

DRAFT SECOND READING SPEECH

HON. MATTHEW GROOM MP

Justice and Related Legislation (Miscellaneous Amendments) Bill 2016

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Madam Speaker, this Bill contains non-controversial and minor amendments that update and clarify a number of different Acts in the Justice portfolio.

The amendments arise from requests from the Chief Justice, Chief Magistrate, Ombudsman or other persons who deal on a daily basis with particular legislative provisions.

Madam Speaker, at the outset I would like to note that the amendment to the *Property Agents and Land Transactions Act 2005* is no longer required as a new *Property Agents and Land Transactions Act 2016* has recently commenced. At an appropriate time I will therefore be moving an amendment to the Bill to delete the *Property Agents and Land Transactions Act 2005* amendment from the Schedule.

I will now outline the reasons for each of the amendments in turn.

Both section 23AA of the *Acts Interpretation Act 1931* and section 8 of the *Administrative Arrangements Act 1990* deal with delegations by public office-holders. The Solicitor-General has suggested that it would be preferable for provisions relating to delegations to be consistent and appear in a single piece of legislation.

This Bill incorporates the matters dealt with by section 8 of the *Administrative Arrangements Act 1990* into section 23AA of the *Acts Interpretation Act 1931* and repeals section 8.

In 2015 the Commonwealth Government advised that amendments would be required to references to the Australian Customs Service in the *Annulled Convictions Act 2003* as a result of the repeal of the *Customs Administration Act 1985* and the amalgamation of the Australian Customs and Border Protection Service into the Department of Immigration and Border Protection.

This Bill makes necessary amendments to section 3 and Part 2 of Schedule 1 of the *Annulled Convictions Act 2003* to update the references to the relevant Commonwealth Agency.

The Bill amends section 7(1) of the *Bail Act 1994*, as requested by the Chief Justice, to include the Registrar of the Supreme Court and an officer appointed by the Registrar on the list of persons authorised to sign bail documents and sureties. At present there are often long delays if a Judge's associate is in court or otherwise unavailable and significant efficiencies will be achieved if the Supreme Court staff, like the staff at the Magistrates Court, are included as an "authorised person".

When the *Coroners Act 1995* was amended in 2015 to insert a new definition of "senior next of kin" in section 3A, the Attorney General undertook to consider changing the language in paragraphs (d) and (g) to ensure that the terms did not exclude intersex persons. Accordingly,

this Bill replaces “son or daughter” in paragraph (d) with “child” and “brother or sister” in paragraph (g) with “sibling”.

The Bill also amends section 53 of the *Coroners Act 1995* to clarify that counsel to assist a coroner are provided through the Director of Public Prosecutions as the current wording of the section has caused some confusion in this respect.

Section 60 of the *Coroners Act 1995* provides for a Coroner to make orders for the care and control of articles seized as evidence pending the conclusion of the investigation. Tasmania Police is responsible for the storage and maintenance of such articles which may include items as diverse as a damaged motor vehicle (including a laden prime mover) and medication. Seized articles are electronically recorded and are examined by experts to obtain all relevant evidence.

Items seized may contain biological hazards which expose other parties to risk unless stored correctly at considerable cost. For example, a vehicle involved in a fatal accident may contain human body fragments and cannot be cleaned except in a way that would destroy evidence in any event. Other items are very large and unwieldy, for example a laden prime mover which was also the sole means of livelihood of its owner.

This Bill inserts a new section 59B into the *Coroners Act* to enable a Coroner to order the Commissioner of Police to make evidentiary material safe or destroy or otherwise dispose of it if it cannot be safely or practicably held. The Commissioner of Police must ensure that a photographic or audio-visual record is taken of the evidentiary material and where practical samples of the evidentiary material are taken.

The Chief Justice has requested amendments to the *Criminal Procedure (Attendance of Witnesses) Act 1996* to reflect more accurately what happens in practice. Most Crown witnesses are co-operative and attend court without any need for a final notice under the Act. Currently, if there is no final notice the witness's expenses cannot be paid unless the court so orders. Sometimes these orders are not sought and an application has to be made to the court at a later date.

A further issue is that sometimes a witness attends court to give evidence without receiving a final notice but is not then called as a witness, for example if the defendant changes to a plea of guilty at the last moment. The current section 17(2)(b) empowers a judge to order the payment of expenses only if the witness “without a final notice, appears and gives evidence”.

The Bill amends section 17(1) so that, unless otherwise ordered by a judge, expenses are payable to any person in a criminal proceeding who gives evidence at the request of the prosecution and any person whom a Crown Law officer certifies to have attended at any place at the request of the prosecution for the purpose of giving evidence in a criminal proceeding.

The Bill also amends section 17(2), which applies to all witnesses, not just those called by the prosecution, to remove the requirement that the witness attend in response to a final notice and to allow for payment of expenses to be ordered for any person who attends at any place for the purpose of giving evidence in a criminal proceeding.

This Bill amends section 160 of the *Evidence Act 2001* to reflect the new letter delivery speed requirements as contained in the *Australian Postal Corporation (Performance Standards) Amendment (Speed of Mail Delivery) Regulations 2015*. Section 160 provides a presumption for the receipt of postal articles sent by pre-paid post in Australia.

The Supreme Court conducts cost assessments for when parties to a civil case cannot agree the amount of costs to be paid.

The Bill amends the *Legal Profession Act 2007* to expand the power of the costs assessor so that the party who is ordered to pay the costs of the assessment may also be ordered to pay a fee of up to 4% of the sum awarded to the Court. This amendment comes at the request of the Chief Justice, who has indicated that such applications can involve significant work for the Court's taxing officers. The effect of this amendment will be to enable the Supreme Court to recoup some of the costs incurred in assessing costs applications.

The Bill amends the *Personal Information Protection Act 2004* to ensure that "personal information custodians" be permitted to fully disclose any information that may be relevant for the purpose of obtaining legal advice to the Solicitor General, Director of Public Prosecutions or Crown Solicitor or persons employed in relation to the functions and duties of those offices.

The provision of accurate advice depends upon the legal advisor being fully and properly informed. It is currently unclear whether a personal information custodian who provides sensitive information to one of the above persons for the purpose of seeking legal advice is in breach of the *Personal Information Protection Act 2004*, so the Solicitor General has requested the matter be clarified.

The Bill also amends section 19 of the *Personal Information Protection Act 2004* to provide that, following preliminary inquiries, the Ombudsman may resolve the complaint without investigation if, having regard to the nature and seriousness of the complaint, the Ombudsman believes the complaint may be resolved expeditiously.

This amendment will mirror section 20A(3) of the *Ombudsman Act 1978* and will provide the Ombudsman discretion to not investigate a complaint that is neither vexatious or frivolous but is capable of speedy resolution without further investigation.

Section 87 of the *Public Interests Disclosure Act 2002* makes it an offence to provide false information under the Act to the various bodies to which a public interest disclosure may be made. However, the list in section 87 omits the Integrity Commission. This is an oversight and the Bill corrects it.

Section 49A of the *Registration to Work with Vulnerable People Act 2013* allows the Registrar to immediately suspend a person's registration while an additional risk assessment is conducted or to suspend a person's registration on an interim basis pending final suspension. Currently the section does not allow notification of a known employer of that person of the immediate or interim suspension. The Bill inserts new paragraphs to allow for such notification.

Section 52A of the same Act allows the Registrar to require or request information, but the definition of "relevant entity" is too restrictive as the information may be held by a wide range of entities.

The Bill makes an amendment to allow information to be required or requested from an entity as defined in section 3 of the Act.

Section 25(3) of the *Residential Tenancy Act 1997* provides that a property agent who receives a security deposit from a tenant must deposit that money with the Rental Deposit Authority within 3 days. The Bill amends this time limit to 10 days.

The *Victims of Crime Compensation Act 1994* requires adult offenders to pay levies whenever they are convicted of “serious offences”. The liability to pay and the amounts payable are fixed by the Act but the time for payment is not.

Section 7 of the Act requires judges and magistrates to make orders specifying the time for payment in every case, although there is a default provision (section 7(3)) if such an order is not made.

The Chief Justice has requested that section 7 be amended. The current section can lead to orders for the payment of relatively small amounts being made at the same time as an order for a substantial period of imprisonment, which may seem to trivialise the significance and solemnity of the occasion.

The requested amendment would make the levy payable within 28 days after the date of the person’s release from imprisonment or, if there is no term of actual imprisonment, within 28 days from the date of sentencing, unless the court orders immediate payment. The amendment also allows the Court to order payment in less than 28 days after the date of sentencing if necessary, for example where the person may be leaving the state after the court case.

I commend the Bill to the House.