# *LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE*

**Members present:**

Mr PS Russo MP (Chair)
Mr JP Lister MP
Mr SSJ Andrew MP (via teleconference)
Mr JJ McDonald MP (via teleconference)
Mrs MF McMahon MP
Ms CP McMillan MP

**Staff present:**

Ms R Easten (Committee Secretary)
Ms L Pretty (Inquiry Secretary)

## PUBLIC HEARING—INQUIRY INTO THE JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2019

### TRANSCRIPT OF PROCEEDINGS

**FRIDAY, 17 JANUARY 2020**

**Brisbane**

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**The committee met at 12.15 pm.**

**CHAIR:** Good afternoon. I declare open this public hearing for the committee's inquiry into the Justice and Other Legislation Amendment Bill 2019. My name is Peter Russo. I am the member for Toohey and chair of the committee. With me here today are: James Lister, the member for Southern Downs and deputy chair; Melissa McMahon, the member for Macalister; and Corrine McMillan, the member for Mansfield. Stephen Andrew, the member for Mirani, and Jim McDonald, the member for Lockyer, are joining us via teleconference.

On 28 November 2019 the Hon. Yvette D'Ath, Attorney-General and Minister for Justice, introduced the Justice and Other Legislation Amendment Bill 2019 into the parliament. The bill was referred to the Legal Affairs and Community Safety Committee for examination. The purpose of the hearing today is to hear evidence from stakeholders to assist the committee with its examination of the bill. Only the committee and invited witnesses may participate. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

These proceedings are similar to parliament and are subject to the standing rules and orders of the parliament. In this regard, I remind members of the public that, under the standing orders, the public may be excluded from the hearing at my discretion or by order of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website.

Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. These images may be posted on the parliament's website or social media sites. I ask everyone present to turn mobiles phones off or to silent mode. The program for today has been published on the committee's web page, and there are hard copies available from committee staff.

## MACKENZIE, Mr Ken, Deputy Chair, Criminal Law Committee, Queensland Law Society

## MURPHY, Mr Luke, President, Queensland Law Society

## SHUTE, Mr Andrew, Chair, Litigation Rules Committee, Queensland Law Society

**CHAIR:** I now welcome the representatives from the Queensland Law Society. I invite you to make a brief opening statement after which committee members will have some questions for you.

**Mr Murphy:** Thank you for giving the society the opportunity to appear at the public hearing. Before we commence, I would like to acknowledge the First Nations people as the original inhabitants and traditional owners of the land on which we meet. I recognise the country north and south of the Brisbane River as the home of the Turrbal and Jagera nations and pay deep respects to all elders past, present and future.

All members are familiar with the society and its role. Can I just emphasise that the society is an independent, apolitical representative body upon which government and parliament can rely to provide advice for the promotion of good evidence based law and policy. Our written submission provides comments on a number of amendments proposed in the bill. The Department of Justice and Attorney-General has responded to several issues raised in our submission and in other submissions provided to the inquiry. This response was received by the society yesterday afternoon. We have not had the benefit of being able to obtain further comments and feedback from our policy committees in that time frame. Accordingly, we are happy to take any questions on notice from the committee in relation to the department's response if we are not in a position to provide complete answers today. I will ask Mr Shute and Mr Mackenzie to address the specifics.

**Mr Shute:** We would like to highlight our recommendations, firstly with respect to clause 18 of the bill which amends section 59 of the Civil Proceedings Act 2011 in respect of interest on money orders and which is dealt with at page 2 of our submission. Our concern is that potentially ambiguous provisions relating to costs can lead to delays in the resolution of matters and ultimately in further litigation. I would be happy to answer any questions in respect of our recommendation in that regard.

We have also recently read the submission of the Caxton Legal Centre dated 24 December 2019 which seeks amendment to the proposed changes to the Magistrates Court Act and the QCAT Act to allow the court and tribunal to deal with debt new claims. The QLS provides in principle support for that submission. A number of QLS members have recommendations with respect to some particular points that were raised in that submission and some drafting suggestions. If permitted by the committee, we would like to provide these in writing to you and the department.

**CHAIR:** I do not see any issue with that. The deadline would be Wednesday, 22 January.

**Mr Murphy:** Thank you.

**Mr Mackenzie:** In relation to the criminal type matters we would refer the committee to our comments in the submission with respect to the Dangerous Prisoners (Sexual Offenders) Act, particularly in relation to the way in which the bill seems to apply the provisions of that act to young offenders to whom it would not have applied before. That is discussed in more detail in the Bar Association submission.

The amendments to the Peace and Good Behaviour Act would extend the operation of the restricted premises provisions in that act to premises where any criminal activity—that is, activity involving any criminal offence—is taking place. That has the potential to expand the operation of what was originally an offence targeted at organised criminals and outlaw motorcycle gangs to a vast array of other people.

The example that came to mind when we were looking at this this morning was protestors, such as the Extinction Rebellion protestors. If they are holding meetings to plan protests to disrupt traffic that would be a criminal offence. It would be a place where a criminal offence is taking place. The criminal offence that they were discussing would involve some risk to members of the public. These very broad powers would come into play in relation potentially to that sort of political protest activity.

We have concerns with proposed section 100D of the Coroners Act in clause 41 of the bill. This section would abrogate the right to maintain a claim for privilege against self-incrimination at an inquest. It also applies retrospectively to conduct which has happened a long time in the past. The privilege against self-incrimination and the abhorrence of retrospective legislation are cornerstone principles of our criminal justice system. In our view the amendment is not justified and risks unfairness to witnesses who may not be adequately protected.

It may also have some wider effect upon public confidence in the administration of justice. There have been, for example, cases in New South Wales where people who have been acquitted or people against whom the charges have been dropped have then been compelled to give evidence at an inquest. One example is the man who, as part of his evidence to the inquest, led police officers to the body of the deceased. That created great public angst that somebody had been acquitted but seemed to have detailed knowledge of the circumstances of an offence. I am not sure that all of the consequences of such a wideranging change have been thought through.

Some of our members have expressed concerns about the change in the jurisdictional limit for criminal proceedings in the Magistrates Court. About nine or 10 years ago now people charged with offences of dishonesty in Queensland lost their automatic right to elect trial by jury. For the last nine years or so any person charged with stealing or obtaining $30,000 or less has had to have their trial in the Magistrates Court. This bill would increase that amount to $80,000.

That has several consequences. One is that many people will lose their entitlement to legal aid for their legal representation because legal aid for a summary trial is much harder to obtain than legal aid for a trial in the District Court. It will place a burden upon the Magistrates Court to try long and complex cases. Those cases will be prosecuted by police officers who lack the legal skills, training and resources, including resources of time, to properly prosecute cases of substantial frauds.

The explanatory notes to the bill make no financial assessment of the effects of these changes and say that the costs will be born from existing budgets without regard to the substantial effect that it will have on the work of the Magistrates Court. The provisions which are referred to in the department's response, sections 552D and 552J, do not provide any safeguard against any of consequences of that change.

One other provision that the society has concerns with is that there are some amendments to section 119 of the Drugs Misuse Act in relation to the protection of drug informants. The amendments themselves are not controversial, but what is disappointing is that the opportunity has not been taken to repeal section 119 in its entirety. The section protects informants from disclosure of their identity, but that is a protection that is provided to every informant in a criminal case across every offence.

For some reason a special provision has been made in relation to drug offences which is mirrored in relation to weapons offences in the Weapons Act. What that means is the court cannot go behind the protection in a case where it is in the interests of justice to do so. The glaring recent example of that in the public arena has been the case of Nicola Gobbo who was informing against her own clients in breach of legal professional privilege.

If that had happened in Queensland by the way of her confined affair informing only in relation to drugs and weapons then that activity could not be revealed because these provisions do not allow for the exception that applies to every other sort of crime—to murder and dangerous operation of vehicles and all sorts of other things. It only applies to drugs and weapons. There is no good reason for that. The society's position is that the law in relation to those offences should be in line with the law in relation to any other criminal offence. We are happy to take questions from the committee.

**Mr LISTER:** Thank you very much to the Queensland Law Society for appearing and for your submission. Mr Murphy, I note in your submission something which echoes some observations your predecessor had made regarding the short time frame available to the society, added to the intervening Christmas period, to make an exhaustive analysis of the bill. In the view of the Queensland Law Society is it the case that in order for this committee to effectively fulfil its consultative role there needs always to be ample time for peak bodies and interested groups to assess the bill and to make submissions?

**Mr Murphy:** Certainly sufficient time. I do think that it is possible to say 14 days or 21 days. We made that point in particular in this submission for two reasons. The first is the number of different pieces of legislation that are being impacted by this bill and the second the timing in the year. From the society's point of view we were fortunate that we were able to rely on and had available the expertise of the gentlemen beside me. If you were waiting for me to prepare the comments in response to this you would still be waiting at this point.

We benefitted from having some people available, but with the holiday period it did not provide the usual, broader array of input which we always find beneficial at a society level in working through the issues. We like to think that that would produce a more meaningful and compelling submission for the committees to consider.

**Mr LISTER:** Is it the society's view that this bill is sufficiently important to warrant a truncated period of time for it to make an observation?

**Mr Murphy:** Given some of the concerns that we raised in the submission and that Mr Mackenzie and Mr Shute addressed, we always would like greater time and would always like more considered debate. Of course, we are happy to assist as best we can.

**Mrs McMAHON:** Obviously there are a number of different pieces of legislation under this particular amendment bill. Earlier in your submission, you touched on concerns about the peace and good behaviour order. Mr Mackenzie outlined concerns regarding current protest activities that might be captured. Do you have any other examples of some of the unintended consequences, noting the explanatory notes looked at and provided examples in relation to organised criminal activities? Will what is proposed under this bill capture what is contained in the explanatory notes and then some? Does it go too far, or is it just too broad?

**Mr Mackenzie:** The application of that sort of legislation can really depend upon the imagination of a police officer who wants to apply it. It will now be drawn so broadly that it will apply to any place where people are meeting and where any sort of criminal activity is taking place. That could include quite minor things. There is the added element that it has to be a criminal activity which would pose some risk to the public, but it is often not difficult to suggest that minor criminal activity poses some risk. If it were students sharing small amounts of drugs between themselves, if it were people gambling illegally—because it interacts with the criminal law more generally as new offences are created—the powers under those provisions will be applicable to the new offences as well. It might be a failure of my imagination to come up with any more specific examples, but the risk in such broadly drawn legislation is that you just do not quite know where it might end up being applied and used in ways that it was never intended by the people who passed the legislation to be used.

**CHAIR:** That never happens Ken.

**Mrs McMAHON:** Thanks very much for that response.

**CHAIR:** Sorry about my comment, I was being facetious if no one picked up on that. I missed some of what Mr Mackenzie said—and I apologise for that—but in relation to the amendments to the informer's identity, it could be solved simply by amending the whole section, or is that too simplistic?

**Mr Mackenzie:** We would like the specific statutory provisions removed so that the same rules apply to all criminal informers and that that then allows the court to reveal the identity in those cases like Nicola Gobbo's where it is in the interest of justice to do so. Not having that allows a great deal of

conduct—and sometimes corrupt conduct—to go unexamined. In my own practice, I had a case where an informer was playing both sides and getting special consideration from the police because he promised to deliver them drug dealers, but then he was setting up people to be drug dealers by giving them the drugs, telling them to go and meet the police and keeping the money for himself. That all came to light in a very indirect way where it was established circumstantially, but the police could not give evidence about what they knew about it, because that would be to breach these provisions. It creates a barrier to the true facts coming out when it is in the interests of justice that those true facts should come out and it conceals improper conduct.

**CHAIR:** That brings to a conclusion this part of the hearing. We thank you for your attendance and written submissions. I understand you wish to provide further written submissions in relation to the department's response.

**Mr Murphy:** If that would assist the committee?

**CHAIR:** It would. Again, I advise that we hope that responses can be provided to the committee secretariat by the close of business on Wednesday 22 January so that we can include them in our deliberations. Again, I conclude by thanking you for your comprehensive written submissions and for your comprehensive presentation here today. It is always good to have the society come along and discuss pending legislation.

**Mr Murphy:** Thank you for giving us the opportunity.

## HOLMES, Ms Neroli, Acting Queensland Human Rights Commissioner, Queensland Human Rights Commission

## BALL, Ms Julie, Principal Lawyer, Queensland Human Rights Commission

**CHAIR:** I now welcome representatives from the Queensland Human Rights Commission. Good afternoon. I invite you to make an opening statement, after which committee members will have some questions for you.

**Ms Holmes:** Can I also please acknowledge the traditional owners of the land on which we meet today and recognise elders past, present and emerging. I thank the committee for allowing us to come and speak to you today about this amendment to the Anti-Discrimination Act. The purpose of the amendments to the act are to improve efficiencies in the process for dealing with complaints made under the act and to better ensure that parties to complaints have equal rights of review. There have been a significant increase in the number of complaints made to the commission over the past few years, resulting in more complaints being accepted into the conciliation process and an increase in the number of administrative decisions to be made on those complaints. Complaints are often lodged outside the one-year time limit, which means the commission has to consider whether to exercise a discretion it has to accept those complaints; essentially a decision whether to extend the time for accepting the complaint.

Natural justice requires that all parties have opportunities to make submissions about the exercise of the discretion and, as an up-front process, this tends to polarise the parties and make resolution through conciliation more difficult. The amendments give the commission express power to defer this decision-making for complaints that include both in time and out of time components and try to resolve the complaint through conciliation. This process improves efficiencies for the parties as well as for the commission.

The amendments also clarify that certain decisions made by the commission not to accept a complaint have the same finality as a decision to reject or lapse a complaint. These are the out of time decisions and decisions whether it is fair to accept a complaint despite the existence of a prior agreement not to complain. For these types of decisions, the parties have been afforded natural justice and the commission has given thorough consideration to all relevant matters. The commission was consulted in the drafting process and supports the amendments the committee is now considering.

**Mrs McMAHON:** I note that your submission outlines the changes and the current challenges particularly with respect to complex incidents, particularly ones that occur over a long period of time perhaps with some elements within the time and some outside. This is now I guess enshrining in legislation the processes and guidelines that you had originally conceived in the first place. Can you provide some examples of expected benefits of this piece of legislation in the administration of some of the complaints that come into the commission?

**Ms Ball:** It gives effect to a process that we only adopted in March 2018 with the huge increase in complaints that we received and the number of decisions we were having to make. In 2016-17 we made 81 decisions whether or not to extend the time in effect to accept a complaint. Although we kept trying to keep records for the effectiveness of this process that we have introduced, we largely do it where the parties to the complaint are the same throughout. Sometimes we have complaints where the out of time component might involve a respondent who is not involved in the in time component. We would generally not use the process for that.

At the outset, parties are required to make submissions. Sometimes that is very difficult for self-represented people. It is difficult for them to stick to the issues that are focussed; they get into the complaint themselves. They get their backs up and it tends to polarise them. That then makes trying to resolve the complaint through conciliation more difficult for the commission staff. Obviously it is in the best interests of the parties if they try to resolve it.

In terms of some statistics for the current financial period—and obviously this is only six months—some 47 matters involved out of time allegations. To date, 29 decisions were made but of those that included both in time and out of time 16 were taken to conference before going through the process and making a decision whether or not to accept. Of those 16, seven have resolved. That is equivalent to about 44 per cent—a little bit lower than our conciliation rate—but it is seven matters where the parties did not need to go through a difficult process which, as I said, self-represented parties find difficult, of course, if parties are represented it involves more costs and they get a resolution of their complaint sooner rather than later.

**Mrs McMAHON:** Of note were some statistics of the ones that include the out of time. What percentage of all the complaints coming into the commission would include out of time complaints as part of those complaints?

**Ms Ball:** Sorry, I do not have those statistics with me. I am not sure whether we would be able to compile them.

**Mrs McMAHON:** Thank you, Chair, I do not require them.

**CHAIR:** We will not put that burden on you. I am referring to the proposed section 164A(4A). The Queensland Law Society submitted that the use of the word 'must' would restrict the commission's flexibility to proceed with an in-time claim whilst an out-of-time claim decision is still yet to be made.

**Ms Ball:** I can address that. We are talking about an amendment to 164A. There are a couple of pathways from the commission to a tribunal for an unresolved complaint. One of them is under 164A: after a conciliation conference has been held, if it has not been resolved, then the person making the complaint can ask the commissioner to refer the complaint to the tribunal. The section provides that the commissioner has to do that. This amendment provides that when we have taken a matter that has both an in-time claim and an out-of-time claim to conference and it has not resolved, we then have to make a decision about the out-of-time component. The amendment is saying that it is okay for us not to send that over to the tribunal until we have made that decision.

Generally we are talking about complaints where the parties are the same. If there was a discretion for the commissioner to send the in-time part over, we potentially have a situation where there might be two complaints going to a tribunal at different times involving the same parties. Generally a tribunal, either one of them, would want to hear those matters together. The tribunal is likely to wait until the commission has made its decision whether or not before so doing. It would create unnecessary work for the tribunals. It would also impose an additional layer of decision-making on the commission where what we should be doing is getting on with making our decision whether or not to accept that out-of-time component, rather than having to consult with the parties and make a decision—should we, shouldn't we? Generally speaking, the matters should be heard together if they are going to go over to the tribunal.

**CHAIR:** In your submission you state that clause 11 removes the potential disparity and the rights of complainant parties and the amendment would therefore make this aspect of the Anti-Discrimination Act more compatible with human rights. How will the proposed amendments to the act have this effect?

**Ms Ball:** Currently the act is silent on the effect of those two provisions where we make a decision on whether or not to accept a complaint as opposed to a decision to accept or reject a complaint. With a complaint that is totally out of time and we decide not to accept it, the person who is unsatisfied with that decision has a right of review only to go to the Supreme Court under the Judicial Review Act because there is only one of our decisions under the Anti-Discrimination Act that can be reviewed by the tribunals. This is not one of them.

Where a complaint involved in-time and out-of-time claims, the commission has made a decision, in accordance with what the section says, not to accept the out-of-time component. The complaint has been referred to the tribunal and then the complainant has asked for the complaint to be amended by including the part that the commission had decided not to accept. It, in effect, is giving an additional right, like a quasi right of review to that person, whereas the person whose complaint is wholly out of time does not have that. That is what we mean by achieving equality between the parties so that their rights of review are the same and to also clarify the other decision, which is a not-to-accept decision, that they have the same effect as a decision to reject.

**CHAIR:** Thank you. That brings to conclusion this part of the hearing. We thank you for your attendance and your written submissions. I now close the hearing. I thank all of the witnesses who appeared today. Thank you to the secretariat staff and to Hansard. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare the public hearing for the committee's inquiry into the Justice and Other Legislation Amendment Bill 2019 closed.

**The committee adjourned at 12.50 pm.**