

Notes from Parliament

by Greg Roche

The following Bills were debated in the August sittings of the Legislative Assembly.

DOMESTIC VIOLENCE AMENDMENT BILL (Serial 203) POLICE ADMINISTRATION AMENDMENT BILL (Serial 224) FIREARMS AMENDMENT BILL (Serial 225)

Last year the Assembly passed a new Domestic Violence Bill.

That Bill introduced very little that was new in the administration of domestic violence orders (an Opposition amendment to provide for the removal of the perpetrator from the family home was defeated).

These Bills fix a couple of oversights in the original legislation: no regulation-making power, a couple of incorrect references in the *Police Administration Act*, and a reference in the *Firearms Act* that was misleading (s 82 of the *Firearms Act*, which refers to the powers of a court to revoke a registration certificate, only refers to an "offence" having been proved, and arguably an order under the *Domestic Violence Act* is not an "offence").

TRAFFIC ACT AMENDMENT BILL (Serial 229)

This is the Cannonball Run Bill. It inserts a new s 43A in the *Traffic Act*, which allows the Minister to declare that normal road rules do not apply to specified streets and public places for an event including a race and practice for a race.

The Minister can only make the order after the Minister responsible for the TIO has advised that the Territory and the TIO is protected from any liability under MACA (new s 43A(2)(b)).

The "competent authority" for the

street or public place must also consent.

The order can be cancelled or suspended.

Public notice of an event must be given at least seven days before the event.

The Director can appoint officials, who must display identification, and who can give directions for the safe conduct of the event, including the clearing of vehicles and people, and the temporary closing of a street or public place.

This does not affect the Police's power to give directions to the officials and the public for the safe and efficient conduct of the race.

PRISONS (CORRECTIONAL SERVICES) AMENDMENT BILL (Serial 230) JUVENILE JUSTICE AMENDMENT (Serial 231)

This Bill provides for compulsory drug and alcohol testing of prisoners and detainees in prisons and juvenile detention centres.

No evidence is alluded to in support of the Bill that this infringement of civil liberties is required, however one can foresee that in a prison or juvenile detention centre it is occasionally necessary to check for the presence of drugs or alcohol.

The Bill envisages a situation where an officer in charge of a prison or the superintendent of a juvenile justice centre can direct that testing be carried out.

They can test by taking samples of blood, breath or urine.

Blood samples can only be taken by a medical practitioner or a person registered under the *Nursing Act*. Such a person can use reasonable force to obtain such a sample, without civil or criminal liability attaching to that act.

CRIMINAL RECORDS (SPENT CONVICTIONS) AMENDMENT BILL (Serial 233)

The Assembly passed a limited form of spent conviction legislation last year. It meant that if a person received a sentence of less than six months, and then kept out of trouble for 10 years (five years if a juvenile), their conviction would be regarded as 'spent' and would not generally be disclosed.

Under the current Act, a law enforcement agency (police forces of the States and Territories, DPPs, the NCA, Attorneys-General, etc) could disclose information to another law enforcement agency for the purposes of prosecution and sentencing.

The amendment would extend that power to investigations as well.

FINANCIAL ADMINISTRATION AND AUDIT AMENDMENT (No 2) BILL (Serial 235) BUSINESS FRANCHISE AMENDMENT BILL (Serial 236) PAY-ROLL TAX AMENDMENT BILL (Serial 237) TAXATION (ADMINISTRATION) AMENDMENT BILL (Serial 238)

Section 55 of the *Financial Administration and Audit Act* states that the powers of the Auditor-General to have access to Territory accounts, books of account and accountable officers is not limited by the operation of the secrecy sections of any other Territory laws, even if passed before or after s 55, except where expressly excluded.

Apparently this quite clear statement of the law has not been enough to satisfy the Commissioner for Taxes that the Auditor-General's secrecy powers extend to asking questions of the Commissioner.

These amendments make it clear

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that the Auditor-General can ask questions relating to pay-roll tax, etc, insofar as they are relevant to the carrying out of the Auditor-General's functions.

The Auditor-General can only use the information obtained in such a way that individuals cannot be identified.

The immunity which currently protects a person who furnishes information to the Auditor-General (s 55(2) of the *Financial Administration and Audit Act*) from being prosecuted for a criminal offence is also extended to civil liability.

CROWN PROCEEDINGS BILL (Serial 239) SUPREME COURT AMENDMENT BILL (Serial 240)

The genesis of this Bill was a decision of the High Court in 1986, known as *Commonwealth v Evans Deakin Industries Ltd* where the High Court held that, notwithstanding a clear statement in the relevant Act that the Commonwealth could not be sued, it was clear from the legislation that the Commonwealth could be sued.

Confusion reigned. It didn't help that the judgment was written in very imprecise terms and one could not be sure that the principles were not of general application (it doesn't just happen in Mabo). It made drafting very difficult - before, if you didn't want the Crown to be bound, you only had to say so in the relevant Act.

It has taken until now for the jurisdictions around Australia to accept that generally the Crown should be bound, and to work out the mechanics of suing the Crown interstate.

The general principle is that the Crown is capable of suing and being sued in its own capacity and as if it was a normal party to a proceeding (clause 5).

This does not affect the situation where the Crown or an officer thereof has an immunity conferred by statute, or the "public interest" ground on which the Crown often refuses to disclose documents in court proceedings (clauses 6 and 9).

Clause 8 makes it clear that you can generally apply for an injunction against the Crown - usually temporary and designed to give the person seeking the injunction time to get a substantial challenge into court.

Cases are often fought on the question of whether the injunction should continue indefinitely or not.

A special procedure is established for enforcement of judgments against the Crown (clause 11).

Provision is also made for special procedural rules relating to service on the Crown (clause 13) and a part to proceedings cannot issue a subpoena requiring a Minister to attend court without leave from the relevant court or tribunal.

Such a court or tribunal must give the Solicitor of the NT an opportunity to be heard (clause 14).

The Attorney already has the right to intervene in proceedings where a question of interpretation of Territory law is concerned or the legislative or executive powers of the Territory or the Commonwealth are in question.

Provision is made for the law of another State on procedures to be applied in cases of this sort to be a corresponding law, and to bind the Territory (clause 7).

LIQUOR AMENDMENT (No 2) BILL (Serial 241)

These amendments are to do with the Prohibition Orders amendments passed last year. They confine the power to make Prohibition Orders to the Magistrates Court, rather than the present situation where the Supreme

Court has the power.

If you accept that most Prohibition Orders will arise after an application that one be made is taken out (rather than being dealt with as part of sentencing someone), then this change makes sense because it leaves the Supreme Court as a body one can appeal to.

To understand the rest of the Bill, you need to be aware that the Magistrates court is technically two courts - the Court of Summary Jurisdiction when it hears criminal matters and the Local Court when it deals with civil matters.

The amendments clarify the procedure where a person makes an application for a Prohibition Order.

It also allows the Local Court to hear witnesses without being bound by the rules of evidence.

Logically, this means that in considering whether a person who has been found guilty in the criminal jurisdiction (ie the Court of Summary Jurisdiction) the court is bound by the rules of evidence.

GAMING CONTROL BILL (Serial 242)

This Bill consolidates the current legislation affecting gaming in the Territory, including casinos, gaming and lotteries.

It establishes a position of Director of Gaming (clause 4), who has the a regulatory role in supervising gaming, assessing the suitability of casino licence applicants and supervising the operations of casinos.

The Director of Gaming is the CEO of the Gaming Control Commission (clause 5).

Casino licenses are obtained by application to the Minister, who can negotiate with an applicant and carry out inquiries (clause 17).

The Minister must assure him or

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herself that the applicant is of good character, sound financial background, etc, before granting a licence.

The Minister can suspend or cancel the licence (clause 20), and approve the assignment of the licence (clause 22).

Casino staff have the power to detain a person for suspected contravention of any Act until the police arrive (clause 28).

The *Casino Licensing and Control Act* is repealed.

Lotteries are also regulated by the Bill, and the Director of Gaming can conduct his or her own lottery (clause 42).

A Lotteries Fund is also established, to receive money from Territory lotteries and as commission on 'foreign' lotteries (clause 43).

Money from this fund can be put to consolidated revenue, to charitable organisations, and to the Sports and Recreation Development Fund (clause 43).

The Bill also regulates gaming and gaming machines and provides for gaming inspectors and the police to enter places where they reasonably believe unlicensed gaming is occurring.

Persons who believe that morals are reaching a low ebb will be pleased to note that cheating will be illegal (clause 69).

CONSUMER AFFAIRS AND FAIR TRADING AMENDMENT (Serial 224)

When the original Bill was passed in 1990 (the motor vehicle trader provisions are only now coming into effect), it was intended that motor vehicle traders would get a licence that ran until it was suspended or revoked.

A drafting ambiguity has meant that on one view those licences are only annual.

The bill removes any ambiguity.

RACING AND GAMING AUTHORITY (Serial 245)

RACING AND BETTING AMENDMENT (Serial 246)

TOTALISATOR ADMINISTRATION AND BETTING AMENDMENT (Serial 247)

This batch of Bills creates a Racing and Gaming Authority and a Racing Commission, and consequential amendments to the *TAB* and *Racing and Betting Acts*.

PROSTITUTION REGULATION AMENDMENT (Serial 248)

I understand the Tribunal that deals with appeals against decisions of the Escort Agency Licensing Board found out the hard way that it does not have any powers to deal with contempt.

This amendment remedies the oversight.

LIMITATION AMENDMENT (Serial 249)

A Bill that is early damage control. There is currently an action part-heard by the High Court brought against the ACTs licence fee system for X-rated video distributors.

The action claims the fee is a disguised excise, which under the Constitution only the Commonwealth can levy.

The action must have some prospect of success, because this

amendment aims to limit the possible payout by the Territory in the event that the ACT claim is successful - if it is, a large number of licensing fee structures will be illegal.

The *Limitation Act* is amended to provide that an action to recover money collected by way of the "tax, fee, charge or other statutory impost" must be brought either within six months of the commencement of this amendment or within six months of being paid (see also story p 6).

TRAFFIC AMENDMENT (Serial 250)

In 1992 the Assembly amended the *Traffic Act* to incorporate a 10-point plan agreed to Australiawide as part of Commonwealth funding for the Black Spots programme.

The amendments include (in s 19(9)) introducing .00 for drivers under 25, for those driving a vehicle carrying more than 12 people and for drivers with passengers in a load space.

The Minister says that more time is needed to bring these changes into effect, and he wants to stagger their introduction.

The amendment makes the offences set out in s 19(9) made subject to the Regulations.

WATER SUPPLY AND SEWERAGE AMENDMENT (Serial 251) ELECTRICITY AMENDMENT (Serial 252)

Effectively the same amendment to both Acts, giving the Minister power to vary the otherwise standard charges, in the case of the *Electricity Act*, to set a different rate for "different users or classes of users", and in the *Water Act* charges "as determined by the Minister".