill amends the Trusts Act 1973 to: remove the requirement for a delegation of the administration of a trust to be made by power of attorney executed as a deed; and provide transactional certainty by retrospectively validating any delegations of trusteeship made using the approved form for a general power of attorney under the Powers of Attorney Act 1998.

The bill also amends section 67 of the Trusts Act in relation to the publication of a notice of a proposed distribution of trust property or an estate. Where included in a notice of intention to apply for a grant of probate, it will be sufficient for the trustee to obtain statutory protection if the notice is published in a publication approved by the Chief Justice under a practice direction. Otherwise, it will be sufficient for the proposed distribution notice to be published in a newspaper circulating throughout the state and sold at least once each week.

The bill also amends section 57A of the Property Law Act 1974 to promote greater certainty in property transactions by prohibiting statutory instruments, other than prescribed subordinate legislation, from rendering void, unenforceable or subject to termination, contracts or dealings concerning property that are made, entered into or effected contrary to the statutory instrument.

The bill amends the Retail Shop Leases Act 1994 to give permanent effect to a transitional regulation clarifying that the act continues to apply to 1,000 square metre plus leases and employee/agent leases entered into before commencement of the Retail Shop Leases Amendment Act 2016.

The bill also corrects an inadvertent omission effected by that amendment act to provide for when a lessee can terminate a lease on the ground of a defective disclosure statement given by the lessor. This accords with the stated intent in my second reading speech that the status quo under the act continue to apply.

For administrative efficiency, the bill allows for website notification of various notices currently required to be published in the *Queensland Government Gazette* under the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984, the Acts Interpretation Act 1954 and the Justices of the Peace and Commissioners for Declarations Act 1991. Finally, the bill amends a range of Justice portfolio statutes to streamline administrative processes, repeal redundant legislation, clarify various provisions and make amendments of a technical or drafting nature. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (3.30 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.

Referral to the Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Mr Crawford): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.

Portfolio Committee, Reporting Date



Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (3.30 pm), by leave, without notice: I move—

That under the provisions of standing order 136 the Legal Affairs and Community Safety Committee report to the House on the Court and Civil Legislation Amendment Bill by 15 May 2017.

Question put—That the motion be agreed to.

Motion agreed to.