

Queensland



EVIDENCE (PROTECTION OF CHILDREN) AMENDMENT ACT 2003

Act No. 55 of 2003



EVIDENCE (PROTECTION OF CHILDREN) AMENDMENT ACT 2003

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Queensland



Evidence (Protection of Children) Amendment Act 2003

Act No. 55 of 2003

An Act to amend the criminal law, and for other purposes

[Assented to 18 September 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Evidence (Protection of Children) Amendment Act 2003*.

2 Commencement

This Act, other than parts 8 and 9A, commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF BAIL ACT 1980

3 Act amended in pt 2

This part amends the *Bail Act 1980*.

4 Amendment of s 8 (Power of court as to bail)

Section 8(1)(a)—

insert—

‘(ia) the court is a Magistrates Court and the person is awaiting an appeal under the *Justices Act 1886*, section 222¹ to be held in the District Court; or’.

¹ *Justices Act 1886*, section 222 (Appeal to a single judge)

PART 3—AMENDMENT OF CHILDRENS COURT ACT 1992

5 Act amended in pt 3

This part amends the *Childrens Court Act 1992*.

6 Amendment of s 20 (Who may be present at a proceeding)

(1) Section 20(2)(b), after ‘court;’—

insert—

‘or’.

(2) Section 20(2)—

insert—

‘(d) in a criminal proceeding—a person who, in the court’s opinion, has a proper interest in the proceeding and whose presence, in the court’s opinion, would not be prejudicial to the interests of the child.’.

PART 4—AMENDMENT OF COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000

7 Act amended in pt 4

This part amends the *Commission for Children and Young People Act 2000*.

8 Insertion of new s 122A

After section 122—

insert—

‘122A Notice of change in criminal history

‘(1) If the police commissioner reasonably suspects that a person who is charged with an offence is a person mentioned in section 122(1)(a) to (c), the police commissioner may notify the commissioner about the change in the person’s criminal history.

‘(2) The notice must state the following—

- (a) the person’s name and address;
- (b) the person’s date of birth;
- (c) the offence the person was charged with;
- (d) particulars of the offence;
- (e) the date of the charge.

‘(3) The commissioner may confirm the police commissioner’s suspicions under subsection (1).

‘(4) If the person is a person to whom section 112(1), 113(1) or 114(1) applies, the commissioner, on receiving notice under subsection (1), may write to the person to inform the person of the person’s obligations under sections 112(2), 113(2) and 114(2).²’.

PART 5—AMENDMENT OF CRIMINAL CODE

9 Code amended in pt 5

This part amends the Criminal Code

10 Amendment of s 1 (Definitions)

Section 1—

insert—

² Section 112 (Change in criminal history of employee), 113 (Change in criminal history of person carrying on regulated business) or 114 (Change in criminal history of other persons)

“affected child”, for chapter 62, chapter division 3³ see section 590AD.

“arresting officer”, for chapter 62, chapter division 3, see section 590AD.

“carnal knowledge” see section 6.

“court”, for chapter 62, chapter division 3, see section 590AD.

“criminal history”, for chapter 62, chapter division 3, see section 590AD.

“disclose”, for chapter 62, chapter division 3, see section 590AD.

“exculpatory thing”, for chapter 62, chapter division 3, see section 590AD.

“offence” see section 2.

“original evidence”, for chapter 62, chapter division 3, see section 590AD.

“possession of the prosecution”, for chapter 62, chapter division 3, see section 590AE.

“prescribed summary trial”, for chapter 62, chapter division 3, see section 590AD.

“prosecution”, for chapter 62, chapter division 3, see section 590AD.

“relevant proceeding”, for chapter 62, chapter division 3, see section 590AD.

“sensitive evidence”, for chapter 62, chapter division 3, see section 590AF.

“spent conviction”, for chapter 62, chapter division 3, see section 590AD.

“statement”, for chapter 62, chapter division 3, see section 590AD.

“the offender cannot be arrested without warrant” see section 5(3).

“the offender may be arrested without warrant” see section 5(1).’.

11 Amendment of s 349 (Rape)

Section 349—

insert—

3 Chapter 62 (Trial—Adjournment—Pleas—Practice), chapter division 3 (Disclosure by the prosecution)

‘(3) For this section, a child under the age of 12 years is incapable of giving consent.’.

12 Amendment of s 354A (Kidnapping for ransom)

Section 354A(5)—

omit.

13 Insertion of new s 560A

After section 560—

insert—

‘560A Place where indictment is presented

‘(1) An indictment may be presented to the court at the place of trial named in the margin of the indictment (the“**place of trial**”) or at another place.

‘(2) If an indictment is presented to the court at a place other than the place of trial—

- (a) the indictment is taken to have been presented to the court at the place of trial; and
- (b) anything that may be done by, or in relation to, the court at the place of trial may also be done by, or in relation to, the court at the other place; and

Example—

An application under section 590AA may be made to, and dealt with by, the court at the other place or at the place of trial.

- (c) as soon as practicable after the indictment is presented, the proper officer of the court at the other place must transfer the indictment to the court at the place of trial.’.

14 Insertion of new ch 62, ch div 1, hdg

Before section 590—

insert—

‘Chapter division 1—Bringing accused person to trial’.

**15 Insertion of new ch 62, ch div 2 hdg, ch div 3 and
ch div 4, hdg**

After section 590—

insert—

‘Chapter division 2—Directions and rulings before trial

‘Chapter division 3—Disclosure by the prosecution

‘Chapter subdivision A—Preliminary provisions

‘590AB Disclosure obligation

‘(1) This chapter division acknowledges that it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly with the single aim of determining and establishing truth.

‘(2) Without limiting the scope of the obligation, in relation to disclosure in a relevant proceeding, the obligation includes an ongoing obligation for the prosecution to give an accused person full and early disclosure of—

- (a) all evidence the prosecution proposes to rely on in the proceeding; and
- (b) all things in the possession of the prosecution, other than things the disclosure of which would be unlawful or contrary to public interest, that would tend to help the case for the accused person.

‘590AC Chapter division does not have particular consequences

‘(1) Nothing in this chapter division—

- (a) requires the disclosure of a thing it is unlawful to disclose under this or another law; or
- (b) affects an accused person’s right to a thing under another law.

‘(2) Failure to comply with this chapter division in a proceeding does not affect the validity of the proceeding.

‘Chapter Subdivision B—Interpretation

‘590AD Definitions for ch div 3

‘In this chapter division—

“affected child” see the *Evidence Act 1977*, section 21AC.⁴

“arresting officer”, for a person charged with an offence, means—

- (a) the police officer who arrested the person or, if the person was not arrested, the police officer who brought the charge against the person; or
- (b) at any time the person mentioned in paragraph (a) is unavailable, another police officer the police commissioner, or a delegate of the police commissioner, designates as the arresting officer for the person.

“court” means the court for the relevant proceeding.

“criminal history” of a person includes every finding of guilt, or acceptance of a plea of guilty, whether or not a conviction was recorded, other than a spent conviction.

“disclose” a thing, other than particulars, means disclose the thing by—

- (a) giving a copy of the thing or a written notice about the thing as required under section 590AH; or
- (b) giving a copy of a thing or notice about the thing as required under section 590AJ; or

⁴ *Evidence Act 1977*, section 21AC—

“affected child” means a child (defined) who is a witness in a relevant proceeding and who is not a defendant in the proceeding.

“relevant offence”, in relation to a proceeding, means—

- (a) an offence of a sexual nature (defined); or
- (b) an offence involving violence (defined), if there is a prescribed relationship between a child who is a witness in the proceeding and a defendant in the proceeding.

“relevant proceeding” means a criminal proceeding for a relevant offence, whether or not the proceeding also relates to other offences.

(c) giving a written notice about the thing under section 590AG.

“disclose” particulars means disclose the particulars by giving the particulars as required under section 590AJ.

“exculpatory thing”, in relation to an accused person, means reliable evidence of a nature to cause a jury to entertain a reasonable doubt as to the guilt of the accused person.

“original evidence” means a thing that may be tendered as an exhibit in a relevant proceeding.

“possession of the prosecution” see section 590AE.

“prescribed summary trial” means a summary trial of an offence prescribed under a regulation for this definition.

“prosecution” means the person in charge of the prosecution or a person appearing for the prosecution.

“relevant proceeding” means—

- (a) a committal proceeding; or
- (b) a prescribed summary trial; or
- (c) a trial on indictment.

“sensitive evidence” see section 590AF.

“spent conviction” means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

“statement” of a person means—

- (a) a statement signed by the person; or

5 Section 590AH (Disclosure that must always be made), 590AJ (Disclosure that must be made on request) or 590AO (Limit on disclosure of sensitive evidence)

6 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 11 (Revival of convictions)

- (b) a statement of the person that is potentially admissible under the *Evidence Act 1977*, section 93A;⁷ or
- (c) any other representation of fact, whether in words or otherwise, made by the person.

‘590AE Meaning of “possession of the prosecution”

‘(1) For a relevant proceeding, a thing is in the **“possession of the prosecution”** only if the thing is in the possession of the prosecution under subsection (2) or (3).

‘(2) A thing is in the possession of the prosecution if it is in the possession of the arresting officer or a person appearing for the prosecution.

‘(3) A thing is also in the possession of the prosecution if—

- (a) the thing is in the possession of—
 - (i) for a prosecution conducted by the director of public prosecutions—the director; or
 - (ii) for a prosecution conducted by the police service—the police service; and
- (b) the arresting officer or a person appearing for the prosecution—
 - (i) is aware of the existence of the thing; and
 - (ii) is, or would be, able to locate the thing without unreasonable effort.

‘590AF Meaning of “sensitive evidence”

“Sensitive evidence” means anything containing or displaying an image of a person (the **“imaged person”**)—

- (a) that, disregarding the fact the thing was brought into existence, or is in the possession of the prosecution, for the purpose of providing evidence of an offence, is obscene or indecent; or

⁷ *Evidence Act 1977*, section 93A (Statement made before proceeding by child or intellectually impaired person)

- (b) the disclosure of which to another person, without the imaged person's consent, would interfere with the imaged person's privacy.

Examples—

- a computer hard drive containing obscene or indecent images
- a photo of a naked rape victim taken to preserve evidence of the victim's condition at a particular time

‘590AG Particular references to an accused person include references to a lawyer acting for the accused person

‘(1) A reference in this chapter division to giving or disclosing a thing to an accused person includes a reference to giving or disclosing the thing to a lawyer acting for the accused person.

‘(2) A reference in this chapter division to an accused person viewing a thing includes a reference to a lawyer acting for the accused person viewing the thing.

‘Chapter subdivision C—Disclosure

‘590AH Disclosure that must always be made

‘(1) This section applies—

- (a) without limiting the prosecution's obligation mentioned in section 590AB(1); and
- (b) subject to section 590AC(1)(a) and chapter subdivision D⁸.

‘(2) For a relevant proceeding, the prosecution must give the accused person each of the following things—

- (a) a copy of the bench charge sheet, complaint or indictment containing the charge against the person;
- (b) the following things in relation to the accused person—

8 Sections 590AB (Disclosure obligation) and 590AC (Chapter division does not have particular consequences) and chapter subdivision D (Limitations on disclosure)

- (i) a copy of the accused person's criminal history in the possession of the prosecution;
- (ii) a copy of any statement of the accused person in the possession of the prosecution;
- (c) the following things in relation to witnesses—
 - (i) for each proposed witness for the prosecution—
 - (A) a copy of any statement of the witness in the possession of the prosecution; or
 - Example—*
 - a statement made by a proposed witness for the prosecution in an audio recording of an interview
 - (B) if there is no statement of the witness in the possession of the prosecution—a written notice naming the witness;
 - (ii) for each proposed witness for the prosecution who is, or may be, an affected child—a written notice naming the witness and describing why the proposed witness is, or may be, an affected child;
 - (iii) if the prosecution intends to adduce evidence of a representation under the *Evidence Act 1977*, section 93B,⁹ a written notice stating that intention and the matters mentioned in section 590C(2)(b) to (d);¹⁰
- (d) the following things in relation to tests or forensic procedures—
 - (i) a copy of any report of any test or forensic procedure relevant to the proceeding in the possession of the prosecution;
 - Example of a forensic procedure—*
 - DNA, fingerprint or another scientific identification procedure
 - (ii) a written notice describing any test or forensic procedure, including a test or forensic procedure that is not yet

⁹ *Evidence Act 1977*, section 93B (Admissibility of representation in prescribed criminal proceedings if person who made it is unavailable)

¹⁰ Section 590C (Advance notice of representation if person who made it is unavailable)

completed, on which the prosecution intends to rely at the proceeding;

- (e) a written notice describing any original evidence on which the prosecution intends to rely at the proceeding;
- (f) a copy of any other thing on which the prosecution intends to rely at the proceeding;
- (g) a written notice or copy of any thing else in the possession of the prosecution prescribed under a regulation.

‘590AI When mandatory disclosure must be made

‘(1) This section applies if—

- (a) the prosecution must give an accused person a written notice or copy of a thing under section 590AH(2); or
- (b) the prosecution must give an accused person a written notice of a thing under 590AO(2) and, apart from section 590AO, the prosecution would have to give the accused person a copy of the thing under section 590AH(2).

‘(2) The prosecution must give the accused person the written notice or copy—

- (a) for a committal proceeding or prescribed summary trial—at least 14 days before evidence starts to be heard at the relevant proceeding; or
- (b) for a trial on indictment—no more than 28 days after presentation of the indictment, or if the trial starts less than 28 days after presentation of the indictment, before evidence starts to be heard at the trial.

‘(3) Subsection (2) is not intended to discourage the prosecution from voluntarily giving the accused person the written notice or copy at a time before the latest time the subsection may be complied with.

‘(4) The court may, at any time, shorten the period mentioned in subsection (2)(a) or extend the period mentioned in subsection (2)(b).

‘590AJ Disclosure that must be made on request

‘(1) This section applies—

(a) without limiting the prosecution's obligation mentioned in section 590AB(1); and

(b) subject to section 590AC(1)(a) and chapter subdivision D!¹

‘(2) For a relevant proceeding, the prosecution must, on request, give the accused person—

- (a) particulars if a proposed witness for the prosecution is, or may be, an affected child; and
- (b) a copy of the criminal history of a proposed witness for the prosecution in the possession of the prosecution; and
- (c) a copy or notice of any thing in the possession of the prosecution that may reasonably be considered to be adverse to the reliability or credibility of a proposed witness for the prosecution; and
- (d) notice of any thing in the possession of the prosecution that may tend to raise an issue about the competence of a proposed witness for the prosecution to give evidence in the proceeding; and
- (e) a copy of any statement of any person relevant to the proceeding and in the possession of the prosecution but on which the prosecution does not intend to rely at the proceeding; and
- (f) a copy or notice of any other thing in the possession of the prosecution that is relevant to the proceeding but on which the prosecution does not intend to rely at the proceeding.

‘(3) If the prosecution gives notice of a thing under subsection (2) that is not original evidence, the prosecution must advise the accused person that the thing may be viewed on request by the accused person at a stated place.

‘(4) In this section—

“particulars” means particulars of a matter alleged in the bench charge sheet, complaint or indictment containing the charge against the accused person.

‘590AK When requested disclosure must be made

‘(1) This section applies if—

11 Sections 590AB (Disclosure obligation) and 590AC (Chapter division does not have particular consequences) and chapter subdivision D (Limitations on disclosure)

- (a) an accused person requests particulars or a copy or notice of a thing under section 590AJ(2);¹² and
- (b) either—
 - (i) the prosecution must give the accused person particulars or a copy or notice of the thing under section 590AJ(2); or
 - (ii) the prosecution must give the accused person written notice of a thing under 590AO(2) and, apart from section 590AO, the prosecution would have to give the accused person a copy of the thing under section 590AJ(2).

‘(2) The prosecution must give the accused person the particulars, copy or notice as soon as practicable after the request is made.

‘590AL Ongoing obligation to disclose

‘(1) If the prosecution can not comply with a time requirement because the thing to be disclosed was not in the possession of the prosecution in sufficient time, including, for example, because the thing did not exist at the time, the prosecution must disclose the thing to the accused person as soon as practicable after it comes into the possession of the prosecution.

‘(2) The obligation to disclose a thing, other than an exculpatory thing, to the accused person continues despite a failure to comply with a time requirement or subsection (1) until the prosecution ends, whether by the accused person being discharged, acquitted or convicted, or in another way.

‘(3) If a thing is an exculpatory thing, the obligation to disclose it to the accused person continues despite a failure to comply with a time requirement or subsection (1) until 1 of the following happens—

- (a) the accused person is discharged or acquitted;
- (b) the accused person dies.

‘(4) In this section—

“time requirement” means a requirement under section 590AI or 590AK.¹³

12 Section 590AJ (Disclosure that must be made on request)

13 Section 590AI (When mandatory disclosure must be made) or 590AK (When requested disclosure must be made)

‘590AM How disclosure may be made

‘(1) If a written notice or copy of a thing must or may be given to the accused person under this chapter division, it is sufficient for—

- (a) a document advising that the written notice or copy of the thing is available for collection at a stated place to be served on the accused person—
 - (i) if a lawyer acts for the accused person—at the lawyer’s address for service; or
 - (ii) otherwise—at the accused person’s place of business, or residential address, last known to the prosecution; and
- (b) the written notice or copy of the thing to be available for collection at the stated place.

‘(2) If notice of a thing must or may be given to the accused person under this chapter division, it is sufficient for notice to be given in a way the prosecution considers appropriate.

Example—

If the prosecution considers it appropriate, notice may be given by phone to the lawyer acting for the accused person or in writing made available under subsection (1).

‘Chapter subdivision D—Limitations on disclosure

‘590AN Limit on disclosure of things accused person already has

‘The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person any thing the accused person or a lawyer acting for the accused person already possesses or has already been given by the prosecution.

Example—

The prosecution is not required to give the accused person a copy of a complaint or indictment already given to the accused person or a copy of depositions already given to the accused person under section 705.

‘590AO Limit on disclosure of sensitive evidence

‘(1) The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person a copy of a thing the

prosecution reasonably considers to be sensitive evidence other than as required under this section.

‘(2) If—

- (a) apart from this section, the prosecution would have to give the accused person a copy of the thing; and
- (b) the prosecution does not give the accused person a copy of the thing;

then the prosecution must give the accused person a written notice—

- (c) describing the thing; and
- (d) stating that the prosecution—
 - (i) considers the thing to be sensitive evidence; and
 - (ii) is not required to give the accused person a copy of the thing other than as required under this section; and
- (e) if the thing is not original evidence, stating the place where the accused person may, on request, view the thing for the purposes of the relevant proceeding; and
- (f) if the thing is original evidence, stating that the prosecution may, on request, allow an appropriate person to view and examine the thing for the purposes of the relevant proceeding at a stated place—
 - (i) under the supervision of the prosecution; and
 - (ii) subject to any other conditions the prosecution considers appropriate to ensure—
 - (A) there is no unauthorised reproduction or circulation of the thing; and
 - (B) the integrity of the thing is protected.

‘(3) If the thing is original evidence, the court may direct that the prosecution allow an appropriate person to view and examine the thing for the purposes of the proceeding subject to the conditions the court considers appropriate.

‘(4) The court may make the direction under subsection (3) only if the court is satisfied the terms of the direction can ensure—

(a) there is no unauthorised reproduction or circulation of the thing;
and

(b) the integrity of the thing is protected.

‘(5) Also, the court may direct that the prosecution give the accused person a copy of the thing (whether or not the thing is original evidence).

‘(6) The court may make the direction under subsection (5) only if—

(a) the accused person satisfies the court a legitimate purpose is achieved by the accused person being given a copy of the thing;
and

(b) the court is satisfied the terms of the direction can ensure there is no unauthorised reproduction or circulation of the thing.

‘(7) In this section—

“appropriate person” means—

(a) the accused person; or

(b) a lawyer acting for the accused person; or

(c) another person engaged by the accused person if the prosecution or court considers it is appropriate for the other person to view or examine the thing.

‘590AP Limit on disclosure of witness contact details

‘(1) The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person a witness contact detail other than as required under this section.

‘(2) The prosecution must give the accused person a witness contact detail that is materially relevant as part of the evidence for the relevant proceeding.

Example 1—

If the alleged offence is breaking and entering a dwelling and a proposed witness was the occupant of the dwelling when the offence allegedly happened, the address of the proposed witness when the offence allegedly happened would be materially relevant as part of the evidence.

Example 2—

If the alleged offence is unlawful stalking involving contacting the stalked person by telephone, the telephone number of the stalked person when the offence allegedly happened would be materially relevant as part of the evidence.

‘(3) However, the court may direct that another witness contact detail be given to the accused person.

‘(4) The court may make the direction only if—

- (a) the accused person satisfies the court a legitimate purpose is achieved by the witness contact detail being given to the accused person; and
- (b) the court is satisfied that giving the detail is not likely to present a reasonably ascertainable risk to the welfare or protection of any person.

‘(5) A witness contact detail the prosecution is not required to give the accused person may be deleted from, or rendered illegible in, a thing that is to be disclosed to, or may be viewed by, the accused person.

‘(6) Although it is acknowledged that a person is not obliged to have contact with the defence, nothing in this section is intended to discourage the prosecution, at the request of the defence, from voluntarily passing on to a person a request from the defence that the person contact the defence.

‘(7) In this section—

“witness contact details” include details of the address and telephone and facsimile number of a proposed witness for the prosecution or a person a copy of whose statement may be given to the accused person under section 590AJ(2)(e).¹⁴

‘590AQ Limit on disclosure contrary to the public interest

‘(1) The prosecution is not, for a relevant proceeding, required under this chapter division to disclose to the accused person a thing, other than as required under this section, if the prosecution—

- (a) considers the disclosure would be contrary to the public interest; and

14 Section 590AJ (Disclosure that must be made on request)

- (b) gives the accused person a written notice stating that the prosecution—
 - (i) considers the disclosure would be contrary to the public interest; and
 - (ii) is not required to disclose the thing to the accused person other than as required under this section.

‘(2) Without limiting subsection (1)(a), the prosecution is not required to disclose the thing to the accused person if—

- (a) there are reasonable grounds for considering disclosure of the thing would—
 - (i) prejudice the security, defence or international relations of Australia; or
 - (ii) damage relations between the Commonwealth and a State or between 2 or more States; or
 - (iii) facilitate the commission of another offence; or
 - (iv) prejudice the prevention, investigation or prosecution of an offence; or
 - (v) prejudice the usefulness of surveillance or other detection methods; or
 - (vi) disclose, or enable a person to find out, the existence or identity of a confidential source of information relating to the enforcement or administration of a law of the Commonwealth or a State; or
 - (vii) cause unlawful or dishonest interference with potential witnesses; or
 - (viii) prejudice the proper functioning of the government of the Commonwealth or a State; or
- (b) disclosure of the thing to the accused person is prohibited by law.

Example for paragraph (b)—

disclosure of an informer’s identity under the *Drugs Misuse Act 1986*, section 119¹⁵

15 *Drugs Misuse Act 1986*, section 119 (Protection of informers)

‘(3) However, unless disclosure to the accused person of the thing is prohibited by law, the court may direct that the thing be disclosed to the accused person.

‘(4) The court may make a direction only if the court is satisfied, on balance, that disclosing the thing to the accused person is not contrary to the public interest.

‘(5) In deciding whether to make a direction, the court may inform itself in any way it considers appropriate.

‘(6) Without limiting the matters the court may take into account in deciding whether to make a direction, the court must take into account the following matters—

- (a) the importance of the thing in the relevant proceeding, including, for example, whether the thing is an exculpatory thing;
- (b) the nature of the offence;
- (c) the likely effect of disclosing the thing and how publication of the thing may be limited;
- (d) whether the substance of the thing has already been published.

‘(7) In this section—

“State” includes a Territory.

‘Chapter subdivision E—Viewing

‘590AR Viewing evidence that is not original evidence

‘If an accused person is advised under section 590AJ(3) or given written notice under section 590AO(2)(e)⁶ of a place where the accused person may, on request, view a thing, the prosecution must allow the accused person, on request, to view the thing for the purposes of the relevant proceeding at the place.

16 Section 590AJ (Disclosure that must be made on request) or 590AO (Limit on disclosure of sensitive evidence)

‘590AS Viewing original evidence that is not sensitive evidence

‘(1) This section applies if a thing that is original evidence and that is not sensitive evidence¹⁷ is disclosed to an accused person under section 590AH(2)(e) or 590AJ.¹⁸

‘(2) The prosecution is not required to allow the accused person to view or examine the thing for the relevant proceeding other than as required under this section.

‘(3) The prosecution may, on request, allow an appropriate person to view or examine the thing for the purposes of the relevant proceeding—

- (a) under the supervision of the prosecution; and
- (b) subject to any other conditions the prosecution considers appropriate to protect the integrity of the thing.

‘(4) Also, the court may direct that the prosecution allow an appropriate person to view and examine the thing for the purposes of the proceeding subject to the conditions the court considers appropriate to protect the integrity of the thing.

‘(5) The court may make the direction only if the court is satisfied the terms of the direction can ensure the integrity of the thing is protected.

‘(6) In this section—

“appropriate person” means—

- (a) the accused person; or
- (b) a lawyer acting for the accused person; or
- (c) another person engaged by the accused person if the prosecution or court considers it is appropriate for the other person to view or examine the thing.

17 For viewing of original evidence that is sensitive evidence, see section 590AO(2)(f), (3) and (4) (Limit on disclosure of sensitive evidence)

18 Section 590AH (Disclosure that must always be made) or 590AJ (Disclosure that must be made on request)

‘Chapter subdivision F—Miscellaneous provisions

‘590AT Accused person may waive entitlement

‘(1) An accused person may waive any or all entitlements the accused person would otherwise have under this chapter division.

‘(2) The waiver must be in writing and be given to the prosecution.

‘590AU Court may waive requirement

‘A court may waive any requirement imposed by this chapter division in relation to a relevant proceeding if it is satisfied there is a good reason for waiving the requirement and that waiving the requirement will not result in a miscarriage of justice.

‘590AV Disclosure directions

‘(1) The court may make a disclosure direction on the court’s own initiative or on an application made by the accused person.

‘(2) The court may make a disclosure direction on the conditions, whether about the circumstances of disclosure or otherwise, it considers appropriate.

‘(3) Without limiting subsection (2), the court may make a disclosure direction on condition that—

- (a) partial disclosure only be made; or
- (b) disclosure only be made to a lawyer acting for the accused person; or
- (c) particular persons are excluded from the room in which the court is sitting for all or part of the proceedings; or
- (d) reporting of the proceedings be limited in a particular way.

‘(4) In this section—

“disclosure direction” means a direction for a relevant proceeding under section 590AO, 590AP, 590AQ or 590AS.¹⁹

‘590AW When issues about disclosure must be resolved

‘Any issue about compliance with this chapter division must, if possible, be resolved before evidence starts to be heard at the relevant proceeding.

‘590AX Unauthorised copying of sensitive evidence

‘(1) A person in possession of sensitive evidence for the purposes of a relevant proceeding commits an offence if, without authority, the person copies or permits a person to copy the sensitive evidence.

Maximum penalty—100 penalty units or 2 years imprisonment.

‘(2) A person has possession of sensitive evidence for the purposes of a relevant proceeding only if—

- (a) the sensitive evidence was given to the person under this chapter division; or
- (b) the sensitive evidence came into the person’s possession directly or incidentally, including by an opportunity given, because the person is a public official.

‘(3) A person has authority only if the person copies or permits a person to copy sensitive evidence for a legitimate purpose connected with a proceeding.

‘(4) In this section—

“public official” includes—

- (a) a police officer; and
- (b) a person appointed, engaged or employed under the *Director of Public Prosecutions Act 1984*.

‘Chapter division 4—Disclosure by an accused person’.

¹⁹ Section 590AO (Limit on disclosure of sensitive evidence), 590AP (Limit on disclosure of witness contact details), 590AQ (Limit on disclosure contrary to the public interest) or 590AS (Viewing original evidence that is not sensitive evidence)

16 Amendment of s 590B (Advanced notice of expert evidence)

(1) Section 590B, heading, ‘Advanced’—

omit, insert—

‘Advance’.

(2) Section 590B(1), from ‘If’ to ‘must—’—

omit, insert—

‘If an accused person intends to adduce expert evidence in relation to an issue in the person’s trial, the person must—’.

(3) Section 590B(2), ‘section 592A²⁰’—

omit, insert—

‘section 590AA²¹’.

17 Amendment of s 590C (Advance notice of representation if person who made it is unavailable)

(1) Section 590C(1)—

omit, insert—

‘(1) If an accused person intends to adduce evidence of a representation under the *Evidence Act 1977*, section 93B,²² the accused person must, as soon as practicable before the person’s trial date, give each of the other parties to the trial written notice of the person’s intention.’.

(2) Section 590C(2)(a), ‘party’—

omit, insert—

‘accused person’.

(3) Section 590C(3), ‘section 592A’—

omit, insert—

‘section 590AA’.

20 Section 592A (Pre-trial directions and rulings)

21 Section 590AA (Pre-trial directions and rulings)

22 *Evidence Act 1977*, section 93B (Admissibility of representation in prescribed criminal proceedings if person who made it is unavailable)

18 Insertion of new ch 62, ch div 5 hdg

After section 590C—

insert—

‘Chapter division 5—Bringing on trial and ordering adjournment’.

19 Amendment, relocation and renumbering of s 592A (Pre-trial directions and rulings)

(1) Section 592A(1), ‘trial.’—

omit, insert—

‘trial or any pre-trial hearing.’.

(2) Section 592A(2)—

insert—

‘(ba) the disclosure of a thing under chapter division 3²³ or’.

(3) Section 592A(2)(1)—

omit, insert—

‘(1) the *Evidence Act 1977*, part 2, division 4A or 6;²⁴ or’.

(4) Section 592A(3), ‘trial judge’—

omit, insert—

‘judge presiding at the trial or pre-trial hearing’.

(5) Section 592A—

relocate and renumber, in chapter 62, chapter division 2 as section 590AA.

20 Relocation and renumbering of s 594 (Accused person to be called upon to plead to indictment)

(1) Section 594, heading, ‘upon’—

23 Chapter division 3 (Disclosure by the prosecution)

24 *Evidence Act 1977*, part 2 (Witnesses), division 4A (Evidence of affected children) or 6 (Cross-examination of protected witnesses)

omit, insert—

‘on’.

(2) Section 594, as amended—

relocate and renumber, before section 598, as section 597C.

21 Insertion of new ch 62, ch div 6 hdg

Before section 594A—

insert—

‘Chapter division 6—Corporation as accused person’.

22 Insertion of new ch 62, ch div 7 hdg

Before section 595—

insert—

‘Chapter division 7—Applications by accused person about indictment’.

23 Insertion of new ch 62, ch div 8 hdg

Before section 597A—

insert—

‘Chapter division 8—Separate trials’.

24 Insertion of new ch 62, ch div 9 hdg

After section 597A—

insert—

‘Chapter division 9—Pleas’.

25 Relocation and renumbering of s 606 (Separate trials)

Section 606—

relocate and renumber in chapter 62, chapter division 8 as section 597B.

26 Relocation and renumbering of s 607 (Juries)

Section 607—

renumber and *relocate* as section 617A.

27 Insertion of new ch 62, ch div 10 hdg

Before section 616—

insert—

‘Chapter division 10—Appearances and fair conduct’.

28 Insertion of new ch 62, ch div 11 hdg

Before section 618—

insert—

‘Chapter division 11—Trial of issues’.

29 Insertion of new ch 62, ch div 12 hdg

Before section 630—

insert—

‘Chapter division 12—Other provisions’.

30 Insertion of new s 668A

After section 668—

insert—

‘668A Reference by Attorney-General of pre-trial direction or ruling

‘(1) The Attorney-General may refer to the Court for its consideration and opinion a point of law that has arisen in relation to a direction or ruling under section 590AA²⁵ given by another court as to the conduct of a trial or pre-trial hearing.

‘(2) If a reference is made—

25 Section 590AA (Pre-trial directions and rulings)

- (a) the Attorney-General must give notice of the reference to the other court and the accused person; and
- (b) the other court—
 - (i) must adjourn the trial until the Court has given its opinion on the point; and
 - (ii) may make the other orders it considers appropriate, including an order about remanding the accused person; and
- (c) the Court must hear argument on the reference—
 - (i) by the Attorney-General; and
 - (ii) by the accused person if the accused person wishes; and
- (d) after hearing argument on the reference, the Court—
 - (i) must consider the point referred and give the Attorney-General its opinion on the point; and
 - (ii) may make the orders it considers appropriate, including the directions or rulings it considers appropriate to give effect to its opinion.

‘(3) In this section—

“**adjourn**”, for a trial where the accused person has not been called on to plead to the indictment, includes postpone the trial.’.

31 Amendment of s 669 (Power to grant new trial)

Section 669—

insert—

- ‘(2) If the Court makes an order for a new trial and the appellant is not granted bail, the order is taken to be a warrant for the appellant’s detention under the *Corrective Services Act 2000*, section 9(1)(a).²⁶’.

32 Insertion of new s 708

Chapter 71—

²⁶ *Corrective Services Act 2000*, section 9 (Authority for admission to corrective services facility)

insert—

‘708 Regulation-making power

‘The Governor in Council may make regulations under this Code.’.

33 Insertion of new ch 78

After chapter 77—

insert—

**‘CHAPTER 78—TRANSITIONAL PROVISION FOR
EVIDENCE (PROTECTION OF CHILDREN)
AMENDMENT ACT 2003**

‘715 Transitional provision for disclosure by the prosecution

‘Chapter 62, chapter division 3⁷ applies to the following types of relevant proceeding, even if the offence concerned was committed before the commencement of this section—

- (a) a relevant proceeding started in relation to an offence if the charge against the accused person for the offence was brought after the commencement of this section;
- (b) a relevant proceeding in relation to an indictment presented after the commencement of this section;
- (c) a relevant proceeding that is a new trial ordered by the court if the order is made after the commencement of this section.’.

27 Chapter 62 (Trial—Adjournment—Pleas—Practice), chapter division 3 (Disclosure by the prosecution)

PART 6—AMENDMENT OF CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

34 Act amended in pt 6

This part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

35 Amendment of s 9A (Disclosure of particulars in special cases)

Section 9A, table—

insert—

- | | |
|---|--|
| <p>‘19. An applicant for admission as a student-at-law under the <i>Barristers’ Admission Rules 1975</i>.</p> | <p>19. Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>20. An applicant for admission as a barrister under the <i>Barristers’ Admission Rules 1975</i>.</p> | <p>20. Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>21. An applicant for the consent of the Solicitors’ Board to enter articles of clerkship under the <i>Solicitors’ Admission Rules 1968</i>.</p> | <p>21. Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>22. An applicant for admission as a solicitor under the <i>Solicitors’ Admission Rules 1968</i>.</p> | <p>22. Contraventions of any law, whether committed in Queensland or elsewhere.</p> |
| <p>23. An applicant for appointment as an associate to a Supreme Court judge or a District Court judge.</p> | <p>23. Contraventions of any law, whether committed in Queensland or elsewhere.’.</p> |

PART 7—AMENDMENT OF CRIMINAL LAW (SEXUAL OFFENCES) ACT 1978

36 Act amended in pt 7

This part amends the *Criminal Law (Sexual Offences) Act 1978*.

37 Insertion of new pt 1, hdg

Before section 1—

insert—

‘PART 1—PRELIMINARY’.

38 Insertion of new pt 2, hdg

Before section 4—

insert—

‘PART 2—EVIDENCE’.

39 Amendment of s 4 (Special rules of evidence concerning sexual offences)

Section 4, heading—

omit, insert—

‘4 Special rules limiting particular evidence about sexual offences’.

40 Insertion of new s 4A

After section 4—

insert—

‘4A Evidence of complaint generally admissible

‘(1) This section applies in relation to an examination of witnesses, or a trial, in relation to a sexual offence.

‘(2) Evidence of how and when any preliminary complaint was made by the complainant about the alleged commission of the offence by the defendant is admissible in evidence, regardless of when the preliminary complaint was made.

‘(3) Nothing in subsection (2) derogates from the power of the court in a criminal proceeding to exclude evidence if the court is satisfied it would be unfair to the defendant to admit the evidence.

‘(4) If a defendant is tried by a jury, the judge must not warn or suggest in any way to the jury that the law regards the complainant’s evidence to be more reliable or less reliable only because of the length of time before the complainant made a preliminary or other complaint.

‘(5) Subject to subsection (4), the judge may make any comment to a jury on the complainant’s evidence that it is appropriate to make in the interests of justice.

‘(6) In this section—

“complaint” includes a disclosure.

“preliminary complaint” means any complaint other than—

- (a) the complainant’s first formal witness statement to a police officer given in, or in anticipation of, a criminal proceeding in relation to the alleged offence; or
- (b) a complaint made after the complaint mentioned in paragraph (a).

Example—

Soon after the alleged commission of a sexual offence, the complainant discloses the alleged commission of the offence to a parent (**“complaint 1”**). Many years later, the complainant makes a complaint to a secondary school teacher and a school guidance officer (**“complaints 2 and 3”**). The complainant visits the local police station and makes a complaint to the police officer at the front desk (**“complaint 4”**). The complainant subsequently attends an appointment with a police officer and gives a formal witness statement to the police officer in anticipation of a criminal proceeding in relation to the alleged offence (**“complaint 5”**). After a criminal proceeding is begun, the complainant gives a further formal witness statement (**“complaint 6”**).

Each of complaints 1 to 4 is a preliminary complaint. Complaints 5 and 6 are not preliminary complaints.’.

41 Insertion of new pt 3, hdg

Before section 5—

insert—

‘PART 3—LIMIT ON PUBLICITY’.

42 Insertion of new pt 4, hdg

After section 13—

insert—

‘PART 4—TRANSITIONAL PROVISIONS’.

43 Insertion of new s 15

After section 14—

insert—

‘15 Transitional provision for Evidence (Protection of Children) Act 2003

‘(1) Section 4A²⁸ only applies in relation to an examination of witnesses, or a trial, in relation to a sexual offence, that starts or continues after the commencement of this section.

‘(2) Subsection (1) applies even if the sexual offence was committed, or the complaint was made, before the commencement of this section.’.

PART 8—AMENDMENT OF CRIMINAL PROCEEDS CONFISCATION ACT 2002

44 Act amended in pt 8

This part amends the *Criminal Proceeds Confiscation Act 2002*.

44A Omission of ch 2, pt 3, div 2 hdg and s 30

Chapter 2, part 3, division 2 heading and section 30—

28 Section 4A (Evidence of complaint generally admissible)

omit, insert—

‘30 Notice of application

‘(1) Subject to section 30A(2), the State must give notice of the application—

- (a) to each person whose property the authorised commission officer or police officer whose affidavit supports the application reasonably believes is the subject of the application; and
- (b) to anyone else the authorised commission officer or police officer whose affidavit supports the application considers has an interest in the property the subject of the application.

‘(2) Notice given under subsection (1)(a) must be accompanied by a copy of the affidavit supporting the application.

‘(3) Notice given under subsection (1)(b) must include a statement informing the person that if the person asks, the person will be given a copy of the affidavit supporting the application.

‘Division 2—Making restraining orders

‘30A Hearing of application

‘(1) The Supreme Court must not hear an application for a restraining order unless satisfied the person whose property is the subject of the application has received reasonable notice of the application.

‘(2) Despite subsection (1), the court must consider the application without notice having been given if the DPP asks the court to do so.

‘(3) However, the Supreme Court may, at any time before finally deciding the application, direct the State to give notice of the application to a stated person or class of persons in the way, and within the time, the court considers appropriate.

‘(4) A person whose property is the subject of the application, and anyone else who claims to have an interest in the property, may appear at the hearing of the application.’.

45 Amendment of s 38 (Particular orders Supreme Court may make)

Section 38(1)(c) and (d), ‘judicial registrar’—

omit, insert—

‘stated officer of the court’.

46 Insertion of new s 38A

Chapter 2, part 3, division 4, subdivision 1, before section 39—

insert—

‘38A Meaning of “judicial registrar” for subdiv 1

‘In this subdivision—

“**judicial registrar**”, for an examination conducted under an examination order, includes an officer of the court other than the judicial registrar mentioned in the order.’.

46A Amendment of s 48 (When Supreme Court may exclude prescribed respondent’s property)

Section 48—

insert—

‘(3) The Supreme Court may require the prescribed respondent to give security satisfactory to the court to meet any liability that may be imposed on the prescribed respondent under this Act.’.

46B Amendment of s 50 (When Supreme Court may exclude applicant’s property)

Section 50—

insert—

‘(4) The Supreme Court may require the applicant to give the undertakings about the applicant’s property the court considers appropriate.’.

46C Insertion of new ch 2, pt 3, div 7A

After section 50—

insert—

‘Division 7A—Revocation of restraining order**‘50A Application to revoke restraining order**

‘(1) A person whose property is the subject of a restraining order and who was not given notice of the application for the restraining order may apply to the Supreme Court to revoke the order.

‘(2) The application must be made within 28 days or, with the approval of the court, the further period, of not more than 3 months, after the person is notified of the making of the restraining order.

‘(3) The applicant must give to the State written notice of the making of the application and the grounds for the application.

‘(4) The restraining order remains in force until the court revokes the order or the order otherwise stops having effect.

‘(5) The State may present additional material to the court relating to the application to revoke the restraining order.

‘(6) After considering the application, the court may revoke the restraining order if satisfied, on the facts before the court, there would be no basis for making a restraining order in relation to the property.

‘50B Notice of revocation of restraining order

‘(1) On the revocation of a restraining order under section 50A, the State must give notice of the revocation to—

- (a) each person whose property was restrained under the order, if known; and
- (b) anyone else who was affected by the order.

‘(2) Subsection (1) does not require the State to notify the applicant for the revocation of the restraining order of the revocation of the order.’.

46D Amendment of s 120 (Notice of application for restraining order)

(1) Section 120(1), ‘The’—

omit, insert—

‘Subject to section 121(2), the’.

(2) Section 120(2) to (4) and note—

omit.

46E Replacement of s 121 (Who may be present at hearing of application made without notice)

Section 121—

omit, insert—

‘121 Hearing of application

‘(1) The Supreme Court must not hear an application for a restraining order unless satisfied the person whose property is the subject of the application has received reasonable notice of the application.

‘(2) Despite subsection (1), the court must consider the application without notice having been given if the DPP asks the court to do so.

‘(3) However, the Supreme Court may, at any time before finally deciding the application, direct the State to give notice of the application to a stated person or class of persons in the way and within the time the court considers appropriate.

‘(4) A person whose property is the subject of the application, and anyone else who claims to have an interest in the property, may appear at the hearing of the application.’.

47 Amendment of s 130 (Particular orders Supreme Court may make)

Section 130(c) and (d), ‘judicial registrar’—

omit, insert—

‘stated officer of the court’.

48 Insertion of new s 130A

Chapter 3, part 3, division 5, subdivision 1, before section 131—

insert—

‘130A Meaning of “judicial registrar” for subdiv 1

‘In this subdivision—

“judicial registrar”, for an examination conducted under an examination order, includes an officer of the court other than the judicial registrar mentioned in the order.’.

48A Amendment of s 139 (Supreme Court may exclude prescribed respondent’s property from restraining order)

Section 139—

insert—

‘(4) The Supreme Court may require the prescribed respondent to give security satisfactory to the court to meet any liability that may be imposed on the prescribed respondent under this Act.’.

48B Amendment of s 140 (Supreme Court may exclude other property from restraining order)

Section 140—

insert—

‘(6) The Supreme Court may require the applicant to give the undertakings about the applicant’s property the court considers appropriate.’.

PART 9—AMENDMENT OF DIRECTOR OF PUBLIC PROSECUTIONS ACT 1984

49 Act amended in pt 9

This part amends the *Director of Public Prosecutions Act 1984*.

50 Amendment of s 10 (Functions of director)

(1) Section 10(2) and (3)—

renumber as section 10(3) and (4).

(2) Section 10—

insert—

‘(2) If the director, with the Minister’s consent, holds an appointment, commission or authority to prosecute offences against the laws of the Commonwealth, the director may, under the terms of the appointment, commission or authority, prepare, institute and conduct—

- (a) criminal proceedings for the offences; and
- (b) proceedings in the Court of Appeal or the High Court of Australia that arise out of the criminal proceedings.’.

51 Insertion of new s 24C

After section 24B—

insert—

‘24C Disclosures by police officers

‘(1) This section applies if the director is—

- (a) deciding whether to institute a proceeding; or
- (b) deciding whether to consent to the institution of a proceeding; or
- (c) is conducting a proceeding.

‘(2) Police officers investigating alleged offences have a duty to disclose to the director all relevant information, documents or other things obtained during the investigation that might tend to help the case for the prosecution or the case for the accused person.

‘(3) The duty of disclosure under subsection (2) continues until 1 of the following happens—

- (a) the director decides the accused person will not be prosecuted for the alleged offence;
- (b) the prosecution ends, whether by the accused person being discharged, acquitted or convicted, or in another way.

‘(4) Any police officer has a duty to disclose to the director an exculpatory thing until 1 of the following happens—

- (a) the accused person is discharged or acquitted; or
- (b) the accused person dies.

‘(5) In this section—

“**exculpatory thing**”, in relation to an accused person, means reliable evidence of a nature to cause a jury to entertain a reasonable doubt as to the guilt of the accused person.’.

PART 9A—AMENDMENT OF DRUG REHABILITATION (COURT DIVERSION) ACT 2000

51A Act amended in pt 9A

This part amends the *Drug Rehabilitation (Court Diversion) Act 2000*.

51B Amendment of s 7A (What is a “disqualifying term of imprisonment”)

Section 7A(1), ‘6 months’—

omit, insert—

‘1 year’.

PART 10—AMENDMENT OF EVIDENCE ACT 1977

52 Act amended in pt 10

This part amends the *Evidence Act 1977*.

53 Insertion of new s 2A

After section 2—

insert—

‘2A Notes in text

‘A note in the text of this Act is part of the Act.’.

54 Amendment of s 3 (Definitions)

(1) Section 3, ‘In this Act—’—

omit, insert—

‘The dictionary in schedule 3 defines particular words used in this Act.’.

(2) Section 3, definitions “court”, “proceeding” and “protected witness”—

omit.

(3) Section 3—

insert—

‘**“affected child”**, for part 2, division 4A, see section 21AC.

“affidavit”, for part 7, see section 104.

“audio link”, for part 3A, see section 39C.

“audio visual link” means facilities, including closed-circuit television, that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places.

“before”, for part 3A, see section 39C.

“book of account”, for part 5, division 6, see section 83.

“business”, for part 7, see section 104.

“child”, for part 2, division 4A, see section 21AD.

“civil proceedings”, for part 3, division 3, see section 35.

“controlled operation”, for part 2, division 5, see section 21B.

“conviction”, for part 5, division 5, see section 78.

“copy”, of a document, see section 4.

“corresponding court”, for part 3, division 2, see section 25.

“counsel”, for part 2, division 4A, see section 21AC.

“court”—

- (a) for part 5, division 5—see section 78; or
- (b) for part 5, division 6—see section 83; or
- (c) otherwise—means the court, tribunal, judge, justice, arbitrator, body or person before whom or which a proceeding is held or taken.

“court location”, for part 3A, see section 39C.

“covert operative”, for part 2, division 5, see section 21B.

“defendant”, for part 2, division 4A, see section 21AC.

“examiner”, for part 3, division 2, see section 25.

“external location”, for part 3A, see section 39C.

“judicial officer” means a judge, magistrate or justices.

“law enforcement agency”, for part 2, division 5, see section 21B.

“lawfully edited copy”, of a video-taped recording of evidence given by a special witness or an affected child, means a copy of the recording that has been edited or otherwise changed under an approval under section 21AZ.²⁹

“machine copy”, for part 7, see section 104.

“offence involving violence”, for part 2, division 4A, see section 21AC.

“offence of a sexual nature”, for part 2, division 4A, see section 21AC.

“original document”, for part 7, see section 104.

“overseas country”—

- (a) for part 3, division 3—see section 35; or
- (b) for part 5, division 3—see section 67.

“participating State”, for part 3A, see section 39C.

“preliminary hearing”, for part 2, division 4A, see section 21AC.

²⁹ Section 21AZ (Approval to edit or otherwise change a recording)

“prescribed country”, for part 3, division 2, see section 25.

“presiding judicial officer”, for part 2, division 4B, see section 21AY.

“proceeding”—

- (a) for part 2, division 4A—see section 21AC; or
- (b) otherwise—means any civil, criminal or other proceeding or inquiry, reference or examination in which by law or by consent of parties evidence is or may be given, and includes an arbitration.

“protected witness”—

- (a) for part 2, division 5—see section 21F; or
- (b) for part 2, division 6—see section 21M.

“Queensland court”, for part 3A, see section 39C.

“recognised court”, for part 3A, see section 39C.

“recording”, for part 2, division 4B, see section 21AY.

“relevant entity”, for part 2, division 5, see section 21B.

“relevant offence”, for part 2, division 4A, see section 21AC.

“relevant proceeding”—

- (a) for part 2, division 4A, see section 21AC; or
- (b) for part 2, division 5, see section 21B.

“reproduce”, for part 7, see section 104.

“reproduction”, for part 7, see section 104.

“request”, for part 3, division 3, see section 35.

“requesting court”, for part 3, division 3, see section 36.

“special witness” see section 21A.

“statute”, for part 5, division 3, see section 67.

“transparency”, for part 7, see section 104.

“tribunal”, for part 3A, see section 39C.

“video-taped” means recorded as a video-taped recording.

“video-taped recording” means a recording, including the accompanying sound track, on any medium from which a moving image may be produced by any means.’.

(4) Section 3, definitions, as amended—

relocate to schedule 3 as inserted by this part.

55 Amendment of s 4 (Meaning of “copy” of document etc.)

Section 4(a), ‘section 3’—

omit, insert—

‘schedule 3’.

56 Amendment of s 8 (Witnesses in a criminal proceeding)

Section 8(2) to (7)—

omit, insert—

‘(2) The husband or wife of an accused person in a criminal proceeding is competent and compellable to give evidence in the proceeding in any court, either for the prosecution or for the defence, and without the consent of the accused.

‘(3) In a criminal proceeding, a husband or wife is competent and compellable to disclose communications made between the husband and the wife during the marriage.’.

57 Replacement of ss 9 and 9A

Sections 9 and 9A—

omit, insert—

‘Division 1A—Competency of witnesses and capacity to be sworn

‘9 Presumption as to competency

‘(1) Every person, including a child, is presumed to be—

(a) competent to give evidence in a proceeding; and

(b) competent to give evidence in a proceeding on oath.

‘(2) Subsection (1) is subject to this division.

‘9A Competency to give evidence

‘(1) This section applies if, in a particular case, an issue is raised, by a party to the proceeding or the court, about the competency of a person called as a witness in the proceeding to give evidence.

‘(2) The person is competent to give evidence in the proceeding if, in the court’s opinion, the person is able to give an intelligible account of events which he or she has observed or experienced.

‘(3) Subsection (2) applies even though the evidence is not given on oath.

‘9B Competency to give sworn evidence

‘(1) This section applies if, in a particular case, an issue is raised, by a party to the proceeding or the court, about the competency of a person called as a witness in the proceeding to give evidence on oath.

‘(2) The person is competent to give evidence in the proceeding on oath if, in the court’s opinion, the person understands that—

(a) the giving of evidence is a serious matter; and

(b) in giving evidence, he or she has an obligation to tell the truth that is over and above the ordinary duty to tell the truth.

‘(3) If the person is competent to give evidence in the proceeding but is not competent to give the evidence on oath, the court must explain to the person the duty of speaking the truth.

Note—

The *Oaths Act 1867*, section 17, makes provision for a person called as a witness to make his or her solemn affirmation instead of being sworn.

‘9C Expert evidence about witness’s ability to give evidence

‘(1) This section applies to a proceeding if—

- (a) under section 9A, the court is deciding whether a person is able to give an intelligible account of events which he or she has observed or experienced; or
- (b) under section 9B, the court is deciding whether a person understands the matters mentioned in section 9B(2)(a) and (b); or
- (c) the evidence of a child under 12 years is admitted.

‘(2) Expert evidence is admissible in the proceeding about the person’s or child’s level of intelligence, including the person’s or child’s powers of perception, memory and expression, or another matter relevant to the person’s or child’s competence to give evidence, competence to give evidence on oath, or ability to give reliable evidence.

‘9D Evidence admitted under s 9A

‘(1) Evidence admitted under section 9A that is written down as a deposition is taken to be a deposition for all purposes.

‘(2) If evidence is admitted under section 9A—

- (a) the probative value of the evidence is not decreased only because the evidence is not given on oath; and
- (b) a person charged with an offence may be convicted on the evidence; and
- (c) the person giving the evidence is liable to be convicted of perjury to the same extent as if the person had given the evidence on oath.

‘Division 1B—Special provisions for child witnesses

‘9E Principles for dealing with a child witness

‘(1) Because a child tends to be vulnerable in dealings with a person in authority, it is the Parliament’s intention that a child who is a witness in a proceeding should be given the benefit of special measures when giving the child’s evidence.

‘(2) The following general principles apply when dealing with a child witness in a proceeding—

- (a) the child is to be treated with dignity, respect and compassion;

- (b) measures should be taken to limit, to the greatest practical extent, the distress or trauma suffered by the child when giving evidence;
- (c) the child should not be intimidated in cross-examination;
- (d) the proceeding should be resolved as quickly as possible.

‘(3) In this section—

“child” means a child under 16 years.’.

58 Omission of s 11 (Communications to husband or wife)

Section 11—

omit.

59 Amendment of s 21A (Evidence of special witnesses)

(1) Section 21A(1), definition “special witness”, paragraph (a)—

omit, insert—

‘(a) a child under 16 years; or’.

(2) Section 21A(1A)—

renumber as section 21(1B).

(3) Section 21A—

insert—

‘(1A) This section does not apply to a child to the extent division 4A applies to the child.’.

(4) Section 21A(2)(e), ‘videotape’—

omit, insert—

‘video-taped recording’.

(5) Section 21A(2)(f), from ‘including’—

omit, insert—

‘including, for example, any of the following—

- (i) a direction about rest breaks for the special witness;
- (ii) a direction that questions for the special witness be kept simple;
- (iii) a direction that questions for the special witness be limited by time;
- (iv) a direction that the number of questions for a special witness on a particular issue be limited.’.

(6) Section 21A(3)—

omit.

(7) Section 21A(5) and (5A), ‘videotape’—

omit, insert—

‘video-taped recording’.

(8) Section 21A(6)—

omit, insert—

‘**(6)** A video-taped recording under this section of evidence given by a special witness, or a lawfully edited copy of the recording—

- (a) is as admissible as if the evidence were given orally in the proceeding in accordance with the usual rules and practice of the court; and
- (b) is, unless the relevant court otherwise orders, admissible in—
 - (i) any rehearing or re-trial of, or appeal from, the proceeding; or
 - (ii) in the case of evidence given for a criminal proceeding—
 - (A) another proceeding in the same court for the relevant charge or for another charge arising out of the same, or the same set of, circumstances; or
 - (B) a civil proceeding arising from the commission of the offence.’.

(9) Section 21A(7), from ‘or’ to ‘videotaped’—

omit, insert—

‘or (e)’.

(10) Section 21A—

insert—

‘(8) If evidence is given, or to be given, in a proceeding on indictment under an order or direction mentioned in subsection (2)(a) to (e), the judge presiding at the proceeding must instruct the jury that—

- (a) they should not draw any inference as to the defendant’s guilt from the order or direction; and
- (b) the probative value of the evidence is not increased or decreased because of the order or direction; and
- (c) the evidence is not to be given any greater or lesser weight because of the order or direction.’.

60 Insertion of new pt 2, divs 4A and 4B

After part 2, division 4—

insert—

‘Division 4A—Evidence of affected children

‘Subdivision 1—Preliminary

‘21AA Purposes of div 4A

‘The purposes of this division are—

- (a) to preserve, to the greatest extent practicable, the integrity of an affected child’s evidence; and
- (b) to require, wherever practicable, that an affected child’s evidence be taken in an environment that limits, to the greatest extent practicable, the distress and trauma that might otherwise be experienced by the child when giving evidence.

‘21AB How purposes are to be achieved

‘To achieve the purposes of this division, the division prescribes the following measures for an affected child when giving evidence for a relevant proceeding—

- (a) for a criminal proceeding—

- (i) the child's evidence is to be pre-recorded in the presence of a judicial officer, but in advance of the proceeding;
- (ii) if the measure in paragraph (a) can not be given effect, the child's evidence is to be given at the proceeding, but with the use of an audio visual link or with the benefit of a screen;
- (iii) for a committal proceeding, the child's evidence-in chief is to be given only as a statement and, ordinarily, the child is not to be called as a witness for cross-examination;
- (b) for a civil proceeding, the child's evidence is to be given at the proceeding with the use of an audio visual link or with the benefit of a screen.

'21AC Definitions for div 4A

'In this division—

"affected child" means a child who is a witness in a relevant proceeding and who is not a defendant in the proceeding.

"child" see section 21AD.

"civil proceeding arising from the commission of a relevant offence" does not include a proceeding for a domestic violence order under the *Domestic and Family Violence Protection Act 1989*.

"counsel" includes solicitor.

"defendant" means—

- (a) in a criminal proceeding—a person charged with an offence; or
- (b) in a civil proceeding arising from the commission of a relevant offence—a person whose act or omission is complained of.

"offence involving violence" means an offence against any of the following provisions of the Criminal Code—

- a provision of chapter 28¹

31 Criminal Code, chapter 28 (Homicide—suicide—concealment of birth)

- a provision of chapter 29³² other than section 317A, 318, 319, 319A, 321, 321A, 327, 329, 330, 331, 332, 333 or 334
- sections 335, 339, 340, 354, 354A and 355
- a provision of chapter 33A³³
- sections 363, 363A and 364.

“offence of a sexual nature” means an offence against any of the following provisions of the Criminal Code—

- a provision of chapter 22³⁴ other than section 224, 225 or 226
- a provision of chapter 32.³⁵

“preliminary hearing” means a hearing under section 21AK.³⁶

“prescribed relationship”, between a child who is a witness in a proceeding and a defendant in the proceeding, means any of the following—

- (a) a relationship, regardless of whether it is a half, adoptive or step relationship, where the defendant is—
 - (i) a parent of the child; or
 - (ii) a grandparent of the child; or
 - (iii) a brother or sister of the child; or
 - (iv) an uncle, aunt, nephew, niece or cousin of the child;
- (b) a relationship arising because, at the time of the alleged offence with which the defendant is charged, the defendant lived in the same household as the child;
- (c) a relationship arising because the defendant had the care of, or exercised authority over, the child in a household on a regular basis.

“proceeding” means any civil or criminal proceeding, including a preliminary hearing.

32 Criminal Code, chapter 29 (Offences endangering life or health)

33 Criminal Code, chapter 33A (Unlawful stalking)

34 Criminal Code, chapter 22 (Offences against morality)

35 Criminal Code, chapter 32 (Rape and sexual assaults)

36 Section 21AK (Video-taping of affected child’s evidence)

“relevant offence”, in relation to a proceeding, means—

- (a) an offence of a sexual nature; or
- (b) an offence involving violence, if there is a prescribed relationship between a child who is a witness in the proceeding and a defendant in the proceeding.

“relevant proceeding” means—

- (a) a criminal proceeding for a relevant offence, whether or not the proceeding also relates to other offences; or
- (b) a civil proceeding arising from the commission of a relevant offence.

“step relationship” includes a relationship corresponding to a step relationship arising because of cohabitation in a de facto relationship or because of a foster relationship or a legal arrangement.

‘21AD Meaning of “child”

‘(1) For the purposes of a proceeding for this division, a **“child”** is—

- (a) if the proceeding is a criminal proceeding—
 - (i) an individual who is under 16 years when the first of the following happens—
 - (A) the defendant in the proceeding is arrested;
 - (B) a complaint is made under the *Justices Act 1886*, section 42³⁷ in relation to the defendant in the proceeding;
 - (C) a notice to appear is served on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 214;³⁸ or
 - (ii) an individual who is 16 or 17 years when the first of the matters mentioned in subparagraph (i) happens and who is a special witness; or

³⁷ *Justices Act 1886*, section 42 (Commencement of proceedings)

³⁸ *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

(b) if the proceeding is a civil proceeding arising from the commission of a relevant offence—

- (i) an individual who is under 16 years when the proceeding starts; or
- (ii) an individual who is 16 or 17 years when the proceeding starts and who is a special witness.

‘(2) An individual remains a **“child”** for the purposes of giving evidence for a proceeding if the child gives evidence for the proceeding at any time before the child turns 18 years.

‘Subdivision 2—Committal proceeding

‘21AE Application of sdiv 2

‘This subdivision applies to the taking of an affected child’s evidence for a committal proceeding for a relevant offence, whether or not the committal proceeding also relates to other offences.

‘21AF Evidence-in-chief

‘(1) The affected child’s evidence-in-chief must be given as a statement without the child being called as a witness.

‘(2) For this section, the *Justices Act 1886*, section 110A³⁹ applies with all necessary changes and as though a reference in that section to a written statement included a reference to a statement contained in a document as defined under schedule 3.

‘(3) Also, for the purposes of applying the *Justices Act 1886*, section 110A, that section is to be read with the following changes—

- (a) if the child’s statement is a written statement—subsections (4), (5)(a) and (d), (8) and (9) of that section were omitted;
- (b) if the child’s statement is not a written statement—
 - (i) subsections (4), (5), (8) and (9) of that section were omitted; and

39 *Justices Act 1886*, section 110A (Use of tendered statements in lieu of oral testimony in committal proceedings)

(ii) in subsection (13)—

(A) the words ‘read as evidence’ were omitted and the words ‘received as evidence’ were inserted in their place; and

(B) paragraph (a) were omitted.

‘(4) Further, for the purposes of applying the *Justices Act 1886*, section 111,⁴⁰ that section applies with all necessary changes and is to be read as though, in subsections (1) and (2), the words ‘read as evidence’ were omitted and the words ‘received as evidence’ were inserted in their place.

‘(5) In addition, for the purposes of applying the *Criminal Law Amendment Act 1892*,⁴¹ section 4, that section applies with all necessary changes and is to be read as though—

(a) a reference to a deposition included a reference to a statement contained in a document; and

(b) a reference to the reading of a deposition that is not a written statement included a reference to the showing of a statement contained in a document.

‘(6) In this section—

“**statement**” means—

(a) a written statement; or

(b) a statement contained in a document.

‘21AG Cross-examination

‘(1) The affected child may be cross-examined only if, under this section, a magistrate requires a party to call the child as a witness for that purpose.

‘(2) The requirement may be made, on an application, by—

⁴⁰ *Justices Act 1886*, section 111 (Depositions of persons dead, absent etc)

⁴¹ *Criminal Law Amendment Act 1892*, section 4 (If prisoner does not require witnesses to attend, their depositions may be put in at trial with any exhibits attached)

- (a) a magistrate at a direction hearing under the *Justices Act 1886*, section 83A;⁴² or
- (b) the magistrate presiding at the committal proceeding.

‘(3) A magistrate at a direction hearing must not require the child to be called as a witness for cross-examination unless the magistrate is satisfied that—

- (a) the party seeking to cross-examine the child has—
 - (i) identified an issue to which the proposed questioning relates; and
 - (ii) provided a reason why the evidence of the child is relevant to the issue; and
 - (iii) explained why the evidence disclosed by the prosecution does not address the issue; and
 - (iv) identified to the magistrate the purpose and general nature of the questions to be put to the child to address the issue; and
- (b) the interests of justice can not adequately be satisfied by leaving cross-examination of the child about the issue to the trial.

‘(4) The magistrate presiding at the committal proceeding must not require the child to be called as a witness for cross-examination unless the magistrate is satisfied that—

- (a) the evidence before the court at the committal has identified an issue to which the proposed questioning relates that could not reasonably have been anticipated before the committal; and
- (b) the party making the application has—
 - (i) provided a reason why the evidence of the child is relevant to the issue; and
 - (ii) explained why the evidence before the court does not address the issue; and
 - (iii) identified to the magistrate the purpose and general nature of the questions to be put to the child to address the issue; and

42 *Justices Act 1886*, section 83A (Direction hearing)

- (c) the interests of justice can not adequately be satisfied by leaving cross-examination of the child about the issue to the trial.

‘(5) Without limiting the matters to which the magistrate may have regard for subsection (3)(b) or (4)(c), the magistrate—

- (a) must consider whether—
 - (i) the prosecution case is adequately disclosed; and
 - (ii) the charge is adequately particularised; and
- (b) must have regard to the vulnerability of children, the general principles stated in section 9E and the undesirability of calling a child as a witness for a committal proceeding.

‘(6) The magistrate must give reasons for the magistrate’s decision on the application.

‘(7) If, under this section, the magistrate requires a party to call the child as a witness for cross-examination—

- (a) the child’s evidence must be taken under subdivision 3 or 4⁴³ and
- (b) when the magistrate decides the application, the magistrate must decide whether the child’s evidence is to be taken under subdivision 3 or under subdivision 4, and how it is to be taken, and give a direction accordingly.

‘(8) In deciding whether the child’s evidence is to be taken under subdivision 3 or 4, and how it is to be taken, the magistrate must have regard to the following—

- (a) the distress or trauma likely to be suffered by the child when giving evidence and the need to minimise the child’s distress or trauma;
- (b) whether a local court has an audio visual link and, if not, the availability of another appropriate place with appropriate equipment and facilities for taking or video-taping the child’s evidence under subdivision 3 or 4;
- (c) whether the parties would be substantially inconvenienced if the proceeding were to be adjourned to another place mentioned in paragraph (b) that is not within the same locality as the court;

43 Subdivision 3 (Pre-recording of affected child’s evidence) or 4 (Taking of affected child’s evidence using audio visual link or screen)

- (d) the need for committal proceedings to be conducted expeditiously.

‘(9) In this section—

“local court” means—

- (a) in relation to a magistrate at a direction hearing—a court at which the committal proceeding would ordinarily be held; or
- (b) in relation to the magistrate presiding at the committal proceeding—the court in which the committal proceeding is being held or another court within the court precincts.

“magistrate”, presiding at a committal proceeding, includes justices presiding at the proceeding.

‘21AH Limitation on cross-examination

‘(1) If the affected child is to be cross-examined, the party calling the child may first ask the child questions for identifying the child and establishing that the child made the statement mentioned in section 21AF and the truthfulness of the statement.

‘(2) The presiding magistrate or justices must not allow the child to be cross-examined about an issue other than the issue in relation to which the child was required to be called unless the magistrate or justices are satisfied as mentioned in section 21AG(3)(a) and (b) or section 21AG(4)(a) to (c), whichever is relevant, in relation to the issue.

‘(3) Also, the presiding magistrate or justices—

- (a) must not allow cross-examination to continue to the extent it—
 - (i) does not appear relevant to an issue for which it may be conducted; or
 - (ii) consists of exploratory questions asked in the hope of receiving any answer or any assistance to the party conducting the cross-examination, commonly known as a ‘fishing expedition’; and

(b) must disallow a question that may be disallowed under section 20 or 21.⁴⁵

‘(4) The child may be re-examined by the party calling the child.

‘Subdivision 3—Pre-recording of affected child’s evidence

‘21AI Application of sdiv 3

‘(1) This subdivision applies to taking an affected child’s evidence—

- (a) for a summary trial for a relevant offence; and
- (b) for a trial on indictment for a relevant offence; and
- (c) for a committal proceeding for a relevant offence, if a magistrate or justices give a direction as mentioned in section 21AG(7)(b)⁴⁶ that the child’s evidence is to be taken under this subdivision.

‘(2) However, this subdivision does not apply to an affected child who is a witness for the defence.

‘(3) Subsection (1) applies to a proceeding whether or not the proceeding also relates to offences other than the relevant offence.

‘21AJ Presentation of indictment

If the affected child’s evidence is to be taken for a trial on indictment, the indictment must be presented before the evidence can be taken under this subdivision.

‘21AK Video-taping of affected child’s evidence

‘(1) The affected child’s evidence must be taken and video-taped at a hearing under this section (a “**preliminary hearing**”) presided over by a judicial officer.

‘(2) The video-taped recording must be presented—

⁴⁵ Section 20 (Cross-examination as to credit) or 21 (Improper questions)

⁴⁶ Section 21AG (Cross-examination)

(a) if taken for a committal proceeding—to the court at the committal proceeding; or

(b) if taken for a trial—to the court at the trial.

‘(3) To facilitate the operation of this section for the taking of the child’s evidence in a proceeding, the judicial officer may order that the preliminary hearing be conducted by audio visual link.

‘(4) The provisions of part 3A⁴⁷ relating to the use of an audio visual link in criminal proceedings apply for, and are not limited by, subsection (3).

‘(5) To facilitate the operation of this section for a trial, the judicial officer must, if it is not practicable at the place of the trial to take and video-tape the child’s evidence—

(a) adjourn the trial to an appropriately equipped place to allow the evidence to be taken and video-taped; or

(b) make another order the judicial officer considers appropriate including, for example, an order that the preliminary hearing be conducted by audio visual link.

‘(6) If the taking and video-taping of the child’s evidence is done at a place that is not a courtroom, the place is taken to be a courtroom for all purposes for the preliminary hearing.

‘(7) It does not matter whether or not the judicial officer presiding and the counsel appearing at the preliminary hearing are the same judicial officer presiding and counsel appearing at an adjourned preliminary hearing or at the proceeding in which the video-taped recording is presented to the court.

‘(8) Also, it does not matter if, while the preliminary hearing is conducted, the judicial officer, counsel, parties and witnesses are at different places.

Example—

To facilitate the taking and video-taping of the affected child’s evidence, the judicial officer directs that the child give the evidence by audio visual link. The preliminary hearing is conducted while the judicial officer, counsel and defendant are in a courtroom in a particular city and the child is in a room in another city connected to the courtroom through the audio visual link.

‘(9) In this section—

47 Part 3A (Audio visual links and audio links)

“appropriately equipped place”, for the taking and video-taping of an affected child’s evidence, means a court, or another place that is not a court, that—

- (a) is equipped to take and video-tape the child’s evidence; and
- (b) allows the defendant to see and hear the child while the child is giving evidence, for example, through an audio visual link.

“evidence” means evidence-in-chief or evidence given in cross-examination or re-examination.

‘21AL Court to give directions for taking an affected child’s evidence

‘(1) The judicial officer presiding at the preliminary hearing may make any order the judicial officer considers appropriate in relation to taking and video-taping the affected child’s evidence.

‘(2) Without limiting subsection (1), the judicial officer may give directions, with or without conditions, as to the conduct of the preliminary hearing, including directions as to—

- (a) whether the child is to be in the courtroom or a separate room when the child’s evidence is being taken; and
- (b) the persons who may be present in the same room as the child when the child’s evidence is being taken.

‘(3) Subsection (2)(b) is subject to section 21AU.

Note—

Section 21AU makes provision about the exclusion of persons while an affected child witness is giving evidence in relation to a relevant offence.

‘(4) At the preliminary hearing—

- (a) the defendant—
 - (i) must not be in the same room as the child when the child’s evidence is being taken; but
 - (ii) must be capable of seeing and hearing the child while the child is giving evidence; and
- (b) subject to the judicial officer’s control, the child is to give his or her evidence-in-chief and be cross-examined and re-examined; and

- (c) except as provided by this subdivision, the usual rules of evidence apply.

‘(5) The judicial officer may adjourn the hearing from time to time until the taking and video-taping of the child’s evidence is complete.

‘21AM Use of pre-recorded evidence

‘(1) A video-taped recording of the affected child’s evidence made under this subdivision for a proceeding, or a lawfully edited copy of the recording—

- (a) is as admissible as if the evidence were given orally in the proceeding in accordance with the usual rules and practice of the court; and
- (b) is, unless the relevant court otherwise orders, admissible in—
 - (i) any rehearing or re-trial of, or appeal from, the proceeding; or
 - (ii) another proceeding in the same court for the relevant charge or for another charge arising out of the same, or the same set of, circumstances; or
 - (iii) a civil proceeding arising from the commission of the relevant offence.

‘(2) The admissibility of the recording or copy for a proceeding is not affected only because the child turns 18 before the evidence is presented at the proceeding.

‘21AN Giving of further evidence

‘(1) This section applies if the affected child has given evidence under this subdivision for a proceeding and has been excused from further attendance as a witness at the proceeding.

‘(2) A party may apply to the court for an order that the child—

- (a) give further evidence under this subdivision at another preliminary hearing; or
- (b) attend at the proceeding to give further evidence.

‘(3) The court must not make the order unless satisfied that—

- (a) if the child were giving evidence before a court in the ordinary way, the child could be recalled to give further evidence; and
- (b) it would be in the interests of justice to make the order.

‘(4) The court must not make an order that the child attend at the proceeding to give further evidence unless satisfied it is not possible or not practical for the child to give the further evidence at another preliminary hearing.

‘21AO Court order that evidence not to be taken and recorded under this sdiv

‘(1) This section applies if an affected child is to give evidence in a criminal proceeding, other than a committal proceeding, for a relevant offence.

‘(2) A party may apply to the court for an order that the child’s evidence not be taken and video-taped under this subdivision.

‘(3) The court may make the order for good reason, having regard to the child’s wishes and the purposes of this division.

Example—

If a courtroom or other place with facilities to take and video-tape the affected child’s evidence is not likely to be available within a reasonable time, the court may decide the child’s interests are better served by dealing with the proceeding quickly rather than waiting for a courtroom or other place with the necessary facilities to become available.

‘Subdivision 4—Taking of affected child’s evidence using audio visual link or screen

‘21AP Application of sdiv 4

‘(1) This subdivision applies to taking an affected child’s evidence—

- (a) for a summary trial for a relevant offence, if the evidence is not taken under subdivision 3; or
- (b) for a trial on indictment for a relevant offence, if the evidence is not taken under subdivision 3; or

- (c) for a committal proceeding for a relevant offence, if a magistrate or justices give a direction as mentioned in section 21AG(7)(b)⁴⁸ that the child's evidence is to be taken under this subdivision; or
- (d) for summary trial, trial on indictment or committal proceeding for a relevant offence, if the child is ordered under section 21AN to attend at the proceeding to give further evidence; or
- (e) for a civil proceeding arising from the commission of a relevant offence.

‘(2) Subsection (1) applies to a proceeding whether or not the proceeding also relates to offences other than the relevant offence.

‘21AQ Audio visual links or screening arrangements must be used

‘(1) This section—

- (a) applies subject to any order under section 21AR; and
- (b) has effect despite the Criminal Code, section 617⁴⁹

‘(2) If there is an audio visual link within the court precincts, the judicial officer presiding at the proceeding for the giving of evidence by the affected child must direct that—

- (a) the child give evidence outside the courtroom and the evidence be transmitted to the courtroom by means of the audio visual link; or
- (b) while the child is giving evidence, the defendant be held in a room apart from the courtroom and the evidence be transmitted to that room by means of the audio visual link.

‘(3) It is not necessary that the place outside the courtroom at which the child gives evidence under subsection (2)(a) be within the court precincts.

‘(4) If a direction is given under subsection (2)(a) or (b) and the audio visual link enables video-taping, the child's evidence must be video-taped.

‘(5) If a direction can not be given under subsection (2)(a) or (b), a screen, one-way glass or other thing must be so placed in relation to the

48 Section 21AG (Cross-examination)

49 Criminal Code, section 617 (Presence of accused)

child while he or she is giving evidence that the child can not see the defendant.

‘(6) A video-taped recording of the child’s evidence made under this section, or a lawfully edited copy of the recording, is, unless the relevant court otherwise orders, admissible in—

- (a) any rehearing or re-trial of, or appeal from, the proceeding; or
- (b) another proceeding in the same court for the relevant charge or for another charge arising out of the same, or the same set of, circumstances; or
- (c) a civil proceeding arising from the commission of the relevant offence.

‘21AR Court may order that s 21AQ does not apply

‘(1) This section applies if—

- (a) a relevant proceeding has been started in a court; and
- (b) an affected child is to give evidence in the proceeding.

‘(2) The party who is to call the child as a witness may apply to the presiding judicial officer for an order that section 21AQ is not to apply to the child.

‘(3) The judicial officer may grant the application only if the judicial officer is satisfied the child is able and wishes to give evidence in the defendant’s presence without using an audio visual link or a screen.

‘Subdivision 5—General

‘21AS Prosecutor or applicant to advise that an affected child is to give evidence

‘(1) The prosecutor or applicant in a relevant proceeding must inform the court, before the proceeding starts, that an affected child may give evidence in the proceeding.

‘(2) For a trial on indictment, the prosecutor must inform the court at the time the indictment is presented.

‘(3) A failure to comply with subsection (1) or (2) does not prevent an affected child’s evidence being taken or video-taped under this division or affect the admissibility of the evidence.

‘21AT Identification of persons or things by affected child

‘(1) This section applies if an affected child is required to identify a person, including the defendant, or thing when the child is giving evidence.

‘(2) The court may make the orders it considers appropriate to ensure that the identification is carried out in a way that limits the distress or trauma that might be suffered by the child when making the identification.

Note—

See section 9E for the general principles to be applied when dealing with a child witness.

‘(3) The court must also decide at what point during the giving of the child’s evidence the identification is to be made.

‘(4) If an affected child is required to be in the defendant’s presence for the purposes of identification, the child should not be required to be in the defendant’s presence for the identification for any longer than is necessary.

‘21AU Exclusion of public

‘(1) This section applies if an affected child is to give evidence in a relevant proceeding under this division.

‘(2) If the child is to give evidence about an offence of a sexual nature, the court must exclude from the room in which it is sitting all persons other than essential persons while the child is giving the evidence.

‘(3) If the child is to give evidence other than in relation to an offence of a sexual nature, the court must exclude from the room in which it is sitting all persons other than essential persons while the child is giving the evidence unless the court is satisfied that the interests of justice require the evidence to be heard in open court.

‘(4) In this section—

“**essential person**”, for a proceeding, means any of the following persons—

- (a) a party to the proceeding and the party’s counsel;

- (b) a Crown law officer or a person authorised by a Crown law officer;
- (c) the prosecutor;
- (d) a person whose presence is, in the court's opinion, necessary or desirable for the proper conduct of the proceeding;
- (e) a support person for the child under section 21AV;
- (f) a person who applies to the court to be present and whose presence, in the court's opinion—
 - (i) would serve a proper interest of the person; and
 - (ii) would not be prejudicial to the child's interests.

‘21AV Affected child entitled to support

‘(1) An affected child, while he or she is giving evidence in a relevant proceeding, is entitled to have near to him or her a person who may provide the child with support (a“**support person**”).

‘(2) A person may be the child's support person only if the person is approved by the court on application by the party proposing to call the child.

‘(3) The support person must be permitted to be in close proximity to the child, and within the child's sight, while the child is giving evidence.

‘(4) An affected child may, with the agreement of the court, waive the entitlement to a support person under subsection (1).

‘(5) The court must not agree to the waiver if the court considers the waiver is not in the child's best interests.

‘21AW Instructions to be given to jury

‘(1) This section applies to a proceeding on indictment if any of the following measures is taken—

- (a) an affected child's evidence is taken in a way provided for under subdivision 3 or 4;⁵⁰

50 Subdivision 3 (Pre-recording of affected child's evidence) or 4 (Taking of affected child's evidence using audio visual link or screen)

- (b) a person is excluded under section 21AU while an affected child gives evidence;
- (c) an affected child has a support person under section 21AV while the child gives evidence.

‘(2) The judicial officer presiding at the proceeding must instruct the jury that—

- (a) the measure is a routine practice of the court and that they should not draw any inference as to the defendant’s guilt from it; and
- (b) the probative value of the evidence is not increased or decreased because of the measure; and
- (c) the evidence is not to be given any greater or lesser weight because of the measure.

‘21AX Orders, directions and rulings concerning affected child witnesses

‘(1) The court may make any orders or give any directions or rulings it considers appropriate for this division on the court’s own initiative or on an application made to the court by a party to the proceeding.

‘(2) Subsection (1) does not limit the Criminal Code, section 590AA or the *Justices Act 1886*, section 83A.⁵¹

‘Division 4B—Dealing with a recording

‘21AY Definitions for div 4B

‘In this division—

“**presiding judicial officer**”, in relation to a recording, means the judicial officer presiding at—

- (a) the proceeding in which the recording is made; or
- (b) the proceeding in which the recording is presented or to be presented; or

⁵¹ Criminal Code, section 590AA (Pre-trial directions and rulings) or the *Justices Act 1886*, section 83A (Direction hearing)

(c) a hearing for giving a direction or ruling under the Criminal Code, section 590AA;⁵² or

(d) a direction hearing under the *Justices Act 1886*, section 83A.⁵³

“recording” means—

(a) a video-taped recording of a special witness’s evidence made under section 21A;⁵⁴ or

(b) a video-taped recording of an affected child’s evidence made under division 4A, subdivision 3 or subdivision 4;⁵⁵ or

(c) a copy of a video-taped recording mentioned in paragraph (a) or (b).

‘21AZ Approval to edit or otherwise change a recording

‘(1) An original recording must not be edited or otherwise changed in any way.

‘(2) The presiding judicial officer may, on application, give approval for a copy of an original recording to be edited or changed in a stated way.

Example—

The presiding judicial officer may give approval for a copy of an original recording to be edited to omit certain inadmissible material.

‘21AZA Court to give directions about the use or safe-keeping of a recording

‘(1) The presiding judicial officer may make any order the judicial officer considers appropriate about the use or safe-keeping of a recording.

‘(2) Without limiting subsection (1), the presiding judicial officer may give directions, with or without conditions, as to—

52 Criminal Code, section 590AA (Pre-trial directions and rulings)

53 *Justices Act 1886*, section 83A (Direction hearing)

54 Section 21A (Evidence of special witnesses)

55 Division 4A (Evidence of affected children), subdivision 3 (Pre-recording of affected child’s evidence) or subdivision 4 (Taking of affected child’s evidence using audio visual link or screen)

- (a) the persons, or classes of persons, who are authorised to have possession of a recording; and
- (b) the giving up of possession of a recording.

‘(3) The presiding judicial officer must have regard to the following matters when deciding the persons, or classes of persons, who are authorised to have possession of a recording—

- (a) the need for counsel involved in the proceeding to have access to the recording;
- (b) the need to ensure that persons authorised to have possession of the recording are able to take appropriate measures to ensure there is no unauthorised access to the recording.

‘(4) In this section—

“use”, of a recording, includes copying of the recording.

‘21AZB Unauthorised possession of, or dealing with, recording

‘(1) A person commits an offence who, without authority—

- (a) has a recording in his or her possession; or
- (b) supplies, or offers to supply, a recording to any person; or
- (c) plays, copies or erases a recording or permits a person to play, copy or erase a recording.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

‘(2) A person has authority for subsection (1) only if the person has the possession or does the thing mentioned in subsection (1)—

- (a) in the case of a public official—for a purpose connected with the proceeding for which the recording was made or any rehearing or re-trial of, or appeal from, the proceeding, or civil proceeding in which the recording may be presented in evidence; or
- (b) in any case—as authorised by a judicial officer under section 21AZA.

‘21AZC Publishing a recording prohibited

‘(1) A person must not publish all or part of a recording other than with the approval of the relevant court and in accordance with any condition attached to the court’s approval.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

‘(2) An approval under subsection (1) may be given only in exceptional circumstances.

‘(3) In subsection (1)—

“**publish**” means disseminate to the public by radio or television or otherwise by the transmission of light or sound.

“**relevant court**” means the court presiding at the proceeding or preliminary hearing at which the recording is made or the court of trial or appeal at which the recording is presented.’.

61 Amendment of s 39C (Definitions for pt 3A)

Section 39C, definition “audio visual link”—

omit.

62 Amendment of s 83 (Definitions for div 6)

Section 83, definition “court”, paragraph (c), ‘stipendiary’—

omit.

63 Amendment of s 93A (Statement made before proceeding by child under 12 years or intellectually impaired person)

(1) Section 93A, heading, ‘**under 12 years**’—

omit.

(2) Section 93A(1), ‘(within the meaning of section 3)’—

omit.

(3) Section 93A(1)(a), ‘under the age of 12 years’—

omit.

(4) Section 93A(1)(b)—

omit.

(5) Section 93A(1)(c)—

renumber as section 93A(1)(b).

(6) Section 93A—

insert—

‘(3A) For a committal proceeding for a relevant offence, subsections (1)(b) and (3) do not apply to the person who made the statement if the person is an affected child.

Note—

For the taking of an affected child’s evidence for a committal proceeding for a relevant offence, see part 2, division 4A, subdivision 2.’.

(7) Section 93A—

insert—

‘(5) In this section—

“affected child” see section 21AC.

“child” means—

- (a) a child who is under 16 years; or
- (b) a child who is 16 or 17 years and who is a special witness.

“relevant offence” see section 21AC.’.

64 Insertion of new ss 93AA

After section 93A—

insert—

‘93AA Unauthorised possession of, or dealing in, s 93A criminal statements

‘(1) A person commits an offence who, without authority—

- (a) has a section 93A criminal statement in the person’s possession;
- or

- (b) supplies, or offers to supply, a section 93A criminal statement to any person; or
- (c) copies, or permits a person to copy, a section 93A criminal statement.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

‘(2) A person has authority for subsection (1) only if the person has the possession or does the thing mentioned in subsection (1) for a legitimate purpose connected with the proceeding for which the section 93A statement was made or another proceeding.

‘(3) In this section—

“section 93A criminal statement” means a statement—

- (a) made to a person investigating an alleged offence; and
- (b) given in, or in anticipation of, a criminal proceeding about the alleged offence; and
- (c) that is potentially admissible under section 93A.’.

65 Amendment of s 131 (Witnesses for defence to be sworn)

Section 131—

insert—

‘(2) Subsection (1) is subject to part 2, division 1A⁵⁶’.

66 Insertion of new pt 9, div 1 hdg

Part 9, before section 136—

insert—

‘Division 1—Evidence Amendment Act 2000’.

56 Part 2 (Witnesses), division 1A (Competency of witnesses and capacity to be sworn)

67 Insertion of new pt 9, div 2

After part 9, division 1—

insert—

‘Division 2—Evidence (Protection of Children) Amendment Act 2003

‘137 Definitions for div 2

‘In this division—

“amending Act” means the *Evidence (Protection of Children) Amendment Act 2003*.

“commencement day” means—

- (a) for section 138—the day the amending Act, section 56 commences; or
- (b) for section 139—the day the amending Act, section 57 commences; or
- (c) for sections 140, 141 and 142—the day the amending Act, section 60 commences.

“originating step”, for a proceeding, means—

- (a) the arrest of the defendant in the proceeding; or
- (b) the making of a complaint under the *Justices Act 1886*, section 42⁵⁷ in relation to the defendant in the proceeding; or
- (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 214.⁵⁸

‘138 Communications between a husband and wife

‘Section 8(3) applies to communications whether made before or after the commencement day.

⁵⁷ *Justices Act 1886*, section 42 (Commencement of proceedings)

⁵⁸ *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

‘139 Evidence admitted under repealed s 9

‘(1) Section 9D applies to evidence admitted before the commencement day under repealed section 9 as if the evidence had been admitted under section 9A.

‘(2) In this section—

“repealed section 9” means section 9 as in force before the commencement day.

‘140 Committal proceeding

‘Part 2, division 4A, subdivision 2⁵⁹ applies to a committal proceeding only if an originating step for the proceeding is taken on or after the commencement day.

‘141 Pre-recording of evidence for a summary trial

‘Part 2, division 4A, subdivision 3⁶⁰ applies to a summary trial for a relevant offence only if an originating step for the proceeding is taken on or after the commencement day.

‘142 Pre-recording of evidence for a trial on indictment

‘Part 2, division 4A, subdivision 3 applies to a trial on indictment for a relevant offence only if the indictment is presented on or after the commencement day.’.

68 Insertion of new sch 3

After schedule 2—

insert—

59 Part 2 (Witnesses), division 4A (Evidence of affected children), subdivision 2 (Committal proceeding)

60 Part 2 (Witnesses), division 4A (Evidence of affected children), subdivision 3 (Pre-recording of affected child’s evidence)

‘SCHEDULE 3**‘DICTIONARY**

section 3’.

PART 11—AMENDMENT OF JUSTICES ACT 1886**69 Act amended in pt 11**

This part amends the *Justices Act 1886*.

70 Amendment of s 4 (Definitions)

Section 4—

insert—

“appealed order”, for part 9, division 1, see section 221.

“general manager”, for part 9, division 1, see section 221.

“notice of appeal”, for part 9, division 1, see section 221.

“prison”, for part 9, division 1, see section 221.

“relevant clerk of the court”, for part 9, division 1, see section 221.

“relevant Magistrates Court”, for part 9, division 1, see section 221.

“relevant registrar”, for part 9, division 1, see section 221.

“respondent”, for part 9, division 1, see section 221.’.

71 Insertion of new pt 4, division 1A

Part 4, before division 1—

insert—

‘Division 1A—Prosecution disclosure

‘41 Prosecution disclosure

‘The laws relating to prosecution disclosure are set out in the Criminal Code, chapter 62, chapter division 3⁶¹’.

72 Amendment of s 83A (Direction hearing)

(1) Before section 83A(5)(a)—

insert—

‘(aa) disclosing a thing under the Criminal Code, chapter 62, chapter division 3,⁶²’.

(2) Section 83A(5)(g)—

omit, insert—

‘(g) if the proceeding is a committal proceeding—

- (i) the arrangements necessary for the giving of evidence by an affected child witness under the *Evidence Act 1977*, part 2, division 4A;⁶³ or
- (ii) cross-examining a protected witness under the *Evidence Act 1977*, part 2, division 6.⁶⁴’.

73 Amendment of s 110A (Use of tendered statements in lieu of oral testimony in committal proceedings)

(1) Section 110A(13A), ‘this subsection’—

omit, insert—

‘subsection (13)’.

61 Criminal Code, chapter 62 (Trial—Adjournment—Pleas—Practice), chapter division 3 (Disclosure by the prosecution)

62 Criminal Code, chapter 62 (Trial—Adjournment—Pleas—Practice), chapter division 3 (Disclosure by the prosecution)

63 *Evidence Act 1977*, part 2 (Witnesses), division 4A (Evidence of affected children)

64 *Evidence Act 1977*, part 2 (Witnesses), division 6 (Cross-examination of protected witnesses)

(2) Section 110A—

insert—

‘(16) For a law about taking certain children’s evidence for committal proceedings for certain offences, see the *Evidence Act 1977*, part 2, division 4A, subdivision 2.⁶⁵’.

74 Amendment of s 154 (Copies of record)

(1) Section 154(3)—

renumber as section 154(4).

(2) Section 154—

insert—

‘(3) A person is not entitled under this section to a copy of—

- (a) sensitive evidence as defined under the Criminal Code, section 590AF;⁶⁶ or
- (b) a section 93A criminal statement as defined under the *Evidence Act 1977*, section 93AA;⁶⁷ or
- (c) a recording as defined under the *Evidence Act 1977*, section 21AY.’.

75 Replacement of s 222 (Appeal to a single judge)

(1) Section 222—

omit, insert—

‘221 Definitions for div 1

‘In this part—

“**appealed order**” means the order against which an appeal is made under section 222.

⁶⁵ *Evidence Act 1977*, part 2 (Witnesses), division 4A (Evidence of affected children), subdivision 2 (Committal proceedings)

⁶⁶ Criminal Code, section 590AF (Meaning of “sensitive evidence”)

⁶⁷ *Evidence Act 1977*, section 93AA (Unauthorised possession of, or dealing in, s 93A criminal statements)

“general manager” of a prison, for a place where a person is held in lawful custody other than a prison under the *Corrective Services Act 2000*, means the person in charge of the place.

“notice of appeal” means a notice of appeal under section 222(3), (4) or (5).

“prison” includes any place in which a person is held in lawful custody.

“relevant clerk of the court” means the clerk of the court of the relevant Magistrates Court.

“relevant Magistrates Court” means the Magistrates Court at the place where the appealed order was made.

“relevant registrar” means the registrar of the District Court at the place where the appeal under section 222 will be heard.

“respondent” means the person concerned in upholding the appealed order.

‘222 Appeal to a single judge

‘(1) If a person feels aggrieved as complainant, defendant or otherwise by an order made by justices or a justice in a summary way on a complaint for an offence or breach of duty, the person may appeal within 1 month after the date of the order to a District Court judge.

Notes—

1. Under the Criminal Code, section 669A(6), an appeal against a decision by a person under this section to a District Court judge is removed directly to the Court of Appeal if the Attorney-General also appeals against the decision under section 669A.
2. This division applies in relation to an order made by justices dealing summarily with a child charged with an offence, but appeals must be made to a Childrens Court judge—see the *Juvenile Justice Act 1992*, section 117.⁶⁸.

‘(2) However, the following exceptions apply—

- (a) a person may not appeal under this section against a conviction or order made in a summary way under the Criminal Code, section 651;

⁶⁸ This is the *Juvenile Justice Act 1992*, section 87C, as inserted by the *Juvenile Justice Amendment Act 2002*, section 30 and renumbered by section 262 of that Act.

- (b) if the order the subject of the proposed appeal is an order of justices dealing summarily with an indictable offence, a complainant aggrieved by the decision may appeal under this section only against sentence or an order for costs;
- (c) if a defendant pleads guilty or admits the truth of a complaint, a person may only appeal under this section on the sole ground that a fine, penalty, forfeiture or punishment was excessive or inadequate.

‘(3) To start the appeal, the appellant must file a notice of appeal in a District Court registry in the district in which the appeal must be heard and decided under subsection (9) or the *District Court of Queensland Act 1967*.⁶⁹

‘(4) For this section, an appellant is taken to have filed the notice of appeal in the District Court registry—

- (a) if the District Court registry is more than 50 km from the place where the order was made; and
- (b) the appellant gives the notice of appeal to the relevant clerk of the court.

‘(5) Also, for this section, an appellant is taken to have filed the notice of appeal in the District Court registry if the appellant is in custody in prison and gives the notice of appeal to the prison’s general manager.

‘(6) A clerk of the court or general manager of a prison who receives a notice of appeal under subsection (4)(b) or (5) must immediately give the appellant a receipt of the notice of appeal in the approved form stating the date of receipt.

‘(7) If—

- (a) an issue arises in a proceeding about whether the appellant gave a notice of appeal under subsection (4)(b) or (5); and
- (b) the receipt under subsection (6) is not produced in evidence;

the onus of proof is on the appellant to prove the giving of the notice of appeal under subsection (4)(b) or (5).

‘(8) The notice of appeal must be in the approved form and state—

- (a) the appeal grounds; and

⁶⁹ See *District Court of Queensland Act 1967*, section 116 (Venue of appeals).

- (b) the details required under section 222C; and
- (c) the name and address of the respondent.

‘(9) Subject to the *District Court of Queensland Act 1967* sections 116(2) and 117, if the appellant is in custody, the appeal must be heard in the District Court district where the appellant is in custody.

‘222A Stay of particular matters

‘(1) This section applies to the following—

- (a) an order made under an Act for the payment of restitution or compensation that may be appealed against under section 222;
- (b) the operation of the *Sale of Goods Act 1896*, section 26(1) in relation to a conviction that may be appealed against under section 222.

‘(2) Unless otherwise expressly provided, the order or operation is stayed—

- (a) until the end of 1 month after the making of the order or conviction; and
- (b) if an appeal against the order or conviction is started under section 222—until the end of the appeal.

Note—

For what happens on the filing of an appeal against a conviction in relation to a resulting disqualification from holding or obtaining a Queensland driver licence, see the *Transport Operations (Road Use Management) Act 1995*, section 131(3A).

‘222B Appeal documents must be sent to the relevant registrar

‘(1) If a notice of appeal is given to a clerk of the court under section 222(4), the clerk of the court, within 7 days afterwards, must send to the relevant registrar—

- (a) the notice of appeal; and
- (b) the file of the Magistrates Court relating to the order.

‘(2) If a notice of appeal is given to the general manager of a prison under section 222(5), the general manager, within 7 days afterwards, must send the notice of appeal to the relevant registrar.

‘(3) If a notice of appeal is filed in a District Court registry other than under section 222(4), the relevant registrar, within 7 days after receiving the notice of appeal, must send a request to the relevant clerk of the court asking for any court file relevant to the appealed order or the appeal to be sent to the registrar.

‘(4) The clerk of the court must comply with the request within 7 days.

‘222C Contact details and address for service

‘(1) An appellant must ensure—

- (a) if the appellant intends to act personally, the following details are on the notice of appeal before it is filed or taken to be filed under section 222(3), (4) or (5)—
 - (i) the residential or business address of the appellant;
 - (ii) if the appellant has a telephone number—the telephone number;
 - (iii) if the appellant does not have a telephone number—a way of contacting the appellant by telephone;
 - (iv) the fax number (if any) of the appellant; or
- (b) if a solicitor is appointed to act for the appellant, the following details are on the notice of appeal before it is filed or taken to be filed given under section 222(3), (4) or (5)—
 - (i) the residential or business address of the appellant;
 - (ii) the name of the solicitor and, if the solicitor practises in a firm of solicitors, the name of the firm;
 - (iii) the address of the solicitor’s place of business;
 - (iv) the solicitor’s telephone number;
 - (v) the solicitor’s fax number.

‘(2) To change the address for service or any other contact details, the appellant must file in the District Court registry a notice of address for service stating the new address for service.

‘(3) The “**address for service**” of an appellant is—

- (a) for a party acting personally—the address specified under subsection (1)(a)(i); and

- (b) for a party for whom a solicitor acts—the address specified under subsection (1)(b)(iii).

‘222D Duty of relevant registrar to give notice of appeal and appeal hearing

‘(1) The relevant registrar must give notice of the appeal to the respondent—

- (a) if the notice of appeal was given under section 222(4) or (5)—within 7 days of the notice being received by the registrar under section 222B; or
- (b) otherwise—within 7 days of the filing of the notice of appeal in the District Court registry.

‘(2) Notice under subsection (1) must include a copy of the notice of appeal.

‘(3) Also, at least 10 days before the District Court hears an appeal, the relevant registrar must give notice of the hearing to the appellant and respondent.

‘(4) If a respondent is a police officer, notice under subsection (1) or (3) may be sufficiently given to that respondent by giving notice to the commissioner of the police service.

‘(5) If a respondent is an officer of a public sector unit, notice under subsection (1) or (3) may be sufficiently given to that respondent by giving notice to the chief executive officer of the unit.

‘(6) Subsections (1) and (3) do not stop the relevant registrar from giving any notice about the appeal at any time to anyone.

‘222E Duty of relevant registrar to give notice when particular issues arise

‘(1) This section applies for an appealed order or operation of a provision stayed under section 222A, (the “**order**” and “**operation**”).

‘(2) At least 10 days before a District Court judge hears the appeal, the relevant registrar must give notice of the hearing of the appeal to each interested person.

‘(3) In this section—

“interested person” means the person in whose favour the order was made or who benefited from the operation.’.

76 Replacement of s 224 (Power to adjourn appeal)

Section 224—

omit, insert—

‘224 Powers of judge incidental to appeal

‘(1) For an appeal, a District Court judge may, on the application of a party or the judge’s own initiative—

- (a) extend the time for filing a notice of appeal; or
- (b) make orders and give directions about service of any notice and about any procedure; or
- (c) amend the notice of appeal or the statement of grounds of the appeal; or
- (d) adjourn the appeal for the time decided by the judge.

‘(2) For anything under subsection (1), the judge may impose conditions the judge considers appropriate, including, for example, ordering 1 or both of the following—

- (a) subject to section 232(4),⁷⁰ payment of costs;
- (b) for anything other than an adjournment—an adjournment.

‘(3) If a District Court judge is exercising a power under this section on the judge’s own initiative, then, if the parties are not before the court, the judge must direct the parties to attend the court.

‘(4) If a party is applying to a District Court judge to exercise a power under this section against another party, then, unless the other party is before the court, the party must serve a copy of the application on the other party.

‘(5) Subsection (1) has no effect on the responsibility or power of the Chief Judge under the *District Court of Queensland Act 1967*, section 28A.’.

⁷⁰ *Justices Act 1886*, section 232 (Costs of appeal)

77 Replacement of s 225 (Powers of judge on hearing appeal)

Section 225—

omit, insert—

‘225 Powers of judge on hearing appeal

‘(1) On the hearing of an appeal, the judge may confirm, set aside or vary the appealed order or make any other order in the matter the judge considers just.

‘(2) If the judge sets aside an order, the judge may send the proceeding back to whoever made the order or to any Magistrates Court with directions of any kind for the further conduct of the proceedings including, for example, directions for rehearing or reconsideration.

‘(3) For subsection (1), the judge may exercise any power that could have been exercised by whoever made the order appealed against.

‘(4) An order made under subsection (1) has effect, and may be enforced in the same way, as if it had been made by whoever made the appealed order.’.

78 Amendment of s 228 (Appeal not to be defeated for defect in notice etc. if amendable)

(1) Section 228, heading **‘if amendable’**—

omit.

(2) Section 228(2)—

omit.

79 Insertion of new s 228A

After section 228—

insert—

‘228A Discontinuance of appeal

‘(1) An appellant may discontinue an appeal before it is heard by filing a notice in the approved form with the relevant registrar.

‘(2) If, under the appealed order, the appellant is liable to serve a term of imprisonment and was released from custody pending the appeal, the

registrar must issue a warrant to arrest the appellant and commit the appellant to prison to serve the term of imprisonment.

‘(3) In this section—

“**term of imprisonment**” includes the unexpired portion of a term of imprisonment.’.

80 Replacement of s 229 (Failure to prosecute appeal)

Section 229—

omit, insert—

‘229 Appeal may be struck out

‘(1) If the appellant delays in prosecuting the appeal or fails to take a necessary step to present the appeal, a District Court judge may strike out the appeal on application in the approved form by a party to the appeal.

‘(2) For subsection (1), the applicant must send a copy of the application and notice of the hearing of the application to the appellant’s address for service at least 10 days before the date of the hearing of the application.

‘(3) Also, if the appellant fails to appear on a day the appeal is to be heard, the judge may strike out the appeal on proof that notice of the hearing, informing the appellant the appeal may be struck out if the appellant fails to appear, was sent to the appellant’s address for service at least 10 days before the date of the hearing.’.

81 Amendment of s 231 (Enforcement of decision)

(1) Section 231(2)—

omit.

(2) Section 231(3), ‘Notwithstanding subsections (1) and (2)’—

omit, insert—

‘Despite subsection (1)’.

(3) Section 231(4), ‘subsection (3)’—

omit, insert—

‘subsection (2)’.

(4) Section 231(3) and (4)—
renumber as section 231(2) and (3).

82 Omission of s 241 (Absconding appellant may be arrested)

Section 241—
omit.

83 Insertion of new pt 11, div 1 hdg

In part 11, before section 268—
insert—

‘Division 1—References’.

84 Insertion of new pt 11, div 2

Part 11—
insert—

‘Division 2—Evidence (Protection of Children) Amendment Act 2003

‘273 Previous recognisance to appear on appeal hearing

‘(1) This section applies to a person who, before the commencement of the *Evidence (Protection of Children) Amendment Act 2002*, section 75 (the “**commencement**”) started an appeal under section 222.

‘(2) If, at the commencement, the appeal has not ended, then, from the commencement—

- (a) the appeal continues to be valid; and
- (b) each step taken for the appeal under this Act before the commencement continues to be effectual for the purpose for which it was taken; and
- (c) subject to paragraph (b), the provisions of this Act as they exist after the commencement apply to the appeal, including for any step that must or may be taken after the commencement.

‘(3) If, immediately before the commencement, a recognisance entered by the person under section 222 is in effect, from the commencement—

- (a) the recognisance continues to have effect; and
- (b) despite the repeal of sections 231(2) and 241, those sections continue to apply, as if they had not been repealed, to the person until the recognisance is discharged.’.