

DRAFT SECOND READING SPEECH

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Justice and Related Legislation (Miscellaneous Amendments) Bill 2018

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Madam Speaker, from time to time legislation requires amendment to ensure it remains up-to-date and to correct minor errors that may become apparent after legislation has been operational for some time. A number of such minor amendments have been identified in legislation administered by the Department of Justice.

This Bill makes minor amendments to eighteen Acts. The amendments result from requests by various stakeholders to clarify or improve the operation of particular Acts.

I will now briefly outline the reason behind each of the changes.

Section 42AH and 42AI of the Sentencing Amendment (Phasing Out of Suspended Sentences) Act 2017 requires an offender who is subject to a home detention order or an authorised person to apply to the court to vary or cancel a home detention order. A copy of the application and notification of the time and place of the hearing of the application is to be served at least 7 days before the hearing.

The Magistrates Court has requested that section 42AH and 42AI of the Act be amended to allow the court to hear the application in a shorter period and without service. This Bill makes the requested change.

Section 36A of the of the Sentencing Act 1997 provides that offenders discharging community service orders are workers for the purposes of the Workers Rehabilitation and Compensation Act 1988 and the Asbestos-Related Diseases (Occupation Exposure) Compensation Act 2011. This means that offenders discharging community service orders are entitled to workers compensation in the event of injury or death.

Section 27M(1)(c) of the Sentencing Act 1997 provides that where an offender contravenes a drug treatment order the court may make an order requiring the offender to perform up to 20 hours of community work under the supervision of the offender's case manager.

Offenders discharging drug treatment orders are not regarded as workers. This Bill amends section 27M to recognise offenders discharging drug treatment orders as workers for the purposes of the Workers Rehabilitation and Compensation Act 1988 and the Asbestos-Related Diseases (Occupation Exposure) Compensation Act 2011. This will provide consistency between people undertaking community service orders and people undertaking community work as part of a drug treatment order.

Section 82 of the Sentencing Act 1997 provides that a court that finds an offender guilty of an offence may, before passing sentence, order a pre-sentence report and adjourn the proceedings to enable the report to be prepared. The Chief Justice has requested that section 82 of the Act be amended to empower magistrates to order pre-sentence reports when a

defendant pleads guilty to an indictable offence before a magistrate and is committed to the Supreme Court for sentence. This Bill amends section 82 to provide that power.

This Bill amends section 8B(3)(e) of the Acts Interpretation Act 1931 to include clause notes in the definition of 'extrinsic material'. Clause notes are a useful reference to explain the purpose of each clause in a Bill.

Section 30(1) of the Acts Interpretation Act 1931 currently provides that where any Act authorises or requires any notice or document to be given, sent, served or delivered by post, such delivery is deemed to be effected by properly addressing, prepaying and posting the document in the mail. On 18 November 2016, Magistrate Brown in Austin held that section 30(1) cannot be satisfied where postage is paid after the document has been given, sent, served or delivered by post. At present, government departments and agencies pay for postage via a monthly business account with Australia Post.

This Bill amends section 30 to cover persons who have a contract with Australia post to pay for items posted on a monthly or other basis.

Section 77(2) of the Classification (Publications, Films and Computer Games) Enforcement Act 1995 provides that the court may, if it considers material which is the subject of a charge for an offence under Part 8 to be child exploitation material or a bestiality product, order that the material be forfeited to the Crown. Section 77(7) of the Act provides that when any material or thing is forfeited to the Crown, the material or thing becomes the Crown's property and may be disposed of or destroyed in such manner as the Attorney-General may direct.

Section 77(2) does not take into account the forfeiture of electronic mediums, such as computers, mobile phones or electronic devices that carry child exploitation material or a bestiality product where the person is not convicted of an offence. Further, there is no provision for the court to make an order for the electronic medium to be destroyed. While data can be deleted from an electronic medium, there is still the possibility that data can be retrieved.

The Department of Police, Fire and Emergency Management has requested an amendment to section 77 to allow the court to make orders to forfeit electronic mediums to the Crown and destroy electronic mediums where the person is not convicted of an offence to which the child exploitation material or bestiality product relates, and this Bill makes that amendment.

The Bill also amends section 130F of the Criminal Code Act 1924, which deals with the forfeiture of child exploitation material, to create consistency between these Acts.

Section 69 of the Coroners Act 1995 requires the Chief Magistrate's annual report on the Coronial Division to be provided to the Attorney-General. Section 17C of the Magistrates Court Act 1987 requires the Chief Magistrate's annual report on the Magistrates Court to be provided to the Minister for Justice. Traditionally the two annual reports are prepared as a single document as the same person usually holds both roles.

This Bill amends section 69 of the Coroners Act 1995 to provide that the Chief Magistrate's annual report be provided to the Minister for Justice to avoid unnecessary duplication and the loss of an overarching understanding of the Court.

Section 27 of the Corrections Act 1997 gives a correctional officer or police officer power to take someone 'into custody' once a judicial officer pronounces a sentence of imprisonment, revokes bail or remands a person in custody. Security officers in the Magistrates Court currently do not have the power to take someone into custody. Security officers only have the power to escort, detain and guard the person while the person is on court premises. The Magistrates Court has requested that a provision be inserted into the Court Security Act 2017 to give a security officer the same powers as a correctional officer or police officer under section 27 of the Corrections Act 1997. This Bill makes the requested amendment.

Section 301 of the Criminal Code Act 1924 requires a person executing a warrant to either have possession of the warrant or produce the warrant as soon as practicable after the arrest. In many cases, this is impractical if the warrant is being held at a station at the other end of the State. There is no time to post or courier the warrant. While subsection 5 attempts to address this issue using facsimile technology, advances in technology have rendered facsimile machines archaic. In most instances, multi-function devices that scan and email documents replace facsimiles.

The Department of Police, Fire and Emergency Management has requested that section 301 of the Criminal Code Act 1924 be amended to update the processes of transmitting warrants with modern technology. This Bill makes the requested amendment.

Section 408 of the Criminal Code Act 1924 provides that on receiving a notice of appeal or of application for leave to appeal, the Registrar may cause an appeal book to be prepared for the use of the Court. The Chief Justice of the Supreme Court has requested that section 408 of the Code be repealed. The current practices of the court no longer align with the procedures outlined in section 408 and this Bill repeals that section.

Section 418 and 418A of the Criminal Code Act 1924 deal respectively with the powers of a single judge and the Associate Judge to exercise certain powers of the Court of Criminal Appeal. The Chief Justice of the Supreme Court has requested that sections 418 and 418A be amended to empower a single judge or an Associate Judge to make orders under section 409(1)(a) and (b) of the Code.

Sections 409(1)(a) and (b) of the Criminal Code Act 1924 give the Court of Criminal Appeal the power to require the production of documents and order the attendance of witnesses to appear before it. At present, a single judge and the Associate Judge do not have the power to make orders under sections 409(1)(a) and (b). Empowering a single judge or an Associate Judge to make orders will increase efficiency and reduce costs. This Bill makes the requested change.

Section 4A of the Police Offences Act 1935 provides that if a police officer believes on reasonable grounds that a person in a public place is intoxicated and is likely to cause injury to himself, herself or another person, or damage any property; or is incapable of protecting himself or herself from physical harm, the police officer may take the person into custody.

The Department of Police, Fire and Emergency Management has requested that a similar provision to section 4A of the Police Offences Act 1935 be inserted into the Criminal Law (Detention and Interrogation) Act 1995 to care for intoxicated persons who have been arrested for an offence.

This Bill amends section 4 of the Criminal Law (Detention and Interrogation) Act 1995 to care for intoxicated persons who have been arrested for an offence and makes consequential amendments to section 5 and 23 of the Bail Act 1994.

This Bill also amends section 6 of the Criminal Law (Detention and Interrogation) Act 1995 to permit multiple incommunicado requests and extensions to prevent evidence being lost or co-offenders still at large escaping justice.

The Criminal Procedure (Attendance of Witnesses) Act 1996 broadly governs the powers of the Supreme Court to secure the attendance of witnesses in criminal proceedings. It allows witness notices to be issued by the Registrar of the Supreme Court, but only on the application of either the prosecutor or the accused. Witness notices require a person to attend and give evidence at a criminal proceeding.

The Chief Justice of the Supreme Court has requested that sections 5(1) and 10(1) of the Criminal Procedure (Attendance of Witnesses) Act 1996 be amended to permit the Registrar of the Supreme Court to issue a preliminary notice or a final notice at the request of any party to a criminal proceeding other than an appeal or application to the Court of Criminal Appeal.

Apart from trials and pleas of guilty, there are various types of criminal proceedings in which it will be in the interests of justice for a party to be able to compel the attendance of a witness or the production of documents. For example, the Court deals with applications for the discharge of orders made under the Criminal Justice (Mental Impairment) Act 1999 and applications to discharge dangerous criminal declarations. This Bill makes the requested change.

The Court of Criminal Appeal has separate powers under the Criminal Code Act 1924 to require the production of documents and order the attendance of witnesses for proceedings before the Court of Criminal Appeal. This Bill amends the definition of 'criminal proceeding' in section 3 of the Criminal Procedure (Attendance of Witnesses) Act 1996 to make clear that the definition of criminal proceeding does not include an appeal or application to the Court of Criminal Appeal.

This Bill further amends the definition of 'criminal proceeding' in section 3 of the Act to add an application to a single judge or the Associate Judge pursuant to a provision of the Criminal Code Act 1924 and remove the reference to section 380 of the Criminal Code Act 1924. Section 380 was repealed in 1999.

Section 13 of the Criminal Procedure (Attendance of Witnesses) Act 1996 provides for the arrest of an intended witness when it appears to a judge that there are reasonable grounds for believing that an intended witness will leave Tasmania in order to avoid giving evidence in a criminal proceeding or has failed or is about to fail to comply with the terms of a recognisance.

This Bill amends section 13 of the Act to broaden the powers of judges to make orders for the arrest of witnesses who fail to attend court. The amendment gives judges the power to make an order for the arrest of a witness, the bringing of the witness before the Court to give evidence, and the detention of the witness for that purpose when, for any reason, the issue of such a warrant is considered necessary.

This Bill amends section 160 of the Evidence Act 2001 to clarify that a postal article sent by prepaid post addressed to a person at a specified address in Australia or in an external Territory was received at that address on the seventh working day after having been posted.

This Bill amends section 3 of the Forensic Procedures Act 2000 to include the offence of evading police, per section 11A of the Police Powers (Vehicle Interception) Act 2000, as a serious offence.

The Department of Police, Fire and Emergency Management requested this amendment to allow for the collection of approved forensic material (DNA) from vehicles used in evading police officers and the subsequent comparison of the material against DNA profiles contained within the DNA database system in accordance with section 54 of the Forensic Procedures Act 2000.

This Bill amends section 90 of the Guardianship and Administration Act 1995 to include a specific power for the registrar to waive fees.

In 2000, section 29 of the Industrial Relations Act 1984 was amended with the intention of enabling applications in relation to long service leave to be brought by a party directly to the Industrial Relations Commission. Prior to the amendment, a dispute in respect to long service was to be referred to the Secretary who was required to investigate the circumstances of the dispute and submit the report to the President of the Industrial Relations Commission. At present, section 13 of the Long Service Leave Act 1976 still requires a dispute to be referred to the Secretary.

This Bill amends section 13 of the Long Service Leave Act 1976 to place discretion on a referrer to be able to choose whether to refer a dispute to the Secretary in the first instance or to proceed directly to the Industrial Relations Commission.

This Bill amends Form 1 in Schedule 1 of the Oaths Act 2001 to add a 'contact phone number' field to the form for the purpose of being able to contact the person making the declaration where needed.

This Bill makes minor amendments to the Registration to Work with Vulnerable People Act 2013 to update terminology in the Act.

This Bill amends section 10A of the Trustee Companies Act 1953 to remove duplicated terms.

The Water Management Act 1999 defines a 'water entity' as including a 'body registered under the Co-operatives Act 1999' and makes reference to such bodies in the Act. In 2015, the Co-operatives Act 1999 was repealed and replaced with the Co-operatives National Law (Tasmania) Act 2015.

This Bill amends section 3 of the Water Management Act 1999 to clarify that a body registered under the Co-operatives National Law (Tasmania) Act 2015 is a 'water entity' for the purposes of the Water Management Act 1999.

This Bill repeals the Long Service Leave (Casual Wharf Employees) Act 1982. The Act is no longer required as the Association of Employers of Waterside Labour is no longer in operation in Tasmania.

I commend the Bill to the House.