

CRIMINAL LAW AMENDMENT BILL 2014

Explanatory Notes

Short title

The short title of the Bill is the Criminal Law Amendment Bill 2014.

Policy objectives and the reasons for them

The objective of the Criminal Law Amendment Bill 2014 (the Bill) is to make various amendments to a number of criminal law and criminal law related Acts administered by the Attorney-General and Minister for Justice including to:

- the *Acts Interpretation Act 1954* to allow chairs of various government boards, tribunals and similar entities established under an Act to choose their preferred title, whether it be “chair”, “chairperson”, “chairman” or “chairwoman” or another similar title (chair title), irrespective of what chair title is used in the Act. The amendment also applies to deputy chairs;
- the *Bail Act 1980* to provide for a court or police officer to consider imposing a special condition for the surrender of a defendant’s passport and prohibiting an application for a new passport when granting bail to a non-resident; and to mandate that, where a surrender passport condition is imposed on any defendant (i.e. not just non-residents) the defendant must be detained until the passport is surrendered. This amendment will help ensure that defendants who pose a flight risk, are not inadvertently released from custody and able to use their passport to abscond from the jurisdiction before their court matter has been dealt with;
- the Criminal Code to:
 - retrospectively apply the exceptions to the rules against double jeopardy under Chapter 68. That is, Queensland’s double jeopardy exception regime will apply to all acquittals of a relevant offence, irrespective of when the alleged offence was committed and the timing of the acquittal. The amendment is consistent with the approach already taken across the other Australian jurisdictions;
 - widen the application of section 328B (Additional power to convict for dangerous driving) so that section 328A (Dangerous operation of a vehicle) is a statutory alternative to an offence connected with or arising out of the operation, or interference in any way with the operation, of a vehicle. This extends section 328A, as a statutory alternative, to an offence alleging the offender interfered with the operation of the vehicle (currently limited to the driving of the vehicle) and applies it to all vehicles, not just motor vehicles;

- insert a range of new offences to address match-fixing conduct to assist in securing the integrity of sporting contests and associated gambling activities. The new offences implement a key objective of the *National Policy on Match-Fixing in Sport* agreed to by all Australian Governments in June 2011 that jurisdictions would pursue a nationally consistent approach to criminal offences in relation to match-fixing and cheating at gambling. The new offences are based on the model match-fixing behaviours approved by the Standing Council on Law and Justice on 18 November 2011 and are consistent with offences introduced in other Australian jurisdictions;
- increase the maximum penalty for the offence in section 229G(2) (Procuring engagement in prostitution) from 14 years to 20 years imprisonment where the person procured is a child or a person with an impairment of the mind. Prosecutions of offences under section 229G(2) have generally been of a shocking nature and understandably garnered significant public attention and denouncement. The increase in the maximum penalty is consistent with the overall approach in the Criminal Code to protect the young and vulnerable from sexual depravity and exploitation;
- insert a new indictable offence of serious animal cruelty carrying a maximum penalty of seven years imprisonment. The new offence will target those persons who intentionally inflict severe pain or suffering upon an animal; in effect the torture of an animal. The new offence responds to community outrage at such conduct and also remedies a current legislative gap in the protection of animals against such abhorrent conduct. Associated and consequential amendments are made to the *Animal Care and Protection Act 2001*, the *Justices Act 1886* and the *Director of Public Prosecutions Act 1984*;
- set the position with respect to the extent a court may rely upon a previous conviction at sentencing where a circumstance of aggravation that is a previous conviction is not stated in the indictment in accordance with section 564(2) (Form of indictment);
- insert a new aggravating factor into section 398 (Punishment of stealing), punishment in special cases, item 13 (Stealing by looting) when the offence is committed in an area that is or was, immediately before the offence was committed, a declared area for a disaster situation under the *Disaster Management Act 2003*, which includes human caused disaster situations. The amendment implements recommendation two of the Legal Affairs and Community Safety Committee in its Report No. 40 (tabled in Parliament on 23 September 2013);
- the *Criminal Proceeds Confiscation Act 2002* to remove the requirement that interstate restraining orders and pecuniary penalty orders must be based on a criminal charge or conviction. This amendment recognises the widespread emergence in Australia of non-conviction based criminal confiscation orders and is considered vital to proper interstate cooperation on confiscation matters;
- the *Dangerous Prisoners (Sexual Offenders) Act 2003* to:

- amend section 43AA (Contravention of relevant order) to insert a new circumstance of aggravation where the released prisoner contravenes the relevant order without a reasonable excuse by removing or tampering with a stated device (for example, a Global Positioning System (GPS) tracking device) for the purpose of preventing the location of the released prisoner being monitored. The new aggravated offence is a crime and punishable by a maximum penalty of five years imprisonment with a mandatory minimum period of one year imprisonment to be served wholly in a corrective services facility. The amendment reinforces that interference with a monitoring device strikes at the heart of the protective effect of this community protection regime. The offence simpliciter is upgraded to an indictable offence and will be open as an alternative verdict for the new aggravated offence;
- clarify the definition of ‘serious sexual offence’ under the Schedule (Dictionary) to ensure the regime applies to an offence of a sexual nature, against a person, including a fictitious person represented to the prisoner as a real person, whom the prisoner believed to be a child under the age of 16 years. The amendment overcomes the challenges confronted in *Dodge v Attorney-General for the State of Queensland* [2012] QCA 280 and ensures that the regime extends to prisoners convicted of offences such as section 218A (Using the internet to procure children under 16) of the Criminal Code or section 218B (Grooming children under 16), even where the conviction is based upon a fictitious child rather than an actual child (for example, a police officer posing as a child but the prisoner believed them to be a child);
- the *Drugs Misuse Act 1986* to enable the Minister to recommend the prescription of a thing as a dangerous drug under the *Drugs Misuse Regulation 1987*, without full consideration of the matters listed in section 134A, where a rapid response by Government is required;
- the *Evidence Act 1977* to:
 - establish a rebuttable presumption in favour of expert witnesses providing their testimony in a criminal or civil proceeding via audio link or audio visual link. The greater use of audio link and audio visual technology in the reception of expert evidence aims to encourage greater participation in the justice system by skilled witnesses and to minimise the cost and disruption experienced by experts who provide their time to assist in court proceedings;
 - update section 95 (Admissibility of statements produced by computers) to recognise technological advancements having regard to presumptions in the Uniform Evidence Act (which now applies in the Commonwealth, New South Wales, Victoria, Tasmania, the Australian Capital Territory and Northern Territory) about the authenticity and reliability of evidence produced by a device or process;
 - insert an evidentiary aid to facilitate proof in a proceeding of the making of a declaration of a disaster situation under the *Disaster Management Act 2003*;
- the *Justices Act 1886* to:

- provide the Attorney-General with standing to appeal sentences imposed for simple offences dealt with summarily;
 - set the position with respect to the extent a court may rely upon a prior conviction at sentencing where a notice of intention to allege a prior conviction is not served in accordance with section 47;
 - amend the requirements for service and the documenting of service of a notice of intention to allege a prior conviction or a criminal history under section 47;
 - better facilitate the use of a web based portal for electronic pleas of guilty in the Magistrates Courts; and
- the *Penalties and Sentences Act 1992* to:
 - insert new section 13B to provide a regime aimed at ensuring the protection and confidentiality of informants who significantly assist law enforcement agencies with their investigations but fall outside the ambit of the existing section 13A as the informant is not willing to give the type of undertaking required under section 13A (for example, a person whose co-operation is reflected in an affidavit by a law enforcement agency; colloquially known as a ‘letter of comfort’);
 - amend section 187 (Disqualification from holding Queensland driver licence) to widen the scope of the sentencing court’s discretion to impose a driver licence disqualification for an offender who was not the driver of the motor vehicle at the relevant time but whose conduct nevertheless amounts to an offence in connection with or arising out of its operation (for example, a passenger who applies the handbrake causing the driver to lose control); and
 - include section 229G(2) (Procuring engagement in prostitution) of the Criminal Code as a serious violent offence in Schedule 1 (Serious violent offences).

A number of significant reforms to the Queensland youth justice system were implemented through the *Youth Justice and Other Legislation Amendment Act 2014* from its commencement on 28 March 2014. These reforms included:

- the expansion of the sentenced youth boot camp program through the creation of a mandatory boot camp (vehicle offences) order for recidivist vehicle offenders usually residing in prescribed areas; and
- promoting greater transparency and public confidence in the youth justice system by opening the Childrens Court for youth justice proceedings involving repeat offenders.

Following commencement of the *Youth Justice and Other Legislation Amendment Act 2014*, two technical matters and an emergent issue have been identified which require minor legislative amendments. The Bill makes a number of minor amendments to the *Youth Justice Act 1992* to address these issues to:

- enhance the good order and discipline of sentenced youth boot camp centres operated under the *Youth Justice Act 1992*;
- ensure information identifying a child as subject to the *Child Protection Act 1999* is able to be used in preparing and providing pre-sentence reports ordered by the Childrens Court; and
- clarify the circumstances in which a court must make a boot camp (vehicle offences) order under the *Youth Justice Act 1992*.

Achievement of policy objectives

The Bill achieves the objectives by way of the proposed amendments to existing legislation as described below.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

Any costs in relation to the amendments will be met from existing agency resources. The future allocation of resources will be determined through normal budgetary processes.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Any potential breaches of the fundamental legislative principles are addressed and justified below.

Retrospective application of Queensland's double jeopardy exception regime

Chapter 68 of the Criminal Code is amended to apply Queensland's existing double jeopardy exception regime retrospectively. The following justifications are relied on for the amendment:

- the advancements in forensic and scientific technology and the high (often overwhelming) quality, probity and reliability of evidence not available in previous years which can now be obtained through re-testing or re-examination of exhibits. Without retrospectivity, the potential advantage in applying new and advancing technology to old cases is lost;
- the extremely serious and dangerous nature of the offences covered by the double jeopardy exception regime (that is, the offence of murder or an offence carrying a maximum penalty of 25 years or more imprisonment);
- the strong public interest in pursuing convictions for the most heinous unsolved crimes, most often murder in this context;
- that all of the existing protective safeguards under Chapter 68 continue to apply; and

- without retrospectivity, an arbitrary distinction is drawn between persons acquitted before and after 25 October 2007 (that is, the commencement date of Chapter 68). Victims of crime and the community can be justifiably outraged where new evidence in an old case is obtained and the double jeopardy exception regime would otherwise have applied but for timing. Further, a person the subject of compelling evidence of guilt for a very serious offence should not be protected by this arbitrary timing.

Serious animal cruelty

The Bill introduces a new offence of serious animal cruelty. This offence will apply to a narrow cohort of offenders who intentionally torture an animal. There are existing offences for certain acts of animal cruelty and it is anticipated that the majority of animal cruelty cases will continue to be prosecuted under section 18 of the *Animal Care and Protection Act 2001*. Section 468 (Injuring animals) of the Criminal Code also provides that any person who wilfully and unlawfully kills, maims or wounds, any animal capable of being stolen is guilty of an indictable offence. The offence carries up to three years imprisonment in the case of domestic animals and seven years if the animal in question is stock. These existing offences do not adequately provide for the case where a person intentionally inflicts severe pain and suffering on an animal; in effect, the torture of an animal. The maximum penalty for the new offence of seven years imprisonment is justified on the basis of the moral importance of animals and the obligation society owes to protect them from suffering and will encourage the imposition of sentences that meet community expectations.

Associated and consequential amendments are made to the *Animal Care and Protection Act 2001* to ensure that the powers of inspectors (including powers to enter premises without a warrant in particular circumstances and also to seize evidence) apply to the investigation of the new offence of serious animal cruelty and that evidence obtained during the investigation can be used, subject to the rules of admissibility, in prosecution proceedings. The amendments address current inconsistencies in the ambit of the powers of inspectors and are justified given the high level of harm inflicted by serious animal cruelty.

Match-fixing offences

The Bill inserts a new Chapter 43 titled ‘Match-fixing’ and introduces six new offences targeting match-fixing conduct and the use of inside information for betting purposes. The introduction of these new offences is justified to protect the integrity of Australian sport and to address the issue of inappropriate and fraudulent sports betting and match-fixing activities. The Australian Crime Commission, in their report *Organised Crime and Drugs in Sport* released in February 2013, identified the growing risk of organised crime infiltration in sport targeting elite and sub-elite athletes with the objective of having athletes participate in match-fixing activities.

With the substantial growth of the sports betting market, in particular the online wagering industry, it is imperative that a safe and lawful market for sports betting be preserved. Match-fixing can involve potential gains or losses in the millions of dollars. The creation of specific match-fixing offences removes ambiguity about whether existing criminal offences could apply to types of match-fixing arrangements or conduct. The new offences will allow enforcement agencies and the courts to deal

with match-fixing behaviours in an efficient and effective manner through a clear set of offences.

The new offences have been drafted in accordance with the *National Policy on Match-Fixing in Sport* as agreed to by Australian Governments on 10 June 2011 and the six match-fixing behaviours and associated penalties that were approved by the Standing Council on Law and Justice. The new match-fixing offences are similar to those introduced in other Australian jurisdictions.

Stealing by looting

The amendment to the offence of Stealing by looting under section 398 of the Criminal Code reinforces the significance of a declaration made under the *Disaster Management Act 2003*, acknowledges the particular vulnerability of a community affected by the making of such a declaration, and is justified to ensure adequate punishment for this serious conduct.

Dangerous operation of a vehicle - a statutory alternative charge

The amendment to section 328B (Additional power to convict for dangerous driving) of the Criminal Code means that a person who is acquitted of the indicted charge may be liable to conviction for a lesser alternative charge which would not otherwise have been open. The amendment is necessary to properly align the language of section 328B with that of section 328A of the Criminal Code, and is justified to ensure that a person who was not the driver of the vehicle but who commits an offence involving the interference in any way with the operation of the vehicle, is not able to avoid criminal responsibility for their actions because of drafting inconsistency between sections of the Criminal Code.

Procuring engagement in prostitution

The amendment to section 229G(2) (Procuring engagement in prostitution) of the Criminal Code and the inclusion of section 229G(2) to the schedule of serious violent offences in the *Penalties and Sentences Act 1992* will affect the rights and liberties of some individuals. Offences committed against section 229G(2) are often marked by significant depravity, a gross breach of trust and fuelled by a desire for financial gain or enrichment making them of a serious nature. For these reasons, an increase in the maximum penalty from 14 years to 20 years imprisonment in section 229G(2) is consistent with the overall approach in the Criminal Code to protect the young and vulnerable from sexual depravity and exploitation. The inclusion of section 229G(2) in the serious violent offence schedule reflects the seriousness of the offence and is consistent with the current inclusion of offences in the schedule.

Surrender of passport as a condition of bail

It may be argued that the amendment to the *Bail Act 1980*, to require the court to order that the person be detained until a passport surrender condition is complied with, impinges upon the independence and discretion of the courts. The amendment is justified to address a significant risk of flight where a court considers it necessary to impose a condition relating to the surrender of a person's passport. The proposed amendment does not override or interfere with the discretion of the court or police

officer to make a decision about bail or the imposition of bail conditions. There are also safeguards provided in the *Bail Act 1980* regarding the right to be heard and to appeal against bail decisions.

Dangerous prisoners

The amendments to the *Dangerous Prisoners (Sexual Offenders) Act 2003* are justified to further bolster the protection that the regime provides to the community against dangerous prisoners that commit serious sexual offences. Significantly, interference with a monitoring device by a released prisoner strikes at the heart of the protective effect of such a regime and requires strong penalties to condemn and deter such a serious contravention of a relevant order. While the amendments to section 43AA (Contravention of a relevant order) apply to a supervision or interim supervision order made before commencement, for the new strengthened punishment to apply, the contravention must occur post commencement.

The amended definition of 'serious sexual offence' applies retrospectively; however such an approach is consistent with that taken to the application of the *Dangerous Prisoners (Sexual Offenders) Act 2003* as enacted.

Amendment of the Drugs Misuse Act 1986

The amendment to section 134A of the *Drugs Misuse Act 1986* will allow the Minister to recommend prescription of a thing in schedule 1-5 of the *Drugs Misuse Regulation 1987* without full consideration of the matters listed in that section. However, the amendment requires that the Minister is satisfied that prescription is required as a matter of urgency having regard to one or more of the matters listed. This may include, for example, the risks of the drug to public health and safety and the potential for use of the drug to cause death. If a regulation is made by the Governor-in-Council based on the Minister's recommendation it will still be subject to the scrutiny of the Legislative Assembly and disallowance.

Amendments to the Evidence Act 1977

The Bill amends the *Evidence Act 1977* to establish a rebuttable presumption in favour of expert witnesses providing their testimony in a criminal or civil proceeding via audio link or audio visual link. The amendment is justified because the proposed presumption is rebuttable and can be overturned on the application of any party to proceedings or a judge or magistrate on their own motion in the interests of justice. It is further justified because it gives encouragement to properly qualified experts to participate in the justice system by ensuring as far as possible that their participation creates minimal disruption to their other professional activities.

Consistent with the current provision, the new section 95 of the *Evidence Act 1977* inserted by the Bill, allows an evidentiary certificate to be used to establish that a device or process, if properly used, produces a particular document or thing. The matters that may be contained in the certificate are non-controversial and provision is made for the opposing party to challenge a matter stated in the certificate. Other safeguards will also continue to apply in relation to the admission of such evidence, including section 130 of the *Evidence Act 1977*. That section provides that nothing in the Act derogates from the power of the court in a criminal proceeding to exclude

evidence if the court is satisfied that it would be unfair to the person charged to admit that evidence.

Amendments to the *Justices Act 1886*

An amendment is made to section 146A of the *Justices Act 1886* to allow the clerk of the court to bring forward the time appointed for the hearing of the case where a written plea of guilty has been received from a defendant under that section. This provision may negatively affect the parties by reducing the notice each party has before determination of the matter.

This amendment will promote increased efficiency in the administration of justice by giving the courts greater flexibility in the allocation of resources and scheduling of matters. The new hearing date will not be able to be less than seven business days after the day on which notice is given to the parties. Anecdotal evidence suggests that pleas of guilty are not commonly withdrawn under section 146A and the power given to the clerk of the court to move the hearing date is discretionary and therefore would only be used in appropriate cases.

The amendments also allow the court to hear a matter “on the papers” (i.e. without the parties appearing in person). This may increase the burden on the court in substantiating the defendant’s plea where they do not have legal representation. The new web portal for electronic pleas addresses this issue by specifically asking the defendant to complete an acknowledgement that the plea is given freely and without duress. A magistrate also has a wide overriding discretion under section 146A to refuse to accept a written plea of guilty.

Retrospective application of procedural laws: amendments to the *Bail Act 1980*, the *Criminal Code* and *Justices Act 1886*

The amendments to the *Bail Act 1980* will apply to proceedings heard from the day of commencement of the amendments. The transitional provision provides that the amendments will apply retrospectively in the sense that they will capture proceedings commenced before these amendments are passed and irrespective of when the relevant offence occurred.

The Bill provides a transitional provision for the amendment to section 564 (Form of indictment) of the Criminal Code which sets the position with respect to the extent a court may rely upon a previous conviction at sentencing where a circumstance of aggravation that is a previous conviction is not stated in the indictment in accordance with section 564(2). A similar transitional provision is provided for the amendments to section 47 of the *Justices Act 1886* (What is sufficient description of offence) which set the position with respect to the extent a court may rely upon a prior conviction at sentencing where a notice of intention to allege a prior conviction is not served in accordance with section 47. The transitional provisions provide that those amendments apply to the sentencing of an offender for an offence, regardless of whether the proceeding for the offence was started before, on or after the commencement of the transitional provisions. The general principle is that legislation should not adversely affect rights and liberties of individuals retrospectively.

The amendments to the *Bail Act 1980*, section 564 of the Criminal Code and section 47 of the *Justices Act 1886* will apply retrospectively in the sense that they will capture proceedings instituted before the amendments have commenced and irrespective of when the relevant offence occurred. This is consistent with the common law on the application of procedural laws. In the absence of an express provision to the contrary, procedural laws are construed so as to operate retrospectively and apply to events that have occurred in the past that are presently before the court. The general rule is that the procedural law applying in a court proceeding is the procedural law in place on the day of the proceeding. Therefore the amendments are consistent with this approach.

Confidentiality of informants

The transparency of the criminal justice system requires, in most instances, that the sentencing of offenders take place in an open court. The new section 13B of the *Penalties and Sentences Act 1992* requires the court to be closed and prohibits the disclosure of part or all of the sentencing proceedings (however, the penalty imposed must be stated in open court). Protecting the safety of an informant and the confidentiality of the information provided is vitally important to encourage others to cooperate with law enforcement agencies (even if the informant is not prepared to testify against another) and to avoid jeopardising ongoing investigations. This type of informant is very important to law enforcement agencies in combating serious crime. While the amendment has retrospective application this operates to the benefit of the offender.

Amendments to the Youth Justice Act 1992

The Convention on the Rights of the Child¹ and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)² provide that young offenders' privacy should be fully respected at all stages of proceedings against them. The amendments to the *Youth Justice Act 1992* to exempt from the confidentiality provisions of the *Child Protection Act 1999* the use and disclosure of information about a child for the purposes of preparing and providing pre-sentence reports to the Childrens Court impacts on the privacy of children before the youth justice system.

This amendment is justified as sufficient safeguards will remain in place to protect the interests and wellbeing of children affected by this exemption. These include the existing confidentiality provisions of part 9 the *Youth Justice Act 1992*, which will continue to protect the confidentiality of all reports prepared for the purposes of court proceedings relating to children; such reports include pre-sentence reports, which may potentially contain child protection information. These confidentiality provisions will not prevent the discussion of the content of pre-sentence reports by court officers in open court. However, the provisions of the *Childrens Court Act 1992* requiring the Childrens Court to be closed when hearing a youth justice matter in relation to a first-time offender and otherwise providing for the court to be closed by court order (other than a proceeding for an indictable offence) provide adequate protective mechanisms for the privacy of children before the court in these circumstances. Further, the

¹ Ratified by Australia on 17 December 1990.

² Adopted by General Assembly resolution 40/33 of 29 November 1985.

existing provisions of the *Child Protection Act 1999* prohibiting the publication of information identifying a child as subject to that Act will continue in effect, including in relation to information disclosed in proceedings under the *Youth Justice Act 1992*.

The amendments to the *Youth Justice Act 1992* to enable youth detention centre officers to use a range of practices to maintain good order and discipline at a boot camp centre (such as restraint, seclusion and personal searches) expose young offenders participating in a boot camp program to the potential use of force. Whether legislation has sufficient regard for the rights and liberties of an individual depends in part on whether it subjects a person to practices involving the use of force—such as personal searches—without appropriate safeguards. The use of this force will be subject to a number of careful safeguards, including the insertion of clear guidelines into the *Youth Justice Regulation 2003*. These guidelines will prescribe the circumstances in which the use of force is approved, the purposes for which force may be used, the type and degree of force that may be used and other limitations such as the duration for which force may be used. Youth detention centre officers will also be required to record details of each episode in which force is used in a boot camp centre.

The amendments to the *Youth Justice Act 1992* to empower youth detention centre officers to maintain the good order and discipline of a boot camp centre will potentially subject children participating in a boot camp program to greater restrictions on their freedom of movement while in the residential phase of that program. This will include children who have not consented to be subject to practices involving the use of force. Legislation should not abrogate rights and liberties from any source without sufficient justification. In practice, this means that youth justice legislation should have regard to the particular vulnerabilities of children.

This restriction is justified having regard to the state's obligation to appropriately protect the safety of persons in its lawful custody and the security of facilities provided for custodial purposes. The *Youth Justice Act 1992* currently only permits the use of directions for maintaining good order and discipline at a boot camp centre. The lack of a head of power to use proportionate force has prevented appropriate measures being taken to address several recent incidents at the Lincoln Springs boot camp centre. Empowering youth detention centre officers to use force at a boot camp centre in prescribed circumstances is a proportionate and necessary measure for protecting the safety of staff and participants in a boot camp program and any property affected by participants' actions.

Consultation

Consultation on a draft version of the Bill (which did not include amendments to the *Acts Interpretation Act 1954*; the Criminal Code section 398 (Punishment of stealing) or section 564 (Form of indictment); the *Justices Act 1886* to facilitate electronic pleas of guilty; and the *Youth Justice Act 1992*) occurred with the President of the Court of Appeal, the Chief Judge of the District Court, the Chief Magistrate, the Director of Public Prosecutions, the Queensland Law Society, the Bar Association of Queensland and the Crime and Misconduct Commission.

Consultation occurred on the amendments to section 564 of the Criminal Code with the Director of Public Prosecutions.

Consultation on the policy to amend the *Justices Act 1886* to facilitate electronic pleas of guilty occurred with the Chief Magistrate, the Director of Public Prosecutions (Commonwealth and Queensland), Legal Aid Queensland, the Queensland Law Society, the Queensland Police Union and the Bar Association of Queensland.

The policy for the amendment to section 398 (Punishment of stealing) of the Criminal Code was exposed to the public through the Queensland Government Response to the Legal Affairs and Community Safety Committee, Report No. 40 on the Criminal Code (Looting in Declared Areas) Amendment Bill 2013.

Consultation on the new serious animal cruelty offence occurred with the Royal Society for the Prevention of Cruelty to Animals (Queensland) Inc.

The Criminal Code match-fixing offences are based on the match-fixing behaviours developed by the Standing Council on Law and Justice Match-Fixing Working Group and were approved by, and exposed to the public through, the Standing Council on Law and Justice.

Consultation on the *Youth Justice Act 1992* amendments for the good order and discipline at boot camp centres occurred with the operator of the Lincoln Springs boot camp centre.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state, except as detailed below.

The amendments to the *Acts Interpretation Act 1954* are based on section 18B of the *Commonwealth Acts Interpretation Act 1901*.

The Bill inserts Chapter 43 into the Criminal Code and provides for a range of match-fixing offences. These match-fixing offences are based on six agreed match-fixing behaviours agreed to by the Standing Council on Law and Justice to guide the scope of new match-fixing offences and were created as part of the *National Policy on Match-Fixing in Sport*. Under the *National Policy on Match-Fixing in Sport*, all Australian governments agreed to pursue nationally consistent legislative arrangements to address the particular issues of match-fixing, including a consistent approach to criminal offences.

The new match-fixing offences in the Criminal Code are consistent in nature with match-fixing offences introduced in other Australian jurisdictions (New South Wales, Victoria, South Australia, the Northern Territory and the Australian Capital Territory). This provides consistency in addressing inappropriate and fraudulent sports betting and match-fixing activities across jurisdictions and assists in securing the integrity of Australian sport.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Criminal Law Amendment Act 2014*.

Part 2 Amendment of Acts Interpretation Act 1954

Clause 2 states this part amends the *Acts Interpretation Act 1954*.

Clause 3 inserts new sections 34A (Chair titles) and 34B (Deputy chair titles) into the *Acts Interpretation Act 1954*.

New section 34A (Chair titles) provides that if an Act establishes an office with a chair title (being the title of chair, chairperson, chairman, chairwoman or other similar title) a person holding the office may choose to be referred to by the title provided for in the Act or another chair title.

The section further provides that it is irrelevant for the performance of functions and exercising powers that the person holding the office uses another chair title to that provided for in the Act establishing the office.

New section 34B (Deputy chair titles) provide that if an Act establishes an office with a deputy chair title (being the title of deputy chair, deputy chairperson, deputy chairman, deputy chairwoman or other similar title) a person holding the office may choose to be referred to by the title provided for in the Act or another deputy chair title.

The section further provides that it is irrelevant for the performance of functions and exercising powers that the person holding the office uses another deputy chair title to that provided for in the Act establishing the office.

Part 3 Amendment of Animal Care and Protection Act 2001

Clause 4 states this part amends the *Animal Care and Protection Act 2001*.

Clause 5 amends section 115 (Functions) to expand the functions of an inspector beyond the investigation and enforcement of compliance with the Act to include the investigation and enforcement of new section 242 (Serious animal cruelty) and section 468 (Injuring animals) of the Criminal Code. This will ensure that RSPCA inspectors appointed under the Act can investigate and commence proceedings for the indictable offences.

Clause 6 amends section 122 (Power of entry) to extend subparagraph (1)(g)(i) to all animal welfare offences. The term ‘animal welfare offence’ is defined in the Dictionary to the Act to include specified offences under the Act as well as the

Criminal Code. Clause 17 of the Bill amends the phrase ‘animal welfare offence’ to include new section 242 of the Criminal Code. The specific power in subparagraph (1)(g)(i) provides for entry to a place if the inspector reasonably suspects any delay in entering the place will result in the concealment, death or destruction of anything at the place that is evidence of the animal welfare offence.

Clause 7 amends section 127 (Issue of warrant) to broaden the application of paragraph (1)(b) to an animal welfare offence (as defined in the Dictionary to the Act and as amended by clause 17 of the Bill) as well as other offences against the Act.

Clause 8 amends section 142 (General power to seize evidence) to extend paragraph (1)(a) to an animal welfare offence as well as other offences against the Act.

Clause 9 amends section 163 (Power to require name and address) to broaden the application of paragraphs (1)(a) and (1)(b) to apply to an animal welfare offence as well as other offences against the Act.

Clause 10 amends section 164 (Failure to comply with personal details requirement) consequential to the amendment of section 163.

Clause 11 inserts new section 181A (Interim prohibition order). This new provision allows the court to make an interim order against a person charged with an animal welfare offence requiring that the person must not possess or purchase or otherwise acquire any animal or stated type of animal (either generally or for trade or commerce or another purpose). The court may make an interim prohibition order if satisfied there are reasonable grounds for believing the person poses an unacceptable risk of committing an animal welfare offence before the completion of the proceeding for the alleged offence.

Subsections (4) and (5) provide that the court may make an interim order at the court’s initiative or on application by the prosecution and in the absence of the person. However, the court must not make an order in the person’s absence unless the person has been given an opportunity to be heard.

Subsections (6) and (7) provide when an interim order takes effect and when it ends.

Clause 12 amends section 183 (Prohibition order) to clarify that a prohibition order applies to an animal in the possession of the person at the time the order is made.

Clause 13 amends section 185 (Criteria for making disposal or prohibition order) to require the court to consider each of the matters listed in subsection (2) and also includes a new paragraph (e), consequential to the insertion of new section 181A, requiring the court to consider a person’s compliance or otherwise with an interim prohibition order.

Clause 14 amends section 187 (Contravention of prohibition order unlawful) to extend the offence to a contravention of an interim prohibition order consequential to the insertion of new section 181A.

Clause 15 inserts new section 187A (Amendment or revocation of interim prohibition order) to allow a relevant court to amend or revoke an interim prohibition order if satisfied that there has been a substantial change in the person's circumstances since the order was made or in all the circumstances it is reasonable to amend or revoke the order. A person subject to an interim prohibition order may not apply to the court for amendment or revocation before six months has passed since the making of the order. The prosecution may make an application at any time.

Clause 16 amends section 209(5) (Liability of executive officer – particular offences committed by corporation) to include reference to the new section 242 (Serious animal cruelty) of the Criminal Code consistent with the reference to section 468 (Injuring animals) of the Criminal Code.

Clause 17 amends the definition of 'animal welfare offence' contained in the schedule (Dictionary) to include reference to the new section 242 (Serious animal cruelty) of the Criminal Code. The Dictionary is further amended to insert a definition of 'interim prohibition order'.

Part 4 Amendment of Bail Act 1980

Clause 18 states this part amends the *Bail Act 1980*.

Clause 19 amends section 7(3) (Power of police officer to grant bail) to insert an editor's note to subsection (3) which refers to the new section 11AA (Release of a person only after surrender of passport) inserted by clause 21.

Clause 20 amends section 11 (Conditions of release on bail) to insert a new subsection (4A) to require a bail granting authority to consider imposing a special condition under subsection (2) for the surrender of a person's passport and prohibiting the person applying for a new passport when granting bail to a person who is not an Australian citizen or permanent resident. New subsection (10) contains definitions for the terms "Australian citizen" and "permanent resident".

Clause 21 inserts a new section 11AA (Release of a person only after surrender of passport) to provide that where a special condition is imposed under section 11(2) that the person must surrender their passport, the person must be detained in custody (and cannot be released) until the passport is surrendered.

Clause 22 amends section 20 (Undertaking as to bail) to include a new subsection (3D) stating that if a defendant is granted bail subject to a requirement for the surrender of their passport, the bail undertaking must include a statement that the defendant has complied with that requirement.

Clause 23 inserts a transitional provision.

Part 5 Amendment of Criminal Code

Clause 24 states this part amends the Criminal Code.

Clause 25 amends section 1 (Definitions) to provide definitions that apply to the offences contained in new Chapter 43 (Match-fixing).

Clause 26 amends section 229G (Procuring engagement in prostitution) to increase the maximum penalty from 14 years imprisonment to 20 years imprisonment where the procured person is a child or a person with an impairment of the mind.

Clause 27 inserts a new part 4, Chapter 25 Cruelty to animals, which contains a new offence of serious animal cruelty. New section 242 makes it an offence to unlawfully kill, cause serious injury or prolonged suffering to an animal with the intention of inflicting severe pain or suffering on the animal. The new offence is a crime, carrying a maximum penalty of seven years imprisonment. A person is relieved of criminal responsibility if the conduct is authorised, justified or excused under the *Animal Care and Protection Act 2001* or another law, other than section 458 of the Criminal Code.

Subsection (3) defines the phrase ‘serious injury’, borrowing in part from the definition of grievous bodily harm as defined in section 1 of the Criminal Code.

Clause 28 amends section 328B (Additional power to convict for dangerous driving), which provides that section 328A (Dangerous operation of a vehicle) of the Criminal Code is a statutory alternative verdict in prescribed circumstances.

Subclause 1 amends the heading of the section to replace the reference to ‘driving’ with ‘operation of a vehicle’.

Subclause 2 amends section 328B to ensure that section 328A of the Criminal Code is a statutory alternative verdict upon an indictment charging a person with any offence in connection with or arising out of the operation, or interference in any way with the operation, of a vehicle. The application of the section is widened to ‘vehicles’ (as defined under section 1 of the Criminal Code) and to extend its scope to include conduct of a person who is not in fact the driver of the vehicle at the relevant time (for example a passenger who pulls on the handbrake causing the driver to lose control of the vehicle).

Clause 29 amends section 398 (Punishment of stealing), punishment in special cases, item 13 (Stealing by looting) to extend the aggravated offence to include where the offence of stealing is committed in an area that is or was, immediately before the offence was committed, a declared area for a disaster situation under the *Disaster Management Act 2003*.

The terms: ‘disaster situation’, ‘disaster’, ‘serious disruption’, ‘event’ and ‘declared area’, which are relevant to the new circumstance of aggravation, are defined under the *Disaster Management Act 2003*.

The amendment extends item 13 (Stealing by looting) to protect the community during in the immediate aftermath of a disaster situation. As to whether the offence is committed in an area that was ‘immediately before’, a declared area will depend on the circumstances of each case, including the nature and circumstances of the particular disaster situation.

Clause 30 inserts a new part 6, division 1, Chapter 43 Match-fixing.

This part introduces a number of offences that prohibit match-fixing conduct in sporting events.

New section 443 (Definitions for chapter 43) provides relevant definitions.

The phrase ‘bet or make a bet’ includes (a) to place, change, accept or withdraw a bet; and (b) to cause a bet to be placed, changed, accepted or withdrawn.

The phrase ‘match-fixing conduct’ in relation to a sporting event or the happening of a sporting contingency, means conduct that – (a) affects, or if engaged in could reasonably be expected to affect, the outcome of the event or the happening of the contingency; and (b) is contrary to the standards of integrity reasonably expected within that sport.

The phrase ‘match-fixing conduct’ is integral to the new offences. In order to avoid potentially capturing a legitimate act or omission that occurs in relation to an event, such as legal play, genuine attempts to win, tactical decisions, honest errors by players or officials, or even the types of rule breaches that give rise to a penalty, the conduct must be contrary to the standards of integrity that an ordinary person would reasonably expect of persons in a position to affect or influence the outcome of the event or the happening of the contingency.

The phrase ‘sporting contingency’ means a contingency – (a) associated with a sporting event; and (b) on the happening of which a person may make a bet under a law of the Commonwealth or a State. This definition captures ‘exotic’ bets, for example, betting on which team or player will score first in a football match.

The phrase ‘sporting event’ means a sporting competition or activity, whether taking place in Queensland or elsewhere, on the outcome of which a person may make a bet under a law of the Commonwealth or a State.

New section 443A provides the offence of Engaging in match-fixing conduct. The offence is a crime with a maximum penalty of 10 years imprisonment. This is the primary match-fixing offence and addresses the most straight forward and obvious example of match-fixing such as providing instructions to team players to orchestrate pre-determined scores, an officials deliberate misapplication of the rules, interference with the play or playing surface, or any other act or omission designed to affect or influence the outcome of the game or the happening of the contingency. The conduct must be engaged in for the purposes of obtaining or receiving a pecuniary benefit to any person or causing a pecuniary detriment to another person.

This section should be read together with the evidentiary provision in new section 443G.

New section 443B provides the offence of Facilitating match-fixing conduct or match-fixing arrangement. The offence is a crime with a maximum penalty of 10 years imprisonment. The offence captures offending behaviour where a person agrees or offers to be involved in a match-fixing arrangement or match-fixing conduct.

The offence captures conduct if a person agrees or offers to:

- (a) engage in the match-fixing conduct; or
- (b) participate in the match-fixing arrangement; or
- (c) encourages another person to:
 - (i) engage in the match-fixing conduct; or
 - (ii) participate in the match-fixing arrangement.

The conduct must be engaged in for the purposes of obtaining or receiving a pecuniary benefit to any person or causing a pecuniary detriment to another person. An example of offending conduct may include a football player accepting a financial benefit for agreeing to influence who from his team will kick the first goal in the game; the match-fixing arrangement may extend further to include other players being advised of the arrangement in order to ensure that no other person on that team will attempt to kick the first goal other than the nominated player.

This section should be read together with the evidentiary provision in new section 443G.

New section 443C provides the offence of Offering or giving a benefit, or causing or threatening detriment, to engage in match-fixing conduct or match-fixing arrangement. The offence is a crime with a maximum penalty of 10 years imprisonment. The offence captures offending behaviour where a person seeks to organise a match-fixing arrangement or match-fixing conduct. An example of offending conduct may include a manager of a tennis player offering money to a player to deliberately lose the second set of the game.

This section should be read together with the evidentiary provision in new section 443G.

New section 443D provides the offence of Using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting. An offence against section 443D is a crime with a maximum penalty of 10 years imprisonment. This offence relates to betting activities where a person has knowledge of a match-fixing arrangement or match-fixing conduct.

New section 443D(1)(a) provides an offence where a person has knowledge of a match-fixing arrangement or match-fixing conduct and makes a bet on the sporting event or contingency to which this knowledge relates. As the definition of bet includes to accept a bet, this offence will also capture match-fixing conduct involving instances where a person who is authorised to conduct betting activities (i.e. a sports wagering licensee) has knowledge match-fixing conduct or a match-fixing arrangement and accepts a bet on the event or contingency.

New section 443D(1)(b) provides an offence where a person has knowledge of a match-fixing arrangement or match-fixing conduct and encourages another person to bet on the sporting event or contingency to which this knowledge relates.

New section 443D(1)(c) provides an offence where a person (first person) has knowledge of a match-fixing arrangement or match-fixing conduct and discloses the information to another person (second person) who the first person knows, or ought

reasonably to know, would be likely to make a bet on the sporting event or contingency to which this knowledge relates.

New section 443D targets betting activities where a person knows that a sporting event or contingency has been fixed and uses this information. A less serious offence is provided in section 443F relating to betting activities where a person has inside knowledge in relation to a sporting event or contingency but this knowledge does not relate to match-fixing conduct or a match-fixing arrangement. *Clause 34* of the Bill inserts a new section 589A (Indictment for using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting) which provides that the offence contained in new section 443F is a statutory alternative to the offence contained in section 443D.

New section 443E provides an offence of Encouraging a person not to disclose match-fixing conduct or match-fixing arrangement. The offence is a crime with a maximum penalty of 10 years imprisonment. The concealment of information about a match-fixing arrangement or match-fixing conduct is specific to the listed authorities.

New section 443F provides the offence of Using or disclosing inside knowledge for betting. An offence against section 443F is a crime with a maximum penalty of 2 years imprisonment. This is a less serious offence to that provided in section 443D as the knowledge does not relate to match-fixing conduct or a match-fixing arrangement.

New section 443F addresses offending conduct where a person has knowledge about a sporting event which is greater than any information provided in the public domain which may be considered by persons who are or would be likely to bet on the sporting event or contingency. Inside information gives a person betting on an event an unfair advantage over others betting on the event who do not have access to such information and strikes at the integrity of sports wagering.

Integral to the new section 443F offence is that the information is not publicly available information and if it was publicly available, it would, or would be likely to, influence persons betting on the sporting event or contingency. In order to avoid criminalising information sharing that may commonly occur between persons involved in a sporting event, the use of the information must be contrary to the standards of integrity that an ordinary person would reasonably expect of persons in possession of the knowledge or information.

New section 443G provides an evidentiary provision that applies to a proceeding for an offence under chapter 43.

Clause 31 amends section 450H(1) (Licence disqualification where commission of offence facilitated by licence or use of vehicle) to insert reference to the new offence of serious animal cruelty inserted by clause 27.

Clause 32 amends section 450I (Forfeiture in cases of conviction for offences under specified sections) to insert reference to the new offence of serious animal cruelty inserted by clause 27.

Clause 33 amends section 564 (Form of indictment) which concerns how an offence is to be described in an indictment. Consistent with the amendment to section 47 of the *Justices Act 1886*, contained in the Bill, an amendment is made to set the position with respect to the extent a court may rely upon a previous conviction at sentencing where a circumstance of aggravation that is a previous conviction is not stated in the indictment in accordance with section 564(2). The amendment provides that a circumstance of aggravation that is a previous conviction may be relied upon for the purposes of sentencing an offender for the offence charged in the indictment despite that circumstance not being charged in the indictment. This is consistent with the position under the *Penalties and Sentences Act 1992*.

Clause 34 inserts new section 589A (Indictment for using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting) to provide that the new offence in section 443F is a statutory alternative to the offence contained in section 443D.

Clause 35 amends Chapter 68, section 678A (Application of ch 68) to retrospectively apply the exceptions to the rules against double jeopardy. That is, Queensland's double jeopardy exception regime under Chapter 68 is to apply to all acquittals of a relevant offence, irrespective of when the alleged offence was committed and irrespective of the date of the acquittal. The existing protective safeguards under Chapter 68 continue to apply to a person acquitted of a relevant offence irrespective of whether the acquittal occurred before or after the commencement of the Chapter.

Clause 36 inserts a new Chapter 94, which makes transitional provision for the application of the amendments to Chapter 68 of the Criminal Code and section 564 of the Criminal Code.

New section 733 (Extended application of ch 68) makes transitional provision for the retrospective application of the double jeopardy exception regime under Chapter 68. The provision makes it clear that Chapter 68 applies to a person acquitted of a relevant offence, whether the person has been acquitted of the relevant offence before, on or after the commencement of Chapter 68 on 25 October 2007 or before, on or after the commencement of *clause 35*; and irrespective of when the circumstances supporting an order for a retrial arose.

To remove any doubt, the double jeopardy exception regime under Chapter 68 is to apply to any person acquitted of a relevant offence.

New section 734 (Application of 564) is a transitional provision in relation to the amendment to section 564 to provide that the amendment applies to the sentencing of an offender for an offence, regardless of whether the proceeding for the offence was started before, on or after the commencement of the transitional provision.

Part 6 Amendment of Criminal Proceeds Confiscation Act 2002

Clause 37 states this part amends the *Criminal Proceeds Confiscation Act 2002*.

Clause 38 amends section 237 (Charge on property subject to filed interstate restraining order) to remove the requirement that interstate restraining orders and pecuniary penalty orders be based on a criminal charge or conviction.

Part 7 Amendment of Dangerous Prisoners (Sexual Offenders) Act 2003

Clause 39 states this part amends the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Clause 40 replaces section 43AA (Contravention of relevant order), which makes it an offence for a released prisoner to contravene a relevant order without a reasonable excuse.

New section 43AA(1) provides for the offence simpliciter. The maximum penalty is unchanged (that is, two years imprisonment). However, the offence simpliciter is amended to designate it as a misdemeanour and therefore it is no longer a simple offence but rather an indictable offence.

New section 43AA(2) provides for a new circumstance of aggravation where the released prisoner contravenes the relevant order without a reasonable excuse by removing or tampering with a stated device (as defined in the section itself) for the purpose of preventing the location of the released prisoner to be monitored. The aggravated offence is a crime and punishable by a maximum penalty of five years imprisonment with a mandatory minimum period of one year imprisonment to be served wholly in a corrective services facility (as defined in the section itself).

Clause 41 omits existing section 43AC (Proceedings for offences) and inserts new sections 43AC to 43AI, which sets out a comprehensive regime for the indictable offences under section 43AA, as amended by *clause 40*, to be dealt with summarily; modelled on the approach under the Criminal Code to indictable offences dealt with summarily. The following is provided:

- new section 43AC provides that an offence against section 43AA must be heard and decided summarily upon prosecution election (subject to new section 43AE);
- new section 43AD provides for the constitution of a Magistrates Court dealing with a section 43AA offence summarily;
- new section 43AE sets out when the Magistrates Court must abstain from jurisdiction;
- new section 43AF ensures that the charge may be heard and decided within the district in which the accused person is arrested on the charge or served with the summons for the charge;
- new section 43AG addresses the issue of the statutory timeframes within which an offence must be heard and decided summarily and ensures that these time limitations do not apply to an offence dealt with summarily under new section 43AC;

- new section 43AH provides that the maximum penalty that may be imposed on a summary conviction for an indictable offence is three years imprisonment or the maximum prescribed for the offence, whichever is the lesser. In no case may a person be punished more than if the offence had been dealt with on indictment. If dealt with summarily, the mandatory minimum one year imprisonment under section 43AA(2) must be applied and cannot be reduced or mitigated; and
- new section 43AI makes provision for appeals against a Magistrate’s decision to decide a matter summarily or to sentence summarily.

Clause 42 inserts new part 9, which makes transitional provision for the application of amended section 43AA and the amended definition of ‘serious sexual offence’.

New section 64 provides that while the amended section 43AA (Contravention of a relevant order) applies to an existing supervision or interim supervision order made before commencement of the Bill, the new and increased penalty will only apply where the contravention occurs post commencement of the Bill. Otherwise, the previous section 43AA applies, or continues to apply, in relation to any contravention of a relevant order that happened before commencement.

New section 65 provides that the amended definition of ‘serious sexual offence’ applies retrospectively. This approach is consistent with the approach taken to the application of the *Dangerous Prisoners (Sexual Offenders) Act 2003* when enacted.

Clause 43 amends the schedule (Dictionary) with regards to the definition of ‘serious sexual offence’ to ensure that the *Dangerous Prisoners (Sexual Offenders) Act 2003* applies to an offence of a sexual nature, whether committed in or outside of Queensland, against a person, including a fictitious person represented to the prisoner as a real person, whom the prisoner believed to be a child under the age of 16 years. The amendment addresses the decision in *Dodge v Attorney-General for the State of Queensland* [2012] QCA 280 which held that the *Dangerous Prisoners (Sexual Offenders) Act 2003* did not extend to section 218A(1)(b) of the Criminal Code where no actual child was involved in the offence (for example an adult the offender believed to be a child under 16 years).

Part 8 Amendment of Director of Public Prosecutions Act 1984

Clause 44 states this part amends the *Director of Public Prosecutions Act 1984*.

Clause 45 replaces section 13 (Police assistance for director). The new section 13 will allow the Director of Public Prosecutions to ask, in addition to the Police Commissioner, the Chief Executive administering the *Animal Care and Protection Act 2001* for the assistance of an inspector if a matter arises that requires further investigation in relation to a criminal proceeding under consideration or conducted by the Director. The amendment complements the insertion of new section 242 (Serious animal cruelty) into the Criminal Code.

Part 9 Amendment of Drugs Misuse Act 1986

Clause 46 states this part amends the *Drugs Misuse Act 1986*.

Clause 47 amends section 134A (Recommendation of Minister) to insert a new subsection (2) which allows the Minister to include a substance in the *Drugs Misuse Regulation 1987*, without a full consideration of the matters listed in subsection (1), where inclusion of the substance is required as a matter of urgency.

Part 10 Amendment of Evidence Act 1977

Clause 48 states this part amends the *Evidence Act 1977*.

Clause 49 amends section 39E (State courts may take evidence and submissions from outside State) to insert a new editor's note after subsection (1) to refer to the new part 3A, division 3A.

Clause 50 inserts new part 3A, division 3A (Use of audio visual links or audio links for expert witnesses) to facilitate a presumption in favour of the use of audio visual links or audio links for expert witnesses; new sections 39PA, 39PB and 39PC are provided.

New section 39PB establishes a rebuttable presumption in favour of expert witnesses providing their testimony in a criminal or civil proceeding via audio link or audio visual link.

Subsection (3) provides that the court may direct the witness to appear in person if the court is satisfied that it is in the interests of justice to give such a direction.

Subsection (4) sets out matters which the court may have regard to in considering whether it is in the interests of justice to direct that the expert witness give oral evidence in court other than by audio visual link or audio link. Subsection (5) clarifies that subsection (4) is not intended to limit the court in the matters it may have regard to when exercising its discretion under subsection (3).

Subsection (6) provides that the court may vary or revoke a direction made under section 39PB at any time either on its own initiative or an application of a party to a proceeding.

Subsection (7) provides that the court must not give the evidence of an expert witness any more or less weight or draw any adverse inferences against a party to the proceeding, only because the expert witness gave their evidence by way of audio visual or audio link.

New section 39PC requires the court to direct the jury as outlined in subsection (2), where an expert witness provides their evidence via audio link or audio visual link.

Clause 51 amends section 39Q (Application of div 4) to include reference to the new division 3A.

Clause 52 amends section 39R (Queensland courts may take evidence and submissions from external locations) to include an editor's note.

Clause 53 inserts new section 55A (Proof of disaster situation under *Disaster Management Act 2003*) providing an evidentiary aid to facilitate proof in a proceeding of the making of a declaration of a disaster situation under the *Disaster Management Act 2003*. For example, in the case of the new circumstance of aggravation inserted into the offence of Stealing by looting under *clause 29*.

Clause 54 replaces section 95 (Admissibility of statements produced by computers). The new section 95 (Admissibility of statements in documents or things produced by processes or devices) incorporates a presumption in relation to the authenticity and reliability of evidence produced by application of a device or process.

Subsection (3) provides that an evidentiary certificate may be used to establish that the device or process is of a kind that, if properly used, does what it is claimed to do. The certificate must be signed by a responsible person as defined in subsection (7) and a copy must be provided to all other parties to the proceeding. A party may, with written notice, challenge a matter stated in the certificate. Subsection (4) provides that it is an offence for a person who signs or purports to sign a certificate if a matter stated in the certificate is false and the statement is material in a proceeding.

Part 11 Amendment of Justices Act 1886

Clause 55 states this part amends the *Justices Act 1886*.

Clause 56 amends section 4 (Definitions) to insert a definition for a RSPCA inspector.

Clause 57 amends section 39 (Power of court to order delivery of certain property) to provide that, for the section, and in relation to a complaint of an offence against section 242 or 468 of the Criminal Code, the term 'public officer' includes an RSPCA inspector.

Clause 58 amends section 47 (What is sufficient description of offence) which concerns how an offence is to be described in a charge before a Magistrates Court. Section 47(5) requires a prior conviction that is a circumstance of aggravation to a charge to be set out in a document separate to the charge and served on the defendant. This informs the defendant that the prosecution is intending to rely upon a prior conviction to place the defendant into a higher category of liability. Section 47(2) sets out the reliance a Magistrates Court may place on a criminal history where the defendant has been served with that history but fails to appear before the court.

The clause provides that where a notice of intention to allege a prior conviction is not served in accordance with section 47(5) (as amended by the Bill), then a conviction which would have been the subject of such a notice may not be relied upon to put the defendant into a higher category of penalty (that is, make the defendant liable to a higher maximum penalty for an aggravated form of the offence), but may nevertheless be taken into account by the court for general sentencing purposes, in accordance with the position under the *Penalties and Sentences Act 1992*. The amendment reinstates

the understanding of the position prior to the judgment in *Miers v Blewett* [2013] QCA 23. This is contained in subsections (7) and (8). A transitional provision is inserted by *clause 63* of the Bill in relation to these sub-sections.

The clause also amends section 47(5) and replaces section 47(6) to enable a notice of intention to allege a prior conviction to be provided to the defendant with the complaint, or on, or before, the day appointed for the defendant's appearance. Where the notice is given on the day of court, the court may, if the court is satisfied it is in the interests of justice to do so, adjourn the hearing to allow the defendant to consider the notice. As a procedural law, the provisions will apply to proceedings as they are heard from the day of commencement of the amendments.

The clause also amends section 47(3) and (3A) to change the requirements for service and documenting of service of a criminal history served on a defendant under section 47(2) or a notice served on a defendant under section 47(5)(a) or (b). At present the manner in which documents under section 47 are served and service is documented is dependant upon the manner in which the proceeding was commenced, that is, whether by notice to appear or otherwise. The amendments streamline the manner of service and proof of service of documents under section 47 so that regardless of the manner by which the proceeding is commenced, service and proof of service is as for a notice to appear under the *Police Powers and Responsibilities Act 2000*. Under that Act, a notice to appear is served in accordance with section 382(3) and (4) and service is documented in accordance with section 389(2). As a procedural law, the provisions will apply to proceedings as they are heard from the day of commencement of the amendments.

The clause also amends section 47(2) to replace 'summons' with 'complaint' for consistency of terminology within the section. As a procedural law, the provisions will apply to proceedings as they are heard from the day of commencement of the amendments.

Clause 59 amends section 142 (Proceedings in absence of defendant) to ensure that notices under that section can be provided electronically if section 146A (Proceeding at hearing on defendant's confession in absentia) also applies to the proceeding.

Clause 60 amends section 142A (Permissible procedure in absence of defendant in certain cases) to ensure that notices under that section can be provided electronically if section 146A (Proceeding at hearing on defendant's confession in absentia) also applies to the proceeding.

Clause 61 amends section 146A (Proceeding at hearing on defendant's confession in absentia) to better facilitate the implementation of a new system for electronic pleas of guilty in the Magistrates Courts.

Section 146A allows a defendant (or lawyer acting on the defendant's behalf) to give the clerk of the court notification in writing that the defendant wishes to plead guilty without appearing in person. This section applies if a defendant is required to appear to answer a complaint for a simple offence or breach of duty. It does not apply to indictable offences. The amendment to paragraph 146A(1)(a) updates terminology in relation to the exclusion of indictable offences.

The amendments to subsection (2) and (2A) allow the court to hear and determine the case “on the papers” by providing that the complainant may also consent to the matter proceeding in their absence. Where the complainant does not appear in person the complainant must provide the justices with written material in relation to the facts relating to the offence.

New subsections (2D) and (3C) to (3G) allow notices (including notice of an adjournment, a conviction or order) to be provided to parties electronically.

New subsections (2B) and (2C) allow the clerk of the court to bring forward the time appointed for the hearing of the case provided this is not less than seven business days after the date of the notice of the change. Notice of such change must be provided to the parties as soon as practicable.

Clause 62 amends section 222 (Appeal to a single judge) to include a new subsection (2A) which provides standing to the Attorney-General to appeal sentences for simple offences disposed of summarily. The one month time limit which applies to all other parties will apply to the Attorney-General.

Clause 63 inserts a new part 11, division 7 to provide a transitional provision. New section 281 (Application of s 47) is a transitional provision in relation to the amendment to insert new subsections (7) and (8) into section 47 to provide that the amendments apply to the sentencing of an offender for an offence whether the proceeding for the offence was started before, on or after the commencement of the transitional provision.

Part 12 Amendment of Penalties and Sentences Act 1992

Clause 64 states that this part amends the *Penalties and Sentences Act 1992*.

Clause 65 amends the heading of section 13A consequential to the insertion of new section 13B by *clause 66* by changing the heading to ‘Cooperation with law enforcement authorities to be taken into account – undertaking to cooperate’.

Clause 66 inserts a new section 13B (Cooperation with law enforcement authorities to be taken into account – cooperation given) to provide a regime aimed at ensuring the protection of informants, and confidentiality of the information provided, who significantly assist law enforcement agencies with their investigations but fall outside the ambit of existing section 13A as the informant is not willing to give the type of undertaking required under section 13A. For example, a person whose cooperation is reflected in an affidavit by a law enforcement agency (colloquially known as a ‘letter of comfort’) tendered to the court in support of reducing the otherwise appropriate penalty.

Section 13B is modelled on section 13A and is intended to complement the operation of section 13A by applying to offenders who have significantly assisted law enforcement agencies with their investigation, beyond simply admitting their own criminality, but who are not prepared to give the type of undertaking required by section 13A. Therefore, section 13B applies to an informant to whom section 13A

does not apply. Under section 13B, the penalty imposed on the offender must be stated in open court.

Consistent with the approach under section 13A, new sections 13B(9) and (10) provide the sentencing court with the discretion to make an order prohibiting publication of all or part of the proceeding or the name and address of any witness; and in deciding whether to make such an order the court may have regard to: the safety of any person; the extent to which the detection of offences of a similar nature may be affected; and the need to guarantee the confidentiality of information given by an informer.

Further, consistent with the approach under section 13A, new section 13B(11) makes it an offence to contravene an order prohibiting publication, which is punishable by up to five years imprisonment.

Clause 67 makes a corresponding amendment to section 187 (Disqualification from holding Queensland driver licence) to that made under *clause 28* regarding section 328B of the Criminal Code. The amendment widens the scope of the court's discretion to impose a driver licence disqualification upon an offender who was not the driver of the motor vehicle at the relevant time (that is, an offender convicted of an offence in connection with or arising out of the operation, or the interference in any way with the operation, of a motor vehicle).

Clause 68 inserts a new part 14, division 9, which makes transitional provision for the application of new section 13B inserted under *clause 66*.

New section 234 ensures that section 13B applies to the sentencing of an offender for an offence on or after commencement of the provision, even if the proceedings for the offence started before commencement or some or all of the offender's cooperation with a law enforcement agency occurred before commencement. This retrospective application of new section 13B is to the benefit of the offender.

Clause 69 inserts the Criminal Code offence section 229G Procuring engagement in prostitution into Schedule 1 (Serious violent offences) if section 229G(2) applies.

Part 13 Amendment of Youth Justice Act 1992

Clause 70 states this part amends the *Youth Justice Act 1992*.

Clause 71 inserts a new section 151A (Permitted use and disclosure of information for pre-sentence report) permitting the chief executive to make information about a child obtained under any Act available to a third party to assist the chief executive in complying with the obligation under existing section 151 to prepare a pre-sentence report ordered by a court. Where the Childrens Court orders a pre-sentence report under section 151 in relation to a child found guilty of a sexual offence, the court commonly requests that the report contain a specialist forensic psychological report in relation to the child. To assist in the preparation of the specialist report, child protection and other sensitive information about the child in the department's possession is routinely provided to an appropriate external specialist body engaged to prepare the report.

In the context of the opening of the Childrens Court by recent amendments to the *Childrens Court Act 1992*, the current amendment removes all doubt that the chief executive is not prohibited by the confidentiality provisions of the *Child Protection Act 1999* or other relevant legislation from continuing to provide this information to an appropriate specialist body.

Clause 72 inserts a new section 153A (Permitted use and disclosure of information in a pre-sentence report) to provide that, subject to the court's power under section 153(3) to limit the disclosure of a pre-sentence report, nothing in that Act or another Act restricts the use or disclosure of information contained in a pre-sentence report or given in evidence to the court about a matter in a pre-sentence report. This removes all doubt, in the context of the opening of the Childrens Court, that the inclusion of child protection and other sensitive information in a pre-sentence report and its use in a sentencing hearing is not prohibited by the confidentiality provisions of the *Child Protection Act 1999* or other relevant legislation.

Subsection 153A(3) makes clear, however, that the existing prohibition under the *Child Protection Act 1999* on the unauthorised publication of child protection information remains undisturbed, including where that information has been disclosed to an open court through a pre-sentence report.

Clause 73 amends section 176B (Sentence orders – recidivist vehicle offences) which provides a head of power for the Childrens Court to make a boot camp (vehicle offences) order and requires the court to have received and considered a pre-sentence report before making the order—to provide that section applies if a court is required under section 206A(1) to make the order. This makes clear that the head of power under section 176B to make a boot camp (vehicle offences) order operates subject to the detailed conditions for the order's making which are prescribed in section 206A.

Clause 74 inserts a new section 282BA (Detention centre employees may provide services at boot camp centres) to permit youth detention centre officers to provide services to maintain good order and discipline at a boot camp centre. Youth detention centre officers are specially trained and experienced in working with young offenders and are able to appropriately employ a range of practices such as use of force, restraint, separation and personal searches.

Queensland Corrective Services officers are currently engaged in supervising offenders at the Lincoln Springs centre. Under these officers' supervision, no offenders have absconded from the centre and there have been no serious issues of self-harm or injury. It has been identified, however, that the proposed additional measure is required to properly protect the safety and security of staff and offenders and prevent damage to property at the Lincoln Springs centre.

While the services to be provided by youth detention centre officers will be required by section 282BA(1) to be provided under an arrangement between the chief executive and the boot camp centre provider, under section 282BA(3) an officer providing these services will remain subject to the direction and control of the chief executive.

Section 282BA(2) restricts the practices which a youth detention centre officer may employ in maintaining good order and discipline at a boot camp centre to those prescribed by regulation. Clear guidelines around the use of practices such as use of force, restraint, separation and personal searches will be prescribed in the *Youth Justice Regulation 2003*, as well as the obligation to record all instances of their use.