



Speech By  
**Hon. Stirling Hinchliffe**


**MEMBER FOR SANDGATE**

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Record of Proceedings, 20 May 2020

## **JUSTICE AND OTHER LEGISLATION AMENDMENT BILL**

### **Second Reading**

 **Hon. SJ HINCHLIFFE** (Sandgate—ALP) (Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs) (12.47 pm): I move—

That the bill be now read a second time.

I would like to commence by thanking the Legal Affairs and Community Safety Committee for its consideration of the Justice and Other Legislation Amendment Bill 2019. The committee's report No. 60, tabled on 21 February 2020, made a single recommendation that the bill be passed. I would also like to take this opportunity to thank those who made submissions to the committee and those who appeared as witnesses at the committee's public hearing.

As the Attorney-General previously advised the House in her introductory speech, the bill proposes amendments to over 30 criminal and civil law acts within the justice portfolio and across a diverse range of subject matters. The overarching focus of the bill is on providing for fairness, legislative clarity and operational efficiency in court and government processes.

For 16 years, since the commencement of the Coroners Act 2003, the Coroners Court has operated under different legislative schemes depending on when a death was reported. The current Coroners Act 2003 established a modern coronial regime for Queensland that is focused on establishing the true facts surrounding a death. Under this modern coronial regime, a coroner has the power 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, this power is not currently available to a coroner with respect to deaths that were reported prior to the commencement of the current act. For those deaths, a coroner is limited to the powers available under the now repealed Coroners Act 1958. The effect of this is that there is a hard core of remaining cases that have not received the benefit of the modern coronial regime and remain unresolved. This issue was the subject of coronial findings following the inquest into the death of Bryan Hodgkinson.

The bill amends the Coroners Act 2003 to provide that inquests that have been previously heard under the repealed Coroners Act 1958 can be reopened by a coroner under existing provisions of the Coroners Act 2003 subject to the requirements of those provisions. The bill also 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 findings and to reopen the inquest under the current act. The effect of the proposed amendments is that the current act, including the power to require a witness to give potentially self-incriminating evidence at an inquest, can apply to inquests into deaths that were reported before the commencement of the current act. This is the case even where a witness has previously claimed privilege against self-incrimination under the repealed Coroners Act 1958. This amendment may affect rights retrospectively.

I note that, in its submission to the committee, the Queensland Law Society expressed concerns that the proposed amendment abrogates the right to maintain a claim for privilege against self-incrimination and also applies rights retrospectively. However, the amendment is justified to support

coroners in finding the truth and potentially provide answers to loved ones. I also note that there are significant existing protections in the Coroners Act 2003 for witnesses who are compelled to give such evidence. For example, any compelled evidence will not be admissible against a witness in a criminal proceeding, other than in a proceeding for perjury.

The bill also proposes to amend the Coroners Act 2003 to support the operation and efficiency of Queensland's coronial system in response to issues identified by the State Coroner and highlighted in the 2018-19 Queensland Auditor-General's *Delivering coronial services* report and coronial findings. Amendments in the bill will allow an approved doctor, or a suitably qualified person under the supervision of an approved doctor, to perform certain preliminary examinations upon a death being reported, to assist a coroner in the performance of the coroner's functions under the act. The amendment will assist in identifying those deaths that do not require further coronial intervention and that can therefore be 'triaged' out of the coronial system at an early stage. The amendment responds in part to a recommendation by the Queensland Auditor-General and draws from the model operating in Victoria.

I note that the Caxton Legal Centre in its submission to the committee raised concerns that the proposed amendment in relation to preliminary examinations may impinge on the rights of families from particular religious or cultural backgrounds. Such concerns can be allayed by the inclusion in the bill of certain safeguards, for example, by requiring a coroner to consider the potential distress for the person's family members because of cultural traditions or spiritual beliefs. This reflects the current position in the act in relation to autopsies, which will generally be more invasive than a preliminary examination.

In addition, the bill also amends the Coroners Act 2003 to: provide a coroner with a discretion to order an autopsy where reasonably necessary for an investigation; allow a coroner to stop investigating a death and not make findings if, after an autopsy, the coroner is satisfied that the death was due to natural causes, the death was not reportable under any other criteria and an autopsy certificate has been issued; allow for the appointment of a second registrar; enable 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 proposes amendments to the Dangerous Prisoners (Sexual Offenders) Act 2003, known generally as the dangerous prisoners act, to put beyond doubt its application to offenders serving terms of detention while being held in custody in a corrective services facility for a serious sexual offence. There are examples of the Supreme Court having applied the provisions of the dangerous prisoners act to offenders sentenced to detention under the Youth Justice Act 1992, the YJA, and who are serving their sentence in a corrective services facility. In those instances, those offenders have met the definition of prisoner contained in section 5(6) of the dangerous prisoners act. Therefore, these amendments to the dangerous prisoners act do not expand the ambit of the act in this respect.

The ability for an application to be made in respect of an offender under the dangerous prisoners act has always been whether a particular offender has satisfied that definition. That definition has always required that an offender be detained in custody serving a period of imprisonment for a serious sexual offence. A difference is recognised, at law, between imprisonment imposed under the Penalties and Sentences Act 1992 and detention imposed under the YJA; generally speaking, the former applies to adults and the latter applies to children and young people.

Children and young people serving periods of detention have always been liable to be transferred to a correctional centre upon a certain age being reached. However, over the course of a number of amendments to the YJA, the legal mechanism which effects that transfer to a correctional centre has changed. The proposed amendments clarify the continued application of the dangerous prisoners act to offenders who have been sentenced under the YJA but are serving that sentence in an adult correctional centre. Additional amendments will correct an anomaly to ensure that the dangerous prisoners act applies to those offenders who are returned to custody due to a suspension of parole. These amendments will ensure that those offenders are also captured by the definition of 'prisoner' in section 5(6).

The bill contains various amendments to support the efficient and effective operation of the criminal justice system and criminal laws and includes amendments to: the Criminal Code to ensure the offence in section 463, which carries a maximum penalty of 14 years imprisonment, captures the wilful and unlawful setting fire of naturally growing grass and vegetation; the Criminal Code to enable an accused person's lawyer to make an application to transmit summary charges to a higher court and remove the requirement for the application to be signed on oath; the Criminal Code to clarify that the circumstance of aggravation applies to unlawful stalking directed at a 'law enforcement officer' when or because the officer is investigating the activities of a criminal organisation, consistent with the aggravating circumstance in relation to threats.

It also amends: 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 District Court of Queensland Act 1967 to include two Criminal Code offences, related to child exploitation material, to the list of exceptions to the general jurisdictional restriction placed on the District Court if the maximum penalty is more than 20 years imprisonment; the Drugs Misuse Act 1986 to correct a drafting anomaly which ensures a person can be prosecuted for an offence of disclosing identifying information about a drug informer and provides a definition of 'informer' for clarity; the Evidence Act 1977 to enhance protections for vulnerable people by enabling courts to exclude the public from a courtroom while an out-of-court statement, usually a prerecorded police interview, given by certain children and other witnesses is being played; 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'; the Penalties and Sentences Act 1992 to consolidate the sentencing principle at section 4 of the Penalties and Sentences Regulation 2015 into section 9 of the Penalties and Sentences Act 1992 in order to improve the accessibility of the criminal law; and the Penalties and Sentences Act 1992 to enhance judicial discretion and reduce complexity in relation to pre-sentence custody calculations.

Importantly, in the context of the current COVID-19 health emergency, the judiciary and key legal stakeholders have identified those amendments to the Criminal Code for the transmitting of summary charges and amendments relating to pre-sentence custody in the Penalties and Sentences Act 1992 as being critical measures that should be implemented as a priority.

The bill contains various civil law amendments, including to: the Anti-Discrimination Act 1991 to streamline processes for the acceptance of out-of-time complaints in specified circumstances; 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; 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; the Legal Profession Act 2007, 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—

**Mr DEPUTY SPEAKER** (Mr Kelly): Minister, are we close?

**Mr HINCHLIFFE**: No, we are not.

**Mr DEPUTY SPEAKER**: Minister, I will ask you to resume your seat.

Sitting suspended from 1.00 pm to 2.00 pm.



**Mr HINCHLIFFE**: As I was saying before the luncheon adjournment, the bill contains various civil law amendments including an amendment to the Magistrates Court Act 1921 to clarify that the jurisdiction of those courts includes personal actions for the recovery of chattels, noting that I intend to introduce some further refinements to the drafting during consideration in detail of the bill to address concerns raised by the Caxton Legal Centre and the Queensland Law Society during the committee process; 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; 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 Queensland Civil and Administrative Tribunal Act 2009 to simplify the process for changing a tribunal member's entitlements to remuneration and allowances and provide flexibility in the appointment process for senior and ordinary members; 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; and 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 to be alive when the registrar signs and stamps with the court's seal a will or other instrument made pursuant to court order.

The bill contains amendments to the Civil Proceedings Act 2011 including an amendment to section 59(4)(b). This amendment aims to address possible unintended consequences of a change in wording between section 48(2)(b) of the now repealed Supreme Court Act 1995 which used the word

'ascertainment' when referring to costs and the replacement provision in section 59(4)(b) that uses the word 'assessment'. The bill also contains other miscellaneous amendments to streamline administrative processes, clarify various provisions and make amendments of a technical or drafting nature.

Finally, I want to foreshadow that I intend to move the following amendments during consideration in detail: further amendments to the Coroners Act 2003 to clarify that the changes to the transitional provisions of that act apply to deaths in connection with fires and to clarify that the types of preliminary examinations able to be performed are limited to those exhaustively listed in the Coroners Act; an amendment to remove the provision in the bill expanding summary disposition of indictable offences relating to property under the Criminal Code following further consideration of the concerns raised by key stakeholders during the committee process about potential unintended impacts on the resources of the Queensland Magistrates Court; further amendments to the Magistrates Courts Act 1921 to address submissions to the committee made by the Caxton Legal Centre and the Queensland Law Society to ensure the amendments as drafted achieve their intended purpose, being to clarify that the jurisdiction of the Magistrates Court includes personal actions for the recovery of goods and chattels; further amendments to the Legal Profession Act 2007 to clarify that the Queensland Law Society's existing power to investigate the affairs of a law practice is not limited to the investigation of a trust account by replacing the defined term 'trust account investigation' with 'part 3.3 investigation'; and new amendments to the Human Rights Act 2019 to allow human rights certificates to be prepared under the authority of the responsible minister and add a regulation-making power that enables certain types of legislation to be exempt from the requirement for a human rights certificate where they do not substantively impact on human rights.

I should also clarify that the amendments to be moved during consideration in detail to further clarify that the jurisdiction of the Magistrates Court includes personal actions for the recovery of goods and chattels do not extend to the Caxton Legal Centre's suggestion that the jurisdiction of QCAT should also be expanded to such matters. This proposal falls outside the scope of the bill. However, I want to report to the House that it will be further considered by the Department of Justice and Attorney-General in due course. With that contribution, I commend the bill to the House.