

Legislation update for prosecuting agencies

2017: The year in review

December 2017

The 2017 year has been one of significant legislative activity, particularly in respect of laws relevant to governmental and regulatory prosecutions. This bulletin will summarise the most noteworthy features of these recent changes.

Justices Act 1886

The *Criminal Law Amendment Act 2017* brought about a number of long-awaited amendments to the *Justices Act 1886*, especially in respect of Magistrates Court practice and procedure.

Section 43A: Joinder of complaints

The insertion of s43A into the *Justices Act* provided much-needed clarity about the joinder of complaints in summary trials involving multiple defendants. Applying to complaints filed both before and after its commencement on 31 March 2017, the new section provides that two or more complaints against different defendants can be heard together “...if the matters of complaint in the complaints are founded on –

- (a) substantially the same facts; or
- (b) facts so closely related that a substantial part of the facts is relevant to all matters of complaint.”

It is expected that this amendment will have a significant impact on summary trials involving multiple defendants from hereon.¹

Section 145: Bulk pleas

New subsections have been added to s145 which now allow for a defendant to enter a single plea to multiple complaints.

To enter a plea utilising the new provisions, a defendant has to:

1. Be legally represented;
2. Have obtained legal advice, and
3. Be aware of the substance of each of the complaints.

¹ The practical application of s43A was recently considered by President Martin in the Industrial Court of Queensland judgment *Thomas v Harrison; Kilby v Harrison; Saxon Energy Services Australia Pty Ltd v Harrison* [2017] ICQ 003.

Section 148A: Admissions of fact

In respect of simple offences or breaches of duty, at the hearing of a complaint, a defendant may now admit any fact alleged against them, and a complainant may admit any fact relevant to the hearing (if the defendant consents to the admission being made).

Prior to this, although some practitioners and magistrates adopted a practice in summary proceedings similar to that found in s644 of the *Criminal Code 1899*, there were no express provisions in the *Justices Act 1886* which allowed for this to occur.

Industrial Relations Act 2017

On 1 March 2017 the new Industrial Relations Act 2016 came into full effect. As explained in our bulletin of March 2017, while much of the original 1999 Act has been preserved, the new Act contains the following key developments:

- A person aggrieved by a decision of the Industrial Court can now appeal the decision to the Court of Appeal;²
- The Industrial Court can now order either party to a proceeding (or indeed a representative of a party) to pay costs incurred by another party.³

The Criminal Practice (Fees) and Other Legislation Amendment Regulation 2017

As of 13 April 2017, allowances payable to prosecution witnesses who attend criminal proceedings to give evidence are now governed by the Criminal Practice (Fees) Regulation 2010 – our bulletin of May 2017 contains more detailed information. A detailed schedule now sets out the allowances that prosecution witnesses are entitled to be paid in criminal proceedings (see Schedule 2 – ‘Amounts of prosecution witness allowances’).

Work Health and Safety and Other Legislation Amendment Act 2017

This Act has recently introduced a new offence of industrial manslaughter, which commenced on 23 October 2017. The offence has been inserted into each of the *Work Health and Safety Act 2011*, the *Electrical Safety Act 2002*, and the *Safety in Recreational Water Activities Act 2011*.

The offence carries maximum penalties of 20 years imprisonment, or 100,000 penalty units for companies. It applies to “a person conducting a business or undertaking” (a ‘PCBU’), and the senior officers of PCBU’s.

² Section 554(1).

³ Section 545(2). If satisfied that the party made/responded to the application vexatiously or without reasonable cause, or it would have been reasonably apparent that the application or response had no reasonable prospect of success.

Victims of Crime Assistance and Other Legislation Amendment Act 2017

There are two features of this Act of particular note:

1. The introduction of a sexual assault counselling privilege. Under the new provisions,⁴ a “*protected counselling communication*” will be unable to be compelled or produced to a court (whether by subpoena or otherwise) at a committal or bail proceeding. For all other criminal proceedings, the specific leave of the court is required. The privilege extends to related civil proceedings involving the same act or omission as the criminal proceedings. The amending Act also excuses the prosecution from its disclosure obligations in respect of protected counselling communications.
2. Amendments have also been made to the *Penalties and Sentences Act* to clarify the rights of victims during sentencing proceedings, and to introduce a charter of victim's rights. The charter outlines rights in respect of the treatment of victims by both government and non-government entities, predominantly focusing upon keeping victims informed about the progress and outcome of investigations and proceedings, major decisions about prosecutions, and details of the offender.

Conclusion

These Acts introduce a number of important new laws of relevance to prosecuting agencies; laws which will no doubt feature heavily in future prosecution proceedings – including those which have already commenced.

For further inquiries or assistance, please contact Glen Cranny, Managing Director, Gilshenan & Luton Legal Practice on 3361 0240 or gcranny@gnl.com.au

⁴ Contained in both the *Criminal Code 1899* and *Evidence Act 1977*.