

## Justice and Other Legislation Amendment Bill 2014

# Explanatory Notes

### Short title

The short title of the Bill is the *Justice and Other Legislation Amendment Bill 2014*.

### Policy objectives and the reasons for them

The objective of the Bill is to make miscellaneous amendments to over 30 Acts administered by the Attorney-General and Minister for Justice, including to:

- strengthen penalties and sentences for certain offenders and streamline certain processes in criminal hearings;
- advance the Government's red tape reduction, public sector renewal and reducing the regulatory burden agendas;
- strengthen and improve provisions concerning the administration of coronial and civil proceedings in the courts;
- support the effective administration of justice by ensuring public confidence in the authority of court orders;
- support the effective operation of births, deaths and marriages registration in Queensland and the transition to a modern digitised registration service;
- strengthen the legal profession regulatory regime;
- simplify and clarify the requirements for delegation of the administration of a trust;
- amend Queensland laws so that they continue to complement uniform or model Commonwealth laws;
- provide greater certainty in property transactions;
- strengthen protections for victims of crime; and
- make other technical, clarifying, and minor amendments.

The Bill also amends the *Tourism and Events Queensland Act 2012*, an Act administered by the Minister for Tourism, Major Events, Small Business and the Commonwealth Games. The amendment reflects the decision that the Tourism and Events Queensland Employing Office is no longer a national system employer.

### Achievement of policy objectives

The Bill achieves the objectives by providing for amendments to the:

- *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* to simplify the process for appointing and revoking the appointment of community justice group members for particular places;
- *Acts Interpretation Act 1954* to provide that approved forms can be notified by publication on a local government website in the case of local government, and a Queensland Government website for all other entities, instead of in the government gazette;

- *Appeal Costs Fund Act 1973* to omit redundant provisions relating to the administration of the fund, and clarify the circumstances in which a person is entitled to payment from the fund because a new trial is ordered;
- *Births, Deaths and Marriages Registration Act 2003* to: strengthen provisions for electronic lodgement by requiring birth notifications by hospitals and death registration applications by funeral directors to be lodged electronically with limited exceptions; clarify the ability of individuals and entities to apply for information electronically and for the information to be provided electronically; and ensure digitised source documents have the same legal status as original paper versions;
- *Civil Liability Act 2003* to broaden the exclusion from civil liability where a person suffers harm while committing an indictable offence;
- *Civil Proceedings Act 2011* to introduce a comprehensive statutory regime to facilitate the effective conduct and management of representative proceedings (commonly called “class actions”) in Queensland;
- *Coroners Act 2003* to limit the operation of section 29 to indictable offences so as to make it explicitly clear when a coroner must not commence or must adjourn a coronial inquest;
- *Corrective Services Act 2006* to introduce a new offence that prohibits prisoners from sending inappropriate and unwanted correspondence to victims;
- Criminal Code to increase the maximum penalty for the offence of misconduct with regard to corpses (section 236) from two years imprisonment to five years imprisonment;
- *Criminal Proceeds Confiscation Act 2002* to:
  - ensure that dealings with property that breach Supreme Court orders made under the *Criminal Proceeds Confiscation Act 2002* are voided and penalised appropriately; and
  - make minor amendments to existing provisions in the *Criminal Proceeds Confiscation Act 2002* that support the Act’s main objective of removing the financial gain and increasing the financial loss associated with illegal activity;
- *Drugs Misuse Act 1986* to update the evidentiary provision providing for drug analysts’ certificates, to reflect current scientific and operational practices of analysis and remove any uncertainty about the admissibility of certificates issued under the section;
- *Drugs Misuse Act 1986* and the *Penalties and Sentences Act 1992* to provide that when sentencing an offender for the offence of supplying a dangerous drug where the drug use results in death, the court must treat that death as an aggravating factor when determining the penalty;
- *Electoral Act 1992* to make the process for applying for electoral visitor voting simpler, and more consistent with the process for applying for a postal vote;
- *Evidence Act 1977* to provide that a DNA analyst is required to attend a hearing when a section 95A DNA analyst certificate is being relied on at the hearing, if another party requires the analyst’s attendance; and to clarify the application of section 95A to committal proceedings;
- *Justices Act 1886* and the Criminal Code to allow a legally represented defendant to enter a plea, in the Magistrates Court, for a number of charges at the same time without each charge being read separately to them;
- *Legal Profession Act 2007* to: provide that liquidation or another form of external administration is a show cause event and suitability matter for incorporated legal

practitioner directors; make minor amendments to reflect changes as a result of the implementation of recommendations resulting from the *Review of the allocation of funds from the Legal Practitioner Interest on Trust Accounts Fund*; and clarify that employees or appointees in public service offices are government legal officers for the purposes of the Act;

- *Magistrates Court Act 1921* so that the chief executive has the power to appoint a bailiff and to provide that the functions of a bailiff may only be performed by a person appointed as a bailiff;
- *Penalties and Sentences Act 1992* to also allow the Police Commissioner to issue presentence custody certificates under section 159A; and also to provide under section 15B that a person who is convicted of a minor drug offence in a Magistrates Court can attend a group drug assessment and education session rather than a one-on-one session;
- *Professional Standards Act 2004* to replace references in the Act to ‘gazettal’ with references to ‘notification’ as a consequence of subordinate legislation no longer being notified in the gazette;
- *Property Law Act 1974* to prohibit statutory instruments (other than prescribed subordinate legislation) from rendering void, unenforceable or subject to termination, contracts or dealings concerning property that are made, entered into or effected contrary to the statutory instrument;
- *Public Guardian Act 2014* to clarify the definition of ‘relevant child’;
- *Queensland Civil and Administrative Tribunal Act 2009* to reduce red tape by streamlining the process for enforcing a final decision of the tribunal in a court;
- *Recording of Evidence Act 1962* to permit the destruction of recordings of Magistrates Court proceedings that are authorised by the archivist under the *Public Records Act 2002*;
- *Referendums Act 1997* to align requirements and processes to facilitate electronically assisted voting, postal voting, and proof of identity to vote in a State election with processes under the Electoral Act;
- *Supreme Court Library Act 1968* to provide protection from civil liability for members of the Supreme Court Library Committee for acts done, or omissions made in good faith under the Act;
- *Telecommunication Interception Act 2009* to ensure consistency with provisions in relevant Commonwealth legislation;
- *Tourism and Events Queensland Act 2012* to remove obsolete provisions of the Act relating to the Tourism and Events Queensland Employing Office;
- *Trusts Act 1973* to achieve consistency with the *Powers of Attorney Act 1998* by removing the requirement that the delegation of the administration of a trust is to be made by power of attorney executed as a deed; and
- *Vexatious Proceedings Act 2005* to allow applications by vexatious litigants for leave to institute a proceeding to be dismissed by the Supreme Court without an oral hearing.

The Bill also makes other minor and technical amendments, including repeal of redundant laws.

## **Alternative ways of achieving policy objectives**

No other options were considered as legislative amendment is the only way to achieve the outcome.

## **Estimated cost for government implementation**

The proposed amendments have no direct financial implications. Should any additional costs be incurred, they will be met from existing agency resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

### *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*

The new arrangements for appointment and revocation of appointment of members of community justice groups to be inserted as sections 20(1A) and 20(4A) of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* potentially are inconsistent with the fundamental legislative principle that requires that legislation give due regard to the rights of individuals due to the mechanism by which appointments and the revocation of appointments are to be publicly notified. Consistent with these new provisions, the Minister must publish notice of an appointment or revocation on the Queensland Courts website which is defined in section 20(5) as ‘<www.courts.qld.gov.au>’ or ‘another website authorised by the chief executive for this section’.

While it is important that the information to be published on the website is publicly available and accessible, the proposed arrangements are justified on the basis of ensuring that any potential future changes to the listed URL address can be accommodated under the Act by enabling the chief executive to authorise publication on another website authorised for this purpose. If publication is to be on a website other than the current Queensland Courts website as authorised by the chief executive, an automatic redirection to the new URL will be arranged to ensure continued public access to this information. Community justice groups and other community stakeholders will also be made aware of these changes.

### *Acts Interpretation Act 1954*

The amendments to section 48 of the *Acts Interpretation Act 1954* to provide that approved forms can be notified by publication on a local government website in the case of local government, and a Queensland Government website for all other entities, instead of in the government gazette, are arguably inconsistent with the fundamental legislative principle that requires that legislation give due regard to the rights of individuals, on account of the amended mechanism by which new or amended forms are notified.

The new method of notification may arguably affect accessibility to historical information about relevant notifications. However, any potential inconsistency with this fundamental legislative principle needs to be balanced against the benefits of the amendments, which ensure that individuals are able to easily access notice of new and amended approved forms and the date on which new and amended approved forms take effect. Appropriate standards for keeping historical information about versions of approved forms and notifications can be addressed administratively.

The new section 48(9) of the Act provides for a delegation of legislative power, in that, it provides for a website for the purpose of the definition of ‘whole-of-government website’ to be prescribed by regulation. It is appropriate that any relevant website be able to be prescribed by regulation, as the relevant website address may need to change from time to time. Any concerns regarding this delegation of legislative power are mitigated by the fact that any regulation that purports to prescribe a website for this purpose will be tabled in Parliament, subject to disallowance, and will appear on the public record.

#### *Appeal Costs Fund Act 1973*

The transitional provisions to be inserted as section 31 of the *Appeal Costs Fund Act 1973* arguably raise a fundamental legislative principle regarding retrospectivity, as they provide that the amendments to section 22 of the Act will apply to applications that were submitted prior to the commencement of those provisions, but have not been determined as at the date of commencement.

The retrospective operation of section 22, as amended, is justifiable on the basis that the amendment is in fact expanding the grounds on which a party can claim from the fund to include where an appeal was allowed on the ground of a miscarriage of justice. There will be no adverse impacts to claimants as a result of this amendment, or its retrospective operation.

#### *Civil Liability Act 2003*

The amendments to section 45 raise an issue regarding the fundamental legislative principle of respect for the rights and liberties of individuals. The amendments will broaden the circumstances in which a person who suffers harm while committing an indictable offence must not be awarded damages.

Section 45 provides an exclusion from civil liability for breach of duty, if the person who suffered harm was engaged in conduct that was an indictable offence and the conduct contributed materially to the risk of harm. The Bill amends section 45 to remove the requirement that the criminal conduct must materially contribute to the risk of harm, insert a broad definition of criminal conduct and remove the discretion of the court to award damages if the court considers the exclusion operates harshly and unjustly in the circumstances. These amendments will ensure greater certainty in the operation of the exclusion and close loopholes that would narrow the circumstances in which the exclusion would apply. The amendments will ensure that the intent of the exclusion in section 45 (i.e. that a criminal should not benefit from his or her criminal conduct) is not subverted by the difficulty of proving a nexus between the criminal conduct and the risk of harm, or arguments that the criminal conduct had ceased or not commenced at the time the harm was suffered (for example, an offender fleeing after committing an offence). The amendments are justifiable in that they are designed to

ensure that a criminal cannot benefit from his or her criminal conduct and will only apply to conduct that constitutes an indictable offence.

Coroners Act 2003

Section 29 has been interpreted and applied as prohibiting a coroner from commencing or resuming an inquest into a death where a person has been charged with any offence in which the question of whether the accused caused the death may be in issue, until after the end of the proceedings for the offence.

The purpose of section 29 is to limit the prejudicial effect on a potential prosecution of an accused in which the question of whether the accused caused the death may be in issue. The amendment to section 29 which limits the application of section 29 to indictable offences, may be considered to reduce the protections available to an accused charged with a summary offence. For this reason, the amendment potentially impacts on the rights and liberties of individuals charged with a summary offence.

However, the amendment is considered justified on the basis that the amendment is in the public interest.

The coroner's primary function is to investigate particular deaths and make comment aimed at helping to prevent deaths of a similar nature happening in the future. Due to the protracted nature of some proceedings, particularly where numerous appeals occur, significant delays to the commencement or resumption of a coronial inquest have resulted. The significant delays arguably reduce a coroner's capacity to make meaningful comment aimed at preventing deaths of a similar nature occurring in the future. This directly contradicts the overarching policy objective of the Coroners Act. These delays also cause further distress to already grieving families.

Importantly, a coroner will have a discretion not to commence or resume an inquest where a person has been charged with a summary offence if the coroner considers it is not in the public interest to do so.

In addition, there are a number of other provisions available to a coroner which limit any prejudicial effect on a potential prosecution of an accused. For instance, section 31 of the Act allows a coroner to order the court be closed; section 39 limits the admissibility of compulsorily acquired oral evidence and provides derivative use immunity; section 41 allows the coroner to prohibit publications; and section 43 allows the coroner to exclude a person from an inquest if it is in the interests of justice, the public or the particular person to do so.

Therefore, it is considered that the amendment and Act contain appropriate safeguards. It is anticipated that the amendments will affect only a small number of coronial matters.

The new section 116 provides a coroner with the discretion to commence or resume an inquest into a death where a coroner has been informed that a person has been charged with a summary offence before the commencement; and on the commencement, the inquest has not been started, resumed or closed, as if the section 29 in force prior to the commencement does not and has never applied in relation to the inquest. Accordingly, the amendment applies retrospectively to deaths that have occurred prior to the

section's commencement. This retrospective effect may be considered to adversely impact the rights and liberties of individuals charged with a summary offence.

However, the retrospective application of the amendment is considered justified on the grounds that it is required to enable the amended section 29 to achieve the desired policy objectives in a timely way. More specifically, retrospective application of the amendment to section 29 will enable a coroner to exercise their discretion to commence or continue an inquest in relation to a particular cohort of cases where proceedings are still on foot after a protracted period of time, and where the coronial findings are necessary to prevent deaths from similar causes happening in the future. Retrospective application will therefore allow grieving families the closure they require. It is anticipated that the retrospective effect of section 29 will only apply in a small number of cases.

*Corrective Services Act 2006*

The introduction of the new offence in the *Corrective Services Act 2006* prohibiting prisoners from sending correspondence which is reasonably likely to cause a victim distress or trauma potentially affects the rights and liberties of the prisoner. The possible breach of fundamental legislative principles must be balanced against the need for community safety, including the safety and protection of victims. The offence is intended to act as a deterrent to ensure prisoners do not make inappropriate and unwanted contact with a victim. This offence strengthens the protections offered to victims and assists in ensuring that they are treated with courtesy, compassion, respect and dignity. The maximum penalty for the new offence marks the seriousness of the offence and is consistent with analogous offences under the *Corrective Services Act 2006* and in Victoria.

*Criminal Code, Drugs Misuse Act 1986 and Penalties and Sentences Act 1992*

The Bill amends the Criminal Code to increase the maximum penalty for the offence of misconduct with regard to corpses and amends the *Drugs Misuse Act 1986* and the *Penalties and Sentences Act 1992* to strengthen the sentencing principles relevant to an offender who supplies a dangerous drug which results in death. Such amendments potentially impact on the rights and liberties of individuals as offenders will be liable to higher punishments.

- *Misconduct with regard to corpses (section 236 of the Criminal Code)*

The Bill amends section 236 of the Criminal Code to increase the maximum penalty for the offence from two years to five years imprisonment. A consequential amendment is also made to reclassify the offence from a misdemeanour to a crime. The amendment is justified as the manner in which a deceased's body is treated following their death can cause substantial distress to the deceased's family and may destroy, weaken or contaminate any evidence the body may reveal in terms of cause of death or the identity of the killer.

Classification of an offence as a crime generally means that the offender may be arrested without warrant. This approach is consistent with the majority of other offences in the Criminal Code which carry a maximum penalty of five years imprisonment.

Pursuant to section 20C of the *Acts Interpretation Act 1954* and section 11 of the Criminal Code, the amendment will apply to offences committed after the amendment commences.

- *Supply dangerous drugs (Drugs Misuse Act 1986 and Penalties and Sentences Act 1992)*

The Bill amends the *Drugs Misuse Act 1986* and the *Penalties and Sentences Act 1992* to provide that when sentencing an offender for the offence of supplying a dangerous drug in the circumstances where the drug supplied results in the death of a person, the court must treat the resulting death as an aggravating factor to the offence of supply. While the amendment does not increase the applicable maximum penalty, it renders the offender liable to a higher sentence.

The drug supply market is usually fuelled by economic motivation for those in the drug trade to create a market for their wares. Such supply of dangerous drugs is in itself an exploitative act which often preys on the young, ill informed, persons with intellectual incapacity and/or those with a drug addiction. The adverse effect on the rights or liberties of this cohort of offenders is justified with reference to the need for: community protection from illicit drugs; and the community expectation that these offenders take moral responsibility for contributing to the death of another person as a consequence of their illicit conduct. A non-commercial supply (e.g. providing drugs to friends) is also an inherently dangerous act and such drug suppliers will also be caught by this amendment.

This amendment will have a partial retrospective effect in that it will apply to offenders convicted and sentenced after commencement irrespective of when the offence occurred or when the offender was charged. It is anticipated that this circumstance of aggravation will be utilised rarely and therefore a limited cohort of offenders will be affected by the partial retrospective application of the amendment.

- *Drug analyst's certificate (Drugs Misuse Act 1986)*

The Bill amends section 128 (Analyst's certificate) to allow a drug analyst to, in effect, certify another analyst's examination. The amendment to allow the analyst to certify what may be 'hearsay' evidence is necessary to accommodate current scientific and operational practices of analysis whereby some elements of examinations may be conducted by an assistant rather than an analyst or may be an automated process. The amendment does not prevent a party to the hearing from challenging the information contained in the certificate.

The transitional provision to be inserted as section 146 of the *Drugs Misuse Act 1986* deems that a drug analyst's certificate signed prior to the commencement of the amendments to section 128 is as valid and effective as if it had been signed after. This curative provision removes any doubt as to the validity of certificates upon which past prosecutions have been based. The provision does not affect the decision making in those cases and is technical in nature.

#### *Criminal Proceeds Confiscation Act 2002*

- *Amendments to provisions for breach of restraining orders and prohibited dealings with property that is subject of a forfeiture order*

The amendments apply to restraining orders and forfeiture orders issued under the *Criminal Proceeds Confiscation Act 2002* whether those orders were issued before or after the commencement of the provisions. Therefore, the amendments have a retrospective effect. However, the amendments will only apply to breaches or

prohibited dealings that occur after the commencement of the amendments. The decision of the Queensland Court of Appeal in the *State of Queensland v Bank of Queensland & Brett Raymond Stevens [2013] QCA 225* (the Stevens decision) highlighted the need to reinforce the authority of orders of the Supreme Court of Queensland issued under the *Criminal Proceeds Confiscation Act 2002*.

Public confidence in the authority of court orders is necessary to ensure the effective administration of justice. Further, effective compliance with orders issued under the *Criminal Proceeds Confiscation Act 2002* is required to ensure that assets that are liable to confiscation or forfeiture to the State are not dissipated. If assets are dissipated in breach of court orders it impedes the *Criminal Proceeds Confiscation Act 2002* from achieving its main objective of removing the financial gain and increasing the financial loss associated with illegal activity.

The amendments also significantly increase the maximum penalty for offences under these provisions. The current penalty for all of the provisions is 350 penalty units or seven years imprisonment. The amendments increase the maximum penalty for financial institutions to 2500 penalty units or the value of the property that is the subject of the breach or prohibited dealing (whichever is the greater amount). For all other persons, the increase in the maximum penalty is to 1000 penalty units or the value of the property that is the subject of the breach or prohibited dealing (whichever is the greater amount) or seven years imprisonment or both.

These increases are justified on the basis that they are more consistent with penalties in other Australian jurisdictions and existing penalties for financial institutions not complying with notices in the *Criminal Proceeds Confiscation Act 2002*. They are further justified because the facts of the Stevens decision emphasises that the penalties in place for these types of offences must be significant enough to encourage compliance with orders issued under the *Criminal Proceeds Confiscation Act 2002*.

- *Amendments to section 249(3) to accommodate the serious drug offender confiscation order scheme in chapter 2A*

The amendment to section 249(3) to allow financial institutions to voluntarily provide information to the Crime and Corruption Commission (CCC) that relates to a matter for which an order may be made under chapter 2A may affect an individual's right to privacy with respect to their financial records.

However, it should be noted that financial institutions can already provide information related to 'serious crime related activity' and any of the 'qualifying offences' in the serious drug offender confiscation order scheme (SDOCOS) could amount to 'serious criminal activity'. Therefore, this is not a significant widening of this provision.

As the amendment will encourage financial institutions to lawfully provide information to the CCC with respect to the SDOCOS, it will aid in furthering the main object of the *Criminal Proceeds Confiscation Act 2002* which is to remove the financial gain and increase the financial loss associated with illegal activity. Finally, it will also aid in achieving the important object set out at section 4(2)(e) of the *Criminal Proceeds Confiscation Act 2002* that is, 'to forfeit to the State property of, or associated with persons who commit qualifying offences, and against whom serious drug offender

confiscation orders are made, in recognition of the impact of qualifying offences on the community and the justice system’.

*Evidence Act 1977*

• *DNA certificates*

The amendment to section 95A of the *Evidence Act 1977* removes the current obligation on a party intending to rely on a DNA evidentiary certificate to call the analyst to give evidence. However, the other party to the proceeding maintains the right to require that the analyst attend the hearing.

While section 95A obviates the need to call persons involved in the continuity testing process that produces a DNA profile it still requires that a DNA analyst give evidence of the comparison of DNA profiles. It is this evidence that may link an offender to a crime.

The amendment in the Bill seeks to address those cases which rely on DNA evidence but where evidence is not required from the DNA analyst. In these circumstances, the current mandatory requirement in section 95A(3)(b) raises resourcing issues for Department of Health.

There are also a number of other safeguards included, such as the provision in section 95A allowing the court to give leave for any person to require the party seeking to rely on the certificate to call any person involved in the receipt, storage or testing of the thing.

The amendments are unlikely to have a significant effect on unrepresented defendants given they maintain the right to require the DNA analyst to attend a hearing. Further, defendants are rarely unrepresented in District and Supreme Court matters. The use of DNA evidence is not likely to arise often in summary trials (which also only account for a small percentage of matters finalised in the Magistrates Courts).

Amendments are also made to clarify the application of section 95A to committal proceedings. The provisions governing the giving of evidence at a committal are contained in the *Justices Act 1886*. The default position is that evidence is given in the form of written statements however there are provisions allowing the calling and cross-examination of witnesses in person at a hearing if certain requirements can be satisfied. Specific provisions are also included in the *Justices Act 1886* where a defendant is not legally represented in a committal.

*Legal Profession Act 2007*

The amendments to the *Legal Profession Act 2007* provide that an incorporated legal practice going into liquidation or another form of external administration is a show cause event and suitability matter for a person who is or has been a legal practitioner director. This arguably could adversely impact on the rights of such individuals, in that, a person who is or has been a legal practitioner director could be penalised for circumstances outside of their control relating to the liquidation or external administration. However, this potential is ameliorated in practice as the person will be afforded a right to present their case.

Referendums Act 1997

Proposed new sections 32A, 32B and 32E contain a delegation of legislative power, and are consistent with existing equivalent provisions contained in sections 121A, 121B and 121E of the Electoral Act.

The Government has noted its support, in principle, for making electronically assisted voting available to all Queensland voters, subject to being satisfied of the associated security arrangements, such as ensuring voting information cannot be intercepted. Electronically assisted voting will have considerable resource implications and significant feasibility, systems development and implementation lead times (including for necessary trialling). For these reasons, initially the priority is electronically assisted voting for blind and vision impaired voters, and voters who need help voting because of a disability, motor impairment or insufficient literacy. Other suitable categories may be subsequently prescribed by regulation.

Consistent with these objectives, the new section 32A provides that a regulation may prescribe a class of electors who may make an electronically assisted vote, and new section 32B provides for the Electoral Commission of Queensland to make procedures for electronically assisted voting. Any concerns regarding the delegation of legislative power have been mitigated by clearly setting out in the section the information to be included in the procedures, and providing that the procedures do not take effect until approved by regulation, and must be tabled with the regulation and published on the Electoral Commission of Queensland's website.

New section 32D provides for the protection of the information technology used for electronically assisted voting. Subsection (1) provides that it is an offence for a person to disclose any source code or other computer software related to electronically assisted voting, unless authorised to do so. The maximum penalty of 40 penalty units or 6 months imprisonment is consistent with the existing equivalent offence provision contained in section 121D(1) of the *Electoral Act 1992*.

Subsection (2) provides that it is an offence to destroy or interfere with any computer program, data file or electronic device used for or in connection with electronically assisted voting. The maximum penalty of 100 penalty units or 2 years imprisonment reflects the gravity of a person deliberately destroying information technology used to conduct democratic elections in Queensland. This provision is consistent with the existing equivalent offence provision contained in section 121D(2) of the *Electoral Act 1992*.

New section 32E allows for the commissioner to decide that electronically assisted voting is not to be used for a particular election, or for a class of electors at a particular election, consistent with the policy objectives outlined above

Supreme Court Library Act 1968

The amendments to the *Supreme Court Library Act 1968* provide protection from civil liability for members of the Supreme Court Library Committee in relation to acts done, or omissions made in good faith under, or for the purposes of the Act. The committee is a statutory corporation established for public charitable purposes to manage and control the Supreme Court library. The membership is comprised of members of the

judiciary and legal profession. The Minister or Minister's nominee is an ex officio member of the committee.

Given the nature of the committee's role and functions, it is appropriate that the committee members are not exposed to personal civil liability for carrying out their statutory functions in good faith. The statutory protection does not deprive a person who has suffered harm of the right to seek redress for any civil wrong, but expressly provides that liability that may have attached to a committee member instead attaches to the committee.

#### *Tourism and Events Queensland Act 2012*

The amendments will abolish the Tourism and Events Queensland (TEQ) Employing Office, including the role of the executive officer, without compensation potentially raising an issue regarding the fundamental legislative principle of the rights and liberties of individuals. In this instance within TEQ the Chief Executive Officer (CEO) of the corporation fulfils the duties of the CEO of the TEQ Employing Office, as well as those of the broader TEQ corporation. The CEO of the TEQ Employing Office role is concomitant to the role of the CEO of TEQ, and attracts no additional remuneration or entitlements. The CEO of TEQ position is not being abolished and the officer will retain all rights, privileges and entitlements, but without the ancillary duties that arose from their position as CEO of the TEQ Employing Office.

#### *Trusts Act 1973*

The amendments to the *Trusts Act 1973* remove the requirement under section 56 for a delegation of a power of attorney to be executed as a deed. The amendments also remove doubt by retrospectively validating delegations that have been made using the approved form for a general power of attorney under the *Powers of Attorney Act 1998* before the commencement of the amendments.

The retrospective nature of the amendments is justified because the amendments operate as validating legislation which does not adversely affect the rights or obligations of persons. The retrospective validation has a beneficial effect in that it will provide certainty in the administration of trusts by persons who have relied on delegations made using the approved form under the *Powers of Attorney Act 1998*.

#### *Vexatious Proceedings Act 2005*

The amendment to the *Vexatious Proceedings Act 2005* will allow certain applications to be dealt with by the Supreme Court on the papers without an oral hearing. This amendment is consistent with federal legislation dealing with vexatious litigants.

This amendment raises an issue regarding the fundamental legislative principle of the right of an applicant to have an adequate opportunity to present their case to the decision-maker. The amendment is, however, justifiable on the basis that the Supreme Court will only be empowered to dismiss an application without an oral hearing in situations where there is already a court-ordered vexatious proceedings order in place, and the applicant is seeking leave to bring a proceeding that would otherwise be in contravention of that order. Allowing the court to decide the matter on the papers increases the efficiency of the courts and better distributes the courts' resources. The applicant in these circumstances will not be disadvantaged by the matter being heard on the papers, as all material facts relating to the application will be required to be filed

with the court at the time that such an application is made. Further, the court will be required to give the applicant a copy of the order dismissing their application, along with the reasons for the decision.

## Consultation

The following community stakeholders and organisations independent of government were consulted on drafts of specific amendments and/or summaries of proposed amendments that are part of the Bill: Aboriginal and Torres Strait Islander Legal Service; Appeal Costs Board; Australian Bankers Association; Australian Funeral Directors Association; Australian Lawyers Alliance (Qld Branch); Bar Association of Queensland; private hospitals; Chief Judge; Chief Justice; Chief Magistrate; community justice groups; Crime and Corruption Commission; Electoral Commission of Queensland; Hospital and Health Services; Legal Aid Queensland; Legal Services Commission; Local Government Association of Queensland; Office of the Director of Public Prosecutions; Parliamentary Crime and Corruption Commissioner; President of the Children's Court; Professional Standards Council; Public Guardian; Public Trustee of Queensland; Queensland Association of Independent Legal Services; Queensland Civil and Administrative Tribunal; Queensland Law Society; Queensland State Archives; and Supreme Court Library Committee.

The above consultation did not include amendments to the *Coroners Act 2003*; *Corrective Services Act 2006*; *Industrial Relations Act 1999*; *Penalties and Sentences Act 1992 (section 159A(10))*; and *Tourism and Events Queensland Act 2012*.

Consultation on the policy to amend section 29 of the *Coroners Act 2003* occurred with the Bar Association of Queensland, the Queensland Law Society, the Chief Magistrate, the Chief Judge and the Chief Justice.

## 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 in relation to the amendments to the repealing of redundant companies legislation and the amendments to the *Telecommunication Interception Act 2009*.

### Repeal of redundant companies legislation

The Bill repeals five companies Acts which are redundant: *Companies (Acquisition of Shares) (Application of Laws) Act 1981*; *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*; *Companies (Application of Laws) Act 1981*; *Futures Industry (Application of Laws) Act 1986*; and *Securities Industry (Application of Laws) Act 1981*. The arrangements which these Acts supported have been superseded – initially with a uniform legislation scheme in 1991, and subsequently by the Commonwealth *Corporations Act 2001* following a referral of powers to the Commonwealth by the States. Three other states have already repealed their equivalent of these five Acts.

*Telecommunication Interception Act 2009*

The Commonwealth Government has responsibility for managing telecommunications powers. In order to obtain a telephone intercept an investigating body like the Queensland Police Service or the CCC needs to become a declared agency under the Commonwealth's *Telecommunications (Interception and Access) Act 1979* (the Commonwealth Act). The requirements for a declared agency are contained at section 35 of the Commonwealth Act and include an investigating body (referred to in the *Telecommunication Interception Act 2009* as an 'eligible authority') having a recording, reporting and inspection regime in place. The *Telecommunication Interception Act 2009* establishes the required regime in Queensland.

Section 14 of the *Telecommunication Interception Act 2009* sets out documents connected with the issue of warrants that must be kept in each eligible authority's records. Section 14(h) of the Act requires each eligible authority to keep in its records 'each authorisation by the chief officer under section 66(2) of the Commonwealth Act'.

The *Telecommunications Interception and Intelligence Services Legislation Amendment Act 2011 (Cwth)* amended section 66 of the Commonwealth Act. This amendment by the Commonwealth allows the chief officer to appoint an 'authorising officer' to issue authorisations.

The Bill amends section 14 of the *Telecommunication Interception Act 2009* so that it will provide for authorisations issued by an 'authorising officer' consistent with amendments made by the Commonwealth.

## **Reasons for non-inclusion of information**

Not applicable.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* states that, when enacted the Bill will be cited as the *Justice and Other Legislation Amendment Act 2014*.

*Clause 2* states that the Part 31, is intended to commence on 1 July 2015. The following provisions will commence on a day to be fixed by proclamation: Parts 2 and 3; sections 29, 30, 31; sections 34, 35 and 36; section 86(1), 86(3), 86(4) and 86(5); and section 87 (to the extent it inserts section 63).

### Part 2 Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

*Clause 3* states that this part amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

*Clause 4* amends section 20 to replace the current requirement for the Minister to appoint and revoke the appointment of members of community justice groups by gazette notice.

Subclause (1) replaces section 20(1A) and provides that the Minister must appoint the members of each community justice group by a written notice given to the member and by publishing notice of the appointment on the Queensland Courts website.

Subclause (2) replaces section 20(4A) and provides that if the Minister decides that a member of a community justice group is no longer suitable for appointment then the Minister must revoke the member's appointment by written notice given to the member and by publishing notice of the revocation on the Queensland Courts website.

Subclause (3) inserts a new definition in section 20(5) for the term 'Queensland Courts website'.

### Part 3 – Amendment of Acts Interpretation Act 1954

*Clause 5* states that this part amends the *Acts Interpretation Act 1954*.

*Clause 6* amends section 48 (Forms-notification and availability) to provide for approved forms to be notified by publication on a local government website in the case of local government, and a Queensland Government website for all other entities, instead of in the government gazette.

*Clause 7* inserts a new section 52A (Regulation-making power) to provide for the making of regulations under this Act. This amendment facilitates the prescription of another website as a 'relevant government website' for the publication of forms approved or made available by entities, other than local government, as provided for by the definition of 'whole-of-government website' in the new section 48(9).

*Clause 8* inserts a new part 14, division 3 in the Act to provide for the transitional arrangements for forms that were approved or made available by an entity under an authorising law, but not notified in accordance with the previous section 48(5), at the date of commencement. Section 58 (Form approved or made available, but not notified in gazette, before commencement) provides that the entity that approved or made the form available may give notification of the approval or availability of the form post-commencement by complying with the requirements in either the previous section 48, or revised section 48.

#### **Part 4 Amendment of Anti-Discrimination Act 1991**

*Clause 9* provides that this part amends the *Anti-Discrimination Act 1991*.

*Clause 10* amends section 119 to correct an editorial matter by replacing references to subsections with references to paragraphs.

#### **Part 5 – Amendment of the Appeal Costs Fund Act 1973**

*Clause 11* states that this part amends the *Appeal Costs Fund Act 1973*.

*Clause 12* amends section 5 to remove the provisions in section 5(4)-(7) which have become redundant due to administration and process changes.

*Clause 13* amends section 22 to expand the grounds on which an applicant can seek reimbursement from the fund to include where an appeal succeeds on the ground that there was a miscarriage of justice.

This clause further amends section 22 to clarify that the costs for which an applicant can seek reimbursement, and is entitled to be paid from the fund, are the costs the board considers have been thrown away, or partly thrown away, and were reasonably incurred by the person or on the person's behalf in the initial proceedings.

*Clause 14* replaces section 30 of the Act. New section 30 provides that the amendments apply to applications submitted prior to the commencement of the provision, but not determined at the date of commencement.

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

*Clause 15* provides that this part amends the *Births, Deaths and Marriages Registration Act 2003*.

*Clause 16* amends section 5 by inserting a new subsection (5) that requires a person in charge of a hospital to give the birth notice electronically, subject to identified exceptions.

*Clause 17* amends section 29 by replacing subsection (5) to require that a funeral director located in Queensland give a death registration application electronically,

subject to identified exceptions. This replaces a general requirement for a person giving an application to give it electronically, if it is reasonably practical to do so.

*Clause 18* replaces current references in section 32(6) to the giving of notice about disposal of a deceased person's body 'by way of electronic communication' to the giving of notice electronically. The means by which a notice or application can be given electronically is set out in clause 22 of the Bill which insert a new section 54A.

*Clause 19* amends section 44 which governs how a person or entity can apply for information, what information can be requested, the basis upon which the registrar can refuse to provide the requested information and related matters.

Subclause (1) replaces section 44(1)(b) to remove the current definition of a 'source document' (clause 24 inserts a new definition in schedule 2).

Subclause (2) amends section 44 to insert new section 44(1A) which provides for an application made by a person or entity for requested information under section 44 to be made electronically but without limiting this to historical information (as was previously the case under section 44(10)).

Subclause (3) replaces existing subsections (9) and (10). The new section 44(9) replaces an existing provision regarding the admissibility of a copy of a source document in proceedings, and clarifies that the Registrar-General can give the requested information to an applicant electronically. The new subsection (10) provides that the ability to give information electronically does not limit a requirement of the Act about giving the requested information or the *Electronic Transactions (Queensland) Act 2001*. The means by which an application can be given electronically is set out in clause 22 of the Bill which inserts a new section 54A.

*Clauses 20 and 21* omit the current definition of 'source document' from sections 48B(6) and 48C(6), with a new definition of 'source document' inserted in schedule 2 by clause 24.

*Clause 22* inserts a new section 54A that provides for how a notice or application is given electronically.

*Clause 23* amends section 55 by inserting a new subsection (1A) which clarifies that an approved form may be an electronic form.

*Clause 24* inserts new definitions of an 'approved form' and 'funeral director' into schedule 2, and a revised definition of 'source document'. The definition of 'source document' was previously contained in sections 44(1)(b), 48B(6) and 48C(6). Paragraph (b) provides for a digitised copy of an original source document to have the same status at law as the original paper version by providing that a source document includes a digitised copy of a source document kept by the registrar as an official record of the document.

## **Part 7 - Amendment of Civil Liability Act 2003**

*Clause 25* states that this part amends the *Civil Liability Act 2003*.

*Clause 26* replaces section 45 to extend the circumstances in which a person who suffers harm while engaged in criminal conduct (as defined) will not be awarded damages in civil proceedings. The amended section 45 provides that a person does not incur civil liability for breach of duty, where the harm suffered by another person (the offender) for which (apart from the section) civil liability would arise was suffered in the course of criminal conduct by the offender. The exclusion does not apply if the harm arose from an unlawful act that was intended to result in the offender suffering harm.

*Clause 27* inserts new Chapter 5, Part 8 – Transitional provision for Justice and Other Legislation Amendment Act 2014 - which contains new section 86. New section 86 clarifies that the amended section 45 applies only in relation to harm suffered by an offender on or after the commencement of the replacement section.

## **Part 8- Amendment of Civil Proceedings Act 2011**

*Clause 28* states that this part amends the *Civil Proceedings Act 2011*.

*Clause 29* amends section 16 which relates to amendment of a claim, pleadings, an application or another document in a proceeding. The amendments provide that the section does not limit the operation of section 103H in new part 13A (Representative Proceedings in the Supreme Court). Section 103H provides for the amendment of an originating process in a representative proceeding to change the description of the group members.

*Clause 30* amends section 17 which provides for when an interested person may become a party to a proceeding and when a person is bound by the outcome of the proceeding. The amended section provides that the section does not apply to a representative proceeding under new part 13A of the Act because the new Part makes specific provision for these issues.

*Clause 31* amends section 18 which relates to orders made in proceedings started and continued by or against a representative party. The amended section provides that section 18 does not apply to representative proceedings under part 13A. Part 13A establishes a specific, comprehensive scheme for certain types of representative proceedings. A “representative party” in section 18 does not correlate to the concept of a “representative party” under part 13A.

*Clause 32* removes a redundant reference.

*Clause 33* removes a redundant reference.

*Clause 34* inserts new part 13A - Representative proceedings in Supreme Court, which establishes a comprehensive regime for the conduct of representative proceedings in the Supreme Court.

### Division 1 Preliminary

New section 103A defines terms used in new part 13A. “Group member” is defined as a member of a group of persons on whose behalf a representative proceeding has been commenced. “Representative party” is defined as a person who commences a

representative proceeding. “Representative proceeding” is defined as a proceeding commenced under section 103B.

Division 2 Conduct of representative proceedings

New section 103B provides that a proceeding may be commenced under part 13A when certain criteria are met. These criteria are that there are seven or more persons who have claims against the same person, the claims are in respect of, or arise out of, the same, similar or related circumstance and the claims of all persons give rise to a substantial common issue of law or fact. The section provides that the proceeding may be started by one or more of the persons on behalf of some or all of the other persons.

New section 103C sets out the requirements for standing. The section provides that a person has a sufficient interest to commence a representative proceeding against another person (the proposed defendant) on behalf of others if the person had standing to commence proceedings against the proposed defendant on the person’s own behalf. The person may commence a representative proceeding against more than one defendant whether or not each of the other persons have a claim against each of the defendants in the proceeding.

New section 103D makes it clear that generally there is no requirement for a person to consent to being a group member in representative proceedings. However, consent is required if the person is the Commonwealth or State (which, under the *Acts Interpretation Act 1954*, includes a Territory); a Minister of the Commonwealth or a State; a body corporate established for a public purpose by a law of the Commonwealth or a State, other than an incorporated company or association; or an officer of the Commonwealth or a State in his or her capacity as an officer.

New section 103E provides that a person under a legal incapacity may be a group member even though the person does not have a litigation guardian. However, a person who is under a legal incapacity can only take a step in the representative proceeding or conduct part of the proceeding by a litigation guardian.

New section 103F provides for the additional information that must be contained in the originating process in a representative proceeding.

New section 103G provides that a group member may opt out of the representative proceeding by giving written notice before a date fixed by the court.

New section 103H enables the court, on the application of the representative party, to give leave to change the description of the group members.

New section 103I allows the court to order that the representative proceedings be continued or no longer continue under part 13A if at any stage it appears likely to the court there are less than seven group members.

New section 103J provides for the situation where the relief sought in a representative proceeding is, or includes payment of money to group members, other than for costs, and on the application of the defendant, the court considers it likely that if judgment were given in favour of the representative party, the cost to the defendant of identifying the group members and distributing the amounts ordered would be excessive, having

regard to the likely total of those amounts. The section allows the court to direct that the representative proceedings no longer continue, or to stay the proceedings so far as it relates to the relief.

New section 103K provides that the court may order that a proceeding no longer continue under part 13A if it considers it is in the interests of justice to do so because of certain circumstances. The circumstances are that the costs that would be incurred if the proceedings were to continue as a representative proceeding are likely to exceed the costs that would be incurred if each group member conducted a separate proceeding; all the relief sought could be obtained by means of a proceeding other than a representative proceeding under part 13A; the representative proceeding would not provide an efficient and effective means of dealing with the claims of the group members; a representative party is not able to adequately represent the interests of the group members or it is otherwise inappropriate that the claims be pursued by means of a representative proceeding.

New section 103L provides that, if the court makes an order under sections 103I, 103J or 103K that a proceeding no longer continue under part 13A, the proceeding may be continued as a proceeding by the representative party on the party's own behalf against the defendant. On the application of a person who was a group member, the court may order that the person be joined as an applicant or plaintiff in the continued proceeding.

New section 103M provides that, if it appears to the court that the determination of the issue or issues common to all group members will not finally determine the claims of all group members, the court may give directions about the determination of the remaining issues. In the case of an issue common to the claims of only some of the group members, the court's directions may include directions establishing a sub-group of those group members and appointing a person to be the sub-group representative party.

New section 103N provides that the court, in giving directions under section 103M, may allow an individual group member to appear in the proceeding for the purpose of deciding an issue that relates only to the claims of that member.

New section 103O provides that if an issue cannot be dealt with properly or conveniently by the court under section 103M or 103N, the court may give directions for the starting and conduct of other proceedings, whether or not the other proceedings are representative proceedings.

New section 103P allows the court to substitute another group member as the representative party (or another sub-group member as the sub-group representative party) if it appears to the court that the representative party is not able to adequately represent the interests of the group members (or the sub-group representative party is not able to adequately represent the interests of the sub-group members).

New section 103Q provides that if a defendant commences a proceeding in the court against a group member, the court may order a stay of execution for any relief awarded to the group member until the other proceeding is decided.

New section 103R requires any settlement or discontinuance of representative proceedings to be approved by the court. If the court gives approval, it may make any orders it considers just for the distribution of money paid under a settlement or paid into the court.

New section 103S provides that a representative party may, with the leave of the court, settle the party's individual claim in whole, or in part, at any stage of the proceeding. A representative party seeking leave to settle, or who has settled, the party's individual claim may, with the leave of the court, withdraw as a representative party. If a representative party seeks leave to withdraw, the court may, on the application of a group member, make an order for the substitution of a group member as the representative party and make any other orders in relation to the substitution that it considers appropriate.

#### Division 3 Notices

New section 103T requires notice to be given to group members of a range of matters in relation to the representative proceeding. These matters are the starting of the proceeding and the right of group members to opt out before the date fixed by the court under section 103G; an application by the defendant for the dismissal of the proceeding on the ground of want of prosecution; and an application by a representative party seeking leave to withdraw under section 103S.

New section 103U provides that the form and content of a notice under section 103T must be approved by the court, and sets out the requirements for the notices.

#### Division 4 Powers of the court

New section 103V sets out the powers of the court in deciding a matter in a representative proceeding, including determining individual entitlements to relief. The section provides that in making an award of damages, the court must provide for the payment or distribution of the money to the group members entitled.

New section 103W enables the court, in providing for the distribution of money to group members, to provide for the constitution and administration of a fund consisting of the money to be distributed.

New section 103X provides that a judgment given in a representative proceeding must describe or otherwise identify the affected group members and binds the group members as described, other than a person who opted out of the proceedings under section 103G.

#### Division 5 Appeals

New section 103Y provides for appeals from judgments of the court under part 13A to be brought under the *Supreme Court of Queensland Act 1991* as a representative proceeding.

New section 103Z provides for the suspension of certain limitation periods on the commencement of representative proceedings.

New section 103ZA provides that in any proceeding, including an appeal conducted under this part, the court may make any order the court considers appropriate or necessary to ensure justice is done in the proceeding.

New section 103ZB provides that the court may order the plaintiff or defendant to pay costs, but may not order a group member or sub-group member to pay costs, other than under section 103M or section 103N.

New section 103ZC enables the court, on the application of a person who is, or was, a representative party or sub-group representative party, to order that the party's costs in representative proceedings in which damages have been awarded, be recoverable from the damages awarded. The section provides that, if the court is satisfied the costs reasonably incurred in relation to the representative proceeding by the person making the application are likely to exceed the costs recoverable from the defendant, the court may order an amount equal to the whole or part, of the excess to be paid to the person out of the damages awarded.

*Clause 35* inserts new part 16 - Transitional provision for Justice and Other Legislation Amendment Act 2014 which contains new section 111. New section 111 provides that part 13A applies only to a proceeding started after the commencement of the amendments. The proceeding may be started even if the cause of action the subject of the proceeding arose before or after the commencement of part 13A.

*Clause 36* amends Schedule 1(Dictionary) to define terms used in new part 13A.

## **Part 9 – Amendment of Coroners Act 2003**

*Clause 37* states this part amends the *Coroners Act 2003*.

*Clause 38* amends section 29 (When inquest must not be held or continued) to insert the word 'indictable' before the word offence, this makes it explicitly clear that section 29 only applies where a coroner, who is investigating a death, is informed that someone has been charged with an indictable offence in which the question of whether the accused caused the death may be in issue.

*Clause 39* inserts a new part 6, division 5 and new section 116, which deals with the transitional application of the amendments to section 29 (that an inquest must not be held or continue to be held when the coroner has been advised that a person has been charged with an indictable offence in which the question of whether the accused cause the death may be in issue). The amendment to section 29 operates with retrospective effect in that, where the coroner has not held or continued to hold an inquest because the coroner had been informed that a person has been charged with a simple offence, the coroner may, following commencement of the amendment to section 29, start or resume an inquest without regard to the pre-amended section 29.

## **Part 10 Amendment of Corporations (Administrative Actions) Act**

*Clause 40* states this part amends the *Corporations (Administrative Actions) Act 2001*.

*Clause 41* amends the definition of “relevant State Acts” to state that five of the Acts referred to in the definition have been repealed.

## **Part 11 Amendment of Corrective Services Act 2006**

*Clause 42* states this part amends the *Corrective Services Act 2006*.

*Clause 43* inserts a section 48A (Prisoner must not send distressing or traumatic correspondence to victim) which provides a new simple offence, punishable by a maximum penalty of six months imprisonment, to apply to a prisoner who is detained for an offence committed or alleged to have been committed against a victim (as defined in the provision).

New section 48A provides that a prisoner must not to send, or attempt to send, correspondence to a victim (or a related person of the victim) if the prisoner knows, or ought reasonably to know, the correspondence contains material that is distressing or traumatic for the victim.

Material is to be considered distressing or traumatic if it is reasonably likely, in all the circumstances, to cause the victim to suffer distress or trauma. The terms distress or trauma are not defined and are intended to have their ordinary meaning. It is immaterial as to whether the prisoner intended to cause the victim to suffer distress or trauma.

New subsection (4) defines the terms, ‘correspondence’, ‘related person’ and ‘send’ for the purposes of the new section 48A.

## **Part 12 Amendment of Court Funds Act 1973**

*Clause 44* provides that this part amends the *Court Funds Act 1973*.

*Clause 45* amends the long title of the *Courts Fund Act 1973* to clarify that one of the purposes of the Act is to provide for the custody and investment of money paid into Magistrates Courts.

*Clause 46* amends section 4 by replacing the current reference in the definition of ‘court’ to ‘a District Court or Magistrates Court’ to ‘the District Court and a Magistrates Court’ to reflect the current structure of the District Court of Queensland being a single entity that functions as a court for the whole State.

## **Part 13 Amendment of Criminal Code**

*Clause 47* states that this part amends the Criminal Code.

*Clause 48* amends the offence in section 236 (Misconduct with regard to corpses) to increase the maximum penalty to five years imprisonment. The amendment also reclassifies the offence as a crime.

*Clause 49* amends section 552I (Procedure under section 552B).

Subclause (1) inserts new subsections (3A) and (3B) which provide for a legally represented defendant to enter a plea, in the Magistrates Court, to a number of charges at the same time without each charge or the substance of each charge being read separately to them if the court is satisfied that the defendant is aware of the substance of each of the charges before the court, has obtained legal advice in relation to each of the charges before the court and consents to the process. It is intended that the court could be satisfied after hearing submissions from a legal representative.

Subclause (2) provides for the renumbering of section 552I.

## **Part 14 Amendment of Criminal Proceeds Confiscation Act 2002**

*Clause 50* provides that this part amends the *Criminal Proceeds Confiscation Act 2002*.

*Clause 51* amends section 52 (Contravention of restraining order) by omitting the section and inserting a new section.

New subsection (1) provides that a person who does an act or makes an omission in relation to restrained property in contravention of a restraining order commits a crime. The new offence differs to the current offence in section 52 which requires proof of an intention to defeat the operation of the restraining order. The new offence does not require proof of ‘intent’ and will apply to all acts or omissions. The subsection also provides for the maximum penalties that apply to this offence.

New subsection (2) provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was restrained under a restraining order and had no reason to suspect that the property was restrained.

New subsection (3) provides that that the defence in subsection (2) will not be available to the extent that charges were registered on the property under the *Personal Property Securities Act 2009 (Cwth)* or a caveat was registered pursuant to section 51(5) of the *Criminal Proceeds Confiscation Act 2002*.

New subsection (4) clarifies that the existence of the offence in subsection (1) does not prevent a person who does an act or makes an omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the *Criminal Proceeds Confiscation Act 2002* or any other Act.

New subsection (5) provides that all dealings with property in contravention of a restraining order are void unless all the conditions in subsection (5)(a) through to (d) are satisfied.

New subsection (6) makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to their acts or omissions relating to the restraining order.

*Clause 52* amends section 60 (Dealing with forfeited property prohibited) by omitting the section and inserting a new section.

New subsection (1) provides that a person commits a crime if they do an act or make an omission in relation to property that is the subject of a forfeiture order and that act or omission directly or indirectly defeats the operation of the forfeiture order. The new offence differs to the current offence in section 60 which requires proof of an intention to defeat the operation of the forfeiture order. The new offence does not require proof of 'intent' and will apply to all acts or omissions. The subsection also provides for the maximum penalties that apply to this offence.

New subsection (2) provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was the subject of forfeiture order and had no reason to suspect that it was the subject of a forfeiture order.

New subsection (3) provides that that the defence in subsection (2) will not be available to the extent that charges were registered on the property under the *Personal Property Securities Act 2009 (Cwth)* or a relevant caveat was registered under the *Land Title Act 1994*.

New subsection (4) clarifies that the existence of the offence in subsection (1) does not prevent a person who does an act or omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the *Criminal Proceeds Confiscation Act 2002* or any other Act.

New subsection (5) provides that all dealings with property in contravention of a forfeiture order are void unless all the conditions in subsection (5)(a) through to (d) are satisfied.

New subsection (6) makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the forfeiture order.

*Clause 53* amends section 93ZT (Contravention of restraining order) by omitting the section and inserting a new section.

New subsection (1) provides that a person who does an act or makes an omission in relation to restrained property in contravention of a restraining order commits a crime. The new offence differs to the current offence in section 93ZT which requires proof of an intention to defeat the operation of the restraining order. The new offence does not require proof of 'intent' and will apply to all acts or omissions. The subsection also provides for the maximum penalties that apply to this offence.

New subsection (2) provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was restrained under a restraining order and had no reason to suspect that the property was restrained.

New subsection (3) provides that that the defence in subsection (2) will not be available to the extent that charges were registered on the property under the *Personal Property Securities Act 2009 (Cwth)* or a caveat was registered pursuant to section 93ZS(5) of the *Criminal Proceeds Confiscation Act 2002*.

New subsection (4) clarifies that the existence of the offence in subsection (1) does not prevent a person who does an act or makes an omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the *Criminal Proceeds Confiscation Act 2002* or any other Act.

New subsection (5) provides that all dealings with property in contravention of a restraining order are void unless all of the conditions in subsection (5)(a) through to (d) are satisfied.

New subsection (6) makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the restraining order.

*Clause 54* amends section 93ZZB (Making of serious drug offender confiscation order).

Subclause (1) amends subsection (3) to insert an example to help clarify the original intended interpretation of that subsection.

Subclause (2) provides for the renumbering of section 93ZZB.

Subclause (3) clarifies that subsection (3) does not limit the amount of property that may be forfeited to the State under a serious drug offender confiscation order.

Subclause (4) provides for the renumbering of section 93ZZB.

*Clause 55* amends section 93ZZH (Dealing with forfeited property prohibited) by omitting the section and inserting a new section with a new offence name.

New subsection (1) provides that a person commits a crime if they do an act or make an omission in relation to property forfeited under a serious drug offender confiscation order if that act or omission directly or indirectly defeats the operation of a serious drug offender confiscation order. The new offence differs to the current offence in section 93ZZH which requires proof of an intention to defeat the operation of the drug offender confiscation order. The new offence does not require proof of 'intent' and will apply to all acts or omissions. The subsection also provides for the maximum penalties that apply to this offence.

New subsection (2) provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was forfeited under a serious drug offender confiscation order and had no reason to suspect that it was forfeited under a serious drug offender confiscation order.

New subsection (3) provides that that the defence in subsection (2) will not be available to the extent that charges were registered on the property under the *Personal Property Securities Act 2009 (Cwth)* or a relevant caveat was registered under the *Land Title Act 1994*.

New subsection (4) clarifies that the existence of the offence in subsection (1) does not prevent a person who does an act or makes an omission mentioned in subsection (1)

from being prosecuted and punished for contempt of court, or another offence under the *Criminal Proceeds Confiscation Act 2002* or any other Act.

New subsection (5) provides that all dealings with property in contravention of a serious drug offender confiscation order are void unless all of the conditions in subsection (5)(a) through to (d) are satisfied.

New subsection (6) makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the serious drug offender confiscation order.

*Clause 56* amends section 143 (Contravention of restraining order) by omitting the section and inserting a new section.

New subsection (1) provides that a person who does an act or makes an omission in relation to restrained property in contravention of a restraining order commits a crime. The new offence differs to the current offence in section 143 which requires proof of an intention to defeat the operation of the restraining order. The new offence does not require proof of 'intent' and will apply to all acts or omissions. The subsection also provides for the maximum penalties that apply to this offence.

New subsection (2) provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was restrained under a restraining order and had no reason to suspect that the property was restrained.

New subsection (3) provides that that the defence in subsection (2) will not be available to the extent that charges were registered on the property under the *Personal Property Securities Act 2009 (Cwth)* or a caveat was registered pursuant to section 142(5) of the *Criminal Proceeds Confiscation Act 2002*.

New subsection (4) clarifies that the existence of the offence in subsection (1) does not prevent a person who does an act or makes an omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the *Criminal Proceeds Confiscation Act 2002* or any other Act.

New subsection (5) provides that all dealings with property in contravention of a restraining order are void unless all of the conditions in subsection (5)(a) through to (d) are satisfied.

New subsection (6) makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the restraining order.

*Clause 57* amends section 171 (Dealing with forfeited property prohibited) by omitting the section and inserting a new section.

New subsection (1) provides that a person commits a crime if they do an act or make an omission in relation to property that is the subject of a forfeiture order and that act or omission directly or indirectly defeats the operation of the forfeiture order. The new offence differs to the current offence in section 171 which requires proof of an intention to defeat the operation of the forfeiture order. The new offence does not require proof

of ‘intent’ and will apply to all acts or omissions. The subsection also provides for the maximum penalties that apply to this offence.

New subsection (2) provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was the subject of forfeiture order and had no reason to suspect that it was the subject of a forfeiture order.

New subsection (3) provides that that the defence in subsection (2) will not be available to the extent that charges were registered on the property under the *Personal Property Securities Act 2009 (Cwth)* or a relevant caveat was registered under the *Land Title Act 1994*.

New subsection (4) clarifies that the existence of the offence in subsection (1) does not prevent a person who does an act or makes an omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the *Criminal Proceeds Confiscation Act 2002* or any other Act.

New subsection (5) provides that all dealings with property in contravention of a forfeiture order are void unless all of the conditions in subsection (5)(a) through to (d) are satisfied.

New subsection (6) makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the forfeiture order.

*Clause 58* amends section 249 (Communication of information by financial institutions to particular officers). The section is amended to provide that a financial institution may communicate information to a commission officer if the information relates to matters for which an order may be made under chapters 2 or 2A of the *Criminal Proceeds Confiscation Act*.

*Clause 59* inserts a new part 5 into chapter 12 to provide for the transitional provisions for the amendments contained in this Act to sections 52, 60, 93ZT, 93ZZH, 143 and 171. These transitional provisions provide that the amendments apply to property restrained or forfeited pursuant to restraining orders, forfeiture orders and serious drug offender confiscation orders whether or not those orders were made before or after the commencement of this Act.

*Clause 60* amends the definition of ‘applicant’ in the Dictionary contained in schedule 6 to remove an incorrect reference to ‘chapter 4’ in that definition and replaces it with the correct reference to ‘chapter 3’.

## **Part 15 Amendment of Drugs Misuse Act 1986**

*Clause 61* states that this part amends the *Drugs Misuse Act 1986*.

*Clause 62* amends section 6 (Supplying dangerous drug) to insert a note. This amendment is consequential to the amendment of section 9 of the *Penalties and Sentences Act 1992* in the Bill.

*Clause 63* amends section 128 (Analyst's certificate) to remove reference to an analysis or examination being made by the analyst and to provide that an analyst's certificate can be evidence of the laboratory at which a thing was analysed or examined and that the analyst reviewed the laboratory's records about the analysis or examination of the thing including that done by someone other than the analyst.

*Clause 64* inserts a transitional provision, section 146 which provides that any certificate signed by an analyst pursuant to section 128 prior to commencement is and always has been as valid and effective as if it had been signed after commencement.

## **Part 16 – Amendment of the Electoral Act 1992**

*Clause 65* states that this part amends the *Electoral Act 1992*.

*Clause 66* amends section 120 (Electoral visitor voting) to replace the requirement for an application to vote as an electoral visitor voter to be made in writing with a requirement for the application to be made in the approved form and given to the commission, or a returning officer.

*Clause 67* replaces section 192 (Failure to post, fax or deliver documents for someone else) with a new section 192 (Failure to give the commission or returning officer a request). The new section 192 provides that it is an offence for a person who is given a request in the approved form for either a ballot paper and declaration envelope under section 119 (Making a declaration vote using posted voting papers), or a request to vote as an electoral visitor voter under section 120 (Electoral visitor voting), to promptly give (as against post, fax or deliver) the request to the commission or returning officer.

This clause inserts a maximum penalty of 20 penalty units or 6 months imprisonment in to the new offence provision in section 192.

## **Part 17 Amendment of Evidence Act 1977**

*Clause 68* states that this part amends the *Evidence Act 1977*.

*Clause 69* amends section 95A (DNA evidentiary certificate) to insert a new subsection to clarify that certain provisions do not apply to committal hearings. The calling of witnesses at committal hearings is governed by the provisions in the *Justices Act 1886*.

Subclause (2) amends section 95A to provide that a DNA analyst need only attend a hearing if required by written notice five business days before the hearing day. To complement this provision, existing subsection (5) is also amended to increase the timeframe for notice of the matter to be challenged from three to five business days.

*Clause 70* inserts a transitional provision to clarify that section 95A as amended by the Bill applies to a proceeding that is on foot at the time of commencement.

## **Part 18 Amendment of Industrial Relations Act 1999**

*Clause 71* states that this part amends the *Industrial Relations Act 1999*.

*Clause 72* amends section 299 (functions and powers of registrar) to change the reference from vice-president to president to reflect the change in the functions and powers of the president.

*Clause 73* amends section 692A (Definitions for this part) by replacing the reference of FWA (Fair Work Australia) to FWC (Fair Work Commission) to reflect the renaming of the federal body.

*Clause 74* amends Schedule 5 (dictionary) by replacing the definition of FWA (Fair Work Australia) with the FWC (Fair Work Commission) to reflect the renaming of the federal body.

## **Part 19 Amendment of Justices Act 1886**

*Clause 75* provides that this part amends the *Justices Act 1886*.

*Clause 76* amends section 145 (Defendant to be asked to plead).

Subclause (1) provides for a legally represented defendant to enter a plea, in the Magistrates Court, for a number of charges at the same time without each charge or the substance of each charge being read separately to them if the court is satisfied that the defendant is aware of the substance of each of the complaints before the court, has obtained legal advice in relation to each of the complaints before the court and consents to the process. It is intended that the court could be satisfied after hearing submissions from a legal representative.

Subclause (2) provides for the renumbering of section 145.

## **Part 20 – Amendment of the Legal Profession Act 2007**

*Clause 77* states that this part amends the *Legal Profession Act 2007*.

*Clause 78* amends section 9 (Suitability matters) to provide that whether the person is, or has been, a legal practitioner director of an incorporated legal practice while the practice is or was an externally-administered body corporate under the *Corporations Act 2001 (Cwth)* is a suitability matter for the person.

*Clause 79* amends section 12 (Meaning of government legal officer and engaged in government work and related matters) to insert a note which clarifies the interaction of the provision with section 22 of the *Public Service Act 2008*.

*Clause 80* amends section 289 to facilitate the implementation of recommendations resulting from the *Review of the allocation of funds from the Legal Practitioner Interest on Trust Accounts Fund*. Subclause (1) amends section 289(1)(h) to reflect that most payments are now made legal assistance service providers.

Subclause (2) amends section 289 to reflect that making a payment to, or for, the Legal Practitioners' Fidelity Guarantee Fund would only be considered if all other funding sources, or other means of raising funds available to the law society for the fidelity fund, are exhausted.

*Clause 81* amends section 291 to make a terminology change from payments being made to ‘beneficiaries’ to payments being made to ‘recipients’.

*Clause 82* omits section 780 (Amendment of regulation by Justice and Other Legislation Amendment Act 2013) as redundant.

*Clause 83* inserts a new chapter 10, part 5. New section 781 applies to certain stated applications which are current at the date of commencement if a suitability matter in section 9(1)(c), applies to the person for the application.

New section 782 provides for the obligations, on commencement, of a local legal practitioner or a registered foreign lawyer who is, or has been, a legal practitioner director of an incorporated legal practice while the practice is or was an externally administered body corporate under the *Corporations Act 2001 (Cwth)*.

*Clause 84* amends Schedule 2 (Dictionary) to expand the definition of ‘show cause event’ to include a person being a legal practitioner director of an incorporated legal practice that becomes an externally administered body corporate under the *Corporations Act 2001 (Cwth)*.

## **Part 21 Amendment of Magistrates Court Act 1921**

*Clause 85* states that this part amends the *Magistrates Courts Act 1921*.

*Clause 86* amends section 3C to provide that the chief executive may appoint a bailiff or bailiffs for a Magistrates Court for the service and execution of the process, judgements and orders authorised by the Magistrates Courts Act. The power of the Magistrates Court to appoint a bailiff or bailiffs for a Magistrates Court is omitted.

Subclause (3) omits sub-section 3C(3), removing the power of a bailiff to appoint an assistant bailiff. The amendment means that only a person appointed as a bailiff may carry out the service and execution of the process, judgements, and orders authorised by the Magistrates Court Act. Consequential to the omission of sub-section 3, sub-section 4 is omitted (that the bailiff is responsible for the civil acts and defaults of the assistant bailiff in the discharge of duties).

Subclause (1) and (4) omits the reference to bailiff’s assistant in section 3C.

Subclause (5) provides for the renumbering of section 3C.

*Clause 87* is a transitional provision for the amendments to section 3C(1) and 3C(3).

A new section 62 is inserted to provide that a person who was appointed as a bailiff by the Magistrates Court before the commencement of the amendment to section 3C(1) will continue to hold the appointment as a bailiff as if the appointment occurred under that section after the commencement.

A new section 63 is inserted to provide that on commencement of the omission of section 3C(3) a person's appointment as an assistant bailiff ends and that no compensation is payable because the appointment ends.

## **Part 22 Amendment of Penalties and Sentences Act 1992**

*Clause 88* states that this part amends the *Penalties and Sentences Act 1992*.

*Clause 89* amends section 9 (Sentencing guidelines) to insert a new sentencing principle.

Subclause (1) inserts new subsections (11A), (11B), (11C) and (11D). These new subsections provide that when sentencing an offender for the offence of supplying a dangerous drug under the *Drugs Misuse Act 1986* in circumstances where the drug supplied is used and causes (wholly or partly) the death of a person but where the offender has not been convicted for causing the death, then the court must have primary regard to the factors in subsection (3), which apply to violent offenders, and treat the death as an aggravating factor when determining the penalty for the offender.

Subclause (2) inserts new definitions into subsection 9(13) for terms used in the new subsections (11A)-(11D).

*Clause 90* amends section 15B by omitting from the definition of 'drug assessment and education session' the words 'one-on-one' to provide for these sessions to be completed either as a one-on-one session or in a group setting.

*Clause 91* amends section 43N (Commissioner may give a copy of banning order to particular persons) and the heading to this section to clarify that it refers to the commissioner of the police service and is consistent with the terminology used in other sections of the Act.

*Clause 92* amends section 159A (Time held in presentence custody) to insert the commissioner of the police service as a person who can issue a presentence custody certificate.

*Clause 93* inserts a new Division 12 containing a transitional provision for the amendments to section 9 of the Act in the Bill.

## **Part 23 Amendment of Professional Standards Act 2004**

*Clause 94* provides that this part amends the *Professional Standards Act 2004*.

This Part amends the relevant sections to replace references to gazette with references to notification. These amendments are consequential, resulting from amendments made to the *Statutory Instruments Act 1992* which provide that notification of subordinate legislation is by publication of the legislation and its publication date on the Queensland legislation website, rather than gazettal.

*Clause 95* amends section 15 (Commencement of schemes) to replace the references to 'gazetted' with 'notified'.

*Clause 96* amends section 16 (Challenges to schemes) to replace the reference to ‘gazetted’ with ‘notified’.

*Clause 97* amends section 18 (Amendment and revocation of schemes) to omit the note, and replace it with a note that replaces references to gazettal, with references to notification. The amended note provides that an instrument that amends a scheme operating in another jurisdiction may be submitted to the Minister administering the corresponding law of that jurisdiction under section 13 with a view to notice being given of the instrument. Notice of an instrument made under the corresponding law of another jurisdiction that amends an interstate scheme may be notified under section 14.

*Clause 98* amends section 18A (Notice of revocation of scheme) to replace references to ‘gazettal’ and ‘gazetted’, with ‘notification’ and ‘notified’, respectively.

*Clause 99* amends section 18B (Termination of operation of interstate schemes in this jurisdiction) to replace the references to ‘gazetted’ with ‘notified’.

*Clause 100* amends section 43 (Functions of council) to replace the reference to ‘publication in the gazette’ with ‘notification’.

## **Part 24 Amendment of Property Law Act 1974**

*Clause 101* provides that this part amends the *Property Law Act 1974*.

*Clause 102* amends section 57A which provides for the effect of certain Acts and statutory instruments on contracts or dealings concerning property. The clause replaces section 57A(1) with a new subsection which provides that a statutory instrument, other than prescribed subordinate legislation, cannot render void or unenforceable a contract or dealing concerning property that is made, entered into or effected contrary to the statutory instrument. In addition, in relation to a contract for the sale of land, a statutory instrument cannot give a party the right to terminate the contract because of another party’s failure to comply with the statutory instrument.

*Clause 103* inserts new part 24 - Transitional provisions for Justice and Other Legislation Amendment Act 2014 - which contains new section 357. New section 357 provides that for statutory instruments, other than subordinate legislation, amended section 57A applies on and from the commencement, regardless of when the statutory instrument was made, and has effect only in relation to a contract or dealing concerning property made, entered into or effected on, or after, the commencement. For subordinate legislation, section 57A, as in force immediately before the commencement, will continue to apply until one year after the commencement. Amended section 57A will apply to subordinate legislation on and from a day that is one year after the commencement, regardless of when the subordinate legislation was made and will have effect only in relation to a contract or dealing concerning property made, entered into or effected on or after that day.

## **Part 25 Amendment of Public Guardian Act 2014**

*Clause 104* provides that this part amends the *Public Guardian Act 2014*.

*Clause 105* amends section 52 which defines a relevant child under the Public Guardian Act.

Subclause (1) provides that a relevant child includes a child who is subject to an application for an order mentioned in subsection 1(a), (b), (c) or (f) of the section. An application includes an application to make the order as well as an application to extend, vary or revoke an order to the extent that each of these types of applications can be made of a particular order.

Subclause (2) provides that if a child is no longer subject to an application and there is no order, intervention or agreement in place, they stop being a relevant child.

Subclause (3) provides that if the child was being helped by the public guardian immediately before they stopped being subject to an application, the public guardian may still help the child if the public guardian believes it is appropriate to finish helping the child. The public guardian may also still help the child if the public guardian believes that the child may be the subject of a further application and needs help until the further application is made.

*Clause 106* provides that the chief executive (child safety) must notify the public guardian as soon as reasonably practicable after becoming aware that a child is subject to an interim order under section 67(1)(a) of the *Child Protection Act 1999*. This requirement limits the notification requirement to interim orders where the child is placed in the temporary custody of the chief executive or a suitable person who is a member of the child's family.

*Clause 107* amends sections 113(6) and 113(7) to replace references to the 'chief executive' with the 'public guardian'. This is because it is the public guardian, not the chief executive, who is responsible for the appointment and termination of community visitors under the Act.

## **Part 26 Amendment of Queensland Civil and Administrative Tribunal Act 2009**

*Clause 108* states that this part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

*Clause 109* replaces sections 131 and 132 with new sections 131 and 132.

New section 131 omits the requirement that a person wishing to enforce a final decision which is a monetary decision must file a copy of the decision and an affidavit about the amount not paid in a court of competent jurisdiction. As a result of new section 131, a final decision of QCAT which is a monetary decision will automatically be taken to be an order of the court and may be enforced under chapter 19 of the *Uniform Civil Procedure Rules 1999*.

New section 132 omits the requirement that a person wishing to enforce a final decision which is a non-monetary decision must file a copy of the decision and an affidavit about the non-compliance with the decision in a relevant court. As a result of new section

132, a final decision of QCAT which is a non-monetary decision will automatically be taken to be an order of the court and may be enforced under chapter 20 of the *Uniform Civil Procedure Rules 1999*.

*Clause 110* removes redundant reference.

## **Part 27 Amendment of Recording of Evidence Act 1962**

*Clause 111* provides that this part amends the *Recording of Evidence Act 1962*.

*Clause 112* amends section 11A (Retention and destruction of records). Subsection (6)(a) is amended by adding the disjunctive ‘or’ after the word ‘made’ thus more clearly indicating that (subject to the other subsections in section 11A set out in in section 11A(6)) a record may be destroyed any time after a transcription has been made *or* in the circumstances set out in section 11A(6)(b).

Subclause (2) amends section 11A(6)(b)(ii) to provide that (subject to the other subsections in section 11A set out in in section 11A(6)) a record of a legal proceeding in the Magistrates Court can be disposed of before a transcription has been made if the record can be disposed of under section 13(a) of the *Public Records Act 2002*. Section 13(a) of the *Public Records Act 2002* provides a public record must not be disposed of unless done under an authority by the archivist. Section 26 of the *Public Records Act 2002* provides the circumstances in which an archivist may authorise the disposal of public records. Section 26(3) of the *Public Records Act 2002* provides that the registrar or other officer of a court with responsibility for official records of the court may apply for or consent to the disposal of the courts record.

## **Part 28 – Amendment of Referendums Act 1997**

*Clause 113* provides that this part amends the *Referendums Act 1997* (Referendums Act).

*Clause 114* amends section 16 (Kinds of polling booths) to include pre-poll voting offices for electoral districts.

*Clause 115* amends section 18 (Supply of ballot papers and electoral rolls) to make provision for electronically assisted voting.

*Clause 116* amends section 19 to provide when scrutineers are entitled to be present for the purposes of electronically assisted voting.

*Clause 117* extends section 21 (Who may vote) to include persons who are not enrolled on the electoral roll for any district, but are entitled to do so, and who give a notice to the commission or electoral registrar for the district under section 65 within the requisite time period. This amendment brings section 21 in to line with section 106 of the *Electoral Act 1992*.

*Clause 118* amends section 22 (Procedure for voting) to implement a proof of identity requirement in the *Referendums Act 1997* in line with the requirement in the *Electoral Act 1992*.

Subclause (1) exempts an elector who makes a pre-poll ordinary vote under section 24C from being required to follow the procedures in section 22.

Subclause (2) replaces section 22(3) to provide that the elector must give the issuing officer the elector's proof of identity document, and request a ballot paper from the issuing officer, in the polling booth.

Subclause (3) replaces section 22(5) to provide that the issuing officer must issue a ballot paper to a person if they have given them their proof of identity document, and the issuing officer is satisfied of their entitlement to vote.

Subclause (4) replaces section 22(7) to provide that the issuing officer must comply with section 32 if the elector does not give the issuing officer the elector's proof of identity document, or has asked questions under section 22(6) and suspects that a person claiming to be a particular elector is not the elector.

*Clause 119* inserts a new part 4, division 3, subdivision 1A to provide for pre-poll ordinary voting in referendums. This new subdivision mirrors the provisions in part 7, division 5, subdivision 2 of the *Electoral Act 1992*.

*Clause 120* amends section 25 (Who may make a declaration vote) to: insert a new section 25(1)(a) to provide that an 'ordinary postal voter', being an elector who wishes to make a declaration vote before the polling day for a referendum, may make a declaration vote; and clarify the interaction of the provision with the Electoral Act.

*Clause 121* amends section 30 (Making a declaration vote using posted referendum papers) to provide that an elector who is an ordinary postal voter can request a ballot paper and declaration envelope by completing an approved form and giving it to the commission or returning officer for the electoral district for which the elector is enrolled, by no later than 7p.m. on the Wednesday before the polling day for the referendum.

*Clause 122* amends section 31 (Electoral visitor voting) to provide that an elector who is an electoral visitor voter can request a ballot paper and declaration envelope by completing an approved form and giving it to the commission or returning officer for the electoral district for which the elector is enrolled, by no later than 7p.m. on the Wednesday before the polling day for the referendum.

*Clause 123* replaces section 32(1) and (2) (Making a declaration vote in cases of uncertain identity) with a provision that requires the issuing officer to give a person a declaration envelope if section 22(7) or 24C(7) apply and updates cross references.

*Clause 124* inserts a new part 4, division 3, subdivision 2A to provide for electronically assisted voting in referendums. This new Part reflects part 7, division 5, subdivision 3A in the Electoral Act.

*Clause 125* amends section 33 to provide that if an elector votes using electronically assisted voting, they must vote in accordance with the procedures approved under section 32B(3).

*Clause 126* amends section 36(2)(c) (Preliminary processing of declaration envelopes and ballot papers) to omit the requirement for a person examining the declaration envelope to be satisfied that the signature on the envelope corresponds with the signature in the request.

*Clause 127* amends section 38 (Preliminary counting of ordinary votes) to provide that the commission's staff in charge of a polling booth must identify and keep in a separate parcel all declaration envelopes and all ballot papers printed for electronically assisted votes, and to extend its application to pre-poll ordinary votes, and votes received under section 36.

*Clause 128* amends section 39 (Official counting of votes) to include ballot papers printed for electronically assisted votes in the first stage of the procedure for the official counting of votes.

*Clause 129* amends section 83 to reflect that requests provided to someone under section 30 or 31 are required to be in the approved form under sections 30 or 31, and given to the commission (instead of being posted, faxed or delivered).

This clause inserts a maximum penalty of 20 penalty units or 6 months imprisonment in to the offence provision in section 83.

*Clause 130* amends schedule 3 (Dictionary) to define the following terms: 'pre-poll ordinary vote', 'pre-poll voting office' and 'proof of identity document'.

This clause also updates the numbering of the provisions of the Act that define the terms 'electoral visitor voter' and 'ordinary postal voter', and extends the definition of 'polling booth' to include a mobile polling booth or a pre-poll voting office.

## **Part 29 Amendment of Supreme Court Library Act 1968**

*Clause 131* provides that this part amends the *Supreme Court Library Act 1968*.

*Clause 132* inserts new section 13B which provides that a member of the committee is not civilly liable for an act done, or omission made, in good faith, under the *Supreme Court Library Act 1968*. The new section also provides that if new section 13B(1) prevents civil liability attaching to a member, the liability will attach to the committee instead.

## **Part 30 Amendment of Telecommunications Interception Act 2009**

*Clause 133* provides that this part amends the *Telecommunication Interception Act 2009*.

*Clause 134* amends section 14 (Eligible authority to keep documents connected with issue of warrants).

Subclause (1) inserts a new subsection (ga) that provides that an eligible authority must keep in their records each appointment of an authorising officer made under section 66(4) of the *Telecommunications (Interception and Access) Act 1979* (Cwth).

Subclause (2) amends subsection (h) to provide that an eligible authority must keep in their records each authorisation by an authorising officer under section 66(2) of the *Telecommunications (Interception and Access) Act 1979* (Cwth).

Subclause (3) provides for renumbering of section 14.

## **Part 31 Amendment of Tourism and Events Queensland Act 2012**

*Clause 135* states that this part amends the *Tourism and Events Queensland Act 2012*.

*Clause 136* states Tourism and Events Queensland may employ staff. This clause also omits provisions that provided for the continuation of the Employing Office. This will simplify the *Tourism and Events Queensland Act 2012*, and remove redundant provisions.

*Clause 137* provides for the transitional provisions for the Tourism and Events Queensland Employing Office to ensure:

- Employees of the former Tourism and Events Queensland Employing Office retain the same terms and conditions of employment applying to the person immediately before the commencement of the new provisions; and
- Remain entitled to all rights of employment existing or accruing immediately before commencement of the provisions, including recognition of the person's length of service with the former employing office and outstanding leave entitlements accrued up to the commencement.

The Bill provides that the *Tourism and Events Queensland Act 2012* amendments will commence on 1 July 2015.

## **Part 32 – Amendment of Trusts Act 1973**

*Clause 138* provides that this part amends the *Trusts Act 1973*.

*Clause 139* amends section 56(1) which confers a power on trustees to delegate the administration of a trust in limited circumstances. The amendment removes the requirement that the power of attorney be executed as a deed.

*Clause 140* inserts new part 13 – Validation provision for Justice and Other Legislation Amendment Act 2014 - which contains new section 123. Section 123 provides for the situation where before the commencement of the amendments to section 56, a trustee purported to make a delegation under section 56 by a power of attorney using the approved form under the *Powers of Attorney Act 1998*, section 11. The section states that any such power of attorney is taken to be, and to have always been, validly given under previous section 56.

## **Part 33 Amendment of Vexatious Proceedings Act 2005**

*Clause 141* provides that this part amends the *Vexatious Proceedings Act 2005*

*Clause 142* replaces subsection 12(2) so the Supreme Court may dismiss without an oral hearing an application of a person, who is subject to a vexatious proceedings order, for leave to institute a proceeding. In line with the previous subsection 12(2), if the court considers an oral hearing is necessary, the application may be dismissed even if the applicant does not appear at the hearing.

New subsection 12(3) requires that, if the Court dismisses the application, the Court must give the applicant a copy of the order dismissing the application and the Court's reasons.

*Clause 143* inserts a transitional provision for the Justice and Other Legislation Amendment Act 2014 - which contains new section 16A. New section 16A provides that the pre-amended Act continues to apply in relation to applications which have been made under section 11 of the Act, but have not yet been decided at the time of commencement of the amendment to section 12 of the Act.

## **Part 34 Repeals**

*Clause 144* repeals the following companies Acts which are now redundant: *Companies (Acquisition of Shares) (Application of Laws) Act 1981*; *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*; *Companies (Application of Laws) Act 1981*; *Futures Industry (Application of Laws) Act 1986*; and *Securities Industry (Application of Laws) Act 1981*.