

Law and Justice Legislation Amendment Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 sets out the purpose of the Act.
- Clause 2 is the commencement provision.

PART 2—CRIMES ACT 1958

- Clause 3 repeals section 207(1) of the **Crimes Act 1958**.

PART 3—CRIMES (FAMILY VIOLENCE) ACT 1987

- Clause 4 provides that the **Crimes (Family Violence) Act 1987** is the Principal Act.
- Clause 5 inserts a new definition into the definition section (section 3) of the Principal Act. New Zealand protection orders are defined. This is a term used in clause 10 of the Bill.
- Clause 6 Sub-clause (1) inserts a new sub-section (3) into section 4 of the Principal Act, to allow the court to make an intervention order in respect of multiple family members if the court is satisfied as to the matters set out in sub-section (1) of section 4 in relation to each of the aggrieved family members.

Sub-clause (2) inserts new sub-sections into section 7 of the Principal Act. Proposed section 7(4) will enable the complaint of a child to be included in the complaint of its parent if both complaints arise out of the same or similar circumstances. Provisions are also included for complaints to be heard separately, or to be heard together, if the court thinks fit.

Sub-clause (3) inserts a new sub-section (3) into section 9 of the Principal Act to clarify a magistrate's power to issue a warrant to arrest a defendant upon a complaint in the absence of service of the summons or failure to appear. At present, section 9 only refers to a registrar having this power (although section 57(2) of the **Magistrates' Court Act 1989** gives magistrates power to issue warrants to arrest).

- Clause 7 substitutes new sections 6 and 6A of the Principal Act.

- Section 6(1) enables the court to specify a period for which an intervention order is to remain in force.
- Section 6(2) provides that an intervention order remains in force for the period (if any) specified in the order under sub-section (1) until it is revoked by the court or reversed or set aside on appeal. If no period is specified by the court the order remains in force until it is revoked by the court or reversed or set aside on appeal.
- Section 6(3) provides that an intervention order made on or after 23 January 1995 is not invalid merely because it did not specify a period for which it was to remain in force.
- Section 6(4) provides that sub-section (3) does not affect the rights of the parties in any proceeding for a breach of an intervention order that was dismissed before the commencement of this section by reason that the intervention order was invalid because it did not specify a period for which it was to remain in force.
- Section 6A states that it is the intention of proposed section 6(3) to alter or vary section 85 of the **Constitution Act 1975**.

Clause 8 inserts a new section 13A into the Principal Act, dealing with the rules of evidence. Proposed section 13A(1) enables a court to inform itself in any manner it thinks fit despite the rules of evidence (for example, in relation to hearsay) in the hearing of a complaint where the aggrieved family member is a child, or on the hearing of a complaint for an interim intervention order where the complainant is someone other than the aggrieved family member, for example, a police officer.

The proposed section makes the procedure in relation to children consistent with the rules of evidence applicable to the Family Division of the Children's Court.

Clause 9 amends section 18AA of the Principal Act to allow a court to make an order extending, varying or revoking an interstate summary protection order that has been registered in Victoria.

Currently the Act provides for the registration of an interstate summary protection order in Victoria but does not provide for an avenue for the Magistrates' Court of Victoria to make an order varying the status or effect of the original interstate order.

Clause 10 inserts a new section 18AAB in the Principal Act to enable New Zealand protection orders to be recognised in Victoria and provide a means of enforcing those orders in Victoria.

The proposed section 18AAB(1) allows the Registrar to register a New Zealand protection order. The effect of that registration is contained in subsection (3) of the proposed section. The order will have the same effect here as it has in New Zealand, but a breach is subject to Victorian penalties.

The section does not allow New Zealand orders to be varied in Victoria.

Clause 11 corrects a minor error in section 5(3) of the Principal Act.

PART 4—LEGAL AID LEGISLATION

Clause 12 states that the **Legal Aid Act 1978** is the Principal Act.

Clause 13 amends sections 11, 12E and 12M of the Principal Act by making changes to the membership of the board of VLA and removing the requirement for the Attorney-General to consult with the Commonwealth Attorney-General in certain circumstances.

Clause 14 substitutes a new Part IV in the Principal Act. The new Part IV establishes a panel of independent reviewers to replace legal aid review committees and legal aid appeal committees. Section 18 of the new Part IV allows the Attorney-General to appoint the panel of independent reviewers and sets out eligibility criteria and the terms and conditions of appointment. Section 19 sets out the functions of independent reviewers.

Clause 15 amends subsection 30(17) of the Principal Act and inserts subsections (17A) and (17B) providing immunities to certain VLA directors, officers and employees, and to independent reviewers making decisions under section 30 of the Principal Act.

Clause 16 substitutes a new section 37 into the Principal Act. The new section 37 prohibits independent reviewers from exercising powers or functions if they have a conflict of interest.

Clause 17 makes a number of consequential amendments, in particular substituting references to "legal aid review committees" and "legal aid appeal committees" in the Principal Act with references to "independent reviewers". It repeals sections 38 and 39 of the Principal Act.

- Clause 18 amends sections 32 and 36 of the Principal Act by allowing VLA to set maximum payments for private practitioners for services on behalf of assisted persons.
- Clause 19 inserts sections 29A and 29B into the Principal Act which allow VLA to set up practitioner panels.
- Clause 20 amends section 30 by giving VLA the power to select a practitioner on a practitioner panel established under section 29B to act on behalf of an assisted person.
- Clause 21 amends sections 34, 35 and 36 of the Principal Act by allowing the VLA board to fix the times within which applicants for legal assistance may seek reconsiderations and reviews of VLA decisions.
- Clause 22 inserts section 49B into the Act. The new section states that it is the intention of subsections 30(17A), 35(3) and 36(3) to alter or vary section 85 of the **Constitution Act 1975**.
- Clause 23 sets out transitional arrangements.
- Clause 24 contains a statute law revision provision.
- Clause 25 makes a consequential amendment to an unproclaimed provision of the **Legal Aid Commission (Amendment) Act 1989**.

PART 5—LEGAL PRACTICE ACT 1996

- Clause 26 redrafts section 441(2) of the **Legal Practice Act 1996** to reflect the insertion of section 46(5)(d) into the **Public Prosecutions Act 1994**.

PART 6—MAGISTRATES' COURT ACT 1989

- Clause 27 provides that for Part 6 of the Act, the **Magistrates' Court Act 1989** is called the Principal Act.
- Clause 28 inserts a new Part 6A into the **Magistrates' Court Act 1989**.

Division 1—Definitions

A new section 124A provides various definitions which apply throughout this new Part.

Division 2—Agreements

A new section 124B provides that the Attorney-General and the Minister administering Part 1 of the **Police Regulation Act 1958** (currently the Minister for Police and Emergency Services) may jointly enter into an agreement on behalf of the Crown to provide administrative services to support the functions of the PERIN Court, the sheriff, the Traffic Camera Office and the Fixed Penalties Payment Office. Section 124B(2) states that nothing in sub-section (1) limits or takes away any other power of these Ministers to enter into agreements of this type.

A new section 124C provides which matters must be included in the agreement entered into under section 124B(1) and which matters may be included in such an agreement.

A new section 124D provides that the Government has free and unfettered access at all times to the operations of the contractor and any sub-contractor. This includes access to any premises, documents, equipment or people employed or engaged by the contractor or sub-contractor. The right of access can be used for the purpose of ensuring compliance with this Part of the **Magistrates' Court Act 1989** or the regulations or the agreement entered into under section 124B(1). This right of access is extended to an administrator who is appointed under section 124E to manage the contractor's operations where the Ministers have exercised their "step in" rights. To refuse access under this provision is an offence attracting a maximum penalty of 50 penalty units. Section 124D(3) provides that nothing in this section limits or takes away any function or power conferred on a person (other than the contractor or sub-contractor) by any other Act, or the agreement entered into under section 124B(1) or otherwise.

A new section 124E provides that in certain circumstances the Ministers may intervene in the management of the contractor's operations under an agreement under section 124B(1). The Ministers may intervene where they determine that a default has occurred that entitles the Crown to terminate the agreement, that there is an emergency which requires such intervention in the interests of public safety, or that the contractor's operations are preventing or impairing the efficient detection, processing or enforcement of infringements, or the functioning of any court. Section 124E(2) provides that where the Ministers exercise their "step in" rights, they may appoint an administrator to manage the operations of the contractor. The administrator may manage these operations until the Ministers determine that the emergency is over or that the contractor is able to manage the operations satisfactorily. Section 124E(3) provides that the contractor or sub-contractor must act or cease to act in accordance with the directions of the administrator. Failure to do so is an offence which attracts a maximum penalty of 50 penalty units. Section 124E(4) provides that a person employed or engaged by a contractor or sub-contractor must comply with the directions of the administrator. Section 124E(5) provides that an administrator may exercise all the powers of the contractor or sub-contractor in relation to the management of the contractor's obligations under the agreement. Section 124E(6) provides that the Department of Justice must assist the administrator in carrying out his or her functions. Section 124E(7) ensures that nothing in this section limits or takes away

any function or power conferred on a person (other than the contractor or sub-contractor) by any other Act, or the agreement entered into under section 124B(1) or otherwise.

A new section 124F provides that the Ministers may arrange for the documents in relation to the contractor's operations under the agreement to be audited by an independent auditor. Section 124F(2) provides that the contractor must make all the documents relating to its operations under the agreement available to the auditor and must provide any necessary assistance to enable the audit to take place.

A new section 124G sets out the status of the documents handed over to the contractor at the commencement of its operations and those created by the contractor or sub-contractor as a result of the operations under the agreement. These documents are deemed to be in the possession of the Department of Justice for the purposes of the **Freedom of Information Act 1982**. This means that requests under that Act in relation to these documents will continue to be made to the Department of Justice after the agreement with a private contractor has been entered into. Section 124G(2) provides that the documents described in sub-section (1) are owned by the Crown. Section 124G(3) provides that these documents are "public records" for the purposes of the **Public Records Act 1973**.

A new section 124H provides that the contractor or sub-contractor is bound by the **Ombudsman Act 1973**.

A new section 124I creates an offence for a person to intentionally access, alter or interfere with data stored in a computer that is under the control of the contractor or sub-contractor, without lawful authority. The offence attracts a maximum penalty of 100 penalty units. Section 124(2) provides that the Secretary to the Department of Justice may authorise a person employed or engaged by the contractor or any other person to do the things listed in sub-section (1). Section 124I(3) provides that a person has lawful authority to access, alter or interfere with this data, if that person has received authorisation from the Secretary to the Department of Justice or that person is acting in his or her official capacity as principal registrar of the Magistrates' Court, registrar or deputy registrar at the PERIN Court, sheriff, deputy sheriff, bailiff or member of the police force of Victoria.

Section 124J provides for the confidentiality of any information relating to the operations under the agreement, acquired by any past or present contractors, sub-contractors, or persons employed or engaged by the contractor or sub-contractor or persons authorised under section 124I(2). Section 124J(2) creates an offence for these persons to make a record, divulge or use this information except for in the exercise of powers under the agreement. The offence attracts a maximum penalty of 100 penalty units. Section 124J(3) provides that nothing in sub-section (2) prevents a person bound by this section from producing a document to a court.

Clause 29 amends section 58(1)(b) of the **Magistrates' Court Act 1989** to provide that where a warrant is issued by a registrar, that warrant may be recalled and cancelled by the registrar who is at the venue of the court at which the warrant

is issued, or, with the exception of warrants issued by the registrar at the PERIN Court, any registrar.

Clause 30(1) repeals sub-clause (3) of clause 7 of Schedule 7 to the **Magistrates' Court Act 1989**. Where a registrar allows a fine defaulter additional time to pay or payment by instalments after a demand on a penalty enforcement warrant has been made, the registrar will no longer include the lawful costs of execution in the amount of the fine.

Clause 30(2) inserts sub-clause (1B) in clause 8 of Schedule 7 to the **Magistrates' Court Act 1989** to clarify that any execution fee prescribed under the Act in relation to a warrant issued under clause 8(1) forms part of the lawful costs of execution.

Clause 31 contains transitional provisions in relation to the amendments made by clause 29 and clause 30(2). These amendments are to apply to warrants issued before or after the commencement of those clauses.

PART 7—PUBLIC PROSECUTIONS ACT 1994

Clause 32 clarifies the operation of section 46 of the **Public Prosecutions Act 1994** in light of the judgment of the Court of Appeal in *BHP v Dagi* [1996] 2 VR 117. The amendments to sub-section (1) and the insertion of a new sub-section (1A) ensure that the section applies to all forms of contempt. The amendments to sub-section (5) expand the circumstances in which an individual may apply to a court for punishment of a contempt and preserve the effect of section 441(2) of the **Legal Practice Act 1996**.

Clause 33 states that it is the intention of clause 32 to alter or vary section 85 of the **Constitution Act 1975**.

PART 8—ROAD SAFETY ACT 1986

Clause 34 makes a consequential amendment to section 88 of the **Road Safety Act 1986**. It clarifies that an infringement notice issued under section 88(1) can be issued or caused to be issued and served or caused to be served by the officers listed in that sub-section. It also clarifies that an infringement notice can be issued or caused to be issued by a member of the police force under section 88(1A). These amendments ensure that where a member of the police force or other officer listed in sub-section (1) decide that a person has committed an infringement, the infringement notice can be printed and sent out under the direction of members of the police force or these other officers.

PART 9—SECOND-HAND DEALERS AND PAWNBROKERS ACT 1989

Background

Second-hand dealers and pawnbrokers are currently regulated under the **Second-Hand Dealers and Pawnbrokers Act 1989** ("the Principal Act"), which provides for licensing of dealers and pawnbrokers by local councils. A primary objective of the Principal Act is to facilitate and expedite the recovery of stolen goods from second-hand dealers and pawnbrokers, and it is intended that the amendments described below will further the achievement of this objective and generally improve the operation and effectiveness of the Principal Act. The existing licensing system is to be replaced by a less regulatory registration/notification system.

Clause 35 provides that the **Second-Hand Dealers and Pawnbrokers Act 1989** is referred to in this Part as "the Principal Act".

Clause 36 inserts definitions of "associate", "disqualifying offence", "externally-administered corporation", "insolvent under administration" and "Secretary", into the Principal Act.

Clause 37 clarifies that the exemptions referred to in section 4(e) of the Principal Act are exemptions from the application of the whole or any provision of the Principal Act or the **Second-Hand Dealers and Pawnbrokers Regulations 1990** ("the Regulations").

Clause 38 substitutes a new Part 2 of the Principal Act. This reflects the change from the present system of licensing of second-hand dealers and pawnbrokers to the new system of centralised registration to be administered by the Department of Justice.

Section 5 provides that a person must not carry on business as a second-hand dealer or pawnbroker unless registered under Part 2 of the Principal Act, but allows a licensed motor car trader to deal in second-hand motor car parts without the need to be registered under the Principal Act. These latter persons must, however, comply with all other requirements of the Principal Act.

Section 6 specifies the requirements of eligibility for registration as a second-hand dealer or pawnbroker.

Section 7 specifies the manner in which an application for registration is to be made (for both new and existing dealers) including the identification which must accompany the application form.

Section 8 requires a police records check to be conducted in respect of all applicants and their associates.

Section 9 provides that the Secretary to the Department of Justice must register an applicant unless the applicant is not eligible under section 6. A registration remains in force until it is cancelled or surrendered, and may be cancelled by the Secretary if a person fails to lodge an annual statement as required by section 11 (below).

Section 10 provides for automatic cancellation of registration where a registrant or his/her associate becomes ineligible to be registered. This section only applies where disqualifying circumstances occur after the commencement of section 38 of the **Law and Justice Legislation Amendment Act 1997**.

Section 11 requires a registrant to lodge an annual statement with the Secretary.

Section 12 requires a registrant to notify the Secretary of certain changes.

Section 13 provides that the Secretary must cause a register to be kept of all persons registered under Part 2 of the Principal Act. The register may be inspected by the public and copies of or extracts from the register can be obtained on payment of the prescribed fee.

Section 14 provides for correction of errors in the register and allows for an appeal to the Administrative Appeals Tribunal for review of the Secretary's decision in relation to a correction.

Section 15 requires the Secretary to publish all approved forms in the Government Gazette.

Section 16 provides that: (a) knowingly or recklessly making a false statement in relation to an application, statement or notice under Part 2 of the Principal Act; and (b) submitting false evidence of identity by an applicant for registration, are offences.

Clause 39 substitutes a new section 19 in the Principal Act. This section requires second-hand dealers and pawnbrokers to request certain specified forms of identification from persons selling or pawning goods and provides that the dealer or pawnbroker must not accept the goods if the identification is not produced. The section also provides that the production of false identification is an offence.

Clause 40 amends section 20 of the Principal Act to require dealers and pawnbrokers to maintain accurate and complete records of all transactions, whether conducted at the business premises or elsewhere.

- Clause 41 inserts a new section 21A into the Principal Act, which requires dealers and pawnbrokers to record, for each item received, details of the place where the item is stored.
- Clause 42 amends section 23 of the Principal Act. Pawnbrokers are required to display a sign giving details of the maximum weekly and monthly charges (or charges for any other normally used period) levied by them, in a position where the sign can be viewed from outside the premises. This enables consumers to "shop around" by comparing charges without having to enter each store. The section also requires pawnbrokers to give the person pawning the goods written notice of the amount that is to be charged, and provides that charging in excess of the displayed rates is an offence, except in particular circumstances. These circumstances are where the pawned goods incur additional storage costs to the pawnbroker, or the terms of the loan envisage less frequent repayments than those normally agreed to and listed on the sign outside the premises. The Regulations can also prescribe additional circumstances in which higher than notified charges can apply. If these higher charges are levied, the person pawning goods must receive a notice as to the reason for this charge, and must agree to the higher charge in writing.
- Clause 43 inserts new sections 24A and 24B into the Principal Act.
- Section 24A provides that failure to comply with an order made by the Magistrates' Court under section 24 of the Principal Act is an offence.
- Section 24B requires dealers and pawnbrokers to display a sign (in the form of the Schedule) which advises the public of the existence of the mechanism contained in section 24 of the Principal Act. This section enables people to apply to the Magistrates' Court for an order for the return of their goods where the goods have been stolen and are then located in the possession of a dealer or pawnbroker. The sign also indicates that the public can ask the police to issue a notice preventing a dealer from altering the goods in any way for 3 weeks, if police are satisfied they may be stolen.
- Clause 44 allows the police to enter business and storage premises, when the business premises are open, for the purposes of inspecting the premises and any goods at the premises.
- Clause 45 provides that the provisions of the Corporations Law relevant to the service of documents on companies apply to the Principal Act.
- Clause 46 substitutes a new section 28 in the Principal Act which allows the Secretary to the Department of Justice to delegate to an employee of the Department the

powers and functions conferred on the Secretary by the Principal Act, other than the power of delegation.

- Clause 47 amends section 29 of the Principal Act to enable certificates purporting to be issued by the Secretary in relation to the registration status of any person to be proof of that fact.
- Clause 48 amends section 30 of the Principal Act to extend the liability created by that section to offences committed under the Regulations.
- Clause 49 amends section 31 of the Principal Act to include additional matters in relation to which regulations can be made.
- Clause 50 repeals sections 27 (3) and 32 of the Principal Act.
- Clause 51 inserts a new section 36 into the Principal Act which provides that the existing Part 2 of the Principal Act (containing the various requirements relevant to the current licensing system) continues to apply to applications for licences which have been lodged with a council but not determined prior to the commencement of the new Part 2.
- Clause 52 inserts a Schedule into the Principal Act containing the information discussed above in clause 43 (new section 24B).

PART 10—SUMMARY OFFENCES ACT 1966

- Clause 53 clause 53(1) inserts a definition of "Scheduled public place" in section 3 of the **Summary Offences Act 1966**.

Clause 53(2)(a) restricts the application of section 9(1)(d) of the **Summary Offences Act 1966** to any public place other than a Scheduled public place.

Clause 53(2)(b) inserts three paragraphs after section 9(1)(d) as follows:

- paragraph (e) provides that where a person wilfully enters any private place or Scheduled public place without express or implied authority given by the owner or occupier or given on behalf of the owner or occupier by a person authorised to give it, or without any other lawful excuse, the offence of trespass has been committed unless the person enters for a legitimate purpose;
- paragraph (f) provides that where a person is warned to leave a private place or a Scheduled public place but neglects or refuses to comply with that request, the offence of trespass has been committed unless the person has a lawful excuse;

- paragraph (g) provides that where a person enters any place, whether private or public, without lawful excuse, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, the offence of trespass has been committed.

Clause 53(3) inserts new sub-sections (1B) to (1E) after sub-section (1A) of section 9 of the **Summary Offences Act 1966** as follows:

- Clause (1B) provides that a person may commit an offence against paragraphs (d), (e), (f) or (g) of sub-section (1) even though he or she did not intend to take possession of the place. The effect of this clause is to overcome the problem which resulted from the High Court decision in *Prideaux v The Director of Public Prosecutions* (1987) which determined that a person had to have the intention of taking possession of a place before the offence of trespass could occur. This decision rendered section 207(1) of the **Crimes Act 1958** ineffective in application;
- Clause (1C) provides that without limiting paragraph (e) of sub-section (1), examples of circumstances in which a person does not have express or implied authority to enter a place are where the person has been previously warned not to enter the place, or the person enters the place in breach of a prominently displayed sign erected at that place refusing entry to specified persons or classes of persons or persons engaging in a particular type of activity, and the person has no other lawful excuse for entering the place;
- Clause (1D) provides that a warning may be given under sub-section (1)(f) or sub-section (1C)(a) or (b) orally or by giving written notice of it personally or (except in relation to sub-section (1)(f)) by certified mail to the person;
- Clause (1E) provides that a person may commit an offence against paragraph (g) of sub-section (1) even though he or she had a right to enter that place in a manner other than that described in that paragraph.

Clause 54 inserts a transitional provision as a new section 62 of the **Summary Offences Act 1966**. This provision refers to a definition in the Schedule.

Clause 55 inserts a new Schedule 1 at the end of the **Summary Offences Act 1966** which lists Scheduled public places as follows :

- land used for the purposes of a State school;

- premises or place where a children's service operates in respect of which certain payments are provided;
- premises that are a residential institution or used to provide a residential program or used by a registered residential service;
- premises that are an approved mental health service;
- land held or managed by the trustees of a public cemetery.

