

Law and Justice Legislation (Further Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

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

PART 2—BAIL ACT 1972

- Clause 3 states that the Principal Act in this Part is the **Bail Act 1977**.
- Clause 4 inserts a new factor into section 4(3) of the **Bail Act 1977** which requires a court, when considering whether an accused would be an unacceptable risk if released on bail, to consider the attitude of the alleged victim of the offence, if the alleged victim chooses to express an attitude to the court, to the grant of bail.
- Clause 5 Clause 5(1) inserts words into section 9(3) of the **Bail Act 1977** to clarify that a surety can sign an undertaking of bail and an affidavit of justification where the surety and the person to be bailed are in different locations, as long as the two persons witnessing the signatures of the surety and the person to be bailed are authorised persons under section 27 of the **Bail Act 1977**.

Clause 5(2) inserts sub-section (3A) in section 9 of the **Bail Act 1977** and provides that a surety may appear before a court by audio visual link or audio link in accordance with Part IIA of the **Evidence Act 1958**. The effect of this sub-section is to allow a surety in regional Victoria or interstate to appear by audio visual link or audio link before the court at which the person to be bailed is located.

Clause 5(2) also inserts sub-section (3B) in section 9 and provides that where a surety appears before a court by audio visual link or audio link, that the undertaking may be constituted by the undertaking signed by the accused person and a copy of

that document transmitted to the surety by any means and signed by the surety.

Clause 6 Clause 6(1) inserts the words "bail justice" in section 12(1) of the **Bail Act 1977**.

Clause 6(2) inserts sub-section (1A) in section 12 of the **Bail Act 1977** and provides that where a bail justice remands a person referred to in sub-section 12(1) in custody, that the person shall not be remanded for a period of more than 8 days.

Clause 7 Clause 7(1) inserts and removes miscellaneous words into and from section 18(4) of the **Bail Act 1977**.

Clause 7(2) provides that where a person has been released on bail but bail is revoked under section 18 or section 24(3) of the **Bail Act 1977** that the person may apply to the Magistrates' Court or the court to which the person was required to surrender under the conditions of the revoked bail for an order granting bail.

Clause 8 Clause 8(1) rewords section 24(3) of the **Bail Act 1977** to distinguish between the case where bail is revoked by a court or is revoked by a bail justice. Where bail is revoked by a bail justice under section 24(3) of the **Bail Act 1977** the clause provides that the person whose bail has been revoked be brought before the Magistrates' Court within 8 days.

Clause 8(2) inserts sub-section (5) in section 24 of the **Bail Act 1977** and provides that where bail is revoked under section 24(3) of the Act that the person may apply under section 18(6B) for an order granting bail.

Clause 9 Clause 9(1) substitutes the words "court official" for "registrar of the Magistrates' Court" in section 27 of the **Bail Act 1977**.

Clause 9(2) inserts sub-section (2) in section 27 of the **Bail Act 1977** and defines the term "court official" as the prothonotary or a deputy prothonotary of the Supreme Court, the registrar or a deputy registrar of the County Court or a registrar or deputy registrar of the Magistrates' Court.

Clause 10 inserts a transitional provision.

PART 3—CONSUMER CREDIT (VICTORIA) ACT 1995

- Clause 11 substitutes a new item 1 in Schedule 1 to the **Consumer Credit (Victoria) Act 1995** by way of statute law revision.

PART 4—COUNTRY FIRE AUTHORITY ACT 1958

- Clause 12 amends section 9B by removing the restriction on the Deputy Chairman engaging in other employment.

PART 5—CREDIT (ADMINISTRATION) ACT 1984

- Clause 13 substitutes a new section 86AA(3) in the **Credit (Administration) Act 1984** to provide for the payment out of the Consumer Credit Fund such amounts as the Minister determines to be applied as grants under section 86AB and such amounts as the Minister determines to be paid in respect of the reasonable costs incurred by the Advisory Committee established under section 86AC in performing its functions under Part 5A of the Act.

PART 6—CREDIT ACT 1984

- Clause 14 inserts new sections 36(2A) and (2B) into the **Credit Act 1984**. These sections provide that certain contracts that have or have had an over-estimation in the statement of the estimated credit charge are not taken to be in breach of the disclosure requirement under section 36 provided that the actual credit charge paid was correct.
- Clause 15 inserts a new section 167F into the **Credit Act 1984** which provides that the operation of sections 36(2A) and (2B) does not affect the liability of a person to be convicted of an offence against this Act or any determination, declaration or order made by the Tribunal before the commencement of the section.
- Clause 16 amends sections 102(3)(b)(ii) and 115(5)(b) of the **Credit Act 1984** to make statute law revision changes.
- Clause 17 repeals sections 168(1), 169(1), 170, 171, 172, 173, 174 and Schedule 8 of the **Credit Act 1984**. These provisions are all spent provisions.

PART 7—EQUAL OPPORTUNITY ACT 1995

- Clause 18 provides that the **Equal Opportunity Act 1995** is the Principal Act in this Part.
- Clause 19 amends the definition of "employee", "employer" and "employment" in section 4 of the Principal Act to refer to the Commonwealth Workplace Relations Act 1996. The amended definitions reflect the recent changes made to Victoria's industrial relations system.
- Clause 20 substitutes the attributes of "parental status or status as a carer" for the attributes of "status as a parent or carer". "Parental status" is defined to mean the status of being a parent or not being a parent.
- Clause 21 amends section 16 of the Principal Act to extend the domestic or personal services exception to enable an employer to discriminate in determining who should be employed to provide domestic or personal services in any person's home not just in relation to the employer's own home.
- Clause 22 makes a consequential amendment to section 83 of the Principal Act which specifies how the Anti-Discrimination Tribunal is to be constituted for the purposes of granting, reviewing or revoking an exemption under the Act. The amendment is necessary as a result of the introduction of a more flexible panel process for the Tribunal as provided for in clause 36 of the Bill.
- Clause 23 amends section 108 of the Principal Act in the following manner:
- Section 108(1) is amended by the inclusion of an additional ground for declining a complaint. The amendment allows the Equal Opportunity Commission to decline a complaint if it involves subject matter that has been adequately dealt with by a tribunal or court. The amendment also requires the Commission to notify a respondent if it declines to entertain a complaint.
- A new sub-section 108(1A) is inserted into the Principal Act which provides that before declining to entertain a complaint the Commission may, by written notice, invite any person to attend

the Commission to discuss the subject matter of the complaint or to produce documents specified in the notice.

A new sub-section 108(1B) is inserted into the Principal Act the effect of which is to suspend the 60 day time period referred to in section 108(1), while an application to strike out a complaint under section 109 of the Act is pending before the Anti-Discrimination Tribunal.

A new sub-section 108(5) is inserted into the Principal Act which requires the Commission to notify in writing both the complainant and respondent when the Commission dismisses a complaint due to the failure of the complainant to request referral of the complaint to the Tribunal within the required time limit.

A new sub-section 108(6) is inserted into the Principal Act which empowers the Commission to extend the 60 day time limit referred to in section 108(1) by a period not exceeding 10 days if the Commission considers it necessary or desirable to do so in the interests of justice or fairness. If the Commission extends the time period, it is obliged to notify the complainant and respondent in writing.

Clause 24 amends section 109 of the Principal Act as follows:

The effect of sub-clause (1) is to allow a respondent to apply to the Tribunal to strike out any part of a complaint.

Sub-clause (2) clarifies when a strike out application may be made.

Sub-clause (3) substitutes a new sub-section (5) which requires the Anti-Discrimination Tribunal to notify the Commission as soon as practicable of the result of a strike out application. This amendment relates to new sub-section 108(1B), which provides that the 60 day time limit referred to in section 108(1) of the Principal Act (during which time the Commission investigates the complaint) is suspended while an application to strike out a complaint is pending before the Tribunal.

Clause 25 inserts a new sub-section 110(1A) into the Principal Act which requires the Commission to notify in writing the complainant and respondent of a dismissal of a stale complaint.

- Clause 26 specifies notification requirements where the Commission does not consider it reasonably possible that a complaint may be conciliated successfully.
- Clause 27 amends section 115 of the Principal Act which deals with conciliation agreements. The amendments provide a revised procedure for the lodgment and registration of conciliation agreements. A certified copy of the conciliation agreement may be lodged with the President of the Anti-Discrimination Tribunal for registration. The President is obliged to register the agreement unless the President considers that it may not be practicable to enforce or to supervise compliance with the agreement, in which case the President may refuse to register the agreement. A refusal by the President to register an agreement does not affect the validity of the agreement.
- Conciliation agreements lodged with the Registrar of the Tribunal before the commencement of clause 27 are deemed to have been registered by the President by virtue of new subsection 222A(3).
- Clause 28 specifies the notification requirements where conciliation fails or is inappropriate.
- Clause 29 extends the time available to the Commission to determine whether a complaint should be expedited from 7 days to 10 days.
- Clause 30 repeals redundant provisions in the Principal Act.
- Clause 31 specifies the notification requirements where the Commission dismisses an expedited complaint.
- Clause 32 repeals redundant wording in section 137 of the Principal Act.
- Clause 33 amends section 140(1) of the Principal Act which is consequential to amendments made to section 115 of the Principal Act by clause 27.
- Clause 34 amends section 154 of the Principal Act to enable the Anti-Discrimination Tribunal to make an order dismissing a complaint if the complainant fails to comply with a direction of the Tribunal or the President of the Tribunal.

- Clause 35 corrects a grammatical error in section 161(1)(b) of the Principal Act.
- Clause 36 substitutes a new section 182 in the Principal Act to provide more flexibility in the constitution of the Anti-Discrimination Tribunal when hearing various matters specified in new subsection 182(2). The Tribunal can be constituted by a single member of the Tribunal who is a lawyer, nominated by the President of the Tribunal, or by a panel consisting of 2 or 3 members of the Tribunal nominated by the President, of whom at least one member is required to be a lawyer.
- Clause 37 amends section 191 of the Principal Act to provide for the appointment of deputy registrars of the Anti-Discrimination Tribunal who are able to exercise any of the powers or perform any of the functions of the Registrar of the Tribunal.
- Clause 38 makes amendments to section 198 of the Principal Act which are consequential to amendments made to section 115 of the Principal Act by clause 27.
- Clause 39 contains transitional provisions.
- Clause 40 makes statute law revisions in the Principal Act.

PART 8—FIREARMS ACT 1996

- Clause 41 defines the **Firearms Act 1996** as the Principal Act in this Part.
- Clause 42 amends section 3(1) of the **Firearms Act 1996** to insert new definitions and makes drafting amendments to the definition "prohibited person".
- Clause 43 makes a drafting amendment to section 53 of the **Firearms Act 1996** to insert a penalty in section 53(4) of the Principal Act.
- Clause 44 amends section 94 of the **Firearms Act 1996** to enable a firearms dealer to dispose of a firearm to the holder of an inter-State permit to acquire in defined conditions.
- Clause 45 amends section 102 of the **Firearms Act 1996** to exempt the holder of an inter-State permit to acquire from the offence of acquiring a firearm without a Victorian permit to acquire under defined conditions.

- Clause 46 amends section 116 of the **Firearms Act 1996** to remove the requirement to give a separate notice of removal of a firearm from Victoria where the firearm is validly acquired and removed under an inter-State permit to acquire.
- Clause 47 amends Schedule 3 to the **Firearms Act 1996** to exempt a person from being required to hold a Victorian firearms licence where they are licensed inter-State and are possessing or carrying a firearm acquired under an inter-State permit to acquire, for the purposes of returning to the State or Territory in which the permit was issued and while carrying that inter-State licence and acting in accordance with that licence.

PART 9—INSTRUMENTS ACT 1958

- Clause 48 repeals Part IX of the **Instruments Act 1958** and its related Schedules.
- Clause 49 is the transitional provision and this provides that any assignment or transfer of book debts which existed at the commencement of Part 9 of this Act and was invalid only because it was not registered under Part IX, is deemed to have been registered immediately before Part 9 of this Act commences.
- Clause 50 is a statute law revision to amend a typographical error.

PART 10—INTERPRETATION OF LEGISLATION ACT 1984

This Part re-enacts and expands upon the current section 41 of the **Interpretation of Legislation Act 1984**. The revised section 41 clarifies powers which attach to a power to make an appointment to an office unless the contrary intention appears. In particular this section clarifies the powers related to the making of acting appointments. The new section 41AA clarifies powers related to make an acting appointment where an Act or subordinate instrument expressly confers such a power. Again these powers will only apply to the extent that the Act or subordinate instrument do not indicate a contrary intention.

Power to appoint

Clause 51 substitutes a new section 41 in the **Interpretation of Legislation Act 1984**.

Sub-section (1) provides that if an Act or subordinate instruments confers on a person or body the power to make an appointment to an office, unless the contrary intention appears, this includes a power to:

- appoint a person to act in the office until someone is appointed to the office or during a vacancy;
- remove the person;
- suspend the person and appoint another person temporarily in that person's place;
- appoint a person to act in place of the holder of the office where the office-holder is absent or for any other reason is unable to perform functions and duties of the office;
- to appoint a person to perform a particular function or duty where the office holder is unable for any reason to perform the function or duty on a particular occasion of in relation to a particular matter.

Sub-section (2) sets out the powers and limitations which apply to acting appointments made pursuant to this section. This sub-section provides that:

- the appointer may determine the terms and conditions of the acting appointment and may terminate the appointment at any time;
- the appointment will cease should the person resign;
- the acting appointee will, subject to the terms and conditions of the appointment, have all the powers and responsibilities of the holder of the office, or the powers necessary for performing the particular duty, and be subject to any relevant Acts.

Sub-section (3) provides that where a power to make an appointment is only exercisable upon the recommendation or

approval or consent of some other person or body, this same limitation will apply to the exercise of a power to make an acting appointment, or to remove or suspend an office-holder, unless a contrary intention appears.

Sub-section (4) is a transitional provision. This ensures that the former section 41 will continue to apply to acting appointments made pursuant to this section before the commencement of these amendments.

Acting Appointments

A new section 41AA is inserted into the **Interpretation of Legislation Act 1984**. This section clarifies the powers and limitations on a power to make an acting appointment which arises under express provisions in another Act or subordinate instrument.

This section provides that except as otherwise provided for in the relevant Act or subordinate instrument:

- the acting appointment may be limited so that it takes effect only in specified circumstances or in relation to a particular function or duty or on a particular occasion or in relation to a particular matter;
- the appointer may determine the terms and conditions of the acting appointment and may terminate it at any time;
- if the appointee is acting in an office which subsequently becomes vacant (for example if the substantive office holder resigns) the appointee may continue to act until the vacancy is filled or as the appointer otherwise directs;
- the acting appointment will cease should the person resign;
- the acting appointee will, subject to the terms and conditions of the appointment, have all the powers and responsibilities of the holder of the office, or those powers necessary for performing the particular duty, and be subject to any relevant Acts.

PART 11—MAGISTRATES' COURT ACT 1989

Clause 52 inserts sub-sections (2), (3) and (4) into section 82F of the **Magistrates' Court Act 1989**. Sub-section (2) provides that a person against whom a penalty enforcement warrant is issued may consent to a sheriff's officer seizing a motor vehicle which would otherwise be exempt from seizure in accordance with section 42 of the **Supreme Court Act 1986**. The sheriff's officer may only seize this motor vehicle where the 7 day notice period referred to in clause 8(3) of Schedule 7 of the **Magistrates' Court Act 1989** has expired.

Sub-section (3) provides that a consent given under sub-section (2) is only effective if the sheriff's officer has delivered to the person consenting to the seizure a written statement explaining the effect of the consent and a copy of the signed written consent.

Sub-section (4) provides that where a motor vehicle is seized in accordance with sub-section (2), the proceeds of the sale of that vehicle must be applied to the penalty enforcement warrants being executed. Any excess money must be returned to the person against whom the warrants were issued. This money cannot be applied to other unexecuted warrants issued against that person.

PART 12—SUPREME COURT ACT 1986

Clause 53 amends section 42(1) and (2)(b) of the **Supreme Court Act 1986** to provide that section 116(2)(ca) of the Commonwealth Bankruptcy Act 1966 is imported into that section.

