

JUSTICE LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2019

(Amendments made by the Legislative Council)

1. Clause 1, page 2, after line 9 insert—

"(ca) to amend the **Independent Broad-based Anti-corruption Commission Act 2011** to enable arrest warrants to be applied for and issued in further circumstances relating to witness summonses; and".

2. Page 7, after line 25 insert the following heading—

"Part 4A—Amendment of Independent Broad-based Anti-corruption Commission Act 2011".

NEW CLAUSES

3. Insert the following New Clauses to follow clause 7 and the heading proposed by amendment number 2—

'7A Definitions

In section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**—

- (a) for the definition of *arrest warrant substitute*—

"arrest warrant" means a warrant to arrest a person issued under—

- (a) section 139(2); or
- (b) section 141A(2); or
- (c) section 141B(2); or
- (d) section 141C(2); or
- (e) section 153(1);"

- (b) **insert** the following definition—

"audio visual link" has the same meaning as in Part IIA of the **Evidence (Miscellaneous Provisions Act) 1958**;"

7B Delegations

In section 32(5) of the **Independent Broad-based Anti-corruption Commission Act 2011**, for "and 139(1)" substitute ", 139(1), 141A(1), 141B(1) and 141C(1)".

7C Warrant to arrest witness who fails to appear

- (1) In section 139(4) of the **Independent Broad-based Anti-corruption Commission Act 2011**, after "arrest warrant" insert "issued under this section".
- (2) In section 139(5) of the **Independent Broad-based Anti-corruption Commission Act 2011**, after "arrest warrant" insert "under this section".

7D Bail for person arrested

In section 140(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**, after "arrest warrant" insert "issued under section 139(2)".

7E Person held in custody

In section 141(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**, after "arrest warrant" insert "issued under section 139(2)".

7F New Divisions 2A and 2B inserted

After section 141 of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

"Division 2A—Warrant to arrest for likely failure to comply with witness summons in certain circumstances

141A Warrant to arrest potential witness who has not yet been summoned

- (1) The IBAC may apply to a Judge of the Supreme Court for the issue of a warrant to arrest a person, if—
 - (a) the IBAC has commenced an investigation under section 60; and
 - (b) as a result of the investigation, the IBAC suspects on reasonable grounds that conduct of the person constitutes corrupt conduct; and
 - (c) a witness summons has not been issued under section 120(1) in respect of the person; and
 - (d) the IBAC believes on reasonable grounds that—

- (i) the person is about to leave, is making preparations to leave, or is likely to leave, the State; and
 - (ii) if a witness summons were issued under section 120(1), including a summons requiring immediate attendance under section 124(2), the person would be unlikely to attend before the IBAC, unless the person were arrested under an arrest warrant; and
 - (e) the person is 18 years of age or over.
- (2) A Judge of the Supreme Court may issue an arrest warrant if satisfied by evidence on oath or affirmation that—
- (a) there are reasonable grounds for—
 - (i) the suspicion under subsection (1)(b); and
 - (ii) the belief under subsection (1)(d); and
 - (b) the granting of an arrest warrant is reasonable having regard to—
 - (i) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and
 - (ii) the age of the person and any mental impairment to which the person is known or believed to be subject; and
 - (c) if the person were not arrested, any information, document or thing sought to be obtained from the person would be lost and could not reasonably be obtained from any other source.

141B Warrant to arrest witness to whom a witness summons has been issued but not served

- (1) The IBAC may apply to a Judge of the Supreme Court for the issue of a warrant to arrest a person, if—
 - (a) the IBAC has commenced an investigation under section 60; and
 - (b) as a result of the investigation, the IBAC suspects on reasonable grounds that conduct of the person constitutes corrupt conduct; and
 - (c) a witness summons has been issued under section 120(1) in respect of the person but not served; and

- (d) the IBAC believes on reasonable grounds that—
 - (i) the person is evading, attempting to evade, or likely to attempt to evade, service of the witness summons; and
 - (ii) the person is unlikely to attend before the IBAC in accordance with the witness summons, unless the person is arrested under an arrest warrant; and
 - (e) the person is 18 years of age or over.
- (2) A Judge of the Supreme Court may issue an arrest warrant if satisfied by evidence on oath or affirmation that—
- (a) there are reasonable grounds for—
 - (i) the suspicion under subsection (1)(b); and
 - (ii) the belief under subsection (1)(d); and
 - (b) the granting of an arrest warrant is reasonable having regard to—
 - (i) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and
 - (ii) the age of the person and any mental impairment to which the person is known or believed to be subject; and
 - (c) if the person were not arrested, any information, document or thing sought to be obtained from the person would be lost and could not reasonably be obtained from any other source.

141C Warrant to arrest witness to whom a witness summons has been issued and served

- (1) The IBAC may apply to a Judge of the Supreme Court for the issue of a warrant to arrest a person, if—
- (a) the IBAC has commenced an investigation under section 60; and
 - (b) as a result of the investigation, the IBAC suspects on reasonable grounds that conduct of the person constitutes corrupt conduct; and
 - (c) the person has been duly served with a witness summons issued under section 120(1); and

- (d) the IBAC believes on reasonable grounds that the person is unlikely to attend before the IBAC in accordance with the witness summons, unless the person is arrested under an arrest warrant; and
 - (e) the person is 18 years of age or over.
- (2) A Judge of the Supreme Court may issue an arrest warrant if satisfied by evidence on oath or affirmation that—
- (a) there are reasonable grounds for—
 - (i) the suspicion under subsection (1)(b); and
 - (ii) the belief under subsection (1)(d); and
 - (b) the granting of an arrest warrant is reasonable having regard to—
 - (i) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and
 - (ii) the age of the person and any mental impairment to which the person is known or believed to be subject; and
 - (c) if the person were not arrested, any information, document or thing sought to be obtained from the person would be lost and could not reasonably be obtained from any other source.

141D Matters relating to an arrest warrant issued under section 141A(2), 141B(2) or 141C(2)

- (1) The rules to be observed with respect to warrants to arrest under the **Magistrates' Court Act 1989** (other than section 62 or 64(2), (3) or (4)) extend and apply to an arrest warrant issued under section 141A(2), 141B(2) or 141C(2).
- (2) A person arrested under an arrest warrant issued under section 141A(2) or 141B(2) must be served with a witness summons issued under section 120(1) as soon as practicable after the arrest.
- (3) The issue of an arrest warrant under section 141A(2), 141B(2) or 141C(2), or the arrest of a person under that warrant, does not relieve the person from any liability for non-compliance with a witness summons duly served on the person before or after the arrest.

141E Arrest warrant under section 141A, 141B or 141C may be granted by telephone or audio visual link in certain circumstances

- (1) An application by the IBAC for an arrest warrant under section 141A(1), 141B(1) or 141C(1) may be made by telephone or audio visual link if the IBAC believes on reasonable grounds that—
 - (a) the application is urgent; and
 - (b) the person to be named in the arrest warrant is about to leave the State.
- (2) An application made by telephone or audio visual link for an arrest warrant must be supported by—
 - (a) an affidavit setting out the grounds for an arrest warrant under section 141A(1), 141B(1) or 141C(1), as the case requires, and the grounds for the belief under subsection (1), that is—
 - (i) sworn or affirmed; or
 - (ii) if it is not reasonably practicable for the affidavit to be sworn or affirmed, a prepared copy of the affidavit that is not sworn or affirmed; or
 - (b) if it is not reasonably practicable for an affidavit to be prepared, as much information as the Judge of the Supreme Court deciding the application considers is reasonably practicable in the circumstances, regarding—
 - (i) the grounds for an arrest warrant under section 141A(1), 141B(1) or 141C(1), as the case requires; and
 - (ii) the grounds for the belief under subsection (1).
- (3) If the IBAC makes an application by telephone or audio visual link for an arrest warrant that is supported by an affidavit (whether or not sworn or affirmed), the IBAC must transmit by electronic communication a copy of the affidavit to the Judge of the Supreme Court deciding the application.
- (4) A Judge of the Supreme Court may issue an arrest warrant under section 141A(2), 141B(2) or 141C(2) on an application made by telephone or audio visual link if satisfied that—

- (a) the grounds for issuing an arrest warrant under section 141A(2), 141B(2) or 141C(2) are satisfied; and
 - (b) there are reasonable grounds for the belief under subsection (1).
- (5) If a Judge of the Supreme Court issues an arrest warrant under section 141A(2), 141B(2) or 141C(2) on an application made by telephone or audio visual link, the Judge must—
 - (a) inform the IBAC of the issue of the arrest warrant; and
 - (b) if practicable, transmit by electronic communication a copy of the arrest warrant to the IBAC.
- (6) If it is not practicable to transmit by electronic communication a copy of the arrest warrant to the IBAC, the Judge may direct the IBAC to—
 - (a) complete a form of arrest warrant in the terms stated to the IBAC by the Judge of the Supreme Court and write on it the name of the Judge and the date on which and the time at which the arrest warrant was issued; and
 - (b) provide the form of arrest warrant completed by the IBAC to the Judge of the Supreme Court as soon as practicable.
- (7) If the IBAC makes an application to a Judge of the Supreme Court by telephone or audio visual link for an arrest warrant, whether or not an arrest warrant is issued, the IBAC must provide to the Judge, not later than the day following the day on which the application was made, a sworn or affirmed affidavit setting out the grounds for the arrest warrant in the same terms stated by the IBAC under subsection (2).
- (8) If an application under section 141A(1), 141B(1) or 141C(1) is made by telephone or audio visual link and the application is supported by a prepared affidavit specified in subsection (2)(a)(ii) or information specified in subsection (2)(b), a Judge of the Supreme Court may issue an arrest warrant under section 141A(2), 141B(2) or 141C(2) despite the evidence not being given under oath or affirmation.

141F Person arrested must be brought before the Supreme Court or Magistrates' Court

- (1) A person arrested under an arrest warrant issued under section 141A(2), 141B(2) or 141C(2) must be brought, as soon as practicable, before the Supreme Court or the Magistrates' Court and the Supreme Court or the Magistrates' Court (as the case requires) may—
 - (a) discharge the person from custody on bail in accordance with the **Bail Act 1977** as if the person had been accused of an offence; or
 - (b) subject to subsection (2), order the continued detention of the person in a prison or police gaol, for the purpose of ensuring the person's attendance before the IBAC, for a specified period not exceeding 24 hours or until the person is excused by the IBAC, whichever is earlier; or
 - (c) order that the person be discharged from custody unconditionally.
- (2) The Supreme Court or the Magistrates' Court must not make an order under subsection (1)(b) unless the Supreme Court or the Magistrates' Court (as the case requires) is satisfied that—
 - (a) detention of the person is necessary for the purpose of ensuring the person's attendance before the IBAC for the purposes of a witness summons issued under section 120(1); and
 - (b) the IBAC is taking all reasonable steps to schedule the attendance as soon as is practicable.
- (3) If a person is detained in a prison in accordance with an order made under subsection (1)(b), the IBAC may give a written direction for the person to be delivered into the custody of a police officer for the purpose of bringing the person before the IBAC.
- (4) If a person is detained in accordance with an order made under subsection (1)(b), the IBAC must, before the expiration of the period of detention specified in the order—
 - (a) release the person from custody unconditionally; or
 - (b) cause the person to be again brought before the Supreme Court or the Magistrates' Court.

- (5) If a person is brought before the Supreme Court or the Magistrates' Court in accordance with subsection (4)(b), the Supreme Court or the Magistrates' Court (as the case requires) may exercise any of the powers set out in subsection (1).

Note

A person discharged or released from custody unconditionally is not relieved from any obligation to comply with a witness summons requiring attendance at a later date.

Division 2B—General provisions in respect of arrest warrant issued under Division 2 or 2A

141G Person arrested under arrest warrant issued under Division 2 or 2A to be given opportunity to seek legal advice or legal representation

- (1) Subject to section 127 and subsection (2), the IBAC is required to give a person arrested under an arrest warrant issued under Division 2 or 2A a reasonable opportunity to seek legal advice or obtain legal representation before the time specified for the person to attend before the IBAC in accordance with a witness summons issued under section 120(1).
- (2) Despite section 127(6), if the IBAC gives a direction under section 127(2), the IBAC is not required to allow the person bound by the direction at least 3 days from the receipt of the direction to obtain legal advice or representation by another Australian legal practitioner before the person is required to attend before the IBAC in accordance with the witness summons issued under section 120(1)."

7G Report to Victorian Inspectorate on issue of arrest warrant

In section 142 of the **Independent Broad-based Anti-corruption Commission Act 2011**, for "this Division" substitute "Division 2 or 2A".

7H New Part 10 inserted

After section 198 of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

"Part 10—Transitional provisions

**199 Transitional provision—Justice Legislation
Miscellaneous Amendments Act 2020**

- (1) The amendments made to this Act by the **Justice Legislation Miscellaneous Amendments Act 2020** apply to an investigation under section 60 of this Act on or after the commencement of the **Justice Legislation Miscellaneous Amendments Act 2020** regardless of whether the investigation commenced prior to that commencement.
- (2) The IBAC may apply for an arrest warrant to be issued under section 141B(2) or 141C(2) in respect of a witness summons issued under section 120(1) prior to that commencement for the purposes of the investigation.".'.

- 4. Long title, before "the **Local**" insert "the **Independent Broad-based Anti-corruption Commission Act 2011**".

Certified -

Clerk of the Legislative Council