

Justice and Other Legislation Amendment Bill 2005

Explanatory Notes

General Outline

Objectives of the Legislation

The Bill amends the following legislation administered by the Attorney-General and Minister for Justice, with the objective of improving the operation of the justice system:

- *Acts Interpretation Act 1954;*
- *Appeal Cost Fund Act 1973;*
- *Anti-Discrimination Act 1991;*
- *Bail Act 1980;*
- *Births, Deaths and Marriages Registration Act 2003;*
- *Civil Liability Act 2003;*
- *Coroners Act 2003;*
- *Criminal Code;*
- *Criminal Law (Rehabilitation of Offenders) Act 1986;*
- *Criminal Proceeds Confiscation Act 2002;*
- *Dangerous Prisoners (Sexual Offenders) Act 2003;*
- *Electronic Transactions (Queensland) Act 2001;*
- *Evidence Act 1977;*
- *Freedom of Information Act 1992;*
- *Judicial Review Act 1991;*
- *Justices Act 1886;*
- *Land Court Act 2000;*
- *Legal Aid Queensland Act 1997;*

- *Magistrates Act 1991*;
- *Penalties and Sentences Act 1992*;
- *Prisoners (Interstate Transfer) Act 1982*;
- *Professional Standards Act 2004*;
- *Powers of Attorney Act 1998*;
- *Queensland Law Society Act 1952*;
- *Recording of Evidence Act 1962 & Recording of Evidence Regulation 1992*;
- *Small Claims Tribunals Act 1973*;
- *State Penalties Enforcement Act 1999*;
- *Supreme Court Library Act 1968*; and
- *Supreme Court of Queensland Act 1991*.

The Bill also amends the *Juvenile Justice Act 1992* (administered by the Minister for Communities, Disability Services and Seniors), the *Corrective Services Act 2000* and repeals the *Suppression of Gambling Act 1895* (administered by the Minister for Police and Corrective Services) and the *Statutory Instruments Act 1992* (administered by the Premier and Treasurer).

Reasons for the Bill

The Attorney-General and Minister for Justice is responsible for a wide range of legislation. Periodically, the Department of Justice and Attorney-General, in consultation with the judiciary and other agencies, examines the justice portfolio legislation with a view to identifying minor, technical or non-contentious amendments required to be made to improve the operation of the legislation and also to clarify the legislation, for example, consequent to recent judicial decisions.

Amendments made by the Bill include the following:

- the *Acts Interpretation Act 1954* and the *Statutory Instruments Act 1992* are amended to assist the statutory interpretation of issues including the delegation of powers and functions and the operation of laws in relation to persons in acting appointments;
- the *Anti-Discrimination Act 1991* is amended to remove anomalies and clarify the Anti-Discrimination Commission Queensland and Anti-Discrimination Tribunal processes;

- the *Appeal Costs Fund Act 1973* is amended to address the inflexibility of the indemnity certificate provision in cases where the appellant was self-represented or frugal;
- the *Bail Act 1980* is amended to:
 - (i) clarify that a police officer may make a determination as to bail when a defendant has been apprehended on a warrant issued pursuant to section 28A of the Act;
 - (ii) facilitate the introduction of the Queensland Magistrates Early Referral into Treatment programme (QMERIT) and other diversion programmes, by enabling a court, when granting bail, to make participation in the QMERIT program a condition of bail in appropriate cases;
- the *Births, Deaths & Marriages Registration Act 2003* is amended to:
 - (i) remove the mandatory requirement for the Registrar-General to note a changed name on a person's birth entry – instead a notation as to the existence of a change of name will be made in the birth entry, unless the person requests the new name to be noted;
 - (ii) give the Registrar-General discretion to register the death of a person in circumstances where a Queensland court or a Queensland coroner has been unable to determine the place of death; and
 - (iii) require the Registrar-General to provide cause of death information as part of the notification to the Department of Child Safety required under section 48A of the Act;
- the *Civil Liability Act 2003* is amended to clarify the timing of commencement of the proportionate liability provisions of the Act;
- the *Coroners Act 2003* is amended to:
 - (i) enable the appointment of an appointed coroner or local coroner to investigate a particular death in custody or any deaths in custody;
 - (ii) enable the appointment of an appointed coroner to investigate a particular death, particular categories of deaths or for a particular period of time; and
 - (iii) remove the mandatory autopsy requirement in the case of a person whose death has not been reported to a coroner prior to the disposal of the body;

- the *Corrective Services Act 2000* is amended to include a prohibition on assaults of corrective services officers;
- the Criminal Code is amended to:
 - (i) create new offences prohibiting the observation or recording of another person, without that person's consent and in breach of privacy, in order to address the current legislative gap in relation to these activities;
 - (ii) modernise the gaming offences in Chapter 23 of the Code; and
 - (iii) provide for a specific offence to cover assaults by prisoners committed upon corrective services officers in prisons;
- the *Dangerous Prisoners (Sexual Offenders) Act 2003* is amended to:
 - (i) extend the return date for a preliminary hearing;
 - (ii) empower the court to make interim supervision orders;
 - (iii) clarify the court's power to make interim supervision orders and interim detention orders pending the determination of final Division 3 orders;
 - (iv) confirm the prisoner's right to appear and be heard at a preliminary hearing;
 - (v) clarify the Court of Appeal's powers on appeal from a decision made under the Act; and
 - (vi) clarify the application of the Act to a released prisoner, following appeal pending re-hearing;
- the *Evidence Act 1973* is amended to restore the accepted interpretation of section 93A (which deals with the admissibility of a child's statement) that applied until the recent Court of Appeal decision in *R v GR* [2005] QCA 146, 10 May 2005;
- the *Freedom of Information Act 1992* is amended to:
 - (i) make minor changes to the fees and charges regime for non-personal affairs information, with respect to claims for waiver on the basis of financial hardship; and
 - (ii) omit a redundant provision;

- the *Justices Act 1992* is amended to:
 - (i) increase the maximum penalty for contempt of criminal proceedings to achieve parity of penalty for contemptuous conduct committed in the civil and criminal jurisdictions;
 - (ii) clarify that section 142A of the Act also applies in relation to bench charge sheet matters;
 - (iii) remove the restriction on the maximum period of imprisonment which may be imposed before a matter is dealt with under section 146A of the Act; and
 - (iv) enable magistrates to deal with matters by court to court video link;
- the *Juvenile Justice Act 1992* is amended to clarify that the court or a police officer may take into account the submissions of a community justice group in deciding whether or not to grant bail to an Aboriginal or Torres Strait Islander child;
- the *Land Court Act 2000* is amended to:
 - (i) specify the powers of the Land Appeal Court;
 - (ii) clarify when time commences running for seeking an appeal or a rehearing;
 - (iii) provide the President of the Land Court with specific powers to give direction about the arrangement of business in the Land Court;
 - (iv) extend the immunity currently conferred upon members of the Land Court to a judicial registrar when exercising judicial or quasi-judicial powers; and
 - (v) clarify the assessment of costs provision;
- the *Magistrates Act 1991* is amended to enable a referral to be made to the advisory committee where there is a vacancy due to a transfer of a magistrate;
- the *Prisoners (Interstate Transfer) Act 1982* is amended to expand the range of matters the Minister may have regard to when considering a request by a prisoner to be transferred to or from another State or Territory to serve or complete serving a sentence of imprisonment;

- the *Professional Standards Act 2004* is amended to:
 - (i) expand the definition of ‘occupational association’ to include an association that represents members of more than one discipline;
 - (ii) clarify the application of limits of liability under approved professional standards schemes in circumstances of vicarious or similar liability; and
 - (iii) expand the regulation making power to enable the charging of yearly fees;
- the *Recording of Evidence Act 1962* and the *Recording of Evidence Regulation 1992* are amended to disapply the obligation to retain ‘master tapes’ in respect of proceedings that have been digitally recorded and replicated on to another server, as part of the roll out of digital recording in Queensland courts;
- the *Small Claims Tribunals Act 1973* is amended to enable registrars to order and conduct oral examinations;
- the *State Penalties Enforcement Act 1999* is amended to:
 - (i) enable driver licence suspension to be used more efficiently as an enforcement measure in circumstances where a court order, as well as an infringement notice, involves an offence in connection with a motor vehicle; and
 - (ii) clarify that a regulation prescribing an infringement notice fine may prescribe an amount for a fine for a corporation up to five times the amount payable by an individual;
- the *Supreme Court Library Act 1968* is amended to enable historical documents to be given to the Library for preservation; and
- the *Supreme Court of Queensland Act 1991* is amended to:
 - (i) clarify the provisions that apply when a judge dies, retires or becomes incapable of continuing in a proceeding before the Court of Appeal; and
 - (ii) provide for rules of court to be made for the restriction of vexatious proceedings.

Administrative cost to Government of implementation

Implementation of the Bill is not expected to result in any additional administrative costs to Government.

Consistency with Fundamental Legislative Principles

The following provisions of the Bill raise fundamental legislative principle issues:

Amendment of the *Births, Deaths and Marriages Registration Act 2003*

Clause 40, although it also applies to findings made by a Queensland court or coroner before commencement, will not affect the rights and liberties of individuals.

Amendment of *Civil Liability Act 2003*

An argument may exist that clause 44, which inserts the declaration about commencement of Chapter 2 Part 2 (Proportionate Liability), breaches fundamental legislative principles. This is on the basis that the provision may operate retrospectively to affect a person's rights in relation to apportioning liability. Conversely, it may be argued that the provision does not breach fundamental legislative principles, as it merely clarifies the application of the Act. The necessity for the amendment arises out of the two competing legal arguments as to when the provisions currently apply from. If the argument that the effect was that the provisions do commence from 1 March 2005 is correct at law, then there is no FLP breach. If this argument is not correct, then there will be a breach in relation to retrospective application of the provision by 10 days from 11 March 2005 back to 1 March 2005. On the basis of this ambiguity, and to give effect to Parliament's original intention that the provisions operate in relation to all incidents on and from 1 March 2005, it is appropriate to make the amendments proposed.

Amendment of the *Coroners Act 2003*

Clause 47, although it also applies to deaths reported to a coroner before commencement, will not affect the rights and liberties of individuals. The amendment will give coroners discretion not to order an autopsy where the body has been disposed of prior to the reporting of the death to a coroner. This may minimise the distress caused to family members.

Amendment of *Evidence Act 1977, s.93A*

Clause 93 amends section 93A of the *Evidence Act 1977* to clarify the requirements for admissibility of a child's statement. The amendment is

designed to restore the accepted interpretation of the section that applied until the recent Court of Appeal decision in *R v GR* [2005] QCA 146, 10 May 2005. Prior to the decision in *R v GR*, it had been accepted that section 93A of the Act set the relevant age for admissibility of a statement as the age of the child at the time of making the statement, not at the date of giving evidence. However, in *R v GR*, the majority held that the witness had to be a child both at the time of making the statement and at the time of the proceeding.

Clause 95 inserts a new section 144, the transitional provision for the amendments to section 93A.

Under general principles, procedural changes, such as changes to the law of evidence, can have retrospective effect without being considered as adversely affecting an existing right (*Rodway v The Queen* (1990) 169 CLR 515). A change to the law of evidence applies to a proceeding from the date the change commences, regardless of when the conduct giving rise to the proceeding occurred.

Consistently with this general principle, new section 144(1) provides that the amendment of section 93A applies to any proceeding (including a committal, a preliminary hearing, a trial and any rehearing, retrial or appeal) that starts after the amendment commences.

New section 144(2) provides that any statement that was admitted into evidence in a proceeding before the amendment commenced, that is admissible under the amended section 93A, is taken to always have been admissible. The purpose of this subsection is to ensure that statements admitted into evidence before the decision in *R v GR*, can no longer be challenged on the basis of that decision.

The transitional provision in new section 144 may be considered to breach the fundamental legislative principle that legislation should not adversely affect rights and liberties and impose obligations, retrospectively.

Currently, a person convicted before the GR decision may use that decision as a ground of appeal and may be granted a retrial. If the retrial starts after the amendment takes effect, the retrial will be conducted on the basis of the amended provision. In other words, a statement found to be inadmissible because of GR (and thus justifying the granting of a retrial) will now again be admissible.

In that sense, an advantage gained because of GR will now be lost. However, it is not possible or practical to attempt to preserve this advantage because it would mean that one accused's trial (conducted as a retrial) would operate under different evidentiary rules than those applying to the

trial of an accused occurring for the first time after the amendment is made. Two different evidentiary regimes would be operating at the same time.

In the absence of new section 144, under general principles, the amendment will take effect from the date it commences. This means that any proceeding started after commencement (including a retrial ordered because of the GR decision) will operate under the amended provisions. However, this approach provides no guidance to the courts on whether the amendment is intended to apply to statements admitted before the GR decision.

Including new section 144 will confirm that statements admitted in reliance of the interpretation of section 93A that applied before GR have been validly admitted into evidence and will remove GR as a potential ground of appeal. It will also clearly indicate that Parliament intends that all future proceedings (including retrials ordered as a result of GR) are to be conducted under the amended provisions.

While it may be argued that this approach will defeat a “right” gained by those who have already used or plan to use GR to appeal, the amendment accords with the long accepted interpretation of section 93A. It does not deprive a successful appellant of a retrial, and still gives that person a second chance at securing an acquittal. It also does not affect the court’s discretion to exclude a statement which otherwise complies with the requirements of section 93A – through section 98, which specifically relates to section 93A, and through section 130, which preserves the general power of a court to exclude evidence that is unfair to the accused to admit.

Amendment of the *Freedom of Information Act 1992*

Clause 100 amends section 52A by removing an anomalous provision which was included in error and inadvertently has the effect of conferring inconsistent review rights in relation to waiver on the basis of financial hardship and duplicating at final assessment stage review rights which exist at preliminary assessment stage. The amendment does not cause injustice to applicants as the scheme of the Act is to require applicants to seek waiver by lodging an objection notice at preliminary assessment stage or by submitting a concession card before a preliminary assessment notice is issued. The current rights of internal and external review will continue to apply to these decisions.

Amendment of *Recording of Evidence Act* legislation

Part 20, although retrospective, will not affect the rights and liberties of individuals.

Amendment of *State Penalties Enforcement Act 1992*, ss.165(4)

An argument may exist that clause 152, which inserts section 174 in the State Penalties Enforcement Act, breaches fundamental legislative principles in that the provision may operate retrospectively to affect a person's rights in relation to the penalty for infringement notice offences. Alternatively, it may be argued that the provision does not breach fundamental legislative principles, as it merely clarifies the application of a provision of the Act. The necessity for the amendment arises out of the two competing legal arguments as to the effect of section 165(4) and whether the subsection indicates a contrary intention to the provisions of the *Statutory Instruments Act 1992*.

Sections 24 and 25 of the Statutory Instruments Act enable differential penalties to be prescribed for individuals and corporations for infringement notice offences. If the argument that the effect of section 165(4) was not to indicate a contrary intention to sections 24 and 25 of the Statutory Instruments Act is correct at law, then there is no FLP breach. If this argument is not correct, then there will be a breach in relation to the retrospective application of the provision. However, the breach would be justified as it accords with the accepted interpretation that the effect of section 165(4) is confined to camera detected offences. Also, the provision has no affect on the right of any person issued with an infringement notice fine for an offence, if they disputed the fine, to have elected to have the matter dealt with by a Magistrates Court, which would determine liability.

Consultation

There has been extensive consultation on the various amendments with:

- relevant Government departments - Department of the Premier & Cabinet, Queensland Treasury, Department of Aboriginal & Torres Strait Islander Policy, Department of Child Safety, Department of Communities, Department of Corrective Services, Disability Services Queensland, Department of Education and the Arts, Department of Industrial Relations, Queensland Health, Queensland Office of Gaming Regulation, Queensland Police Service and Queensland Treasury;

- the judiciary;
- Director of Public Prosecutions;
- Legal Aid Queensland;
- Crime and Misconduct Commission;
- Appeal Costs Board;
- Anti-Discrimination Commission Queensland and the Anti-Discrimination Tribunal;
- Registrar-General of Births, Deaths and Marriages;
- State Coroner;
- Queensland Information Commissioner;
- Co-ordinator-General;
- Land Court;
- State Reporting Bureau;
- State Penalties Enforcement Registry; and
- Supreme Court Library.

Notes on Provisions

Part 1-Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 provides Part 5 (which amends the *Bail Act 1980*) and clauses 162 & 163 (which amend sections 31 & 41 of the *Supreme Court of Queensland Act 1991*) commence on a date fixed by proclamation. The remaining provisions of the Act will commence on assent.

Part 2 - Amendment of Acts Interpretation Act 1954

Clause 3 states that Part 2 amends the *Acts Interpretation Act 1954*.

Clause 4 amends section 2 of the Act by omitting subsection (2). This is consequential to the amendment of section 6 of the Act made under clause 5 below.

Clause 5 amends section 6 of the Act by inserting a new subsection which clarifies that a reference in any legislation to ‘an Act’ will include the legislation in which the reference appears. This was a matter discussed in the High Court decision in *Fingelton v The Queen* [2005] HCA 34 (23 June 2005).

Clause 6 amends section 14 of the Act by inserting a new subsection (4) which clarifies the status of notes in legislation as part of the legislation. It also makes a minor amendment to subsection 14(7).

Clause 7 amends subsection 14F(1) of the Act by incorporating examples of frequently used citation methods.

Clause 8 amends section 22A of the Act by inserting a new subsection (7) which clarifies the placement of a penalty, note or example in a provision of an Act.

Clause 9 amends section 22C of the Act to address an anomaly in relation to extension regulations. Currently, it is necessary to expire these regulations because they don’t fit within section 22C of the Act, as it is applied under the *Statutory Instruments Act 1992*. These regulations only operate to extend the commencement of an Act that would otherwise commence under section 15DA of the Act. Once they have achieved this purpose, they are ‘spent’ in much the same way as an amending regulation is spent when it has had its effect. The effect of the amendment made by clause 9 is to remove the need to include a provision in the regulation to expressly expire the regulation.

Clause 10 amends section 24B to make it clear that, while a person acts in an office, laws have effect in relation to the person and other persons dealing with the person in that acting capacity in the same way as they would if the person were the actual holder of the office.

Clause 11 amends section 24C of the Act to make it clear that, while a specified officer or the holder of a specified office acts as another specified officer or in another specified office because of the operation of an Act or a

provision of an Act, laws have effect in relation to the person and other persons dealing with the person in that acting capacity in the same way as they would if the person were the actual officer or holder of the actual office.

Clause 12 expands the operation of section 27A of the Act to include the delegation of functions. This brings Queensland into line with the approach taken by other major jurisdictions (New South Wales, Victoria, Tasmania, Australian Capital Territory, South Australia, Northern Territory and the Commonwealth) and avoids problems in relation to national scheme legislation. Subsection 27A(1A) already authorises the effective delegation of functions by delegating relevant matters. The delegation of all powers for a function is effectively the same as the delegation of a function. The amendment is necessary to preserve the effectiveness of existing powers to delegate a power. Section 27A is amended to state that anything done by or in relation to a delegate in the exercise of the delegate's power or function is taken to have been done by or in relation to the delegator. For example, the delegation may involve the receipt of information from a person for whom it would be an offence to provide false information to the delegator. The amendment clarifies that this offence would also be committed when the false information was given to the delegate.

Clause 13 amends section 35C of the Act to state that a note about the operation of a provision, which appears at the end of the provision, forms part of the provision unless the note relates to a different provision. For example, if there is an amendment of the legislation that omits the provision, then because of this amendment, the note will also be omitted.

Clause 14 inserts a new section 35CA in the Act which clarifies that if there is more than one end item (ie a penalty, example or note) for a provision, they are all taken to be end items. The order in which they appear will be determined having regard to current drafting practice.

Clause 15 amends section 36 of the Act to insert a definition of 'Administrative Arrangements'.

Part 3 - Amendment of Anti-Discrimination Act 1991

Clause 16 states that Part 3 amends the *Anti-Discrimination Act 1991*.

Clause 17 amends section 15A of the Act, which prohibits discrimination against workers where the work is being carried out for someone other than the employer of the worker. The amendment makes it clear that the prohibition applies in the pre-work area.

Clause 18 amends section 113 of the Act, which provides for the making of applications to the Tribunal for exemptions from specified provisions of the Act. The amendments require the Tribunal to notify the Commission of each application for exemption received by the Tribunal, and to have regard to any submission made by the Commission on the application, including the process for considering the application. The amendment will ensure all relevant issues are properly raised for the attention of the Tribunal and to provide greater transparency in decision making.

Clause 19 amends section 143 of the Act, which requires the Commissioner to notify the respondent when a complaint is accepted. The amendments make it clear that the respondent must give any response to the Commissioner in writing and give a copy of any written response to the complainant and to any other respondent. The amendments also require the respondent to advise the Commissioner in writing of the respondent's address for service.

Clause 20 amends section 165 of the Act to make it clear that the power to refer a complaint to the Tribunal under any other section of the Act ends when the Commissioner gives notice to the complainant and the respondent under this section that the Commissioner believes the complaint cannot be resolved by conciliation.

Clause 21 amends section 166 of the Act to provide that a complainant must make any request for an extension of time in writing. The amendment also makes it clear that the period between when the complainant asks for an extension of time and when the complainant is notified of the Commissioner's decision is not included in the 28 day period under subsection 166(1). However, if the complainant asks for an extension on the last of the 28 days allowed 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 notice of refusal is received or the next day that is a business day.

Clauses 22-25 amend sections 176, 213C, 214 & 215 of the Act to clarify that the reference to 'member' in those sections is a reference to a member of the Tribunal.

Clause 26 inserts a new section 246A in the Act which provides a definition of 'member' for the purpose of Chapter 9, Part 2 of the Act.

Clause 27 amends the schedule definition of ‘complainant’ to achieve consistency with section 134 of the Act, which sets out who may complain. It also omits the definition of ‘member’ which is used inconsistently throughout the Act and inserts a signpost for the definition of ‘member’ inserted under new section 246A.

Part 4 - Amendment of Appeal Costs Fund Act 1973

Clause 28 states that Part 4 amends the *Appeal Costs Fund Act 1973*.

Clause 29 amends section 16 of the Act to address the inflexibility of subsection 16(3)(a) in certain situations. Section 16 of the Act entitles a respondent to be paid, from the Appeal Costs Fund, an amount equal to the appellant’s costs (if any) of (a) the appeal in respect of which an indemnity certificate was granted under section 15 of the Act and (b) a new trial had in consequence of an order made upon an appeal for a new trial, as assessed or agreed upon by the Appeal Costs Board. However, subsection 16(3)(a) of the Act currently qualifies the respondent’s entitlement by limiting the amount the respondent is to be paid from the Fund to an amount that does not exceed the amount payable from the Fund to the appellant. Subsection 16(3)(b) currently limits the amount payable for any one indemnity certificate to an amount prescribed by regulation, which is currently \$15,000. If an appellant is self represented or frugal, subsection 16(3)(a) effectively denies a respondent a claim on the Fund. To address this, clause 29 amends subsection 16(3) by removing the limitation under subparagraph (a) on the respondent’s entitlement under the indemnity certificate. It should be noted that the appellant’s costs will still receive first consideration by the Board, which will continue to exercise its discretion as to whether the costs claimed by both the appellant and the respondent are reasonable. New subsection 16(3) preserves the current limitation under subparagraph (b) that only the prescribed amount is payable in respect of any one indemnity certificate.

Part 5 - Amendment of Bail Act 1980

Clause 30 states that Part 5 amends the *Bail Act 1980*.

Clause 31 amends the section 6 definition of ‘community justice group’ by correcting the reference to the *Aboriginal Communities (Justice and Land Matters) Act 1984*.

Clause 32 amends section 11 of the Act to provide that a Magistrates Court may grant bail on condition that the person participates in a program prescribed under a regulation.

Clause 33 makes consequential amendments to section 20(3)(b)(i) and section 20A(3A)(b)(i) following the insertion of the new subsection (4) to section 11 under clause 32, above.

Clause 34 inserts a note in section 28A of the Act to clarify that a police officer acting under section 16(3)(d) of the Act may make a determination as to bail when a defendant has been apprehended on a warrant issued under section 28A.

Clause 35 amends section 29 of the Act to provide that a defendant does not commit an offence under this Act for failure to comply with the condition that the defendant participates in a program prescribed under a regulation under section 11(4).

Clause 36 amends section 29A of the Act so that the section does not apply if the only condition that the defendant has broken, or is likely to break, is a condition of the defendant’s undertaking imposed under section 11(4).

Clause 37 amends section 30 of the Act so that 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 under section 11(4), the court may vary the defendant’s bail, including rescinding the condition imposed under section 11(4), but may not revoke the bail. This is because the primary consideration for the Magistrate at the time of the original grant of bail should be eligibility for bail. If a defendant is eligible for bail, then the Court can consider whether the defendant would be suitable for the QMERIT program. For this reason, it would be inequitable for a breach of the QMERIT condition, without any other breach of bail, to result in revocation of bail. A client could, however, be breached for commission of further offences and non-compliance with bail conditions.

Part 6 - Amendment of Births, Deaths and Marriages Registration Act 2003

Clause 38 states that Part 6 amends the *Births Deaths and Marriages Registration Act 2003*.

Clause 39 amends section 19 of the Act to provide that if the registrar registers a change of name of a person whose birth or adoption was registered in Queensland and the changed name is not the same as the person's latest name in the register, the registrar must note the change in the register of births or the adopted children register if the applicant requests it. If the request is not made, the register of births or adopted children register must have a notation that a change of name has been entered in the change of name register. In practice, this means that whenever a change of name occurs, the birth entry will be noted to reflect the existence of a change of name in the change of name register. To assist in combating identity fraud, this will enable a law enforcement agency sighting a birth certificate to be made aware that the person's name has been changed.

Clause 40 amends section 27 of the Act to accommodate a situation not previously contemplated, namely where a Queensland court or coroner finds that a person has died but is unable to find the place of death. The amendment will apply to findings made before and after the commencement of the amendment. The amendment gives the registrar discretion to register such deaths where the death has not been registered in another State or country.

Clause 41 amends subsection 48A(3) of the Act, which requires the Registrar-General, when registering the death of a child, to provide prescribed information to the chief executive of the Department of Child Safety. The provision of this information facilitates the Department's obligation, under section 246A of the *Child Protection Act 1999*, to review the death of a child where, within three years of the child's death, the Department had received an allegation of harm or risk of harm to the child or had taken action under the Child Protection Act in relation to the child. To improve the efficiency of this process, subparagraph 48A(3)(b) is amended to require the Registrar-General to provide cause of death information to the Department in the notice required under subparagraph 48A(2)(b).

Part 7 - Amendment of Civil Liability Act 2003

Clause 42 states that Part 7 amends the *Civil Liability Act 2003*.

Clause 43 amends the heading to Chapter 5 of the Act to reflect that, under clause 44 below, the chapter will deal with issues additional to transitional requirements for amending legislation.

Clause 44 inserts a new Part 4 into Chapter 5 of the Act. Part 4 consists of new section 82, which clarifies the application of Chapter 2 Part 2 (Proportionate Liability) of the Act. In particular, new section 82 clarifies that the provisions of Chapter 2 Part 2 apply to all causes of action that occur or arise on or after 1 March 2005.

Part 8 - Amendment of Coroners Act 2003

Clause 45 states that Part 8 amends the *Coroners Act 2003*.

Clause 46 amends section 11 of the Act. Currently deaths in custody have to be investigated by the State Coroner or Deputy State Coroner. This amendment will allow the Governor in Council, on the recommendation of the Chief Magistrate in consultation with the State Coroner, to approve an appointed coroner or local coroner to investigate a particular death in custody or any death in custody.

Clause 47 amends section 19 of the Act by removing the mandatory autopsy requirement in the case of a person whose death has not been reported to a coroner prior to the disposal of the body. In most of these cases a coroner is likely to require some type of autopsy on the body. However, in some cases where there are systemic issues, the coroner may not require an autopsy or examination of the ashes. The amendment also clarifies that an autopsy is not required where a suspected death is being investigated. The amendments will apply to deaths for which an autopsy has not yet occurred that were reported to the coroner after the commencement of the Act but before the commencement of this amendment.

Clause 47 also removes an incorrect reference that the coroner may make an order for autopsy under the section for deaths previously investigated under the repealed *Coroners Act 1958*. Section 100 of the current *Coroners*

Act 2003 makes it clear that the provisions of the *Coroners Act 1958* apply in such a situation.

Clause 48 amends section 26 of the Act, consequential to the amendment to section 19 under clause 47 above, to make it clear that the coroner cannot have control of the body in those cases where the death is reported to the coroner after burial. Where the body is exhumed in such a situation, control of the body is dealt with in the provisions governing exhumation (section 20 of the Act).

Clause 49 amends section 83 of the Act to allow appointed coroners to be appointed to investigate a particular death or for a particular period or otherwise. The amendment will allow an appointed coroner to be appointed to investigate a particular death, particular categories of deaths or for a particular period of time.

Part 9 - Amendment of Corrective Services Act 2000

Clause 50 states that Part 9 amends the *Corrective Services Act 2000*.

Clause 51 amends section 95 of the Act to extend the provision to an assault on a corrective services officer or proper officer of the court. This amendment complements the amendment made under clause 59 to section 340 of the Criminal Code (Serious assaults) to specifically cover assaults on corrective services officers. This amendment provides a specific charge, which must be dealt with summarily, to deal with minor examples of assaults on corrective services officers.

Part 10 - Amendment of Criminal Code

Clause 52 states that Part 10 amends the Criminal Code.

Clause 53 amends section 1 of the Code by inserting signposts for the new definitions of 'conduct', 'occupier', 'place', 'public place' and 'unlawful game' for the purpose of Chapter 23. It also inserts signposts for the new definitions of 'law enforcement agency', 'law enforcement officer', 'observe', 'private act', 'private place', 'state of undress' and 'visually

record' inserted in section 207A for the purpose of the new voyeurism offences in Chapter 22.

Clause 54 amends section 207A to insert definitions of 'law enforcement agency', 'law enforcement officer', 'observe', 'private act', 'private place', 'state of undress' and 'visually record' for the purpose of new sections 227A, 227B and 227C (discussed in clause 55 below).

'Private act' is defined to mean showering or bathing, using a toilet, another activity when a person is in a state of undress, or an intimate sexual activity that is not ordinarily done in public.

'State of undress' means the person is naked, or the person's breasts (for a female) or genital or anal region are bare, the person is wearing only underwear, or the person is partially undressed, so that some of the underwear is exposed.

'Private place' means a place where a person might reasonably be expected to be engaging in a private act. This includes toilets, bathrooms, bedrooms and change rooms.

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

The definitions of 'law enforcement agency' and 'law enforcement officer' have been relocated from section 228H, as these definitions now also apply to new section 227C (discussed in clause 55 below).

Clause 55 inserts new sections 227A, 227B & 227C into Chapter 22 of the Code.

Section 227A creates three offences in relation to observations or recordings made in breach of privacy. The new offences are designed to address the 'voyeuristic' observation or recording of another person. In each case the maximum penalty is two years imprisonment, which is the same as that applying to the offence of indecent acts in section 227.

In each case the observation or recording must occur in circumstances where a reasonable adult would expect to be afforded privacy, and where the observation or recording occurs without the consent of the person under observation or being recorded. The motivation of the observer is irrelevant, that is, whether the observer's motives are for sexual gratification, to harass the person observed, or for a commercial purpose.

Including an objective test – that in the circumstances, a reasonable adult would expect to be afforded privacy – ensures that the offences are directed

at conduct which any reasonable person would find breaches accepted notions of privacy and where a person would rightly expect their privacy to be protected by the criminal law.

This test is consistent with that contained in section 21G (Filming for indecent purposes) of the New South Wales *Summary Offences Act 1988* and new section 162 (Voyeurism) of the Canadian *Criminal Code*.

The first offence is directed at the observation or recording of a person in a private place (defined in section 207A), such as a bathroom, toilet, bedroom or change room. The person under observation need not actually be engaged in a private act at the time.

The second offence is directed at the observation or recording of a person who is actually engaging in a private act, regardless of the place, and where the observation or recording is made for the purpose of observing or visually recording a private act.

For the second offence, requiring the purpose of the observation or recording to be to observe or record the person in, for example a state of undress, is intended to exclude the inadvertent or incidental recording or observation of a person in such a state. For example, a security camera may record a couple engaged in an intimate sexual activity, but the purpose of the camera is not to record that activity.

Before either offence is committed, the observation or recording must occur in circumstances where a reasonable adult would expect to be afforded privacy. For example, in a communal change room (such as in a gym or public swimming pool), a person may expect that while undressing, they will be observed by others using the same room, but may not expect to be filmed on another person's mobile phone camera. A person who requires assistance in dressing or toileting may expect to be observed by the person giving that assistance, but may not expect to be observed by a third person. Section 227A(1) sets out these examples of circumstances where a reasonable adult would expect to be afforded privacy.

The third offence, set out in section 227A(2), is directed at conduct known as "up skirting", for example, where an offender uses a concealed camera to take an image of a person's private parts or underwear under their clothing. Under section 227A(2) it is an offence to observe or visually record another person's genital or anal region, in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region, without their consent, and where the observation or visual recording is made for the purposes of observing or visually recording the other person's genital or anal region.

For this subsection, “genital or anal region” means the person’s genital or anal region when it is bare or covered by underwear.

All three offences cover observation as well as the making of a visual recording, and done by any means – for example, observation through a secret camera in a toilet linked to a live CCTV link or relaying a live image to a TV or web site).

New section 227B makes it an offence to distribute a ‘prohibited visual recording’ of another person, having reason to believe it to be a prohibited visual recording, and without that person’s consent. This proposed offence also has a maximum penalty of two years imprisonment.

In order for this offence to apply, the person distributing the visual recording must have reason to believe that it is a recording obtained in circumstances where a reasonable adult would expect to be afforded privacy. The offence will apply to a person who distributes a recording obtained in breach of section 227A, as well as to a person who distributes a recording in circumstances where section 227A may not apply. For example, a person may inadvertently record an image of a person engaging in a private act, but then decide to distribute the image.

A ‘prohibited visual recording’ is –

- (a) a visual recording of another 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 another person’s genital or anal region (either bare or covered by underwear) made in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region.

‘Distribute’ is defined to include –

- (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.

This definition is the same as that applying in section 228C of the Criminal Code (Distributing child exploitation material).

There are cases where a person may legitimately be the subject of observation or visual recording without their consent. This includes law enforcement officers undertaking legitimate surveillance operations, the surveillance for safety reasons of toilet and bathroom facilities in correctional institutions and mental health facilities (eg for suicide watch), and where a person subject to an intensive drug rehabilitation order is required to provide a urine test sample.

New section 227C expressly excludes these types of legitimate surveillance from the ambit of the offences in new sections 227A and 227B. A law enforcement officer or a person performing duties in relation to another person in lawful custody or under supervision, is not criminally responsible for an offence against section 227A(1) or (2) or 227B(1) in relation to an observation or recording, where the person is acting in the course of the person's duties and the person's conduct is reasonable for the performance of those duties. This exemption is consistent with that contained in section 228H of the Criminal Code (Possession etc of child exploitation material by law enforcement officer).

Section 227C(3) includes definitions of "lawful custody" and "supervision order".

Clause 56 amends section 228H (Possession etc of child exploitation material by law enforcement officer) to omit the definitions of "law enforcement agency" and "law enforcement officer" as these definitions have been relocated to section 1.

Clause 57 inserts new section 230A in the Code, which contains definitions of 'conduct', 'occupier', 'place', 'public place' and 'unlawful game' for the purposes of Chapter 23. The modernised definition of 'unlawful game' reaffirms the community standard that unauthorised gambling games are unacceptable in public places. Additionally, whether conducted or played in a public place or elsewhere, a game is an unlawful game if it is unauthorised and a person takes a percentage of the amount gambled or bet by the players and that percentage is not included in the winnings of the players or a person charges players a fee to enter the game or a person receives a fee or another consideration to conduct the game, for example, games such as poker tournaments or 'funny money nights'. The definition does not capture games played in private where a percentage of the winnings is not retained by a 'bank' or there is no entry fee for the game. For example, a game of poker between friends at a private dwelling where the total amount bet on each game is received by the player with the winning hand is not an unlawful game.

Clause 58 replaces sections 232-235 of the Code with the following new sections:

New section 232 makes it an offence to operate a place for the conduct or playing of unlawful games. This new section modernises the offence of keeping a common gaming house in current section 232 of the Code.

New section 233 makes it an offence to possess gaming equipment which facilitates the playing of an unlawful game where the circumstances of the possession are in conjunction with evidence of the playing, or the intended playing, of an unlawful game using that equipment.

Current section 233 which makes it an offence to keep a common betting house is repealed as this provision is unnecessary in that it duplicates offences in the *Racing Act 2002*.

New section 234 makes it an offence to conduct or play an unlawful game. The offence of conducting an unlawful game has a higher maximum penalty reflecting the greater culpability of a person who conducts the game compared to that of a person who is merely playing the game.

Current section 234 (which makes it an offence to keep a place for conducting lotteries) is repealed, as this provision has been superseded by the offence provision for unauthorised gaming schemes and lotteries under the *Lotteries Act 1997*.

Current section 235 is repealed because the matter is dealt with by the new definition of 'occupier' under new section 230A.

Clause 59 amends section 340 of the Code to provide for a specific offence to cover assaults by prisoners committed upon corrective services officers in prisons. This amendment acknowledges the vulnerability of prison officers and the seriousness of any assault upon them in the course of their legitimate duties.

Clause 60 omits section 637 of the Code. This evidentiary provision is no longer required because of the inclusion of the definition of 'unlawful game' in clause 58 above.

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

Clause 61 states that Part 11 amends the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Clause 62 amends section 5(4) of the Act to extend the return date for the preliminary hearing to within 28 business days after the filing of the Attorney-General's application. The currently prescribed period is 14 business days. The extension to 28 business days addresses the concern that the current timeframe compromises procedural fairness in that the respondent is afforded inadequate time in which to prepare a response.

Clause 63 amends section 8 of the Act to provide the court with the option of making an interim supervision order if the court sets a date for the hearing of an application for final orders. Currently, section 8(2) provides that if the court is satisfied that the prisoner may be released from custody before the application is finally decided, it may make an interim detention order. The ability to make an interim supervision order will be particularly relevant in circumstances where the Attorney-General is applying for a supervision order and not a continuing detention order.

Clause 63 further amends section 8 by omitting subsections (3) and (4). The content of those subsections will instead be covered in a new section 43A (Persons who remain prisoners for particular purposes) discussed in clause 86 below.

Clause 64 inserts a new section 9A into the Act to clarify that the court may adjourn the hearing for final orders and may make an interim supervision order or interim detention order pending the determination of final Division 3 orders.

Clause 65 amends section 10 of the Act consequential to the introduction of interim supervision orders.

Clause 66 amends the Part 2, division 3 heading.

Clause 67 inserts a new Part 2, division 3A heading.

Clause 68 amends section 14 of the Act by:

- amending the heading to refer to interim detention orders;
- amending subparagraph (1)(b) by omitting 'by the court's order';
- inserting a new subsection (2) which provides for the effect of an interim detention order; and

- omitting the existing subsection (2) the content of which will be covered in a new section 43A, discussed in clause 86 below.

Clause 69 amends section 15 of the Act consequential to the introduction of interim supervision orders.

Clause 70 inserts a new Part 2, division 3B heading.

Clause 71 provides for minor drafting amendments to section 16 of the Act.

Clause 72 provides for a new Part 2, division 3C heading.

Clause 73 amends section 17 of the Act by requiring a judicial authority to give detailed reasons for making an interim detention order or interim supervision order. Currently the section only applies to a continuing detention order or supervision order.

Clauses 74 to 79 provide for amendments consequential to the introduction of interim supervision orders.

Clause 80 amends section 22 of the Act by:

- amendments consequential to the introduction of interim supervision orders; and
- inserting new subsections (2) and (3) which clarify the grounds and evidence on which a continuing detention order may be made when the court rescinds a supervision order.

Clauses 81 and 82 provide for amendments consequential to the introduction of interim supervision orders.

Clause 83 provides for minor drafting changes to section 41 and an amendment consequential to the introduction of interim supervision orders. Section 41 is further amended by omitting subsection (3), the content of which is covered in the new section 43A, discussed in clause 86 below.

Clause 84 amends section 42 of the Act, consequential to the amendment to section 41.

Clause 85 amends section 43 of the Act to clarify that the Court of Appeal has all the powers it has when hearing appeals in its civil jurisdiction, including the power to remit the matter for rehearing. New subsection (4) confirms that if the Court of Appeal remits a matter for rehearing and the prisoner will be released from custody before the matter is reheard, the Court of Appeal may make an interim detention order or interim supervision order.

Clause 86 inserts a new section 43A in the Act which clarifies when a person remains a prisoner for the purposes of the Act.

Clause 87 amends section 44 of the Act to clarify that the section is subject to section 49.

Clause 88 amends section 49 of the Act to clarify that a prisoner has a right of appearance at the preliminary hearing and at an application to amend the conditions of a supervision order, but that if the prisoner does not appear at the hearing of the application the court may proceed pursuant to section 44 of the Act.

Clause 89 is a minor consequential drafting amendment.

Clause 90 inserts a new Part 6 dealing with transitional provisions. New section 54 states that the amendments do not affect any existing orders made under the Act. New section 55 provides that the amendments apply to proceedings on foot at the time the amendments commence operation. New section 56 provides that the amendments do not affect the status of persons who were prisoners for the purposes of the Act under the pre-amended Act.

Clause 91 amends the schedule by replacing the definitions of ‘interim detention order’ and ‘risk assessment order’, inserting new definitions of ‘interim supervision order’, ‘judicial authority’ and ‘release day’ and amending the definition of ‘supervised release’.

Part 12 - Amendment of Evidence Act 1977

Clause 92 states that Part 12 amends the *Evidence Act 1977*.

Clause 93 amends section 93A of the Act to clarify the requirements for admissibility of a child’s statement. The amendment is designed to restore the accepted interpretation of the section that applied until the recent Court of Appeal decision in *R v GR* [2005] QCA 146, 10 May 2005. Prior to the decision in *R v GR*, it had been accepted that section 93A set the relevant age for admissibility of a statement as the age of the child at the time of making the statement, not at the date of giving evidence. However, in *R v GR*, the majority held that the witness had to be a child both at the time of making the statement and at the time of the proceeding.

Where the maker of the statement is a child aged 16 or 17, the child’s statement may also be admissible if the child is a ‘special witness’. The amendments also clarify when the assessment is to be made that the witness is a ‘special witness’.

Section 93A(1) currently provides that in any proceeding where direct oral evidence of a fact would be admissible, any statement tending to establish that fact, contained in a document, shall be admissible as evidence of that fact if—

- (a) the maker of the statement was a child or an intellectually impaired person at the time of making the statement and had personal knowledge of the matters dealt with by the statement; and
- (b) the child or intellectually impaired person is available to give evidence in the proceeding.

Subsection 93A(1)(b) is amended by replacing the phrase “*the child or intellectually impaired person*” with the phrase “*the maker of the statement*”. This amendment will confirm that the relevant age for admissibility of a child’s statement is the age of the witness at the time of making the statement, not the age of the witness at the time of the proceeding.

Subsection 93A(2) is replaced by new subsections (2), (2A) and (2B) to reflect the changes made in subsection (1). The effect of the new subsections will be the same as existing subsection (2).

The definition of ‘child’ in subsection (5) is amended to give effect to the amendments made to subsection (1) and to clarify when the assessment is made that a witness is a ‘special witness’.

The definition in subparagraph (a) that a child means “*a child who is under 16 years*” is replaced by the words “*a person who was under 16 years when the statement was made, whether or not the person is under 16 at the time of the proceeding*”. This amendment further reinforces the intention that the relevant age for admissibility of a child’s statement is the age of the witness at the time of making the statement, not the age of the witness at the time of the proceeding.

The definition in subparagraph (b) that ‘child’ means ‘*a child who is 16 or 17 years and who is a special witness*’ is replaced by the words ‘*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*’.

This amendment reflects the view that the relevant assessment of the witness should take place at the time of the proceeding, not at the time the witness gave the statement. However, the statement will only be admissible in these circumstances if the maker of the statement was aged 16 or 17 years at the time of making the statement.

Clause 94 amends section 134A of the Act, which provides procedures regarding the production for inspection of an agency's documents to a party in civil proceedings. Subsection 134A(6) makes it clear that documents subject to the confidentiality provisions of the *Health Services Act 1991* can be produced for inspection under this section. Clause 94 amends the cross-referencing to the relevant provisions of the *Health Services Act 1991* to reflect recent changes to that Act.

Clause 95 inserts a new Division 4 into Part 9 of the Act, which includes new section 144 (the transitional provision for the amendments to section 93A).

New section 144(1) provides that the amendment of section 93A applies to a proceeding that starts after the amendment commences. This is consistent with the general principle that a change to the law of evidence applies to a proceeding from the date the change commences, regardless of when the conduct giving rise to the proceeding occurred. Subsection (3) defines proceeding to include a committal, a preliminary hearing, a trial and any rehearing or retrial arising out of, or any appeal from, an earlier proceeding.

New section 144(2) provides that any statement that was admitted into evidence in a proceeding before the amendment commenced, that is admissible under the amended section 93A, is taken to always have been admissible. The purpose of this subsection is to ensure that statements admitted into evidence before the decision in *R v GR* can no longer be challenged on the basis of that decision.

New section 145 is a declaratory provision regarding the effect of the amendment of the definition 'chief executive (surveys)' by the *Surveyors Act 2003*. The *Evidence (Protection of Children) Amendment Act 2003* commenced on 5 January 2004 and relocated the definitions to schedule 3. The amendments by the Surveyors Act were fed into the definition in schedule 3 when they should not have been.

Part 13 - Amendment of Freedom of Information Act 1992

Clause 96 states that Part 13 amends the *Freedom of Information Act 1992*.

Clause 97 amends section 7 to provide a definition of 'holder' of a concession card.

Clause 98 amends section 11 of the Act to refer to the Mental Health Review Tribunal in the definition of ‘tribunal’.

Clause 99 amends section 35A to account for the new definition of ‘holder’.

Clause 100 amends section 52A by omitting an anomalous subsection which inadvertently has the effect of conferring inconsistent review rights in relation to waiver on the basis of financial hardship and duplicating at final assessment stage review rights which exist at preliminary assessment stage.

Clause 101 omits section 108B from the Act. This section is otiose as there is no longer provision for the Ombudsman to be the Information Commissioner, unless another person is appointed.

Clause 102 replaces the Part 7 heading. This is because all transitional provisions are now being inserted in this Part.

Clause 103 replaces Part 8 heading. This is because all transitional provisions are being inserted in the new Part 7.

Clause 104 replaces Part 9 heading. This is because all transitional provisions are being inserted in the new Part 7.

Clause 105 replaces Part 10 heading. This is because all transitional provisions are being inserted in the new Part 7.

Clause 106 amends Schedule 4 section 8 to take account of the changes to Schedule 4 section 10.

Clause 107 amends Schedule 4 section 10 to provide that only if the agency is a department and the applicant is a non-profit organisation claiming financial hardship is the decision in relation to waiver to be made by the prescribed person. In cases where the applicant is an individual the departments will make this decision themselves.

Part 14 - Amendment of Justices Act 1886

Clause 108 states that Part 14 amends the *Justices Act 1886*.

Clause 109 amends section 40 of the Act by increasing the maximum penalty for contempt of criminal proceedings to same level as the maximum penalty for contempt of civil proceedings (as prescribed under the *Magistrates Courts Act 1921*, section 50(3)(b)). This achieves parity of

penalty for contemptuous conduct committed in the civil and criminal jurisdictions.

Clause 110 amends section 142A of the Act to extend the section to cases where the defendant is required to appear for the hearing of the complaint under a condition of the defendant's bail or by a notice given to the defendant under the *Bail Act 1980*. The amendment makes it clear that a person charged on a Bench Charge Sheet and released on bail (including 'cash bail') can be dealt with by the section 142A procedure.

Clause 111 amends section 146A in similar terms to the amendment to section 142A under clause 110 above. The amendment makes it clear that section 146A applies if a defendant is required to appear for the hearing of a complaint pursuant to a summons, or a condition of the defendant's bail or by a notice given to the defendant under the *Bail Act 1980*. Section 146A is further amended to remove any restriction on the maximum period of imprisonment which may be imposed before a matter is dealt with on a written plea of guilty in absentia.

Clause 112 replaces sections 178B-178F of the Act with new sections designed to expand the operation of Part 6A of the Act to allow magistrates to deal with matters of bail and remand at another court by video link. Part 6A currently confines the use of video link facilities to linking court proceedings involving a 'detainee' with the detainee's correctional institution.

New section 178B contains new definitions of 'associated place', 'facility user' and 'primary court' for the purpose of Part 6A of the Act. The new section retains the current definition of 'proceeding'.

New section 178C essentially replicates the effect of current section 178C, with an additional requirement that the person be legally represented in circumstances where the 'associated place' is another Magistrates Court where the person is present.

New sections 178D, 178E & 178F essentially replicate the effect of current sections 178D, 178E & 178F, but replace references to 'correctional institution' with the expanded concept of 'associated place' (defined in new section 178B to mean a correctional institution or another Magistrates Court) and incorporate the new concepts of 'facility user' (instead of 'detainee') and 'primary court'.

Part 15 - Amendment of Juvenile Justice Act 1992

Clause 113 states that Part 15 amends the *Juvenile Justice Act 1992*.

Clause 114 amends section 48 of the Act to clarify that the court or a police officer may take into account the submissions of a community justice group in deciding whether or not to grant bail to an Aboriginal or Torres Strait Islander child.

Clause 115 omits the definitions of ‘child’s community’ and ‘community justice group’ from section 150 of the Act. Instead, clause 116 inserts those definitions in Schedule 4 of the Act to reflect that these terms are also used in section 48, as amended by clause 114 above.

Part 16 - Amendment of Land Court Act 2000

Clause 117 states that Part 16 amends the *Land Court Act 2000*.

Clause 118 amends section 12 of the Act to clarify the point in time from which the period in which an application for rehearing of a decision under section 12 commences. Time will commence running when an order containing the relevant decision is made by the Court. The Court makes its order in accordance with the *Land Court Rules 2000*.

Clause 119 inserts new division 3A into Part 2 of the Act. The new division contains section 20A, which provides specific power to the President of the Land Court to manage the day to day work of the Court, such as making decisions upon which matters are to be listed, at what times, and where. This is in contrast to section 22 of the Act, which provides power for giving directions to supplement application of the Land Court Rules.

Clause 120 amends section 34(5) of the Act to remove any possible impediment to assessment of the costs of a matter under a scale other than the Supreme Court Scale of Costs. It also amends section 34(6) to make a technical correction to internal references within the section.

Clause 121 amends section 35 of the Act by inserting a new subsection (1A), which provides the judicial registrar with the same privileges,

protection and immunity as a Justice of the Supreme Court when the registrar exercises their judicial or quasi-judicial powers under the Act.

Clause 122 replaces section 57 of the Act with a new section that specifies the powers of the Land Appeal Court upon an appeal.

Clause 123 amends section 65 of the Act to clarify the point in time from which the period in which a party must serve notices of appeal under section 65 commences. Time will commence running when an order containing the relevant decision is made by the Land Court. The Court makes its order in accordance with the Land Court Rules.

Clause 124 amends section 75 of the Act to clarify the point in time from which the period in which a party must seek leave to appeal under section 75 of the Act commences. Time will commence running when an order containing the relevant appeal decision is made by the Land Appeal Court.

Part 17 - Amendment of Magistrates Act 1991

Clause 125 states that Part 17 amends the *Magistrates Act 1991*.

Clause 126 amends section 23 of the Act to enable a referral to be made where there is a vacancy due to a transfer of a magistrate.

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

Clause 127 states that Part 19 amends the *Prisoners (Interstate Transfer) Act 1982*. The objective of the amendments made is to broaden the range of matters that Ministers may have regard to when considering a request by a prisoner to be transferred to or from another State or Territory to serve or complete serving a sentence of imprisonment. It is intended that Ministers may have regard to all matters which they consider relevant in exercising their discretion under Parts 2 and 4 of the Act.

Clause 128 amends the heading to Part 2 to reflect the amendments made to Part 2 under clauses 129-132 below.

Clause 129 amends section 6 of the Act by removing references to the basis for consideration of requests for transfer, as the criteria will be contained in the new section 10A (inserted by clause 131 below).

Clause 130 amends section 10 of the Act to make a minor drafting change.

Clause 131 inserts a new section 10A in the Act, which sets out the criteria the Minister may take into account in deciding to ask another State or Territory to consider accepting the prisoner or in deciding to accept a transfer from another State or Territory, namely:

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

Clause 132 amends section 22 of the Act to incorporate the criteria prescribed by new section 10A for use in situations where a prisoner temporarily transferred from another State or Territory to face trial for offences against Queensland law seeks to remain in Queensland, rather than be returned to the original jurisdiction after the trial. Under the scheme, if the Queensland trial results in acquittal or a lesser sentence of imprisonment than the prisoner was facing in his or her 'home' jurisdiction, the prisoner would, under section 19 of the Act, usually be returned to that jurisdiction to serve out the sentence. Section 22, as amended, will allow for a transfer to be initiated by the prisoner when the trial has concluded and the two Ministers will use the same criteria as they would under new section 10A.

Part 19 - Amendment of Professional Standards Act 2004

Clause 133 states that Part 19 amends the *Professional Standards Act 2004*.

Clause 134 inserts new section 21A in the Act, which deals with the application of limits of liability under approved professional standards schemes in circumstances of vicarious or similar liability. Where one member is liable for loss or damage as a result of actions of another member, then the limitation of liability under the scheme will continue to apply. It will not be arguable, for example, that the vicarious liability of a member is outside the occupational liability covered by the scheme.

Clause 135 amends the regulation making power contained in section 71 of the Act. The section specifically provides the Governor in Council with the power to make regulations that provide for fees to be payable for any application to the Professional Standards Council. This includes fees for approval, preparation, revocation or amendment of schemes. The amendment also provides the Governor in Council with power to fix a fee to be paid on a yearly basis, based either upon a scheme or the members of a scheme, and for interest to be payable upon any fee that is not paid within 30 days after it becomes payable.

Clause 136 amends Schedule 2 of the Act by inserting a definition of ‘fee’ that allows for setting of fees by the Governor in Council at levels that ensure cost recovery for the Professional Standards Council’s activities in approving a scheme during the life of the scheme, as well as providing for the further functions of the Council under the Act. The clause also amends the definition of ‘occupational association’ to allow associations that represent members of more than one discipline to apply for approval of schemes under the Act. However, the disciplines must be allied, connected or interrelated on an occupational basis. The clause then amends the definition of ‘officer’ by removing the specific reference to the repealed section 82A.

Part 20 – Amendment of Recording of Evidence Legislation

Clause 137 states that Part 20, division 1 amends the *Recording of Evidence Act 1962*.

Clause 138 amends section 4 of the Act to:

- delete the reference to ‘stipendiary’ in the definition of judicial person because the term “stipendiary” is no longer used in relation to magistrates; and

- amend the definition of ‘record under this Act’ to include, if the record on a master tape is a digital recording, a replication of the record onto a separate data storage medium.

Clause 139 amends section 11 of the Act to allow a digital recording to be destroyed once it has been securely archived by replicating the original digital recording to servers located remotely from the recording site.

The effect of the Act is that, generally speaking, the master tape may only be destroyed after a transcript has been made and any appeal period has passed without an appeal or other form of review or, if one has commenced, it has been finalised. This regime does not reflect the reality of the digital recording environment being rolled out across Queensland's courts where the digital recording is replicated to servers located remotely from the recording site and then it is purged because of storage reasons. The replicate is not destroyed.

Clause 140 inserts a new section 14 into the Act to:

- authorise the destruction, before commencement of the amendment, of the record on a master tape, if the record is a digital recording that has been replicated onto a separate storage medium; and
- provide that the amendment to the *Recording of Evidence Regulation 1992* made by this Act (see clauses 141 & 142 below) does not affect the power of the Governor in Council to further amend the regulation or repeal it.

Clause 141 states that Part 20 Division 2 amends the *Recording of Evidence Regulation 1992*.

Clause 142 inserts a new section 5(3) into the regulation to make it clear that a recorder is no longer responsible for the safe custody of a master tape once all the records on the master tape may be destroyed under the Act.

Part 21 - Amendment of Small Claims Tribunals Act 1973

Clause 143 states that Part 21 amends the *Small Claims Tribunals Act 1973*. The objective of these amendments is to enable registrars to order and conduct oral examinations.

Clause 144 removes the reference to ‘stipendiary’ from section 5 of the Act.

Clause 145 amends section 11 of the Act to state that a registrar may conduct an oral examination under section 23A of the Act and for this limited purpose, the registrar constitutes the tribunal and may exercise all its jurisdiction and powers, except for the power to punish for contempt.

Clause 146 amends section 23A of the Act to facilitate the extension to registrars under section 11, (as amended by clause 145 above) of the power to order and conduct oral examinations. New subsection 23A(3A) essentially replicates the effect of the provisions omitted under subclauses 145(5) & (6), in respect of an examination before a referee. New subsection 23A(3B) replicates the effect of the provision omitted under subclause 145(5) in respect of an examination before a registrar. It also establishes a mechanism by which the registrar is to deal with contempt. The registrar has discretion to adjourn the examination and refer the contempt to the tribunal. This recognises that under section 11, as amended by clause 145, registrars are prevented from exercising the tribunal’s power to punish for contempt.

Part 22 - Amendment of State Penalties Enforcement Act 1999

Clause 147 states that Part 22 amends the *State Penalties Enforcement Act 1999*.

Clause 148 amends section 104 of the Act by inserting a third reason for which the registrar may suspend an enforcement debtor’s driver licence. The amendment will allow driver licence suspension to be more efficiently utilised as an enforcement measure in circumstances where a court order, as well as infringement notices, involves an offence in connection with a motor vehicle.

Clause 149 amends section 165 of the Act to clarify that a regulation prescribing an infringement notice fine for any infringement notice offence may prescribe an amount for the infringement notice fine for a corporation up to five times the amount payable by an individual.

Clauses 150 & 151 amend the headings of Part 10 and Part 10, division 2 of the Act, consequential to the insertion of new section 174 (discussed in clause 152 below).

Clause 152 inserts a new section 174 in the Act to clarify that section 165(4), prior to its amendment under this Bill, was not a contrary intention for the purposes of the *Statutory Instruments Act 1992* but was confined in its operation to camera detected offences.

Part 23 – Amendment of Statutory Instruments Act 1992

Clause 153 states that Part 23 amends the *Statutory Instruments Act 1992*. These amendments are consequential to the amendments made under Part 2 to the *Acts Interpretation Act 1954*.

Clause 154 inserts new sections 14A & 14B in the Act, which are consequential to the amendment of sections 6 & 14 of the *Acts Interpretation Act* (see clauses 5 & 6 above) and illustrate the modified application of section 14(7) for statutory instruments.

Clause 155 inserts a new section 15A in the Act, which is consequential to the insertion of examples in section 14F(1) of the *Acts Interpretation Act* (see clause 7 above) and illustrates its modified application for statutory instruments.

Clauses 156 & 157 amend schedules 1 & 2 of the Act respectively, to add relevant provisions of the *Acts Interpretation Act* to the respective lists of provisions that apply or do not apply to statutory instruments.

Part 24 - Amendment of Supreme Court Library Act 1968

Clause 158 states that Part 24 amends the *Supreme Court Library Act 1968*.

Clause 159 omits references to ‘stipendiary’ where it appears in section 4 of the Act.

Clause 160 inserts new section 7A in the Act which allows historical documents to be given to the Library for preservation. The section preserves the rights of people to claim privilege and other obligations of confidence in relation to the historical documents.

Part 25 - Amendment of Supreme Court of Queensland Act 1991

Clause 161 states that Part 26 amends the *Supreme Court of Queensland Act 1991*.

Clause 162 amends section 31 of the Act to ensure that it applies whether the Court of Appeal is constituted by judges of appeal or judges of the trial division. The provision establishes an objective means of determining when a judge otherwise becomes unable to continue in a proceeding by enabling the Chief Justice or the President of the Court of Appeal to issue a certificate stating that a judge is incapable of sitting. The provision also removes the current requirement for the parties to the affected proceedings to consent to the remaining judges finishing the hearing and determination.

Clause 163 amends section 41 of the Act to ensure that it applies whether the Court of Appeal is constituted by judges of appeal or judges of the trial division and to expand its operation to address the situation where the presiding judge has died, resigned or become incapable of continuing and the remaining judges are equally divided in opinion. In these circumstances, the decision of the Court of Appeal is to be in accordance with the opinion of the judge who was most senior at the start of the hearing.

Clause 164 amends section 118 of the Act, consequential to the amendment of Schedule 1 (discussed in clause 165 below) to enable rules to be made in relation to the restriction of vexatious proceedings.

Clause 165 amends Schedule 1 to the Act to include the restriction of vexatious proceedings as the subject matter for rules. This is consequential to the *Vexatious Proceedings Act 2005*.

Part 26 - Minor Amendments and Repeal

Clause 166 and the schedule operate together to correct a range of minor legislative errors identified by the Office of the Queensland Parliamentary Counsel during the reprints process. The effect of the various amendments contained in the schedule include inserting missing conjunctives and disjunctives, correcting grammar, updating provisions to reflect current

drafting practice and updating references to repealed statutes. The Acts amended in this way comprise:

- *Criminal Code*;
- *Criminal Law (Rehabilitation of Offenders) Act 1986*;
- *Criminal Proceeds Confiscation Act 2002*;
- *Electronic Transactions (Queensland) Act 2001*;
- *Judicial Review Act 1991*;
- *Legal Aid Queensland Act 1997*;
- *Penalties and Sentences Act 1992*;
- *Prisoners (Interstate Transfer) Act 1982*;
- *Powers of Attorney Act 1988*; and
- *Queensland Law Society Act 1952*.

The specific amendments are detailed under the heading ‘Schedule’ below.

Clause 167 repeals the *Suppression of Gambling Act 1895*. This is consequential to the insertion of modernised gambling offences in Chapter 23 of the Criminal Code. This Act is now fully superseded by the Criminal Code and modern gaming legislation.

Schedule – Minor Amendments

Clause 166 and the schedule operate together to correct a range of minor legislative errors identified by the Office of the Queensland Parliamentary Counsel during the reprints process.

Criminal Code

Items 1-3, 5, 7-13 amend sections 210, 216, 408A, 450E, 546, 590A, 592, 636, 669A, 671K and 672A of the Code (respectively) to insert missing conjunctives and disjunctives.

Item 4 amends section 442A of the Code to update the reference an administrator appointed under the *Guardianship and Administration Act 2000*.

Item 6 updates section 450F of the Code to reflect current drafting practice.

Criminal Law (Rehabilitation of Offenders) Act 1986

Items 1 & 2 correct the grammar in the entries for items 17(2) & 18(2) in column 2 of the table in section 9A of the Act.

Criminal Proceeds Confiscation Act 2002

Item 1 updates section 205(1)(a) of the Act to reflect current drafting practice.

Electronic Transactions (Queensland) Act 2001

Items 1-4 remove redundant provisions resulting from the effect of section 7A(2) of the Act.

Judicial Review Act 1991

Item 1 corrects the reference to the *Plant Protection Act 1989* as it appears in item 5A of Part 1 of the Schedule to the Act.

Legal Aid Queensland Act 1997

Item 1 omits a definition of ‘Legal Aid lawyer’ made redundant by the insertion of an updated definition by the *Legal Profession Act 2004*, s.596, schedule 1.

Penalties and Sentences Act 1992

Items 1 & 2 insert closing brackets in the entry for the *Drugs Misuse Act 1986*, items 2 & 3 in the Schedule to the Act.

Prisoners (Interstate Transfer) Act 1982

Item 1 amends section 9 of the Act to correct the reference to Part II of the *Transfer of Prisoners Act 1983* (Cth).

Powers of Attorney Act 1998

Item 1 amends section 57 of the Act to update the reference to section 59A, which replaced section 68 of the Act (omitted by the *Guardianship and Administration Act 2000*).

Queensland Law Society Act 1952

Item 1 omits the definition of ‘approved form’, which was made redundant by the omission of section 51 of the Act by the *Legal Profession Act 2004*, s.640, schedule 4.