



Queensland

Justice and Other Legislation Amendment Act 2005

Act No. 70 of 2005



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Justice and Other Legislation Amendment Act 2005

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Queensland

Justice and Other Legislation Amendment Act 2005

Act No. 70 of 2005

**An Act to amend legislation administered by the Attorney-
General, and for other purposes**

[Assented to 8 December 2005]

The Parliament of Queensland enacts—**Part 1 Preliminary****1 Short title**

This Act may be cited as the *Justice and Other Legislation Amendment Act 2005*.

2 Commencement

Part 5 and sections 162 and 163 commence on a day to be fixed by proclamation.

Part 2 Acts Interpretation Act 1954**3 Act amended in this part**

This part amends the *Acts Interpretation Act 1954*.

4 Amendment of s 2 (Act applies to all Acts)

(1) Section 2(2)—

omit.

(2) Section 2—

insert—

‘Note—

For the application of this Act to statutory instruments, see the Statutory Instruments Act 1992, part 4, divisions 1 and 2.’

5 Amendment of s 6 (References to Act)

Section 6—

insert—

- ‘(2) In an Act, a reference to ‘an Act’ includes the Act in which the reference is.’

6 Amendment of s 14 (Material that is, and is not, part of an Act)

- (1) Section 14(4) to (6)—

renumber as section 14(5) to (7).

- (2) Section 14—

insert—

- ‘(4) A note in an Act to the Act or to a provision of the Act, as opposed to a footnote, an editor’s note or an endnote mentioned in subsection (7), is part of the Act.

Example of a note—

See the note to section 2.

Example of a footnote—

See the footnote to section 36, definition *Acting Governor*.’

- (3) Section 14(7), as renumbered, after ‘footnote’—

insert—

‘or editor’s note’.

7 Amendment of s 14F (References to particular Acts)

Section 14F(1)—

insert—

‘Examples of citations—

- 1 *Statutory Instruments Act 1992*
- 2 *Statutory Instruments Act 1992, No. 22*
- 3 *Act No. 22 of 1992*
- 4 *1992 Act No. 22’.*

8 Amendment of s 22A (Insertion of provisions by amending Act)

(1) Section 22A(7)—

renumber as section 22A(8).

(2) Section 22A—

insert—

‘(7) If an Act amends a provision of a law by inserting an example, note or penalty, and does not specify the position in the provision where it is to be inserted, the example, note or penalty is to be inserted at the end of the provision.’.

9 Amendment of s 22C (Automatic repeal of amending Act)

(1) Section 22C(4)—

insert—

‘*assent day* means the date of assent of—

(a) if the provision provides for the extension of the period before commencement, under section 15DA(2), of an Act—the Act; or

(b) if the provision provides for the extension of the period before commencement, under section 15DA(2), of a provision of an Act—the Act that enacts the provision.’.

(2) Section 22C(4), definition *amending Act*, paragraph (f)—

renumber as paragraph (g).

(3) Section 22C(4), definition *amending Act*—

insert—

‘(f) a provision providing for the extension of the period before commencement, under section 15DA(2), of an Act or a provision of an Act that has not commenced within 1 year of the assent day;’.

10 Amendment of s 24B (Acting appointments)

Section 24B(8)(b), after ‘to the appointee’—

insert—

‘, and to other persons in relationship to the appointee.’

11 Amendment of s 24C (Acting person nominated by Act etc.)

Section 24C(2)(b), after ‘to the nominated person’—

insert—

‘, and to other persons in relationship to the nominated person.’

12 Amendment of s 27A (Delegation of powers)

(1) Section 27A, heading, ‘powers’—

omit, insert—

‘functions or powers’.

(2) Section 27A(1A)—

relocate and renumber as section 27A(15A).

(3) Section 27A(1) and (4) and (6) to (12), ‘power’—

omit, insert—

‘function or power’.

(4) Section 27A(3C), after ‘to the delegate’—

insert—

‘, and to other persons in relationship to the delegate, in the performance of the delegated function or’.

(5) Section 27A—

insert—

‘(3D) Anything done by or in relation to the delegate in relation to the delegation is taken to have been done by or in relation to the delegator.’

(6) Section 27A(5), from ‘may,’—

omit, insert—

‘may, in the performance of a delegated function or in the exercise of a delegated power, do anything that is incidental to the delegated function or power.’.

- (7) Section 27A(6), (7), (8), (9)(b), (10) and (10A), before ‘exercised’—

insert—

‘performed or’.

13 Amendment of s 35C (Headings part of provision etc.)

- (1) Section 35C(2), ‘the Act’—

omit, insert—

‘an Act’.

- (2) Section 35C(3) to (6)—

renumber as section 35C(4) to (7).

- (2) Section 35C—

insert—

- ‘(3) A note to a provision of an Act at the end of the provision is part of the provision unless the note relates to a different provision.’.

14 Insertion of new s 35CA

After section 35C—

insert—

‘35CA References to items at the end of a provision

‘In an Act, a penalty, example or note (*end item*) is taken to be at the end of a provision even if there is another end item also at the end of the provision.’.

15 Amendment of s 36 (Meaning of commonly used words and expressions)

Section 36—

insert—

- (b) identification of persons who may be affected by a decision to grant the application;
 - (c) whether the public should be consulted;
 - (d) how consultation with identified persons or the public should be conducted.
- ‘(4) The commissioner must give a copy of a written submission the commissioner makes on an application to the applicant.
- ‘(5) The tribunal may request that the commissioner—
- (a) inquire into an application; and
 - (b) report to the tribunal the results of the inquiry and a recommendation about the application.’.

19 Amendment of s 143 (Respondent is to be notified of accepted complaint)

- (1) Section 143(2)(d)(ii) and (e), after ‘complainant’—
insert—
‘and any other respondent’.
- (2) Section 143—
insert—
- ‘(2A) The respondent must advise the commissioner in writing of the respondent’s address for service.
- ‘(2B) If the respondent is giving a written response, the respondent must also—
- (a) give the written response to the commissioner and give a copy of the written response to the complainant and any other respondent; and
 - (b) advise the commissioner whether the written response, or a copy of the written response, has been given to the complainant and any other respondent.’.

20 Amendment of s 165 (Complaints which are not resolved by conciliation)

Section 165—

insert—

- ‘(3) If the commissioner gives notice under subsection (1), sections 164A and 167 stop applying in relation to the complaint.’.

21 Amendment of s 166 (Complainant may obtain referral of unconciliated complaint)

- (1) Section 166(2)(a), after ‘commissioner’—

insert—

‘, in writing,’.

- (2) Section 166—

insert—

- ‘(3) If the complainant asks for the extension, the day the complainant asks for the extension, the day the complainant is given written notice of the commissioner’s decision about the extension and any period between those days, is not included in the period mentioned in subsection (1) within which the complaint may be referred to the tribunal.
- ‘(4) However, if the complainant asks for the extension on the last day of the period mentioned in subsection (1) and the extension is subsequently refused, the complainant may require the commissioner to refer the complaint to the tribunal by making a written request on the day the complainant receives written notice of the refusal or on the next day that is a business day.’.

22 Amendment of s 176 (Constitution of tribunal)

Section 176, after ‘member’—

insert—

‘of the tribunal’.

23 Amendment of s 213C (Acceptance of offer to settle)

Section 213C(4)(a), after ‘by a member’—

insert—

‘of the tribunal’.

24 Amendment of s 214 (Authentication of documents)

Section 214, after ‘member’—

insert—

‘of the tribunal’.

25 Amendment of s 215 (Judicial notice of certain signatures)

Section 215, after ‘member’—

insert—

‘of the tribunal’.

26 Insertion of new s 246A

Chapter 9, part 2, before section 247—

insert—

‘246A Definition for pt 2

‘In this part—

member means a member of the tribunal.’.

27 Amendment of schedule (Dictionary)

(1) Schedule, definitions *complainant* and *member*—

omit.

(2) Schedule—

insert—

‘*complainant* means—

(a) in relation to a representative complaint—a person named in the complaint or otherwise identified in the complaint as a person on whose behalf the complaint is being made; or

- (b) in relation to a complaint by a relevant entity under section 134—the relevant entity; or
- (c) otherwise—the person who is the subject of the alleged contravention of the Act.

member, for chapter 9, part 2, see section 246A.’.

Part 4 Appeal Costs Fund Act 1973

28 Act amended in this part

This part amends the *Appeal Costs Fund Act 1973*.

29 Amendment of s 16 (Effect of indemnity certificate under s 15)

Section 16(3)—

omit, insert—

- ‘(3) Despite subsections (1) and (2), the amount payable from the fund to any 1 respondent under any 1 indemnity certificate must not be more than the amount prescribed under a regulation.’.

Part 5 Amendment of Bail Act 1980

30 Act amended in this part

This part amends the *Bail Act 1980*.

31 Amendment of s 6 (Definitions)

Section 6, definition *community justice group*, paragraph (a), ‘*Community Services (Aborigines) Act 1984*,’ and footnote—

omit, insert—

‘Aboriginal Communities (Justice and Land Matters) Act 1984.’.

32 Amendment of s 11 (Conditions of release on bail)

Section 11—

insert—

- ‘(4) Without limiting a court’s power to impose a condition on bail under another provision of this section, a Magistrates Court may impose on the bail a condition that the defendant participate in a program prescribed under a regulation, after having regard to—
- (a) the nature of the offence; and
 - (b) the circumstances of the defendant, including any benefit the defendant may derive by participating in the program; and
 - (c) the public interest.

Note—

A breach of a condition of an undertaking imposed under subsection (4) is not an offence under section 29. Section 30 sets out procedures for varying the defendant’s bail if the condition is broken.’.

33 Amendment of s 20 (Undertaking as to bail)

- (1) Section 20(3)(b)(i), ‘section 11(2) or (3)’ and footnote—

omit, insert—

‘section 11(2), (3) or (4)¹’.

- (2) Section 20(3A)(b)(i), ‘section 11(2) or (3)’—

omit, insert—

‘section 11(2), (3) or (4)’.

1 Section 11 (Conditions of release on bail)

34 Amendment of s 28A (Other warrants for apprehension of defendant)

Section 28A(3)(c)—

insert—

‘Note—

A defendant may be granted bail before being brought before the court under paragraph (c) if the defendant shows cause under section 16(3) why the defendant’s detention in custody is not justified.’.

35 Amendment of s 29 (Offence to breach conditions of bail)

Section 29(2)—

insert—

‘(c) a condition that the defendant participate in a program prescribed under a regulation under section 11(4).’.

36 Amendment of s 29A (Procedure in respect of defendants apprehended under s 21(7) or the Police Powers and Responsibilities Act 2000)

Section 29A—

insert—

‘(3) This section does not apply if under subsection (1)(b) the only condition the defendant has broken, or is likely to break, is a condition of the defendant’s undertaking imposed under section 11(4).’.

37 Amendment of s 30 (Apprehension on variation or revocation of bail)

Section 30—

insert—

‘(6) If the only ground for making an application under subsection (1) is that the defendant has broken, or is likely to break, a condition of the defendant’s undertaking imposed under

- ‘(2A) The death of a person may be registered under this Act if a Queensland court or a coroner finds, or has found—
- (a) that the death happened but is, or was, unable to find where the person died; and
 - (b) the name of the person; and
 - (c) the date or approximate date of the person’s death.’.
- (2) Section 27(6)—
insert—
‘**coroner** means a coroner under the *Coroners Act 1958* or the *Coroners Act 2003*.’.

41 Amendment of s 48A (Registrar to give notice of registration of child death to commissioner)

Section 48A(3)(b)—

insert—

‘(v) the cause of death.’.

Part 7 Amendment of Civil Liability Act 2003

42 Act amended in this part

This part amends the *Civil Liability Act 2003*.

43 Amendment of ch 5 hdg (Transitional provisions)

Chapter 5, heading, after ‘Transitional’—

insert—

‘**and other**’.

44 Insertion of new ch 5, pt 4

Chapter 5—

47 Amendment of s 19 (Order for autopsy)

- (1) Section 19(2) to (8)—
renumber as section 19(3) to (9).
- (2) Section 19(1)—
omit, insert—
- ‘(1) This section does not apply if a coroner—
- (a) has stopped investigating a death under section 12(2)(a), (b), (d) or (e);⁴ or
 - (b) is investigating a suspected death under section 11(6).⁵
- ‘(2) As part of the investigation of a death or to find out whether a body is that of a stillborn child, a coroner—
- (a) if burial of the body has not happened—must order a doctor to perform an autopsy; or
 - (b) otherwise—may order a doctor to perform an autopsy.’.

(3) Section 19(6), as renumbered, ‘subsection (4)(b)’—
omit, insert—
‘subsection (5)(b)’.

(4) Section 19(9)(c), as renumbered—
omit, insert—

 - ‘(c) the death has previously been investigated under this Act; or
 - (d) the death was reported to the coroner on or after 1 December 2003 but before the commencement of the *Justice and Other Legislation Amendment Act 2005*, section 47.’.

48 Amendment of s 26 (Control of body)

- Section 26(1), ‘The coroner starts having control of a’—
omit, insert—

4 Section 12 (Deaths not to be investigated or further investigated)

5 Section 11 (Deaths to be investigated)

‘Unless a person’s death is reported to the coroner after burial, the coroner starts having control of the’.

49 Amendment of s 83 (Appointed coroners)

Section 83—

insert—

- ‘(5) An appointed coroner may be appointed to investigate a particular death or for a particular period, or otherwise.’.

Part 9 Amendment of Corrective Services Act 2000

50 Act amended in this part

This part amends the *Corrective Services Act 2000*.

51 Amendment of s 95 (Obstructing corrective services officer)

- (1) Section 95, heading, ‘**Obstructing**’—

omit, insert—

‘**Assaulting or obstructing**’.

- (2) Section 95(1), after ‘not’—

insert—

‘assault or’.

- (3) Section 95(3)—

insert—

‘*assault* has the meaning given by the Criminal Code, section 245.’.

Part 10 Amendment of Criminal Code

52 Code amended in this part

This part amends the Criminal Code.

53 Amendment of s 1 (Definitions)

Section 1—

insert—

‘conduct, for chapter 23, see section 230A.

law enforcement agency, for chapter 22, see section 207A.

law enforcement officer, for chapter 22, see section 207A.

observe, for chapter 22, see section 207A.

occupier, for chapter 23, see section 230A.

place, for chapter 23, see section 230A.

private act, for chapter 22, see section 207A.

private place, for chapter 22, see section 207A.

public place, for chapter 23, see section 230A.

state of undress, for chapter 22, see section 207A.

unlawful game, for chapter 23, see section 230A.

visually record, for chapter 22, see section 207A.’.

54 Amendment of s 207A (Definitions for this chapter)

Section 207A—

insert—

‘law enforcement agency means—

- (a) the Queensland Police Service; or
- (b) the Office of the Director of Public Prosecutions; or
- (c) the Crime and Misconduct Commission; or
- (d) any other entity of—

- (i) another State; or
 - (ii) the Commonwealth;
- that performs a similar function to an entity in paragraphs (a) to (c).

law enforcement officer means—

- (a) a member or officer of a law enforcement agency, including a person appearing for the director under the *Director of Public Prosecutions Act 1984*, section 10(4); or
- (b) a person who is authorised, in writing, by the commissioner of the police service, or the chairperson of the Crime and Misconduct Commission, to help a member or officer of a law enforcement agency; or
- (c) a person who belongs to a class of persons that is authorised, in writing, by the commissioner of the police service, or the chairperson of the Crime and Misconduct Commission, to help a member or officer of a law enforcement agency.

observe means observe by any means.

private act, for a person, means—

- (a) showering or bathing; or
- (b) using a toilet; or
- (c) another activity when the person is in a state of undress; or
- (d) intimate sexual activity that is not ordinarily done in public.

private place means a place where a person might reasonably be expected to be engaging in a private act.

state of undress, for a person, means—

- (a) the person is naked or the person's genital or anal region is bare or, if the person is female, the person's breasts are bare; or
- (b) the person is wearing only underwear; or

- (c) the person is wearing only some outer garments so that some of the person's underwear is not covered by an outer garment.

visually record, a person, means record, or transmit, by any means, moving or still images of the person or part of the person.'.

55 Insertion of new ss 227A–227C

After section 227—

insert—

'227A Observations or recordings in breach of privacy

- '(1) A person who observes or visually records another person, in circumstances where a reasonable adult would expect to be afforded privacy—
- (a) without the other person's consent; and
 - (b) when the other person—
 - (i) is in a private place; or
 - (ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act;

commits a misdemeanour.

Maximum penalty—2 years imprisonment.

Examples of circumstances where a reasonable adult would expect to be afforded privacy—

- 1 A person changing in a communal change room at a swimming pool may expect to be observed by another person who is also changing in the room but may not expect to be visually recorded.
 - 2 A person who needs help to dress or use a toilet may expect to be observed by the person giving the help but may not expect to be observed by another person.
- '(2) A person who observes or visually records another person's genital or anal region, in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region—
- (a) without the other person's consent; and

- (b) when the observation or visual recording is made for the purpose of observing or visually recording the other person's genital or anal region;

commits a misdemeanour.

Maximum penalty—2 years imprisonment.

Example for subsection (2)—

using a mobile phone in a public place to take photos of women's underwear under their skirts without their consent

- '(3) In subsection (2)—

genital or anal region, of a person, means the person's genital or anal region when the region is covered by underwear or bare.

'227B Distributing prohibited visual recordings

- '(1) A person who distributes a prohibited visual recording of another person having reason to believe it to be a prohibited visual recording, without the other person's consent, commits a misdemeanour.

Maximum penalty—2 years imprisonment.

- '(2) In this section—

distribute includes—

- (a) communicate, exhibit, send, supply or transmit to someone, whether to a particular person or not; and
- (b) make available for access by someone, whether by a particular person or not; and
- (c) enter into an agreement or arrangement to do something in paragraph (a) or (b); and
- (d) attempt to distribute.

prohibited visual recording, of another person, means—

- (a) a visual recording of the person in a private place or engaging in a private act made in circumstances where a reasonable adult would expect to be afforded privacy; or
- (b) a visual recording of the person's genital or anal region, when it is covered by underwear or bare, made in

circumstances where a reasonable adult would expect to be afforded privacy in relation to that region.

‘227C Persons who are not criminally responsible for offences against ss 227A and 227B

‘(1) A person is not criminally responsible for an offence against section 227A(1) or (2) or 227B(1) if—

(a) the person is, at the time of the offence, a law enforcement officer acting in the course of the person’s duties; and

(b) the person’s conduct is reasonable in the circumstances for the performance of the duties.

‘(2) A person is not criminally responsible for an offence against section 227A(1) or (2) or 227B(1) in relation to an observation or visual recording of another person who is in lawful custody or subject to a supervision order if—

(a) the person is, at the time of the offence, acting in the course of the person’s duties in relation to the other person’s lawful custody or supervision order; and

(b) the person’s conduct is reasonable in the circumstances for the performance of the duties.

Examples of conduct that may be reasonable for the performance of duties—

- the observation of a person for the safety of the person or another person
- the observation of a person providing a urine sample for a drug test

‘(3) In this section—

lawful custody includes detention under the *Mental Health Act 2000*, in an authorised mental health service or a high security unit.

supervision order, for a person, means an order under an Act or a law of the Commonwealth or another State or made by an Australian court that subjects the person to supervision including, for example, the following orders—

- (a) a community based order under the *Penalties and Sentences Act 1992*;
- (b) a community based order or supervised release order under the *Juvenile Justice Act 1992*;
- (c) a post-prison community based release order or a conditional release order under the *Corrective Services Act 2000*;
- (d) an intensive drug rehabilitation order under the *Drug Rehabilitation (Court Diversion) Act 2000*;
- (e) a supervision order or an interim supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

56 Amendment of s 228H (Possession etc. of child exploitation material by law enforcement officer)

Section 228H(3), definitions *law enforcement agency* and *law enforcement officer*—

omit.

57 Insertion of new s 230A

Chapter 23, before section 230—

insert—

'230A Definitions for ch 23

'In this chapter—

conduct means conduct, promote, organise, control or operate.

occupier, of a place, means any of the following—

- (a) the owner, lessee or person apparently in charge of the place;
- (b) the person who has the care, management or supervision of the place or who is conducting a business at the place.

place includes land, premises and a vehicle.

public place means—

- (a) a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or
- (b) a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter.

unlawful game means a game of chance, or mixed chance and skill, that—

- (a) is not authorised under an Act; and
- (b) is played by 1 or more persons (***players***) who gamble or bet on an outcome of the game for the purpose of winning money or another consideration; and
- (c) has at least 1 of the following characteristics—
 - (i) the game is conducted or played in a public place;
 - (ii) the game is played in a place, or part of a place, the occupier of which allows, on payment of money or for other consideration, players to enter and use for playing the game;
 - (iii) a percentage of the amount gambled or bet is—
 - (A) kept by 1 or more of the players, or another person; and
 - (B) not included in the winnings of the players.’.

58 Replacement of ss 232–235

Sections 232 to 235—

omit, insert—

‘232 Operating a place for unlawful games

- ‘(1) A person who operates a place—
 - (a) for the purpose of conducting an unlawful game, by the person or another person; or
 - (b) for the purpose of playing an unlawful game;
 commits a misdemeanour.

Maximum penalty—600 penalty units or 3 years imprisonment.

‘(2) In this section—

operates includes owns, leases, manages, controls and maintains.

‘233 Possession of thing used to play an unlawful game

‘(1) A person who possesses gaming equipment that has been used, or is intended to be used, for playing an unlawful game commits an offence.

Maximum penalty—200 penalty units.

‘(2) In this section—

gaming equipment means a machine or other device (whether electronic, electrical or mechanical), computer software, or another thing, used or suitable for use, for playing an unlawful game.

Example of another thing, used or suitable for use, for playing an unlawful game—

implements for playing two-up

‘234 Conducting or playing unlawful games

‘(1) A person who conducts an unlawful game commits an offence.

Maximum penalty—200 penalty units.

‘(2) A person who plays an unlawful game commits an offence.

Maximum penalty—40 penalty units.’.

59 Amendment of s 340 (Serious assaults)

Section 340—

insert—

‘(2) A prisoner who assaults a working corrective services officer is guilty of a crime, and is liable to imprisonment for 7 years.

‘(3) In this section—

corrective services facility see the *Corrective Services Act 2000*, schedule 3.

corrective services officer see the *Corrective Services Act 2000*, schedule 3.

prisoner see the *Corrective Services Act 2000*, schedule 3.

working corrective services officer means a corrective services officer present at a corrective services facility in his or her capacity as a corrective services officer.’.

60 Omission of s 637 (Evidence of gaming)

Section 637—

omit.

Part 11 Amendment of Dangerous Prisoners (Sexual Offenders) Act 2003

61 Act amended in this part

This part amends the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

62 Amendment of s 5 (Attorney-General may apply for orders)

Section 5(4), ‘14 business days’—

omit, insert—

‘28 business days’.

63 Amendment of s 8 (Preliminary hearing)

Section 8(2) to (4)—

omit, insert—

- ‘(2) If the court is satisfied as required under subsection (1), it may make—
- (a) an order that the prisoner undergo examinations by 2 psychiatrists named by the court who are to prepare independent reports; and
 - (b) if the court is satisfied the application may not be finally decided until after the prisoner’s release day—
 - (i) an order that the prisoner’s release from custody be supervised; or
 - (ii) an order that the prisoner be detained in custody for the period stated in the order.

Note—

If the court makes an order under subsection (2)(b)(i), the order must contain the requirements for the prisoner stated in section 16(1).’.

64 Insertion of new s 9A

After section 9—

insert—

‘9A Court may adjourn hearing for division 3 order

- ‘(1) The court may, on application or on its own initiative, adjourn the hearing of an application for a division 3 order.
- ‘(2) If the court adjourns the hearing of the application and is satisfied the application may not be finally decided until after the prisoner’s release day, the court may make an order—
- (a) that the prisoner’s release from custody be supervised; or
 - (b) that the prisoner be detained in custody for the period stated in the order.

Note—

If the court makes an order under subsection (2)(a), the order must contain the requirements for the prisoner stated in section 16(1).’.

65 Amendment of s 10 (Discontinuing application for division 3 order)

Section 10(3), after ‘interim detention order’—

insert—

‘or has been released from custody under an interim supervision order’.

66 Replacement of pt 2, div 3 hdg

Part 2, division 3, heading—

omit, insert—

‘Division 3 Final orders’.**67 Insertion of new pt 2, div 3A hdg**

After section 13—

insert—

‘Division 3A Effect of particular orders’.**68 Amendment of s 14 (Effect of continuing detention order)**

(1) Section 14, heading, after ‘detention order’—

insert—

‘or interim detention order’.

(2) Section 14(1)(b), ‘by the court’s order’—

omit.

(3) Section 14(2)—

omit, insert—

‘(2) An interim detention order has effect in accordance with its terms—

(a) on the order being made or at the end of the prisoner’s period of imprisonment, whichever is the later; and

(b) for the period stated in the order, unless earlier rescinded.’.

69 Amendment of s 15 (Effect of supervision order)

Section 15, after ‘supervision order’—

insert—

‘or interim supervision order’.

70 Insertion of new pt 2, div 3B hdg

After section 15—

insert—

‘Division 3B Supervised release to be subject to particular requirements’.**71 Amendment of s 16 (Conditions for supervised release)**

- (1) Section 16(1), from ‘If the court’ to ‘the prisoner—’—

omit, insert—

‘If a judicial authority orders that a prisoner’s release from custody be supervised under a supervision order or interim supervision order, the order must contain requirements that the prisoner—’.

- (2) Section 16(1)(b), ‘the court’—

omit, insert—

‘the judicial authority’.

- (3) Section 16(2), from ‘supervision order’ to ‘thinks’—

omit, insert—

‘order may contain any other order the judicial authority considers’.

72 Insertion of new pt 2, div 3C hdg

After section 16—

insert—

‘Division 3C Reasons for orders’.

73 Amendment of s 17 (Court to give reasons)

Section 17(1)—

omit, insert—

- ‘(1) If a judicial authority makes any of the following orders, it must give detailed reasons for making the order—
- (a) a continuing detention order;
 - (b) an interim detention order;
 - (c) a supervision order;
 - (d) an interim supervision order.’

74 Amendment of pt 2, div 4 hdg

Part 2, division 4, heading, after ‘orders’—

insert—

‘**or interim supervision orders**’.

75 Amendment of s 18 (Application for amendment)

Section 18(1)(a), after ‘supervision order’—

insert—

‘or interim supervision order’.

76 Amendment of s 19 (Amendment of conditions of supervision order)

Section 19, after ‘supervision order’—

insert—

‘or interim supervision order’.

77 Amendment of pt 2, div 5 hdg

Part 2, division 5, heading, after ‘supervision order’—

insert—

‘**or interim supervision order**’.

78 Amendment of s 20 (Summons or warrant for released prisoner suspected of contravening a supervision order)

- (1) Section 20, heading, after ‘supervision order’—

insert—

‘or interim supervision order’.

- (2) Section 20(1), after ‘supervision order’—

insert—

‘or interim supervision order’.

79 Amendment of s 21 (Contravention of supervision order)

Section 21, heading, after ‘supervision order’—

insert—

‘or interim supervision order’.

80 Amendment of s 22 (Court may make further order)

- (1) Section 22, from ‘order, the court may—’—

omit, insert—

‘order or interim supervision order, the court may—

- (a) amend the conditions of the supervision order or interim supervision order; or
- (b) if the order is a supervision order and the court is satisfied as required under section 13(1), rescind the order and make a continuing detention order; or
- (c) if the order is an interim supervision order, rescind the order and make an order that the released prisoner be detained in custody for the period stated in the order; or
- (d) make any other order the court considers appropriate—
- (i) to achieve compliance with the supervision order or interim supervision order; or
- (ii) to ensure adequate protection of the community.’.

- (2) Section 22—

insert—

- ‘(2) Subject to subsection (3), for the purpose of subsection (1)(b), section 13 applies as if the application under this section were an application for a division 3 order under that section.
- ‘(3) For the purpose of deciding whether to make a continuing detention order under subsection (1)(b), the court may—
 - (a) act on any evidence before it; or
 - (b) make any order necessary to enable evidence of a kind needed to support an application for a division 3 order to be brought before it, including an order in the nature of a risk assessment order.’.

81 Amendment of s 23 (Application of division)

Section 23, after ‘supervision order’—

insert—

‘or interim supervision order’.

82 Amendment of s 24 (Period in custody not counted)

Section 24(1), after ‘supervision order’—

insert—

‘or interim supervision order’.

83 Amendment of s 41 (Stay of operation of decision)

Section 41(2) and (3)—

omit, insert—

- ‘(2) However, if the judicial authority hearing an appeal is satisfied the appeal may not be finally decided until after the prisoner’s release day, the judicial authority may make an order—
 - (a) that the prisoner’s release from custody be supervised; or
 - (b) that the prisoner be detained in custody for the period stated in the order.

Note—

If a judicial authority makes an order under subsection (2)(a), the order must contain the requirements for the prisoner stated in section 16(1).'

84 Amendment of s 42 (Court's power to order re-arrest on appeal by Attorney-General)

Section 42(1), 'section 41(2)'—

omit, insert—

'section 41(2)(b).'

85 Amendment of s 43 (Court of Appeal's powers on appeal)

(1) Section 43(2)—

insert—

'(d) may order that the matter be remitted to the court for rehearing.'

(2) Section 43—

insert—

'(3) Subsection (2)(a) does not limit the powers that the Court of Appeal has in its civil jurisdiction.

'(4) If the Court of Appeal orders that the matter be remitted to the court for rehearing and is satisfied the matter may not be reheard until after the prisoner's release day, the Court of Appeal may make an order—

(a) that the prisoner's release from custody be supervised;
or

(b) that the prisoner be detained in custody for the period stated in the order.

Note—

If the Court of Appeal makes an order under subsection (4)(a), the order must contain the requirements for the prisoner stated in section 16(1).'

86 Insertion of new s 43A

Part 5—

insert—

‘43A Persons who remain prisoners for particular purposes

- ‘(1) This section provides for the application of this Act to a person.
- (2) A person who is subject to a continuing detention order or interim detention order remains a prisoner.
- ‘(3) A person who is subject to an interim supervision order remains a prisoner for the purposes of any relevant application, appeal or rehearing.
- ‘(4) A person who is released from custody, without an interim supervision order having being made, after the court sets a date for the hearing of an application for a division 3 order relating to the person remains a prisoner for the purposes of the application.
- ‘(5) A person who is released from custody, without an interim supervision order having being made, after the Court of Appeal makes an order under section 43(2)(d) relating to the person remains a prisoner for the purposes of the rehearing.
- ‘(6) A person who is released from custody after the hearing of any application under this Act, without an interim supervision order having being made, remains a prisoner for the purposes of any appeal against the decision and for any subsequent appeal.’.

87 Amendment of s 44 (Hearings on the papers)

Section 44—

insert—

- ‘(3) Subsection (1) is subject to section 49.’.

88 Amendment of s 49 (Appearance at hearings)

- (1) Section 49, ‘at a hearing under section 13’—

omit, insert—

‘at a preliminary hearing under section 8 or at a hearing under section 13, 18’.

(2) Section 49—

insert—

‘(2) Subsection (1) does not limit the court’s power under section 44 to deal with an application under section 8 or 18 if the prisoner does not appear at the hearing of the application.’.

89 Amendment of s 51 (Post-prison community based release)

Section 51, from ‘order,’ to ‘section 41(2)’—

omit, insert—

‘order or interim detention order’.

90 Insertion of new pt 6

After part 5—

insert—

‘Part 6 Transitional provisions for Justice and Other Legislation Amendment Act 2005

‘54 Amendment does not affect existing orders

‘(1) The amendment of this Act by the *Justice and Other Legislation Amendment Act 2005*, part 11 does not affect any order made under the Act and in force immediately before the commencement.

‘(2) An order mentioned in subsection (1) continues to have effect according to its terms after the commencement.

‘(3) In this section—

commencement means the commencement of this section.

‘55 Transitional statements for particular provisions

‘(1) A court may make an order under section 8(2)(b)(i) even if the application to which the order relates was made before the

commencement if the application has not been decided on the commencement.

- ‘(2) A court may make an order under section 9A(2) even if the application to which the order relates was made before the commencement if the application has not been decided on the commencement.
- ‘(3) A judicial authority may make an order under section 41(2) even if the appeal to which the order relates was started before the commencement.
- ‘(4) The Court of Appeal may make an order under section 43(2)(d) or (4) even if the appeal to which the order relates was started before the commencement.
- ‘(5) Section 44(1) as in force immediately after the commencement applies even if the application to which the decision relates was started before the commencement.
- ‘(6) In this section—
commencement means the commencement of this section.

‘56 **Amendments not to affect status of persons who were prisoners for particular purposes**

- ‘(1) Without limiting section 43A, if, immediately before the commencement of this section, a person was or remained a prisoner for a purpose under the pre-amended Act, the person is or remains a prisoner for the purpose under the amended Act.
- ‘(2) In this section—
amended Act means this Act as amended by the *Justice and Other Legislation Amendment Act 2005*, part 11.
pre-amended Act means this Act as in force immediately before the commencement of this section.’.

91 **Amendment of schedule (Dictionary)**

- (1) Schedule, definitions *interim detention order* and *risk assessment order*—
omit.

(2) Schedule—

insert—

‘interim detention order means an order detaining a person in custody made under section 8(2)(b)(ii), 9A(2)(b), 22(1)(c), 41(2)(b) or 43(4)(b).

interim supervision order means an order made under section 8(2)(b)(i), 9A(2)(a), 41(2)(a) or 43(4)(a).

judicial authority means—

- (a) the court; or
- (b) if the court’s decision on a matter is appealed—a court with jurisdiction to hear the appeal or any further appeal.

release day, in relation to a prisoner, means the day on which the prisoner is due to be unconditionally released from lawful custody under the *Corrective Services Act 2000*.

risk assessment order means an order made under section 8(2)(a).’.

(3) Schedule, definition *prisoner*—*insert—**‘Note—*

Also see section 43A.’.

(4) Schedule, definition *supervised release*, after ‘supervision order’—*insert—*

‘or interim supervision order’.

Part 12**Amendment of Evidence Act
1977****92 Act amended in this part**

This part amends the *Evidence Act 1977*.

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

(1) Section 93A(1)(b), ‘the child or intellectually impaired person’—

omit, insert—

‘the maker of the statement’.

(2) Section 93A(2)—

omit, insert—

‘(2) If a statement mentioned in subsection (1) (the *main statement*) is admissible, a related statement is also admissible as evidence if the maker of the related statement is available to give evidence in the proceeding.

‘(2A) A *related statement* is a statement—

(a) made by someone to the maker of the main statement, in response to which the main statement was made; and

(b) contained in the document containing the main statement.

‘(2B) Subsection (2) is subject to this part.’.

(3) Section 93A(5), definition *child*—

omit, insert—

‘*child*, in relation to a person who made a statement under subsection (1), means—

(a) a person who was under 16 years when the statement was made, whether or not the person is under 16 years at the time of the proceeding; or

(b) a person who was 16 or 17 years when the statement was made and who, at the time of the proceeding, is a special witness.’.

94 Amendment of s 134A (Production of documents by agencies in relation to civil proceedings)

Section 134A(6), from ‘, section 63’ to ‘authorised’—

omit, insert—

‘, section 62A(1)⁶ applies, the document is, for the purposes of section 62B⁷ of that Act, information that is expressly required’.

95 Insertion of new pt 9, div 4

Part 9—

insert—

‘Division 4 Justice and Other Legislation Amendment Act 2005

‘144 Statement made before proceeding by child or intellectually impaired person

‘(1) To remove any doubt, it is declared that amended section 93A⁸ applies to a proceeding that starts after the commencement of this section, regardless of when the conduct giving rise to the proceeding happened.

‘(2) A statement admitted into evidence in a proceeding before the commencement of this section that would be admissible under the amended section 93A if tendered in a proceeding after the commencement is taken to have always been admissible under section 93A.

‘(3) In this section—

amended section 93A means section 93A as amended by the *Justice and Other Legislation Act 2005*.

proceeding includes a committal, a preliminary hearing, a trial and any rehearing or retrial arising out of, or any appeal from, an earlier proceeding.

‘145 Definition *chief executive (surveys)*

‘It is declared that the amendment of the definition *chief executive (surveys)* by the *Surveyors Act 2003* is, and has

6 *Health Services Act 1991*, section 62A (Confidentiality)

7 *Health Services Act 1991*, section 62B (Disclosure required or permitted by law)

8 Section 93A (Statement made before proceeding by child or intellectually impaired person)

always been, as effective as it would have been if the definition had been located in schedule 3 rather than section 3 when the amendment commenced.’.

Part 13 Amendment of Freedom of Information Act 1992

96 Act amended in this part

This part amends the *Freedom of Information Act 1992*.

97 Amendment of s 7 (Definitions)

Section 7—

insert—

‘*holder*, of a concession card, at a time the concession card is being relied on for a purpose under this Act, means an individual who is named on the concession card and would be qualified to be named on the concession card if the concession card were issued at the time the concession card is being relied on.’.

98 Amendment of s 11 (Act not to apply to certain bodies etc.)

Section 11(4), definition *tribunal*, paragraph (g), after ‘Health’—

insert—

‘Review’.

99 Amendment of s 35A (Meaning of *financial hardship*)

Section 35A(1)(a)—

omit, insert—

‘(a) the holder of a concession card; or’.

100 Amendment of s 52A (Who is aggrieved by a decision for s 52)

Section 52A(1)(f)—

omit, insert—

‘(f) a processing charge or access charge is payable under a final assessment notice and the applicant considers the charge is wrongly assessed; or

Note—

For challenges to a processing charge or access charge payable under a preliminary assessment notice, see schedule 4 (Process for assessment of charges), part 2 (Objection process).’

101 Omission of s 108B (Combining strategic reviews)

Section 108B—

*omit.***102 Replacement of pt 7 hdg (Transitional provision for Ombudsman Act 2001)**

Part 7, heading—

*omit, insert—***‘Part 7 Transitional provisions****‘Division 1 Provision for Ombudsman Act 2001’.****103 Replacement of pt 8 hdg (Transitional provision for Terrorism (Community Safety) Amendment Act 2004)**

Part 8, heading—

*omit, insert—***‘Division 2 Provision for Terrorism (Community Safety) Amendment Act 2004’.**

104 Replacement of pt 9 hdg (Transitional provision for Transport Infrastructure Amendment Act 2004)

Part 9, heading—

*omit, insert—***‘Division 3 Provision for Transport Infrastructure Amendment Act 2004’.****105 Replacement of pt 10, hdg (Transitional provisions for Freedom of Information and Other Legislation Amendment Act 2005)**

Part 10, heading—

*omit, insert—***‘Division 4 Provisions for Freedom of Information and Other Legislation Amendment Act 2005’.****106 Amendment of sch 4, s 8 (Concession card given and accepted)**

Schedule 4, section 8(2), ‘, subject to section 10,’ and footnote—

*omit.***107 Amendment of sch 4, s 10 (Financial hardship claim if agency is a department)**

(1) Schedule 4, section 10, heading, ‘if agency is a department’—

*omit, insert—***‘by non-profit organisation’.**

(2) Schedule 4, section 10(1) and (2)—

omit, insert—

(1) This section applies if an agency that is a department is given an objection notice in which the applicant contends charges

should be waived because the applicant is a non-profit organisation in financial hardship.

- ‘(2) The agency must give the prescribed person a copy of both the application and the objection notice.’.

Part 13A Amendment of Guardianship and Administration Act 2000

107A Act amended in this part

This part amends the *Guardianship and Administration Act 2000*.

107B Amendment of s 112 (Publication about proceeding or disclosure of identity)

- (1) Section 112—

insert—

‘(3A) Subsection (3) does not apply to the publication of information about a proceeding, or to the disclosure of the identity of a person involved in a proceeding, to a reviewer for the purposes of the substituted decision-making review.

‘(3B) Subsection (3) does not apply to the publication of information about a proceeding by a reviewer for the purposes of the substituted decision-making review.’.

- (2) Section 112(4)—

insert—

‘**commission** means the Law Reform Commission established under the *Law Reform Commission Act 1968*.

consultant means a person engaged under the *Law Reform Commission Act 1968*, section 9.⁹

9 *Law Reform Commission Act 1968*, section 9 (Specialised assistance)

reviewer means a member of the commission or its staff, or a consultant, involved in the substituted decision-making review.

substituted decision-making review means the review of particular matters under this Act and the *Powers of Attorney Act 1998* referred to the commission by the Minister on 14 October 2005.’.

(3) Section 112—

insert—

‘(5) The following provisions expire on 1 January 2009—

(a) subsections (3A), (3B) and (6);

(b) subsection (4), definitions *commission*, *consultant*, *reviewer* and *substituted decision-making review*;

(c) this subsection.

‘(6) However, before 1 January 2009, a regulation may extend the period before expiry to not later than 1 January 2010.’.

107C Amendment of s 249 (Preservation of confidentiality)

(1) Section 249(2)—

insert—

‘(h) a reviewer.’.

(2) Section 249(3)—

insert—

‘(g) for the substituted decision-making review.’.

(3) Section 249(4)—

insert—

‘**commission** means the Law Reform Commission established under the *Law Reform Commission Act 1968*.

consultant means a person engaged under the *Law Reform Commission Act 1968*, section 9.¹⁰

¹⁰ *Law Reform Commission Act 1968*, section 9 (Specialised assistance)

reviewer means a member of the commission or its staff, or a consultant, involved in the substituted decision-making review.

substituted decision-making review means the review of particular matters under this Act and the *Powers of Attorney Act 1998* referred to the commission by the Minister on 14 October 2005.’.

Part 13B **Amendment of Judicial Review Act 1991**

107D Act amended in this part

This part amends the *Judicial Review Act 1991*.

107E Insertion of new pt 7

After part 6—

insert—

‘Part 7 **Transitional provision**

‘58 Transitional provision for Justice and Other Legislation Amendment Act 2005

‘It is declared that the insertion in schedule 1, part 1 of item 6AA does not affect an application for a statutory order for review lodged with a registry of the court before the commencement of this section and not heard or decided at the commencement.’.

107F Amendment of sch 1, pt 1

Schedule 1, part 1—

insert—

‘6AA *Small Claims Tribunals Act 1973*, section 19’.

Part 14 Amendment of Justices Act 1886

108 Act amended in this part

This part amends the *Justices Act 1886*.

109 Amendment of s 40 (Penalty for insulting or interrupting justices)

Section 40(2), from ‘2’ to ‘days’—

omit, insert—

‘84 penalty units or imprisonment for 1 year’.

110 Amendment of s 142A (Permissible procedure in absence of defendant in certain cases)

(1) Section 142A(4)(b)—

omit, insert—

‘(b) the defendant is required to appear at a time and place fixed for the hearing of the complaint—

(i) by a summons issued on the complaint and served at least 14 days before the date on which the defendant is required by the summons to appear; or

(ii) under a condition of the defendant’s bail or by a notice given to the defendant under the *Bail Act 1980*; or

(iii) by a notice of adjournment given to the defendant a reasonable time before the date previously fixed for the hearing of the complaint; and’.

(2) Section 142A(4), before ‘according to law’—

insert—

‘or as stated by the complainant’.

(3) Section 142A(4), ‘as aforesaid’—

omit, insert—

‘or are stated by the complainant’.

- (4) Section 142A(4), ‘before it in obedience to the said summons.’—

omit, insert—

‘at the time and place fixed for the hearing of the complaint.’.

111 Amendment of s 146A (Proceeding at the hearing on defendant’s confession in absentia)

- (1) Section 146A(1), from ‘if’ to ‘appear’—

omit, insert—

‘if a defendant, under a summons or a condition of the defendant’s bail or by a notice given to the defendant under the *Bail Act 1980*, is required to appear’.

- (2) Section 146A(1)(b)—

omit.

112 Replacement of ss 178B–178F

Sections 178B to 178F—

omit, insert—

‘178B Definitions for part

‘In this part—

associated place, in relation to a person using video link facilities for a proceeding in a Magistrates Court, means—

- (a) a correctional institution where the person is in custody;
or
(b) another place, appointed for the holding of a Magistrates Court, where the person is present.

facility user, in relation to a proceeding, means someone who is a party to the proceeding.

primary court, in a proceeding, means the Magistrates Court conducting the proceeding.

proceeding for a provision of this part, other than section 178C(1), means a proceeding to which section 178C(1) applies.

‘178C Use of video link facilities in proceedings

- ‘(1) This section applies to a proceeding if—
- (a) a person is entitled or required to be present before a Magistrates Court for the proceeding; and
 - (b) the proceeding is about an offence with which the person is charged, including a proceeding for the person’s bail or remand; and
 - (c) the person is—
 - (i) in custody at a correctional institution that has video link facilities linking it and the primary court; or
 - (ii) present at another place, appointed for the holding of a Magistrates Court, that has video link facilities linking it and the primary court, and the person is represented by a lawyer.
- ‘(2) If the person is in custody in a correctional institution and the proceeding is for the person’s bail or remand, the proceeding must be conducted using the video link facilities, unless the primary court, in the interests of justice, otherwise orders.
- ‘(3) In a proceeding, other than a proceeding to which subsection (2) applies, the primary court may order the proceeding be conducted using video link facilities only if all parties consent.
- ‘(4) The video link facilities may only be used to link the proceeding before the primary court with the person, or the person and the person’s representative, at the associated place.

‘178D Facility user taken to be before the court

- ‘(1) A person present at the part of the associated place used for the conduct of a proceeding, when the proceeding is being conducted, is taken to be in the presence of the primary court for all purposes.

- ‘(2) The part of the associated place used for the proceeding is taken to be part of the primary court for the conduct of the proceeding.
- ‘(3) Any entitlement of, or requirement for, the facility user under a law or court order to be present before the primary court in the proceeding is taken to be satisfied by the facility user’s use of video link facilities for the proceeding.

‘178E Way video link facilities must be operated

- ‘(1) Video link facilities, when used for a proceeding, are to be operated in a way that ensures two-way audio and visual communication between the facility user and the primary court.
- ‘(2) If video link facilities fail during a proceeding, the primary court may adjourn the proceeding or make another appropriate order, as if the facility user were still in the presence of the primary court.

‘178F Facilities for private communication

- ‘(1) The primary court and the associated place must make facilities available for private communication between the facility user and the facility user’s representative in a proceeding if the facility user’s representative is at the place where the primary court is sitting.
- ‘(2) A communication between the facility user and the facility user’s representative is as confidential and as inadmissible in any proceeding as it would be if it took place between the facility user and the facility user’s representative while in each other’s presence.
- ‘(3) Subsection (2) does not limit any other protection applying to the communication.’.

Part 15 **Amendment of Juvenile Justice Act 1992**

113 Act amended in this part

This part amends the *Juvenile Justice Act 1992*.

114 Amendment of s 48 (Decisions about bail and related matters)

(1) Section 48(3)—

insert—

‘(da) if the child is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the child’s community, including, for example, about—

- (i) the child’s relationship to the child’s community; or
- (ii) any cultural considerations; or
- (iii) any considerations relating to programs and services established for offenders in which the community justice group participates;’.

(2) Section 48—

insert—

‘(7A) If required by the court or officer for subsection (3)(da), a representative of the community justice group in the child’s community must advise the court or police officer whether—

- (a) any member of the community justice group that is responsible for the submission is related to the child or the victim; or
- (b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the child or victim.’.

115 Amendment of s 150 (Sentencing principles)

Section 150(5)—

omit.

116 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘child’s community means the child’s Aboriginal or Torres Strait Islander community, whether it is—

- (a) an urban community; or
- (b) a rural community; or
- (c) a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

community justice group, for a child, means—

- (a) the community justice group established under the *Aboriginal Communities (Justice and Land Matters) Act 1984*, part 5 or the *Community Services (Torres Strait) Act 1984*, part 5, for the child’s community; or
- (b) a group of persons within the child’s community, other than a department of government, that is involved in the provision of any of the following—
 - (i) information to a court about Aboriginal or Torres Strait Islander offenders;
 - (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;
 - (iii) other activities relating to local justice issues; or
- (c) a group of persons made up of the elders or other respected persons of the child’s community.’.

Part 16 **Amendment of Land Court Act 2000**

117 Act amended in this part

This part amends the *Land Court Act 2000*.

118 Amendment of s 12 (Power to rehear matters)

Section 12(2)—

omit, insert—

- ‘(2) The application must be made within 42 days after the order containing the decision is made by the court.’.

119 Insertion of new pt 2, div 3A

After section 20—

insert—

‘Division 3A Powers and responsibilities of president

‘20A Arrangement of business

- ‘(1) The president is responsible for the administration of the Land Court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Land Court.
- ‘(2) The president has power to do things necessary or convenient to be done for the administration of the Land Court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Land Court.’.

120 Amendment of s 34 (Costs)

- (1) Section 34(5), from ‘, under’ to ‘in the Supreme Court’—
omit.
- (2) Section 34(6), ‘(4)’—

omit, insert—

‘(5)’.

121 Amendment of s 35 (Privileges, protection and immunity)

Section 35—

insert—

‘(1A) A judicial registrar, exercising judicial or quasi-judicial power the judicial registrar may exercise under the Act, has the same privileges, protection and immunity as the judicial registrar would have if the judicial registrar were a Supreme Court Judge presiding over a proceeding in the Supreme Court.’.

122 Replacement of s 57 (Land Appeal Court may remit matter)

Section 57—

omit, insert—

‘57 Powers of Land Appeal Court

‘The Land Appeal Court may do 1 or more of the following—

- (a) suspend the operation of the decision and remit the matter, with or without directions, to the court or tribunal that made the decision to act according to law;
- (b) affirm, amend, or revoke and substitute another order or decision for the order or decision appealed against;
- (c) make an order the Land Appeal Court considers appropriate.’.

123 Amendment of s 65 (Notice of appeal)

Section 65(1), from ‘within’ to ‘the party,’—

omit, insert—

‘within 42 days after the order containing the decision is made by the court,’.

124 Amendment of s 75 (When leave to appeal must be sought and appeal made)

Section 75(1), from ‘within’ to ‘the party,’—

omit, insert—

‘within 42 days after the order containing the decision is made by the Land Appeal Court.’.

Part 17 Amendment of Magistrates Act 1991**125 Act amended in this part**

This part amends the *Magistrates Act 1991*.

126 Amendment of s 23 (Decisions about constituting Magistrates Courts)

Section 23(5), from ‘the magistrate has ceased’—

omit, insert—

‘the magistrate —

- (a) has ceased to be a magistrate under section 42;¹¹ or
- (b) has been the subject of a transfer decision under section 12(2)(a) requiring the magistrate to constitute a Magistrates Court at another place; or
- (c) has been the subject of an agreement under section 5(4); or
- (d) has been the subject of a decision under section 5(5).’.

11 Section 42 (Tenure of office)

Part 17A Amendment of Powers of Attorney Act 1998

126A Act amended in this part

This part amends the *Powers of Attorney Act 1998*.

126B Amendment of s 74 (Preservation of confidentiality)

- (1) Section 74(1), after ‘an attorney’—

insert—

‘or reviewer’.

- (2) Section 74(2)—

insert—

‘(f) for the substituted decision-making review.’.

- (3) Section 74(4)—

insert—

‘**commission** means the Law Reform Commission established under the *Law Reform Commission Act 1968*.

consultant means a person engaged under the *Law Reform Commission Act 1968*, section 9.¹²

reviewer means a member of the commission or its staff, or a consultant, involved in the substituted decision-making review.

substituted decision-making review means the review of particular matters under this Act and the *Guardianship and Administration Act 2000* referred to the commission by the Minister on 14 October 2005.’.

12 *Law Reform Commission Act 1968*, section 9 (Specialised assistance)

Part 18 **Amendment of Prisoners (Interstate Transfer) Act 1982**

127 Act amended in this part

This part amends the *Prisoners (Interstate Transfer) Act 1982*.

128 Replacement of pt 2 hdg (Transfer for prisoner's welfare)

Part 2, heading—

omit, insert—

'Part 2 **Transfer at request of prisoner'.**

129 Amendment of s 6 (Requests for, and orders of, transfer)

Section 6(1)(b), (3)(b) and (5)(b), 'in the interests of the welfare of the prisoner'—

omit.

130 Amendment of s 10 (Reports)

Section 10(1), 'may have regard'—

omit, insert—

'by reference'.

131 Insertion of new s 10A

Part 2, after section 10—

insert—

'10A Matters that the Minister may have regard to

'When forming an opinion or exercising a discretion under this part, the Minister may have regard to any one or more of the following—

- (a) the welfare of the prisoner;
- (b) the administration of justice in this or any other State;

- (c) the security and good order of any prison in this or any other State;
- (d) the safe custody of the prisoner;
- (e) the protection of the community in this or any other State;
- (f) any other matter that the Minister considers relevant.’.

132 Amendment of s 22 (Provisions ancillary to ss 19 and 20)

- (1) Section 22(1), ‘it is in the interests of the welfare of the person that’—

omit.

- (2) Section 22—

insert—

‘(1A) When making a decision under subsection (1)(a), the Minister may have regard to any one or more of the following—

- (a) the welfare of the prisoner;
- (b) the administration of justice in this or any other State;
- (c) the security and good order of any prison in this or any other State;
- (d) the safe custody of the prisoner;
- (e) the protection of the community in this or any other State;
- (f) any other matter that the Minister considers relevant.’.

Part 19

Amendment of Professional Standards Act 2004

133 Act amended in this part

This part amends the *Professional Standards Act 2004*.

134 Insertion of new s 21A

After section 21—

insert—

‘21A Extension of liability limitation to other persons to whom scheme applies

- ‘(1) A limitation applying under this Act to the occupational liability of a person as a member of an occupational association (*first scheme member*) in relation to a cause of action (*principal cause of action*) also applies, in relation to the principal cause of action and any related cause of action, to the liability of any other person to whom the scheme concerned applies (*second scheme member*) as a partner, officer, employee or associate of the first scheme member.
- ‘(2) Subsection (1) applies in relation to the liability of the second scheme member whether or not the second scheme member’s liability is an occupational liability.
- ‘(3) A reference in this section to a person who is a partner, officer, employee or associate of the first scheme member is a reference to a person who was a partner, officer, employee or associate of the first scheme member at the time of the event that gave rise to the principal cause of action.
- ‘(4) A reference in this section to a limitation on liability that applies to a person as a member of an occupational association includes a reference to a limitation on liability that would apply to the person if a cause of action relating to the liability were brought against the person.
- ‘(5) In this section—
- associate*, of the first scheme member, includes a person who carries out work for or with the first scheme member whether the work is carried out voluntarily or for financial reward.
- related cause of action* means a cause of action in relation to the civil liability of the second scheme member arising, in tort, contract or otherwise, directly or vicariously from anything done or omitted to be done by the second scheme member that—
- (a) caused or contributed to the loss or damage with which the principal cause of action is concerned; and

- (b) resulted from the same or substantially the same event as that from which the principal cause of action arose.’.

135 Amendment of s 71 (Regulation-making power)

- (1) Section 71(2)(b)—

omit, insert—

‘(b) prescribe—

- (i) fees payable to the council for applications to the council under this Act; and
- (ii) an annual fee, payable to the council, in relation to a scheme, or for each member of an occupational association a scheme applies to, for each year, or part of a year, the scheme is in force;’.

- (2) Section 71—

insert—

- ‘(3) A regulation may also provide for the payment of interest to the council on a fee not paid within 30 days after the fee becomes payable.
- (4) Fees payable under this Act may be set at a level that is sufficient to cover the costs of administering this Act and funding the council in the performance of its functions.’.

136 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definition *occupational association*, paragraph (a), after ‘group’—

insert—

‘or related occupational groups’.

- (2) Schedule 2, definition *occupational association*, paragraph (b), after ‘group’—

insert—

‘or the related occupational groups’.

- (3) Schedule 2, definition *officer*, paragraph (a), ‘section 82A of’—
omit.

Part 20 Amendment of Recording of Evidence legislation

Division 1 Amendment of Recording of Evidence Act 1962

137 Act amended in div 1

This division amends the *Recording of Evidence Act 1962*.

138 Amendment of s 4 (Meaning of terms)

- (1) Section 4, definition *judicial person*, ‘Stipendiary’—
omit.
- (2) Section 4, definition *record under this Act*, after ‘by this Act’—
insert—
‘, and includes, if the record on a master-tape is a digital recording, a replication of the record onto a separate data storage medium’.

139 Amendment of s 11 (Person giving evidence need not sign deposition etc.)

- (1) Section 11(2A), (3), (4), (5) and (6)—
renumber as section 11(3), (4), (6), (8) and (9).
- (2) Section 11—
insert—

- ‘(5) Despite subsection (4), the record on a master-tape may be destroyed if the record is a digital recording that has been replicated onto a separate data storage medium.’
- (3) Section 11(6), as renumbered, from ‘(b)’—
omit, insert—
 ‘(b) if—
 (i) a transcription of the record has been made under this Act; and
 (ii) the transcription has been certified as correct by the responsible shorthand reporter or recorder;
 then, whether or not an order has been made under paragraph (a), by order authorise the destruction of the record on the master-tape.’
- (4) Section 11—
insert—
- ‘(7) An order made under subsection (6)(a) in relation to the retention of a record that is a digital recording is taken to be satisfied if the record on the master-tape has been replicated onto a separate data storage medium.’
- (5) Section 11(8), as renumbered, from ‘Subject’ to ‘master-tape’—
omit, insert—
 ‘Subject to subsection (4) and to an order made under subsection (6), a record on a mastertape, other than a record that may be destroyed under subsection (5),’.

140 Insertion of new s 14

After section 13—

insert—

‘14 Declaratory provision for Justice and Other Legislation Amendment Act 2005

- ‘(1) Despite section 11(4), the destruction of the record on a master-tape before the commencement of section 11(5) as inserted by the *Justice and Other Legislation Amendment Act*

2005, section 139 is authorised if the record was a digital recording that had been replicated onto a separate data storage medium.

- ‘(2) The amendment of the *Recording of Evidence Regulation 1992* by the *Justice and Other Legislation Amendment Act 2005* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

Division 2 Amendment of Recording of Evidence Regulation 1992

141 Regulation amended in div 2

This division amends the *Recording of Evidence Regulation 1992*.

142 Amendment of s 5 (Safe custody of tapes and original certified transcriptions)

- (1) Section 5(2)—
renumber as section 5(3).
- (2) Section 5—
insert—
- ‘(2) To remove any doubt, it is declared that a recorder is no longer responsible for the safe custody of a master tape once all of the records on the master tape may be destroyed under the Act.’.

Part 21 Amendment of Small Claims Tribunals Act 1973

143 Act amended in this part

This part amends the *Small Claims Tribunals Act 1973*.

144 Amendment of s 5 (Appointment of referees and referees ex officio)

Section 5(1), ‘stipendiary’—
omit.

145 Amendment of s 11 (Constitution of tribunal)

Section 11—
insert—

- ‘(2) A registrar may conduct an examination under section 23A.
- ‘(3) For the examination, the registrar constitutes, and may exercise all the jurisdiction and powers of, the tribunal.
- ‘(4) However, a registrar may not exercise any power of the tribunal to punish for contempt.’.

146 Amendment of s 23A (Examination of person required by order to pay money)

(1) Section 23A(1), ‘before a referee’—
omit.

(2) Section 23A(2), after ‘examination’—
insert—
‘before a referee or registrar’.

(3) Section 23A(3)(c)(ii), from ‘referee’—
omit, insert—
‘referee or registrar;’.

(4) Section 23A(3)(d)—
omit, insert—

‘(d) the registrar must give the applicant a transcript of the evidence taken on the examination;’.

(5) Section 23A(3)(g)—
omit.

(6) Section 23A(3)(h), from ‘the person may be’—

omit, insert—

the person must be dealt with under subsection (3A)(a), if the examination is before a referee, or under subsections (3B)(b) and (3D), if the examination is before a registrar.’

(7) Section 23A—

insert—

‘(3A) For the purposes of an examination of a person before a referee—

(a) sections 33, other than subsection (2)(a), 38 and 39¹³ apply in relation to the examination as if the examination were the taking of a proceeding by a small claims tribunal in relation to a claim properly referred to it; and

(b) if subsection (3)(h) applies—

(i) the referee may summarily convict the person of contempt; and

(ii) section 38(2), (3) and (4) apply as if the person had been convicted under section 38(1) and as if the examination were the taking of a proceeding by a small claims tribunal in relation to a claim properly referred to it.

‘(3B) For the purposes of an examination of a person before a registrar—

(a) sections 33, other than subsection (2)(a), and 39 apply to the examination as if—

(i) the examination were the taking of a proceeding by a small claims tribunal in relation to a claim properly referred to it; and

(ii) a reference in the sections to a referee were a reference to the registrar; and

(b) if subsection (3)(h) applies, the registrar may adjourn the matter and certify the contempt in writing to the small claims tribunal.

¹³ Sections 33 (Taking of evidence before tribunal), 38 (Contempt in face of tribunal) and 39 (Law of perjury to apply)

omit, insert—

‘A regulation’.

150 Amendment of pt 10, hdg (Transitional and validating provisions)

Part 10, heading, ‘and validating’—

omit, insert—

‘, **validating and declaratory**’.

151 Amendment of pt 10, div 2, hdg (Validating provisions)

Part 10, division 2, heading, after ‘Validating’—

insert—

‘**and declaratory**’.

152 Insertion of new s 174

After section 173—

insert—

‘174 Infringement notice for a corporation

‘To remove any doubt, it is declared that section 165(4), as in force immediately before the commencement of the *Justice and Other Legislation Amendment Act 2005*, section 149 was not and has never been, a contrary intention for the purposes of the application of the *Statutory Instruments Act 1992*, sections 24 and 25.’.

Part 23 Amendment of Statutory Instruments Act 1992

153 Act amended in this part

This part amends the *Statutory Instruments Act 1992*.

154 Insertion of new ss 14A and 14B

After section 14—

insert—

‘14A Modified application—s 6

‘For the purposes of applying the *Acts Interpretation Act 1954*, section 6(1), after ‘In an Act’, insert ‘or statutory instrument.’

‘14B Modified application—s 14

‘For the purposes of applying section 14(7) of the *Acts Interpretation Act 1954*, add the following example—

‘Example of an endnote to subordinate legislation—

ENDNOTES

- 1 Made by the Governor in Council on 9 December 2004.
- 2 Notified in the Gazette on 10 December 2004.
- 3 Laid before the Legislative Assembly on 22 February 2005
- 4 The administering agency is the Department of Education and the Arts.’.

155 Insertion of new s 15A

After section 15—

insert—

‘15A Modified application—section 14F

‘For the purposes of applying section 14F(1) of the *Acts Interpretation Act 1954*, omit the examples and insert—

‘Examples of citations—

- 1 Statutory Instruments Regulation 2002
- 2 Statutory Instruments Regulation 2002, SL No. 218
- 3 SL No. 218 of 2002
- 4 2002 SL No. 208’.

156 Amendment of sch 1 (Provisions of Acts Interpretation Act 1954 that apply to statutory instruments)

Schedule 1—

insert—

‘section 6’.

157 Amendment of sch 2 (Provisions of Acts Interpretation Act 1954 that do not apply to statutory instruments)

Schedule 2—

insert—

‘section 7’.

Part 24 Amendment of Supreme Court Library Act 1968

158 Act amended in this part

This part amends the *Supreme Court Library Act 1968*.

159 Amendment of s 4 (Constitution of committee, appointment and term of office of members)

(1) Section 4(1)(c), ‘stipendiary’—

omit.

(2) Section 4(4E), ‘stipendiary’—

omit.

160 Insertion of new s 7A

After section 7—

insert—

‘7A Historic documents given to committee for preservation

- ‘(1) A lawyer may give an historic document to the committee, without obtaining the consent of an interested person for the historic document, if—
- (a) giving the historic document—
 - (i) is not contrary to an express instruction given to the lawyer by the interested person; and
 - (ii) is unlikely to adversely affect the interested person; and
 - (b) it is not reasonably practicable to obtain the consent of the interested person.
- ‘(2) The committee must take reasonable steps to preserve the historic document after receiving it.
- ‘(3) The giving of an historic document to the committee does not affect—
- (a) any right a person may have to recover possession of the historic document; or
 - (b) legal professional privilege attaching to the historic document, or the information contained in the historic document.
- ‘(4) The committee may use or disclose an historic document given to the committee only if—
- (a) the use or disclosure is for historical or educational purposes; and
 - (b) the historic document is at least 100 years old, or if the historic document is a copy of another document, the other document is at least 100 years old.
- ‘(5) In this section—
- give* includes loan.

historic document means a document that is considered by the committee to have sufficient historical significance to justify its preservation, and includes a copy of the document.

interested person, for an historic document, means a person having a legal right to object to a lawyer giving the document to the committee.’.

Part 25 Amendment of Supreme Court of Queensland Act 1991

161 Act amended in this part

This part amends the *Supreme Court of Queensland Act 1991*.

162 Amendment of s 31 (Constitution of court if 1 judge of appeal unable to continue)

Section 31(1)—

omit, insert—

‘(1) If—

- (a) after the Court of Appeal (including the court constituted under this section) has started the hearing, or further hearing, of a proceeding; and
- (b) 1 of the judges constituting the court dies, resigns as a judge, or is certified as incapable of sitting before the proceeding has been determined;

the hearing and determination of the proceeding may be finished by the remaining judges if at least 2 judges remain.

‘(1A) A judge is certified as incapable of sitting if the Chief Justice or the President of the Court of Appeal has issued a certificate stating that the judge is incapable of sitting.’.

163 Replacement of s 41 (Decision)

Section 41—

omit, insert—

‘41 Decision

‘The decision of the Court of Appeal is to be in accordance with—

- (a) if the judges present at the hearing are equally divided in opinion—the opinion of the judge who, at the start of the hearing, was the most senior judge; or
- (b) otherwise—the opinion of the majority of judges present at the hearing.’.

164 Amendment of s 118 (Rule-making power)

Section 118—

insert—

‘(2B) The rules of court may make provision of a saving or transitional nature for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the *Vexatious Litigants Act 1981* to the operation of the *Vexatious Proceedings Act 2005*.

‘(2C) However—

- (a) a rule may only be made under subsection (2B) within 2 years after the commencement of that subsection; and
- (b) a rule made under subsection (2B) expires 2 years after it is made.

‘(2D) Subsections (2B), (2C) and this subsection expire 4 years after the commencement of subsection (2B).’.

165 Amendment of sch 1 (Subject matter for rules)

Schedule 1—

insert—

‘16A Vexatious proceedings

‘Restriction of vexatious proceedings within the meaning of the *Vexatious Proceedings Act 2005*.’.

Part 26 Minor amendments and repeal

166 Acts amended in schedule

The schedule amends the Acts mentioned in it.

167 Repeal

The Suppression of Gambling Act 1895 No. 9 is repealed.

Schedule Minor amendments

section 166

Criminal Code

- 1 Section 210(1)(a) to (e), after ‘;’—**
insert—
‘or’.
- 2 Section 216(3)(a) and (b), after ‘;’—**
insert—
‘or’.
- 3 Section 408A(1B)(a), after ‘;’—**
insert—
‘or’.
- 4 Section 442A(1), definition *trustee*, from ‘committee’ to ‘1974’—**
omit, insert—
‘administrator appointed under the *Guardianship and Administration Act 2000*’.
- 5 Section 450E(2)(a)(ii), (4)(a)(ii) and (5)(c) and (d), after ‘;’—**
insert—
‘or’.

Schedule (continued)

- 6 Section 450F(3), after ‘to’, first mention—**
insert—
‘the following’.
- 7 Section 546(b), (c) and (d), after ‘;’—**
insert—
‘and’.
- 8 Section 590A(6)(a) and (b), after ‘;’—**
insert—
‘and’.
- 9 Section 592(1A)(a), (b) and (c), after ‘;’—**
insert—
‘or’.
- 10 Section 636(2)(a), after ‘;’—**
insert—
‘and’.
- 11 Section 669A(1)(a), after ‘;’—**
insert—
‘or’.
- 12 Section 671K(3)(a), (b) and (c), after ‘;’—**
insert—
‘or’.

Schedule (continued)

13 Section 672A(a), after ‘;’—*insert—*

‘or’.

Criminal Law (Rehabilitation of Offenders) Act 1986**1 Section 9A, table, column 2, item 17(2), before ‘offender’—***insert—*

‘the’.

2 Section 9A, table, column 2, item 18(2), before ‘offender’—*insert—*

‘the’.

Criminal Proceeds Confiscation Act 2002**1 Section 205(1)(a), ‘and’—***omit.***Electronic Transactions (Queensland) Act 2001****1 Section 7A(1), ‘, part 2’—***omit.***2 Section 7A(2)—***omit.*

Schedule (continued)

- 3** **Schedule 1, heading, ‘State laws,’—**
omit.
- 4** **Schedule 1, part 2, heading—**
omit.

Judicial Review Act 1991

- 1** **Schedule 1, part 1, item 5A, ‘1991’—**
omit, insert—
‘1989’.

Legal Aid Queensland Act 1997

- 1** **Schedule, definition *Legal Aid lawyer*, first mention—**
omit.

Penalties and Sentences Act 1992

- 1** **Schedule, entry for *Drugs Misuse Act 1986*, item 2,**
‘institutions)’—
omit, insert—
‘institutions))’.
- 2** **Schedule, entry for *Drugs Misuse Act 1986*, item 3,**
‘schedule)’—
omit, insert—
‘schedule))’.

Schedule (continued)

Prisoners (Interstate Transfer) Act 1982**1 Section 9, ‘part 11’—***omit, insert—*

‘part II’.

Powers of Attorney Act 1998**1 Section 57(3), example, ‘section 68.’ and footnote—***omit, insert—*‘section 59A.¹⁵’.**Queensland Law Society Act 1952****1 Section 3, definition *approved form*—***omit.*

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15 Section 59A (Effect of power ending) allows the remaining joint attorney to exercise a power another joint attorney is unable to exercise.