




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 28 November 2019

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (12.15 pm): I present a bill for an act to amend the Acts Interpretation Act 1954, the Anti-Discrimination Act 1991, the Appeal Costs Fund Act 1973, the Civil Proceedings Act 2011, the Commercial Arbitration Act 2013, the Coroners Act 2003, the Corrective Services Act 2006, the Crime and Corruption Act 2001, the Criminal Code, the Criminal Law (Rehabilitation of Offenders) Act 1986, the Criminal Proceeds Confiscation Act 2002, the Dangerous Prisoners (Sexual Offenders) Act 2003, the District Court of Queensland Act 1967, the Drugs Misuse Act 1986, the Evidence Act 1977, the Guardianship and Administration Act 2000, the Introduction Agents Act 2001, the Judges (Pensions and Long Leave) Act 1957, the Land Court Act 2000, the Legal Profession Act 2007, the Legal Profession Regulation 2017, the Magistrates Courts Act 1921, the Mineral Resources Act 1989, the Ombudsman Act 2001, the Peace and Good Behaviour Act 1982, the Penalties and Sentences Act 1992, the Penalties and Sentences Regulation 2015, the Personal Injuries Proceedings Act 2002, the Personal Injuries Proceedings Regulation 2014, the Property Law Act 1974, the Property Law Regulation 2013, the Queensland Civil and Administrative Tribunal Act 2009, the Retail Shop Leases Act 1994, the Second-hand Dealers and Pawnbrokers Act 2003, the Succession Act 1981, the Surrogacy Act 2010, the Tourism Services Act 2003 and the legislation mentioned in schedule 1 for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Justice and Other Legislation Amendment Bill 2019 [2180](#).

Tabled paper: Justice and Other Legislation Amendment Bill 2019, explanatory notes [2181](#).

I am pleased to introduce the Justice and Other Legislation Amendment Bill 2019. The bill proposes miscellaneous amendments to over 30 criminal and civil law acts within the justice portfolio and across a diverse range of subject matter. The overarching focus of the bill is on providing for fairness, legislative clarity and operational efficiency in court and government processes.

The bill makes important amendments to the Coroners Act 2003 to extend the act's operation to all inquests regardless of when a death occurred, and otherwise to support the operation and efficiency of the coronial system in response to issues identified by the State Coroner and highlighted in the 2018-19 Queensland Auditor-General's report *Delivering coronial services* and coronial findings.

I will first address the amendments which extend the operation of the Coroners Act 2003 to all inquests regardless of when a death occurred. The Coroners Act 2003 established a modern coronial regime for Queensland. This modern regime is focused on establishing the true facts surrounding a cause of death so as to ensure against another preventable death happening in similar circumstances.

The modern coronial regime established under the current act includes a power for the coroner to require a witness to give potentially self-incriminating evidence at an inquest if the coroner is satisfied that it is in the public interest to do so. However, those powers are not currently available to a coroner

with respect to deaths that were reported prior to the commencement of the Coroners Act 2003. In respect of those deaths, a coroner is constrained to the powers available under the now repealed Coroners Act 1958.

For 16 years, the Coroners Court has operated under different legislative schemes depending on when a particular death was reported. The effect of that is that there is a hard core of remaining cases that have not received the benefit of our modern coronial regime. Those cases remain unresolved, not just to the detriment of truth and justice in this state but also to the detriment of the family and friends of deceased persons who desire and deserve the truth in order to obtain closure.

This issue was the subject of coronial findings following the inquest into the death of Bryan Hodgkinson. In removing provisions preserving the application of the repealed Coroners Act 1958 to pre-commencement deaths, the amendments in the bill will allow inquests previously heard under the now repealed Coroners Act 1958 to be reopened under existing provisions of the Coroners Act 2003, subject to the requirements of those provisions. This includes in circumstances where new evidence casts doubts on the original finding.

The bill provides a discretionary power for a coroner to stop an inquest that is currently being heard under the repealed Coroners Act 1958 without concluding that inquest or making any findings, and to reopen the inquest under the current act. This means that the current act, including the power to require a witness to give evidence at an inquest that would tend to incriminate the witness, will apply to inquests into deaths that were reported before the commencement of the act. To be clear, this will apply even if the person has claimed the privilege against self-incrimination at a previous inquest under the repealed Coroners Act 1958.

I acknowledge that this amendment may affect rights retrospectively. However, this is justified to support coroners in finding the truth and potentially provide answers to loved ones. I note that there are significant existing protections in the Coroners Act 2003 for witnesses who are compelled to give such evidence. These existing protections will mean that any compelled evidence will not be admissible against a witness in a criminal proceeding, other than in a proceeding for perjury.

The bill also amends the Coroners Act 2003 to allow approved doctors, or a suitably qualified person under the supervision of an approved doctor, to perform certain specific preliminary examinations when a death is reported to a coroner to assist a coroner in performing his or her functions under the act. The types of preliminary examinations that are able to be performed are exhaustively listed in the bill, are based on the Victorian model and include, for example, taking and testing samples of bodily fluid, including blood, urine, saliva and mucus. The amendment responds in part to a recommendation by the Queensland Auditor-General and draws from the model in place in Victoria so as to allow those deaths that do not require coronial intervention to be quickly identified. The bill provides safeguards including, for example, requiring consideration of potential distress for the person's family members because of cultural traditions or spiritual beliefs.

The bill also amends the Coroners Act to: provide a coroner with the discretion to order an autopsy, where reasonably necessary for an investigation; allow a coroner to stop investigating a death after an autopsy is completed, if the coroner has determined the death is due to natural causes, the death is not reportable under any other criteria and an autopsy certificate has been issued; allow for the appointment of a second registrar; allow the State Coroner to delegate power to a registrar to, in an investigation, require a person to give information, a document or anything else that is relevant to the investigation in certain circumstances; and allow a coroner to delegate the power to provide consent to the removal of tissue under the Transplantation and Anatomy Act 1979.

The bill also amends the Dangerous Prisoners (Sexual Offenders) Act 2003, DPSOA, to confirm its application to two classes of prisoners. The amendments will: correct an anomaly in the DPSOA's operation with respect to prisoners returned to custody on parole suspensions; and clarify its application to those serving terms of detention while being held in custody in a corrective services facility. These amendments will ensure that the Dangerous Prisoners (Sexual Offenders) Act 2003 remains responsive and achieves its object of ensuring the adequate protection of the community.

I will now briefly outline some of the key amendments to the Criminal Code, which simplify and clarify the operation of existing provisions and make procedural enhancements to increase efficiency in the criminal justice system. Firstly, the bill makes amendments to allow more property related offences involving a value of up to \$80,000, instead of the current \$30,000 limit, to be dealt with in the Magistrates Courts rather than on indictment in the District Court. This reform will reduce pressure on the District Court.

An amendment is also made to section 652 of the Criminal Code to make the transfer of summary charges to a higher court registry more efficient by allowing lawyers to make an application under section 651 on behalf of their client and to remove the outdated requirement for the application to be signed in the form of a sworn declaration. This amendment aligns with recommendations recently made

by the Queensland Sentencing Advisory Council in its report *Community-based sentencing orders, imprisonment and parole options*. The council noted in this report that the current impediments for section 651 applications have resource implications for the defence, often Legal Aid Queensland, and prison management staff given that these provisions are of most importance when the offender is in custody or has served pre-sentence custody.

The bill also amends the offence in section 463 of the Criminal Code of setting fire to crops and growing plants, which carries a maximum penalty of 14 years imprisonment, to clarify that it applies to naturally growing grass and any other vegetation. The amendment provides certainty in the operation of this section, which is critical as bushfires continue to impact the state.

The bill amends the Peace and Good Behaviour Act 1982 to ensure the intended operation of the restricted premises order scheme by including criminal activity at the premises that is likely to pose a risk to the safety of a member of the public in the definition of 'disorderly activity'. This amendment responds to a decision of the Magistrates Court.

The more significant civil law amendments contained in the bill clarify jurisdiction, and improve the administration, of the courts. In particular, the bill amends the Land Court Act 2000, with related consequential amendments to the Mineral Resources Act 1989, to clarify and improve the administration of the Land Court and its procedures and processes, including for the recommendatory jurisdiction.

Other amendments in the bill relating to the administration of the courts include: corresponding amendments to the District Court of Queensland Act 1967, the Magistrates Courts Act 1921 and the Queensland Civil and Administrative Tribunal Act 2009 to clarify that interest payable on any basis is not to be considered in applying the jurisdictional monetary limits for the District and Magistrates Courts and for QCAT; amendments to the Magistrates Courts Act to clarify that the jurisdiction of those courts includes personal actions for the recovery of chattels; and amendments to the Civil Proceedings Act 2011 to provide an assessor, appointed under chapter 13 part 7 of the Uniform Civil Procedure Rules 1999, with the same protection and immunity as a witness attending before the Supreme Court of Queensland.

With regard to the administration of justice, the bill also amends: the Anti-Discrimination Act 1991 to streamline processes for the acceptance of out-of-time complaints in specified circumstances; the Criminal Law (Rehabilitation of Offenders) Act 1986 to remove the requirement for the minister to authorise the prosecution of offences under that act; the Criminal Proceeds Confiscation Act 2002 to clarify that section 237 of that act is only activated where both an interstate restraining order and a pecuniary penalty order have been filed; the Evidence Act 1977 to enable the court to exclude the public from a courtroom while a statement made under section 93A given by an affected child or special witness is being played—this amendment will help further protect these vulnerable witnesses and addresses an anomaly with existing provisions which provides for the closing of the court during the playing of prerecorded cross-examination of such witnesses; the Ombudsman Act 2001 to allow the Ombudsman to delegate the making of a decision about a human rights complaint under section 66 of the Human Rights Act 2019 to an appropriately qualified officer; and section 159A of the Penalties and Sentences Act 1992 to enhance judicial discretion and reduce complexity in relation to pre-sentence custody calculations, particularly where there are multiple offences that are not all before the sentencing court.

The bill also includes amendments directed to clarifying and streamlining aspects of Queensland's succession and property legislation. The bill amends: the Succession Act 1981 to remove the requirement to obtain the court's leave to apply for an order authorising a will to be made, altered or revoked on behalf of a person without testamentary capacity together with the requirement for the proposed testator be alive when the registrar signs and stamps with the court's seal a will or other instrument made pursuant to court order; and the Property Law Act 1974 to clarify that a mortgagee may exercise a power of sale following the disclaimer of freehold land by a trustee in bankruptcy or liquidator without the need to apply for court orders under the Commonwealth Bankruptcy Act 1966 or the Corporations Act 2001.

The bill also includes amendments to the Legal Profession Act 2007, in particular to: further strengthen provisions relating to directors of insolvent incorporated legal practices and corporations; and clarify that the Queensland Law Society's power to conduct a trust account investigation of the affairs of a law practice may be exercised routinely, not just in relation to a particular allegation or suspicion.

To improve administrative efficiencies for QCAT, the bill amends the QCAT Act to simplify the processes for changing a tribunal member's entitlements to remuneration and allowances, and the Retail Shop Leases Act 1994 to remove the minister's power to appoint mediators and generally align the appointment process with that under the Dispute Resolution Centres Act 1990.

I understand there are currently 116 members of QCAT including full- and part-time senior and ordinary members and sessional members. QCAT needs the ability to quickly respond to resource demands as they arise by allowing for appointment of further amendments on an as-needs basis. To further improve administrative efficiencies for QCAT and to give QCAT the ability to respond quickly to resource demands, this bill will remove the requirement to advertise for appropriately qualified persons to be appointed as senior or ordinary members. This will not mean that QCAT will not continue to have public processes for appointment of members; however, this amendment will allow for flexibility in the way this is done. It is important that the appointment processes are fully transparent and that Queenslanders' confidence in those processes is maintained.

Finally, the bill otherwise amends a range of justice portfolio statutes to streamline administrative processes, clarify and update 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) (12.30 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 Legal Affairs and Community Safety Committee

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