

CLAUSE NOTES

Justice and Related Legislation (Miscellaneous Amendments) Bill (No. 2) 2023

- Clause 1** **Short title**
Specifies the name of the proposed Act.
- Clause 2** **Commencement**
Provides that the Act commences on Royal Assent, with Part 2 commencing on a day to be proclaimed.
- Clause 3** **Repeal of Act**
This clause automatically repeals the amending legislation after the first anniversary of the day on which the last uncommenced provision of this Act commences. The amendments made to various other Acts by the provisions of this Act will remain in force after the repeal of this Act.

PART 2

- Clause 4** **Principal Act**
Provides that the Principal Act being amended in Part 2 is the *Coroners Act 1995*.
- Clause 5** **Section 3 amended**
Inserts the definition of 'family violence' as defined in the *Family Violence Act 2004*.
- Clause 6** **Section 24 amended (Jurisdiction of coroner to hold inquest into a death)**
Extends the jurisdiction of the coroner to hold an inquest into a death where the coroner suspects that family violence has materially contributed to that death.
- Clause 7** **Section 24B inserted**
This clause clarifies what procedure the coroner is to follow where a coroner intends to hold an inquest, but a person is charged with one or more specific offences (such as murder, manslaughter, death by dangerous driving etc.) before such an inquest is held.
- Clause 8** **Section 25 amended (Procedure at inquest where person charged with an offence)**
This clause substitutes a new sub-section (4) to clarify that the current reference to finding not being inconsistent with determinations of criminal proceedings means facts determined in the proceedings.

Clause 9 Section 26B inserted

This clause contains a new requirement applying when the coroner suspects that family violence may have materially contributed to a death.

It provides that the coroner may only decide not to hold or resume such an inquest where the following elements are met:

- o the family violence is the subject of or has been referred to in connection with criminal proceedings; and
- o as a result of the facts as determined by the court in those proceedings, the coroner either no longer suspects that family violence materially contributed to the death or is satisfied that the issue of family violence has been addressed and it is not in the public interest to hold the inquest.

Clause 10 Section 72AA inserted

The amendments to the *Coroners Act 1995* under Part 2 of this Bill are to commence on a date to be proclaimed (as per clause 2 of the Bill).

Clause 7 clarifies that the wording of sections 24 and 25 of the *Coroners Act 1995* which is in force immediately before the commencement of Part 2 of this Bill may still apply after commencement in the following circumstances:

- o In relation to section 24, it would apply to a death that occurred before the commencement of the amendments.
- o In relation to section 25, it would apply to an inquest that began before the commencement of the amendments.

This clause clarifies that the new section 24B (Procedure where person charged with an offence before inquest) does not apply to an inquest that began before the commencement of Part 2 of this Bill. Further, it provides that section 26B (Inquests relating to family violence) does not apply to deaths that occurred before the commencement of Part 2.

PART 3

Clause 11 Principal Act

Provides that the Principal Act being amendment in Part 3 is the *Criminal Code 1924*.

Clause 12 Section 4A inserted

This clause inserts a new section 4A which outlines the powers of the Governor to appoint 'Crown Law Officers' (a defined term).

This power of the Governor to appoint is currently in section 5 of the *Australian Courts Act 1828*, and this amendment both modernises and clarifies the basis of this power.

Clause 13 Principal Act amended

This clause amends a number of provisions in Schedule 1 of the Code.

(a) It removes the crime of blasphemy contained in section 119. Blasphemy provisions across Australia are not used (the last successful prosecution for blasphemy in Australia was in 1871) and the offence of blasphemy has already been abolished in Queensland and Western Australia.

At common law this crime only pertains to statements in relation to Christianity, which is out of step with a modern and diverse community. Discriminatory behaviour toward a person or group of persons on the grounds of religious belief and affiliation is prohibited by the *Anti-Discrimination Act 1998*.

(b) This clause creates two indictable offences to mirror summary offences in section 72 and 74 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* – the production or possession of bestiality products.

Such an amendment provides flexibility to prosecuting authorities, particularly where other offending includes serious indictable offences as well as bestiality product offences, as it would enable all matters to be considered as indictable matters where appropriate.

(c) This clause includes family violence matters and the crime of persistent family violence within the provisions of section 371A.

Section 371A requires that in relation to specific crimes, where there is evidence to suggest there has been an absence of a complaint or a delay in making a complaint the judge shall give a warning to the jury that this does not necessarily indicate that the allegation of the crime is false.

Further, section 371A requires the judge to inform a jury that there may be good reasons why such a person may hesitate in making, or may refrain from making, a complaint. This ensures the jury is aware that a complainant's evidence should not necessarily be discredited due to a delay.

PART 4

Clause 14 **Principal Act**

Provides that the Principal Act being amended in Part 4 is the *Legal Profession Act 2007*.

Clause 15 **Section 359 amended (Minister to approve funding)**

This clause clarifies that the Minister may approve an amount to be paid from the Solicitor's Guarantee Fund (the 'Fund') to meet the whole or part of the costs of the Legal Profession Board (the 'Board') if the Fund is reduced below the maintenance amount section 358(3)(b), which is determined by the Minister and the Trust which administer the fund (currently determined at \$11 million).

The amendment does not allow the Fund to reduce below the minimum amount in section 358(3)(a) (\$3.5m), and is consistent with the purposes for which the Fund is to be applied under section 358 which includes funding the Board.

PART 5

Clause 16 Principal Act

Provides that the Principal Act being amended in Part 5 is the *Police Offences Act 1935*.

Clause 17 Section 12 amended (Prohibited language and behaviour)

This clause removes reference to blasphemous language in section 12(1)(c).

This is consistent with the amendments to the Criminal Code removing the offence of blasphemy.

Clause 18 Section 35 amended (Common assault and aggravated assault)

This clause clarifies that there is no time limit for commencing prosecutions of 'indecent assault' under section 35. It is to have retrospective effect to historical offending and validation of any proceedings commenced since 20 April 2023.

One of the intended outcomes of legislation which commenced on 20 April 2023, the *Justice Miscellaneous (Royal Commission Amendments) Act 2022*, was to remove the 12 months statutory time limit for commencing prosecutions for "indecent assaults" under section 35, so that proceedings could be commenced at any time. The amendment also applied retrospectively.

However, it has subsequently been identified that a further amendment is required to ensure that a charge can be made at any time.

PART 6

Clause 19 Principal Act

Provides that the Principal Act being amended in Part 6 is the *Variations of Trusts Act 1994*.

Clause 20 Section 5 amended (Application for variation of trust)

This clause amends the definition of 'original purposes' to clarify that it includes the variation of a charitable trust which was in existence prior to the Act being introduced in 1994.

The current wording of section 5 creates potential for doubt about whether it extends to such charitable trusts. There is nothing in the Act or explanatory materials to indicate that there was any such intention to create such an exclusion, so the amendment clarifies the law.