

Law Reform Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the *Law Reform Amendment Bill 2011*.

Policy objectives and the reasons for them

The objectives of the Law Reform Amendment Bill 2011 (the Bill) are to introduce a new sentencing regime of minimum standard non-parole periods for serious offences of violence and sexual offences and other substantive and technical amendments to Acts administered by the Attorney-General, Minister for Local Government and Special Minister of State.

The Acts amended include:

- *Animal Management (Cats and Dogs) Act 2008*
- *Anti-Discrimination Act 1991*
- *Births, Deaths and Marriages Registration Act 2003*
- *Classification of Films Act 1991*
- Criminal Code
- *Criminal Law (Rehabilitation of Offenders) Act 1986*
- *Dispute Resolution Centres Act 1990*
- *District Court of Queensland Act 1967*
- *Evidence Act 1977*
- *Guardianship and Administration Act 2000*
- *Jury Act 1995*
- *Justices Act 1886*
- *Justices of the Peace and Commissioners for Declarations Act 1991*
- *Land Court Act 2000*

- *Magistrates Act 1991*
- *Peaceful Assembly Act 1992*
- *Penalties and Sentences Act 1992*
- *Queensland Civil and Administrative Tribunal Act 2009*
- *Recording of Evidence Act 1962*
- *State Penalties Enforcement Act 1999*
- *Trustee Companies Act 1968*

The Bill also amends:

- the *Child Employment Act 2006* and *Child Employment Regulation 2006* administered by the Minister for Education and Industrial Relations;
- the *Corrective Services Act 2006* administered by the Minister for Police, Corrective Services and Emergency Services;
- the *Guide, Hearing and Assistance Dogs Act 2009* administered by the Minister for Disability Services, Mental Health and Aboriginal and Torres Strait Islander Partnerships; and
- the *Manufactured Homes (Residential Parks) Act 2003* administered by the Minister for Community Services and Housing and Minister for Women.

Achievement of policy objectives

The Bill achieves the objective of introducing a new sentencing regime of minimum standard non-parole periods for Queensland through an amendment to part 9A of the *Penalties and Sentences Act 1992* (Penalties and Sentences Act). The Bill adopts the scheme as recommended by the Sentencing Advisory Council in its 2011 report, 'Minimum standard non-parole periods' (final report) with the exception that, consistent with current sentencing practices in Queensland, the new scheme will capture 17 year old offenders.

In summary, the Bill makes provision for a standard percentage scheme of minimum standard non-parole periods as follows:

- an offender convicted of a serious offence and sentenced to immediate full-time imprisonment of five or more, but less than 10 years, must serve 65 per cent of the term of imprisonment before being eligible to

apply for parole, unless the court is of the opinion that it would be unjust to do so;

- the scheme applies to the offences listed in schedule 1 of the Penalties and Sentences Act with the addition of a further eight offences to schedule 1, as recommended by the Sentencing Advisory Council, in recognition that these offences are serious. Additionally, the new offence of grooming children under 16, proposed to be inserted into the Criminal Code by the Criminal and Other Legislation Amendment Bill 2011, is included;
- the scheme interfaces with, and complements in its operation, the existing serious violent offence regime in part 9A of the Penalties and Sentences Act, which necessarily means that the new minimum standard non-parole period will not apply to sentences of immediate full-time imprisonment of 10 or more years and will not apply where the court has made a serious violent offence declaration; and
- the scheme only applies to offenders convicted on indictment and to offences committed on, or after, the commencement of the new scheme.

Minimum standard non-parole period schemes operate in New South Wales (*Crimes (Sentencing Procedure) Act 1999*), the Northern Territory (*Sentencing Act 1995*), South Australia (*Criminal Law (Sentencing) Act 1988*), and for certain Commonwealth offences.

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

- the *Anti-Discrimination Act 1991* to expand the grounds on which the Anti-Discrimination Commissioner may reject or lapse a complaint and strengthen the complaint handling process; and to allow for a 28 day “cooling off” period when complainants give written notice that they wish to withdraw a complaint;
- the *Births, Deaths and Marriages Registration Act 2003* to provide that the Registrar and Deputy Registrar of Births Deaths and Marriages are to be appointed by the chief executive rather than the Governor in Council;
- the *Classification of Films Act 1991* to enable the Commonwealth Classification Board to solely consider exemptions to screen films, for example, unclassified films at film festivals, bringing Queensland into line with all other states and territories;

- the Criminal Code to insert a new offence, carrying up to 10 years imprisonment, of dangerous management of a dog resulting in death or grievous bodily harm to a person through an attack;
- the *Criminal Law (Rehabilitation of Offenders) Act 1986* (CLROA) to exempt court registry and State Reporting Bureau (SRB) staff from criminal liability under the non-disclosure provision in section 6 of the CLROA when performing their official duties;
- the *Dispute Resolution Centres Act 1990* to abolish the Dispute Resolution Centres Council;
- the *District Court of Queensland Act 1967* to:
 - (a) repeal obsolete sections in part 2, division 3;
 - (b) amend section 31 to refer to an application under the *Judicial Review Act 1991* rather than an application for a writ of prohibition;
 - (c) amend section 113 to provide that the District Court, on appeal, has the same power as the Court of Appeal; and
 - (d) repeal section 114;
- the *Evidence Act 1977* to:
 - (a) clarify that husbands and wives are competent and compellable in all non-criminal proceedings, whether or not both or either of them is a party to the proceedings; and
 - (b) provide that a DNA analyst is required to attend a hearing if another party provides notice at least five business days before the hearing day;
- the *Guardianship and Administration Act 2000* to provide that a community visitor may be appointed on a full-time, part-time or casual basis;
- the *Jury Act 1995* to remove the limit on the judge's discretion to direct that no more than three people be chosen and sworn as reserve jurors in a criminal or civil trial;
- the *Justices Act 1886* to:
 - (a) allow a proceeding to be conducted by audio link or audio visual link by a Magistrates Court at a location prescribed under a

- practice direction by the Chief Magistrate which is outside the relevant court district or division; and
- (b) allow the Minister to delegate to the chief executive a decision to release copies of records in certain proceedings;
- the *Justices of the Peace and Commissioners for Declarations Act 1991* to allow for the register of Justices of the Peace and Commissioners for declarations to be maintained in electronic form; the registrar to exempt appointees from gazettal in appropriate cases; and the registrar to ensure that persons accessing personal details on the register have a sufficient interest;
 - the *Land Court Act 2000* to
 - (a) clarify the jurisdiction of the Court;
 - (b) provide time limits on rehearing of a judicial registrar's decision in a proceeding;
 - (c) provide that the *Uniform Civil Procedure Rules 1999* will apply to record management procedures and policies in the Land Court to enable consistency of such procedures and policies within Queensland Courts; and
 - (d) provide that the Land Court Registrar will be appointed by the chief executive rather than the Governor in Council;
 - the *Magistrates Act 1991* to:
 - (a) remove doubt that the Chief Magistrate's powers under section 12 extend to magistrates, acting magistrates and judicial registrars;
 - (b) provide that the Chief Magistrate is responsible for directing the professional development and training of magistrates and judicial registrars;
 - (c) expand the delegation powers of the Chief Magistrate to allow allocation of functions to a particular magistrates and nomination of a supervising magistrate or a coordinating magistrate for the purpose of allocation of work; and
 - (d) provide for the appointment of more than one Deputy Chief Magistrate and Acting Deputy Chief Magistrate;
 - the *Peaceful Assembly Act 1992* to allow the Police Commissioner (the Commissioner) to delegate his powers under the Act to a police

officer who is the rank of sergeant or higher, where currently the Commissioner can only delegate to the chief executive of the Department of Transport and Main Roads; and

- the *Penalties and Sentences Act 1992* to enable the court to refer a person convicted of a minor breach of the alcohol restrictions in Indigenous communities to attend an alcohol assessment and education session as part of a court order;
- the *Queensland Civil and Administrative Tribunal Act 2009* to: remove some restrictions on which tribunal members can exercise stated tribunal's powers; provide a discretion for the provision of written reasons for interlocutory or procedural decisions; ensure that costs assessors have immunity; expand the definition of 'judicial member' to enable former judges who are senior or ordinary members to sit as a judicial member on a broader range of matters; and afford protections and immunities under the Act to conciliators;
- the *Recording of Evidence Act 1962* in relation to the Queensland Sentencing Information Service;
- the *State Penalties Enforcement Act 1999* to clarify that, if a corporation defaults in paying fines, penalties or other amounts under a court order, the amount can be registered with the State Penalties Enforcement Registry (SPER); and ensure officers of shared service agencies are protected from liability when performing functions on behalf of SPER;
- the *Trustee Companies Act 1968* to facilitate: voluntary transfers of trustee company business as provided for by the *Corporations Act 2001* (Cth); and the transfer of trustee company business to the Public Trustee of Queensland (with consent) where the licence of the trustee company has been cancelled.

The Bill also includes amendments of a minor and technical nature to justice portfolio legislation.

Amendments to other portfolio Acts included in the Bill are as follows:

- the *Child Employment Act 2006* and the *Child Employment Regulation 2006* to prohibit the employment of minors in the unregulated live adult entertainment industry;
- the *Guide, Hearing and Assistance Dogs Act 2009* to make it an offence for a person in control of accommodation offered to the public

to deny accommodation to a person with a disability who relies on a certified guide, hearing or assistance dog; and

- the *Manufactured Homes (Residential Parks) Act 2003* to clarify the meaning of section 99A (introduced in March 2011) which creates an offence for park owners who charge a home owner an amount for the use of a utility that is more than the amount charged by the relevant supplier.

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 costs associated with the implementation of this Bill will be met within existing resources.

Consistency with fundamental legislative principles

The following aspects of the Bill may represent breaches of fundamental legislative principles, which are justified in the circumstances.

Anti-Discrimination Act 1991

The new grounds for rejection or lapsing of a complaint of discrimination impacts on the rights of a complainant to pursue a complaint under the *Anti-Discrimination Act 1991*. However, the amendments are consistent with the interests of justice, in that, the new grounds are that the subject matter of the complaint can be more effectively or conveniently dealt with by another entity or the subject matter has been adequately dealt with by another entity. In addition, the decision to reject or lapse on these grounds is subject to rights of judicial review under the *Judicial Review Act 1991*.

Classification of Films Act 1991

The amendment of sections 57 and 58 potentially breaches the fundamental legislative principle that legislation must have sufficient regard to the institution of parliament by allowing the delegation of legislative power only in appropriate cases and to appropriate persons and sufficiently subjecting the exercise of the delegated legislative power to the scrutiny of the Legislative Assembly. Both the State films classification officer and the Director of the Commonwealth Classification Board presently have the

power to determine applications to exempt films in Queensland, for example, unclassified films to be screened at film festivals. The Bill provides for the Director of the Commonwealth Classification Board to solely consider exemptions of films. The Commonwealth Classification Board already performs this function for all states and territories, except Queensland. The amendment of section 57 also enables the Minister to issue directions or guidelines in relation to the application of the Act to which the Director of the Commonwealth Classification Board must give effect.

The omission of section 59 of the *Classification of Films Act 1991* potentially breaches the fundamental legislative principle that legislation should make rights dependent on administrative power only if subject to appropriate review. A decision by the State films classification officer could be reviewed on an application to the Queensland Civil and Administrative Tribunal (QCAT) under section 59. The Bill provides for the Director of the Commonwealth Classification Board to solely consider applications to exempt films. Where the Commonwealth Director has declined to exempt an unclassified film, the Director's consideration will be subject to review by virtue of the organisation being able to submit the film to the Classification Board for formal classification. If the film receives a classification which makes it illegal to be publicly screened, the Commonwealth Director's decision to decline to exempt it will be confirmed to the applicant.

Criminal Code

The creation of a new offence of dangerous management of a dog potentially breaches the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals. The new offence will apply to persons responsible for a dog who manage the dog in a way that is dangerous, having regard to all the circumstances, and where such dangerous management causes the death of or grievous bodily harm to a person through an attack. The offence will bridge the gap that exists between the high-level criminal negligence offences, such as manslaughter, and the lower tier offences contained in the *Animal Management (Cats and Dog) Act 2008*. The offence carries a maximum penalty of 10 years imprisonment; the same as the maximum penalty applicable to the offence of dangerous operation of a vehicle causing death or grievous bodily harm.

Criminal Law (Rehabilitation of Offenders) Act 1986

Section 6 of the CLROA prohibits the disclosure of certain criminal convictions after the expiry of a ‘rehabilitation period’ (spent convictions), unless an exception to the prohibition applies. The exceptions to the section 6 prohibition are found in various provisions in the CLROA, including section 7.

As part of their functions of employment, court registry staff and SRB staff are required by legislation to make court files and transcripts of proceedings available for search, inspection or copy by the public upon payment of a prescribed fee. This ensures an open and transparent justice system. While disclosure of such information occurs in carrying out a function of the Crown and, while section 6 applies to a person who ‘knowingly’ discloses spent convictions, there is a concern to ensure that staff are protected from criminal liability under the Act.

Arguably, there is a current anomaly in the CLROA because section 6 is not breached where court registry staff, when requested, permit someone to search for or inspect a court file even if that file contains details of a spent conviction. The amendment clarifies that court registry staff and SRB staff are exempt from the operation of section 6. The amendment does not limit the protection offered by section 6 because a recipient of spent conviction information is still prohibited from disclosing the conviction to another person.

Dispute Resolution Centres Act 1990

The Bill abolishes the Dispute Resolution Centres Council (DRC Council). The former Scrutiny of Legislation Committee queried provisions which terminated a person’s holding of office or employment. The Independent Review of Government Boards, Committees and Statutory Bodies recommended the abolition of the DRC Council, an advisory council, which last met on 28 March 2008. The abolition of the DRC Council will not negatively impact on any individual.

Guide, Hearing and Assistance Dogs Act 2009

The amendment introduces a new offence where a person in control of a place of accommodation refuses to accept a reservation or application, or enter into or fulfil an agreement for accommodation (such as residential or holiday accommodation) for an accompanied handler because the accompanied handler is accompanied by a guide, hearing or assistance dog or trainee support dog.

The creation of this new offence potentially breaches the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals. The introduction of an offence is consistent with the government's obligations under the United Nations Convention on the Rights of Persons with Disabilities, and the government's commitment to promoting equality of opportunity and access for people with a disability, and preventing discrimination on the basis of disability.

A breach of these offences will attract a maximum penalty of 100 penalty units. This is the same as the penalty imposed under the *Guide, Hearing and Assistance Dogs Act 2009* where a person denies access to a public place or public passenger vehicle.

The new offence does not impose new obligations on accommodation providers who are already obliged under the *Anti-Discrimination Act 1991 (Qld)* not to refuse accommodation because a person relies on a guide, hearing or assistance dog. Instead, it provides an alternative avenue for redress when these existing obligations are breached.

While the offence is a strict liability offence, it does require the prosecuting authority to prove that the accommodation provider denied accommodation because the person is accompanied by a guide, hearing or assistance dog, and does not impose obligations on the accommodation provider around matters of proof.

Justice of the Peace and Commissioner for Declarations Act 1991

The Bill amends the *Justice of the Peace and Commissioner for Declarations Act 1991* to provide that inspection of the register may be allowed if the Registrar considers that the person has a 'sufficient interest' in inspecting the register. 'Sufficient interest' is not defined in the Act and there is no mechanism for an administrative review of the Registrar's decision. Section 4(3)(a) of the *Legislative Standards Act 1992* provides that legislation should make rights and liberties or obligations, dependant on administrative power only if the power is sufficiently defined and subject to appropriate review. However, there are few applications to inspect the register and the mechanism of inspection has been adopted to protect the personal contact details of Justices of the Peace and Commissioners for Declarations. In addition, 'sufficient interest' is not defined so that the term can cover a wide range of circumstances.

Magistrates Act 1991

The Bill expands the functions of the Chief Magistrate under section 12 of the *Magistrates Act 1991*, and therefore may potentially breach the fundamental legislative principle that legislation should not prejudice the independence of the judiciary. However, the amendments merely formalise current practices and do not fetter the Chief Magistrate's powers when exercising these functions.

Manufactured Homes (Residential Parks) Act 2003

The amendment to section 99A of the *Manufactured Homes (Residential Parks) Act 2003* has the potential to raise a fundamental legislative principle as it may impose an obligation retrospectively. Home owners who have been overcharged for the use of a utility by a park owner may apply to QCAT for reimbursement of the overcharged amounts from the date the section commenced, namely, 1 March 2011. However, the amendment of section 99A merely clarifies the original policy intention by removing any ambiguity of the section, that is, the park owner as an on-supplier of a utility cannot profit from the on-supply of the utility to a home owner. The amendment will clarify the wording of section for any determination sought in QCAT from the commencement of section 99A on 1 March 2011.

Penalties and Sentences Act 1992

The Bill inserts a new sentencing regime into the *Penalties and Sentences Act*. The minimum standard non-parole period scheme potentially impacts on the rights and liberties of individuals by requiring offenders to serve longer periods of actual incarceration before being eligible to apply for parole release. This arguably punishes the offender to a greater extent than was authorised by the former law. However, the scheme only applies to the most serious forms of offending and offences of mid to high level seriousness that ordinarily warrant an offender serving a substantial term of actual imprisonment. The scheme is justified to ensure that the punishment for these serious offenders fits the severity of the crime and communicates the wrongfulness of their actions; and to protect the community from such offenders. Additionally, the scheme operates prospectively, so it will only capture offenders who commit a relevant offence on, or after, the date upon which the scheme commences.

Queensland Civil and Administrative Tribunal Act 2009

The amendment to section 122 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) to provide QCAT with a discretion whether or not to issue written decisions for interlocutory or procedural decisions raises fundamental legislative principle issues concerning whether legislation has sufficient regard to rights and liberties of individuals. Section 4(3)(a) of the *Legislative Standards Act 1992* provides that legislation should only makes rights and liberties or obligations dependant on administrative power if the power is sufficiently defined and subject to appropriate review. Appropriate review provisions should provide for the entitlement to written reasons of the reviewer.

Increasingly, reasons are being requested for interlocutory or procedural decisions made in the course of QCAT proceedings. In some instances, parties have sought written reasons for why a matter had been adjourned for a few days. This is not the best or most appropriate use of QCAT's resources. QCAT will be able to use its discretion to provide reasons in appropriate circumstances.

Recording of Evidence Act 1962

Amendments to the *Recording of Evidence Act 1962* in relation to the Queensland Sentencing Information Service (QGIS) potentially breach the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals, particularly privacy and confidentiality rights. QGIS is an internet based research tool for information relating to criminal practice and procedure developed in conjunction with the Judicial Commission of New South Wales. QGIS includes a large collection of sentencing remarks which has a highly functional search facility attached. One of the aims of QGIS is to provide relevant information to parties and sentencing courts to enable well reasoned submissions on sentence and more informed decision making.

A number of Acts restrict or prohibit access to or publication of certain information related to criminal proceedings. Examples include: the *Youth Justice Act 1992* which prohibits the disclosure of 'confidential information' which is defined to include a record or transcription of a court proceeding relating to a child; the *Criminal Law (Sexual Offences) Act 1978* which prohibits the publication of a report of a committal or trial which reveals identifying details about a victim; and the *Child Protection Act 1999* which prohibits a report on a proceeding for an offence of a

sexual nature against a child from disclosing identifying details of the child.

Each of these legislative provisions is different in its application and consequently it is difficult for the court registry to reliably de-identify the information to ensure compliance. Further, aspects of the identifying information, for example, the child's age, may be necessary for locating similar cases. As a result of the legislative prohibitions, access to QGIS by agencies such as the Queensland Police Service and Legal Aid Queensland and the legal profession has been restricted. The purpose of the amendments in this Bill is to provide a legislative basis for QGIS and extend access to the QGIS to relevant organisations to ensure fair distribution of information amongst key legal stakeholders.

The restrictions on publication contained in various Acts have to be balanced against the community benefit that flows from greater consistency in sentencing and improved administration of the criminal justice system. Under the Bill, only specified categories of entities will be given access to the database by the chief executive and only for certain purposes. The Bill permits use of the information by the entity only for the purpose for which it was received. Misuse of the information is an offence. The Bill seeks to achieve a balance between the competing considerations of an efficient and cohesive criminal justice system and individual privacy.

The Bill confers immunity from civil, criminal or administrative liability on persons who make the information in the QGIS database available to relevant judicial persons under new section 11E(1) and entities which have entered into an arrangement with the chief executive under new section 11E(2) of the *Recording of Evidence Act 1962*. This provision has the potential to breach the rights and liberties of individuals because it confers immunity from proceedings or prosecutions. However, the immunity is limited to acts or omissions done or made honestly.

State Penalties Enforcement Act 1999

The amendment to section 12 of the *State Penalties Enforcement Act 1999* (SPE Act) for ensuring officers of shared service agencies are protected from liability when performing functions on behalf of SPER raises a potential fundamental legislative principle issue as it provides a protection from liability for a person acting under the authority or direction of the Registrar. However, the protection is limited to civil liability for acts done honestly and without negligence and liability instead attaches to the State.

The proposed amendment to section 34 of the SPE Act would retrospectively validate the registration of fines against corporations with the SPER. This raises a fundamental legislative principle issue as it would adversely affect rights and liberties retrospectively. The need for the amendment was identified as part of a technical review of the legislation. In practice, SPER has been registering these fines and the invalidity has not been raised by affected corporations. It would be inequitable for corporations to be able to avoid enforcement.

Consultation

Consultation on the justice portfolio aspects of the Bill has been undertaken with the heads of jurisdiction, Queensland Civil and Administrative Tribunal, Legal Services Commission, Queensland Law Reform Commission, Adult Guardian, Anti-Discrimination Commission and Departments.

Consultation on the minimum standard non-parole scheme occurred with: Chief Justice of the Supreme Court; President of the Court of Appeal; Chief Judge of the District Court; Chief Magistrate; Bar Association of Queensland; Queensland Law Society; Director of Public Prosecutions; Legal Aid Queensland; Women's Legal Service; Queensland Council of Civil Liberties; Aboriginal and Torres Strait Islander Legal Service; Brave Hearts Inc; Brisbane Domestic Violence Advocacy Service; Centre Against Sexual Violence Inc; Domestic Violence Court Assistance Network; Gold Coast Centre Against Sexual Violence; Protect All Children Today; Queensland Homicide Victims Support Group. The Government also invited public comment on the recommendations contained in the final report of the Sentencing Advisory Council.

Extensive public consultation was undertaken on the proposed new Criminal Code offence of dangerous management of a dog. Draft amendments were publicly released on the Department of Justice and Attorney-General website enabling electronic feedback from members of the public. Further, consultation was undertaken with local councils and key industry groups.

In addition, consultation on amendments to the *Classification of Films Act 1991* has occurred with the Commonwealth Government.

Consultation on the amendments to the *Guide, Hearing and Assistance Dogs Act 2009* has been undertaken with the Residential Tenancies Authority, the Anti-Discrimination Commission and relevant Departments.

Consultation on amendments to the *Manufactured Homes (Residential Parks) Act 2003* has been undertaken with home owners living in residential parks, park owners and relevant Departments.

Consistency with legislation of other jurisdictions

With the exception of amendments to the *Classification of Films Act 1991* and the *Trustee Companies Act 1968*, the Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Amendments to the *Classification of Films Act 1991* have been modelled on similar arrangements for New South Wales and Victoria to transfer to the Commonwealth the function of exempting films from classification.

The Bill amends the *Trustee Companies Act 1968* to facilitate part 5D.6 of the *Corporations Act 1991* (Cth) regarding voluntary and compulsory transfers of trustee company business.

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 *Law Reform Amendment Act 2011*.

Clause 2 provides for commencement, including the proclamation of commencements for stated provisions.

Part 2 **Amendment of Animal Management (Cats and Dogs) Act 2008**

Clause 3 provides that this part amends the *Animal Management (Cats and Dogs) Act 2008*.

Clause 4(1) amends section 194 (Relevant person must ensure dog does not attack or cause fear) to omit section 194(1)(a) as a consequence of the amendment to the Criminal Code in this Bill to insert a new offence of dangerous management of a dog. Subclause (2) renumbers subsequent paragraphs (b) to (d) of section 194(1) to paragraphs (a) to (c).

Clause 5(1) amends section 195 (Prohibition on allowing or encouraging dog to attack or cause fear) to omit section 195(1)(a) as a consequence of the amendment to the Criminal Code in this Bill to insert a new offence of dangerous management of a dog. Subclause (2) renumbers subsequent paragraphs (b) to (d) of section 195(1) to paragraphs (a) to (c).

Part 3 **Amendment of Anti-Discrimination Act 1991**

Clause 6 states that this part amends the *Anti-Discrimination Act 1991*.

Clause 7 inserts new section 140A which provides new grounds for the rejection or staying of a complaint. The Anti-Discrimination Commissioner (the commissioner) may reject or stay a complaint before it is referred to the QCAT if the commissioner is of the reasonable opinion that the act or omission that is the subject of the complaint may be more effectively or conveniently dealt with by another entity. The commissioner may also reject a complaint if the commissioner is of the reasonable opinion that the act or omission that is the subject of the complaint has been adequately dealt with by another entity.

Clause 8 amends section 154A by providing that the commissioner may investigate a complaint at any time after the complaint is received by the commissioner.

Clause 9 amends section 168 by providing that, once the complaint has lapsed, the complainant cannot make a further complaint relating to the act or omission that was the subject of the complaint.

Clause 10 inserts new section 168A which provides new discretionary grounds for lapsing of a complaint. If the commissioner is of the reasonable opinion that the act or omission that is the subject of a complaint has been adequately dealt with by another entity, or may be more effectively or conveniently dealt with by another entity the commissioner may decide to require the complainant to show cause why the complaint should not lapse. The complainant must be given notice that the complaint will lapse unless the complainant is able to show to the commissioner's satisfaction within 28 days that the act or omission that is the subject of the complaint has not been adequately dealt with, or may not be more effectively or conveniently dealt with by another entity.

Clause 11 replaces section 170 to provide that, when a complainant gives notice that they do not want to continue with the complaint, they will have a 28 day 'cooling off' period in which they may give notice that they wish to continue with the complaint. If the complainant does not give notice, the complaint will lapse. Once the complaint has lapsed, the complainant can not make a further complaint relating to the act or omission that is the subject of the complaint.

Part 4 Amendment of Births, Deaths and Marriages Registration Act 2003

Clause 12 states that this part amends the *Births, Deaths and Marriages Registration Act 2003*.

Clause 13 amends section 34(1) of the Act by replacing the words 'Governor in Council' with the words 'chief executive' to simplify the process of appointing the Registrar.

Clause 14 amends section 35(1) of the Act by replacing the words 'Governor in Council' with the words 'chief executive' to simplify the process of appointing the Deputy Registrar.

Part 5 **Amendment of Child Employment Act 2006**

Clause 15 states that this part amends the *Child Employment Act 2006* (CE Act).

Clause 16 amends references to particular sections of the CE Act to include work experience, an apprenticeship, a traineeship or a vocational placement within the definition of work. Those arrangements are generally excluded from the definition of work and therefore from the provisions of the CE Act. The amendment to section 8(3) means that the types of work described in sections 8A, 8B and 8C, if performed as part of work experience, an apprenticeship, a traineeship or a vocational placement, will be subject to the prohibitions under the CE Act.

Clause 17 inserts a new section 8C to prohibit an employer from requiring or permitting a child to work in an inappropriate role or situation. An objective of the provision is to prohibit work by children up to the age of 18 years in adult entertainment type activities where that work is deemed inappropriate. The provision complements existing provisions governing work by children in licensed premises under the *Liquor Act 1992* and under the Criminal Code. The provision additionally retains its original application in regulating roles and situations in the general entertainment industry (e.g. theatrical and recorded performances and in advertising).

Clause 18 inserts a new section 40 (Effect of regulation amendment by the Law Reform Amendment Act 2011) to provide that the following amendment to the *Child Employment Regulation 2006* does not affect the power of the Governor in Council to further amend or repeal the regulation.

Part 6 **Amendment of Child Employment Regulation 2006**

Clause 19 provides that this part amends the *Child Employment Regulation 2006*.

Clause 20 omits existing section 12 (Prohibition on inappropriate roles and situations) from the regulation. The section, with some amendments, is now inserted in the *Child Employment Act 2006* as section 8C.

Clause 21 amends references in section 25 (Employer's duty about presence of parent) to the omitted section 12 of the *Child Employment Regulation 2006* to reflect the new location of the provision within section 8C of the *Child Employment Act 2006*.

Part 7 Amendment of Classification of Films Act 1991

Clause 22 states that this part amends the *Classification of Films Act 1991*.

Clause 23 amends section 3 (Definitions) to remove the definition of 'approved organisation'.

Clause 24 replaces the heading 'Part 7 Exhibition of films by approved organisations' with the heading 'Part 7 Exemptions'.

Clause 25 omits section 56 (Approval of organisation).

Clause 26 replaces sections 57 (Application for exemption) and 58 (Exemption). New section 57 (Application for exemption) provides that an entity, instead of an approved organisation, may now only apply to the Commonwealth Director of the Classification Board for an exemption from the Act in relation to a particular film that the entity intends to exhibit. New section 58 (Exemption) provides that the Commonwealth Director of the Classification Board may direct that the Act does not apply in relation to the exhibition of the film and may impose conditions on the exemption. In deciding an application for an exemption, the Commonwealth Director of the Classification Board must give effect to any directions or guidelines issued by the Queensland Minister.

Clause 27 omits section 59 (Review by QCAT).

Clause 28 inserts new part 9, division 5 (Law Reform Amendment Act 2011) and inserts a new section 76. New section 76, provides that sections 58 and 59 of the Act in force immediately before the commencement of this section, continues to apply to applications for exemption that have been made but not decided before the commencement of the *Law Reform*

Amendment Act 2011, as if the *Law Reform Amendment Act 2011* had not commenced.

Part 8 **Amendment of Corrective Services Act 2006**

Clause 29 states that this part amends the *Corrective Services Act 2006*.

Clause 30 inserts a new section 182A (Parole eligibility date for other serious offender), which requires a prisoner serving a term of imprisonment for a serious offence to serve, as a minimum, 65 per cent of the term of imprisonment before being eligible to apply for parole. ‘Serious offence’, as defined in new section 182A, is a reference to a conviction of a serious offence under the *Penalties and Sentences Act 1992*.

Clause 31 amends section 185 (Parole eligibility date for prisoner serving terms of imprisonment in particular circumstances) consequential to the insertion of new section 182A.

Clause 32 amends section 194 (Types of parole orders granted by parole board) consequential to the insertion of new section 182A.

Part 9 **Amendment of Criminal Code**

Clause 33 states that this part amends the Criminal Code.

Clause 34 amends section 228E(8) to include in the definition of ‘certificate’, a certificate for a film mentioned in the *Classification of Films Act 1991*, section 60(1) signed or purporting to be signed by the director or convenor within the meaning of that Act; and to include in the definition of ‘classification exemption’, an exemption for a film given under the *Classification of Films Act 1991*, section 58.

Clause 35 inserts new section 334A (Dangerous management of a dog). The new offence applies to a person responsible for a dog who manages the dog dangerously where such dangerous management results in the death of

or grievous bodily harm to another person through an attack by the dog. The offence carries a maximum penalty of 10 years imprisonment.

The phrase ‘manages the dog dangerously’ is defined to mean, manages the dog in a way that is dangerous having regard to all the circumstances. It is intended that the issue of whether the dog was managed dangerously will be determined by applying an objective test; the degree of negligence being irrelevant.

The section provides a list of examples of the circumstances that are relevant when determining whether the dog was managed dangerously. Example (d) references whether the restraint of the dog was appropriate in all the circumstances. The term ‘restraint’ is not defined and will take its ordinary meaning. It is intended that the term encompasses the confinement of the dog, if any (for example, where a dog is restrained in a yard by a fence).

The new offence does not prevent a dog from being used to guard persons or property. This is reflected in example (e). Therefore, whether the use of a guard dog is appropriate in the circumstances will be a matter of fact for the determination of a jury.

The phrase ‘person responsible for the dog’ is defined to mean: a person who has custody of the dog (that is, physical possession); or a person who has control of the dog, even if someone else has the actual custody of the dog (that is, a person who has the power to exercise custody of the dog). Therefore, a dog owner who allows a child to walk a dog would fall within the definition of ‘person responsible for a dog’.

Where the person who has control of the dog allows someone else to have actual custody of the dog, the former person may still be liable for the offence of managing the dog dangerously depending on the circumstances of the transfer of custody. Example (f) provides examples of the circumstances which are relevant to consider.

Subsection (2) of new section 334A expressly declares that the new offence does not apply to a government entity notwithstanding that, subject to subsection (3), it applies to a person employed or engaged by a government entity.

Clause 36 amends section 651(7) to include in the definition of ‘summary offence’ an indictable offence against the Criminal Code mentioned in section 552B if, under that section, the defendant has not informed the court that he or she wants to be tried by jury.

Part 10 **Amendment of Criminal Law (Rehabilitation of Offenders) Act 1986**

Clause 37 states that this part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Clause 38 amends section 7 to exempt Queensland court registry and SRB staff from section 6 of the Act when performing their official duties if a disclosure is made as part of giving access to, or a copy of, a record under an Act.

Part 11 **Amendment of Dispute Resolution Centres Act 1990**

Clause 39 states that this part amends the *Dispute Resolution Centres Act 1990*.

Clause 40 amends section 2 (Interpretation) to remove the definitions for ‘council’ and ‘member’.

Clause 41 amends the heading for part 2 (Administration) by replacing the word ‘administration’ with the phrase ‘staff of dispute resolution centres’.

Clause 42 omits part 2, division 1 (the Council) to abolish the Dispute Resolution Centres Council established under the Act.

Clause 43 omits part 2, division 2 heading (Staff of dispute resolution centre).

Clause 44 removes section 35 (1)(a) and (b) to reflect the abolition of the council and renumbers section 35(1)(c) and (d) as 35(1)(a) and (b).

Clause 45 amends section 37(2)(e) to replace the reference to ‘the council’ with reference to ‘a director’ and modifies the definition ‘relevant person’ to remove reference to the council or sub-committee of the council.

Clause 46 amends section 38 to remove reference to the council.

Clause 47 inserts a new part 6 (Transitional provisions) and a new division 1 heading (Justice and Other Legislation Amendment Act 2008).

Clause 48 inserts a new part 6, division 2 to provide for transitional matters for the Law Reform Amendment Act 2011.

Part 12 Amendment of District Court of Queensland Act 1967

Clause 49 states that this part amends the *District Court of Queensland Act 1967*.

Clause 50 replaces the heading of part 2, division 3 (Prerogative writs) with 'Applications under Judicial Review Act 1991'.

Clause 51 omits section 29 (When action may be removed) and section 30 (Rule or order substituted for writ of mandamus to a judge of officer) of the Act. These sections are obsolete because, as a result of the *Judicial Review Act 1991*, writs of certiorari and prerogative writs are no longer used.

Clause 52 replaces section 31 (Judge not to be served with notice of application for prohibition) with a modernised provision that refers to an application under the *Judicial Review Act 1991*.

Clause 53 omits section 32 (Rule or summons to show cause why a writ of certiorari or prohibition should not be issued to be a stay of proceedings), section 33 (Notice of rule or summons to be given to registrar and parties) and section 34 (Notice of writ of certiorari or prohibition obtained ex parte to be given to registrar and parties) because these sections are obsolete.

Clause 54 amends section 113 (Power of District Court on appeal from Magistrates Court) to remove an out-dated reference to the powers of the Supreme Court before the commencement of the *District Courts Act 1958*, and clarify that, for an appeal from a Magistrates Court, the District Court has the same powers as the Supreme Court.

Part 13 **Amendment of Evidence Act 1977**

Clause 55 provides this part amends the *Evidence Act 1977*.

Clause 56 amends section 7 (Parties, their wives and husbands as witnesses) to clarify that a party to a proceeding in subsections (1) and (2) includes a person who is the subject of, or a witness in, an inquiry, reference or examination. The amendment confirms that a husband or wife of a person, whether or not that person is a party, witness or otherwise involved in a non-criminal proceeding, is competent and compellable to give evidence.

Clause 57 amends section 95A (DNA evidentiary certificate) to provide that a DNA analyst need only attend a hearing if required by written notice five business days before the hearing day. Existing subsection (5) is amended to increase the timeframe for notice from three to five business days. This amendment to subsection (5) complements new subsection (3A).

Part 14 **Amendment of Guardianship and Administration Act 2000**

Clause 58 states that this part amends the *Guardianship and Administration Act 2000*.

Clause 59 amends section 231 (Appointment) to provide for the appointment of community visitors on a casual basis.

Part 15 **Amendment of Guide, Hearing and Assistance Dogs Act 2009**

Clause 60 states that this part amends the *Guide, Hearing and Assistance Dogs Act 2009*.

Clause 61 amends section 3, which relates to how the objects of the Act are mainly achieved. The amendments expand this section to provide that the objects of the Act are mainly achieved by protecting the rights of people with a disability who rely on guide, hearing or assistance dogs, and trainers of these dogs, to be accompanied by the dog in places of accommodation.

Clause 62 amends the part 2 heading of ‘Guide, hearing and assistance dogs in public places and public passenger vehicles’ to include ‘places of accommodation’ in the heading.

Clause 63 inserts a new definition ‘place of accommodation’ for the purposes of part 2 of the Act, to include the following:

- (a) a house or flat; and
- (b) a hotel or motel; and
- (c) a boarding house or hostel; and
- (d) a caravan or caravan site; and
- (e) a manufactured home, or a site, under the *Manufactured Homes (Residential Parks) Act 2003*; and
- (f) a camping site.

This is an inclusive definition of accommodation, which is intended to capture types of accommodation typically used for personal purposes, such as residential and holiday accommodation.

Clause 64 expands section 8 of the Act to make it clear that a person with a disability who relies on a guide, hearing or assistance dog to reduce the person’s need for support may be accompanied by the guide, hearing or assistance dog in a place of accommodation, in addition to a public place or public passenger vehicle. The clause also expands section 8 of the Act to make it clear that a person with a disability who relies on a guide, hearing or assistance dog to reduce the person’s need for support does not commit an offence merely by taking the dog into a place of accommodation.

Clause 65 expands section 9 of the Act to make it clear that an approved trainer, employee trainer or puppy carer may be accompanied by a guide, hearing, assistance or trainee support dog in a place of accommodation, in addition to a public place or public passenger vehicle. The clause also expands section 9 of the Act to make it clear that an approved trainer, employee trainer or puppy carer does not commit an offence merely by taking the dog into a place of accommodation.

Clause 66 amends the part 2, division 3 heading to ‘Obligations of persons exercising control of public places and public passenger vehicles’ to include a reference to places of accommodation.

Clause 67 amends section 11 of the Act, to provide that a person exercising control of a place of accommodation is a person exercising control or purporting to exercise control, over:

- access to, or permission to remain in the place; or
- the delivery of a service in the place.

Clause 68 amends section 13 of the Act to create a new offence where a person exercising control of a place of accommodation denies accommodation to certain persons accompanied by a guide, hearing or assistance dog or trainee support dog. Specifically, the clause inserts a new subsection (1A) that provides that it is an offence for a person exercising control of a place of accommodation, to -

- refuse to accept a reservation or application at the place for accommodation for an accompanied handler;
- refuse to enter into or fulfil an agreement to provide accommodation at the place for an accompanied handler;
- refuse to renew or extend the supply of accommodation for an accompanied handler at the place; or
- impose a term as part of an agreement (such as an extra payment) to provide accommodation for an accompanied handler at the place

because the accompanied handler is accompanied by a guide, hearing or assistance dog or a trainee support dog. A breach of the subsection (1A) attracts a maximum penalty of 100 penalty units.

Currently section 13 defines an ‘accompanied handler’ as a person with a disability who is accompanied by the guide, hearing or assistance dog the person relies on to reduce the person’s need for support; or an approved trainer, employee trainer or puppy carer who is accompanied by a guide, hearing, assistance or trainee support dog.

The clause also amends the definition of ‘accompanied handler’ in section 13(3)(a) to make it clear that an accompanied handler is a person with a disability accompanied by their certified guide, hearing or assistance dog. This is to ensure that the new offence in section 13(1A) only applies where a person with a disability is accompanied by their certified guide, hearing or assistance dog, as these dogs have met certain requirements under the

Act such as passing a public access test and have been specially trained by an approved trainer. The clause defines the term ‘certified guide, hearing or assistance dog’.

Clause 69 corrects a minor grammatical error.

Clause 70 inserts a new definition in the dictionary of ‘place of accommodation’.

Part 16 Amendment of Jury Act 1995

Clause 71 states that this part amends the *Jury Act 1995*.

Clause 72 amends section 34 (Reserve jurors) to remove the limitation on the number of reserve jurors that the judge in a civil or criminal trial can direct to be chosen and sworn.

Part 17 Amendment of Justices Act 1886

Clause 73 states that this part amends the *Justices Act 1886*.

Clause 74 inserts new section 23ED (Conduct of proceeding by audio link or audio visual link by Magistrates Court outside district or division) into the Act. This amendment will allow a proceeding to be conducted by audio link or audio visual link by a Magistrates Court at a location prescribed under a practice direction by the Chief Magistrate which is outside the relevant court district or division. This section confers on the Magistrates Court the jurisdiction to constitute a Magistrates Court for the proceeding and to conduct the proceeding by audio link or audio visual link.

The amendment will encourage greater use of technology in remote and regional areas, enabling cases to be heard and finalised more speedily than would otherwise be the case.

Clause 75 amends section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence) to replace the words ‘crown solicitor’ with ‘director of public prosecutions’. This amendment reflects

the current practice that the prosecuting authority at a person's trial on indictment is the Director of Public Prosecutions.

Clause 76 amends section 154 (Copies of record) to provide that the Minister may delegate the Minister's functions under subsection 154(2) to the chief executive. This amendment seeks to streamline the process for obtaining copies of the transcript.

Part 18 Amendment of Justices of the Peace and Commissioners for Declarations Act 1991

Clause 77 states that this part amends the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Clause 78 amends the definition of 'contact details' to provide for the inclusion of an 'email address (if any)' in the contact details of a Justice of the Peace or Commissioner for Declarations.

Clause 79 amends section 13 (Register of justices of the peace and commissioners for declarations) to provide that the register may be kept in hard copy or electronic form. Existing subsection 13(2)(a) is amended to provide that the register is available for inspection on application.

Clause 80 amends section 21 (Registration of justices of the peace and commissioners for declarations) to provide that the appointment of a justice of the peace or commissioner for declarations need not be published in the government gazette if the Registrar considers withholding notification is necessary to protect the safety or wellbeing of the person or a relative of the person.

Clause 81 inserts a new section 38A (Access to register) to provide for the process of an application to the Registrar to inspect the register. This section provides that the Registrar may grant access only if the Registrar considers the applicant has a sufficient interest in inspecting the register. Further new section 38A(3) provides that the Registrar may withhold inspection if the Registrar considers it is necessary to protect the safety or wellbeing of the person.

Part 19 **Amendment of Land Court Act 2000**

Clause 82 states that this part amends the *Land Court Act 2000*.

Clause 83 amends section 12 (Power to rehear matters) to provide the Land Court with the power to extend the 42 day time limit for applications for rehearing.

Clause 84 amends section 31 (Rehearing after judicial registrar's decision) to insert a new subsection (2) to provide a 42 day time limit on applications for rehearing of a judicial registrar's decision, unless a longer period is allowed by the court.

Clause 85 omits the heading of part 2, division 6C.

Clause 86 amends section 32J (Land Court has the power of the Supreme Court for particular purposes) to clarify that the Land Court has all the powers of the Supreme Court for exercising jurisdiction conferred under the Act, and other Acts. This amendment reinstates the position prior to the amendments to the Act in 2007, and negates an argument that the jurisdiction of the court is limited. New subsection (5) provides that an order of the Land Court may be made an order of the Supreme Court and enforced in the Supreme Court.

Clause 87 amends section 34(5) and (6) so that the process for cost assessment in the *Uniform Civil Procedure Rules 1999* applies in the Land Court.

Clause 88 amends section 48 (Registrar, deputy registrars and other officers) to provide that the Registrar of the Land Court is to be appointed by the chief executive rather than the Governor in Council. This is consistent with the 2009 Independent Review of Government Boards, Committees and Statutory Bodies.

Clause 89 omits section 52 (Court records). The effect of this amendment is that the *Uniform Civil Procedure Rules 1999* will apply.

Part 20 **Amendment of Legal Profession Act 2007**

Clause 90 provides that this part amends the *Legal Profession Act 2007* (Legal Profession Act).

Clause 91 amends section 598 (Constitution of tribunal) to provide that the President of QCAT may nominate a former Supreme Court judge to constitute the tribunal for a proceeding under the Legal Profession Act. Currently only a sitting Supreme Court judge may constitute the tribunal for a proceeding under the Act. This amendment is complementary to the amendment to the definition of 'judicial member' in the QCAT Act, as contained in this Bill.

Part 21 **Amendment of Magistrates Act 1991**

Clause 92 states that this part amends the *Magistrates Act 1991*.

Clause 93 amends section 5 (Appointment of magistrates) to provide that the Governor in Council may appoint more than one Deputy Chief Magistrate.

Clause 94 amends section 5A (Appointment of acting Deputy Chief Magistrate) to provide that the Chief Magistrate may appoint more than one acting Deputy Chief Magistrate if the Deputy Chief Magistrate's position is vacant or the Deputy Chief Magistrate is not available to perform the functions of the office.

Clause 95 amends section 12 (Functions of Chief Magistrate) to clarify and expand the powers of the Chief Magistrate including expanding the range of powers the Chief Magistrate may delegate to the Deputy Chief Magistrate or another magistrate; expanding the Chief Magistrate's powers to issue directions about the practice and procedure of Magistrates Courts; providing that the Chief Magistrate is responsible for directing the professional development and training of magistrates and judicial registrars.

Clause 96 amends part 4, heading (Deputy Chief Magistrate) to replace 'magistrate' with 'magistrates'.

Clause 97 amends section 13 (Deputy Chief Magistrate) to reflect the amendments to section 5 providing for the appointment of more than one Deputy Chief Magistrate.

Clause 98 amends section 14 (Functions of Deputy Chief Magistrate) to reflect the amendments to section 5 providing for the appointment of more than one Deputy Chief Magistrate.

Clause 99 amends section 17 (Composition of advisory committee) to reflect the amendments to section 5 providing for the appointment of more than one Deputy Chief Magistrate.

Clause 100 amends section 19 (Presiding at meetings) to clarify that the Deputy Chief Magistrate is the chairperson of the advisory committee.

Part 22 Amendment of Manufactured Homes (Residential Parks) Act 2003

Clause 101 states that this part amends the *Manufactured Homes (Residential Parks) Act 2003*.

Clause 102 of the amendment of section 99A of the Act prohibits a park owner from charging more for the on-supply of a utility than they are charged by the relevant supply authority. The amendment clarifies the existing section and provides certainty to industry and further protection to home owners.

New provision section 99A(2)(a) will allow park operators to negotiate an administration fee for the provision of utilities and have that fee stipulated in the site agreement.

The amendment is intended to hinder profiteering and the arbitrary charging of additional fees on utility bills to home owners. Park owners will be able to recoup the legitimate costs for the provision of a utility because they will be able to pass on those legitimately invoiced charges to home owners.

New provision section 99A(2)(b) provides a head of power under the legislation to prescribe valid charges, fees or amounts for the provision of a utility by regulation should it be deemed necessary.

Part 23 Amendment of Motor Accident Insurance Act 1994

Clause 103 provides that this part amends the *Motor Accident Insurance Act 1994*.

Clause 104 amends section 68 (Review of commission's decisions by QCAT) to require that the judicial member who must constitute the tribunal for a review under section 68 is to be a Supreme Court judge. This amendment is consequential to the amendment to the definition of 'judicial member' in the QCAT Act, as contained in this Bill. That amendment would otherwise permit a retired judge to constitute the tribunal as a judicial member. The amendment to section 68 ensures that the tribunal judicial member, for the purposes of section 68, is a sitting Supreme Court judge.

Part 24 Amendment of Peaceful Assembly Act 1992

Clause 105 provides that this part amends the *Peaceful Assembly Act 1992*.

Clause 106 omits section 17 (Delegation of powers) and inserts a new section 17 which allows the commissioner to delegate his powers under the Act to a police officer who is of the rank of sergeant or higher.

Part 25 Amendment of Penalties and Sentences Act 1992

Clause 107 states that this part amends the *Penalties and Sentences Act 1992*.

Clause 108 amends section 4 (Definitions) to include definitions of the following terms: ‘alcohol diversion condition’; ‘alcohol information and education session’; ‘eligible alcohol offence’; ‘eligible alcohol offender’ and ‘serious offence’. ‘Serious offence’ is a reference to a serious offence of which an offender is convicted under new section 161BA (When an offender is convicted of a serious offence).

Clause 109 amends section 15B (Definitions for div 1) to include a definition of an ‘alcohol information and education session’. It is intended to encompass a single session with an approved health provider. The session is not confined in format, it can be a one-on-one session or a group session. The session will involve alcohol education, information and advice on further treatment options for the offender. The format of the alcohol information and education sessions is flexible to allow approved providers to deliver the session in a culturally appropriate way. The clause provides a definition for ‘alcohol diversion condition’; ‘eligible alcohol offence’; and ‘eligible alcohol offender’. The clause also inserts into the definition of ‘attend’ a reference to an alcohol information and education session.

Clause 110 inserts a new section 15CA which defines the term ‘eligible alcohol offender’ to mean a person charged with an eligible alcohol offence who has pleaded guilty to the offence.

Clause 111 inserts a new section 15DA which defines an ‘eligible alcohol offence’. This is an offence against the *Liquor Act 1992* section 168B (prohibition of liquor in restricted area) or 168C (attempt to take liquor into restricted area) or an offence by a person against the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 34 (possession or consumption of alcohol in or on dry place) or section 38 (offences relating to homemade alcohol).

Clause 112 amends section 15F (Meaning of approved provider) to insert a new definition of an ‘approved provider’ to include a reference to an approved provider for alcohol information and education sessions, as well as an approved provider for drug assessment and education sessions.

Clause 113 amends section 17 (Making of order) to allow a court to make an order under s19(1)(b) that includes an alcohol diversion condition provided it complies with the matters set out in section 19(2B)(a) and (b).

Clause 114 amends section 19 (Order of court) to insert a section 19(2B) which allows a court to impose a condition that an offender must attend an alcohol information and education session by a stated date if the person is convicted of an eligible alcohol offence. This can occur when the person is an eligible alcohol offender and when they consent to attending the alcohol information and education session.

Clause 115 amends section 20 (Contravention of order) to insert reference to a breach of an alcohol diversion condition as well as a drug diversion condition. The section provides powers to the court when there is a contravention of section 19(1)(b) to bring the offender back to court if the offender contravenes an alcohol diversion condition.

Clause 116 amends section 31 (Recognisance – summary conviction) to remove the word ‘be’ and replace it with ‘ordered to be’ and inserts a new subsection (2) allowing a court to impose any additional conditions that it considers appropriate. This amendment brings this provision in line with other recognisance orders and makes it clear that the court can attach conditions, including the condition that a person attend an alcohol education and assessment session, to a recognisance made under section 31.

Clause 117 amends section 160A (Application of sections 160B-160D) consequential to the insertion of new section 182A of the *Corrective Services Act 2006*.

Clause 118 amends the heading of section 160C (Sentence of more than 3 years and not a serious violent offence or sexual offence) consequential to the insertion of new division 2 (Serious offences) in part 9A, by inserting a reference to ‘serious offence’ in the heading of the section.

Clause 119 amends section 160D (Sentence for a serious violent offence or sexual offence) consequential to the insertion of new division 2 (Serious offences) in part 9A, by inserting a reference to ‘serious offence’ in the heading of the section and in sub-section (1).

Clause 120 amends section 160E (Automatic cancellation of parole release or eligibility dates) consequential to the insertion of the new division 2 (Serious offences) in part 9A of the Penalties and Sentences Act, by inserting a reference to ‘serious offence’ in sub-sections (1) and (2).

Clause 121 amends the heading of part 9A by changing it from ‘Convictions of serious violent offences’ to ‘Convictions of serious violent offences or serious offences’.

Clause 122 inserts a new heading, ‘Division 1 - Serious violent offences’, in part 9A of the Penalties and Sentences Act. Current sections 161A and 161B, which together provide the framework for the existing serious violent offence regime in Queensland, are now provided for in new division 1 of part 9A. The insertion of the new division 1 heading does not otherwise alter the operation of the existing provisions.

Clause 123 inserts a new division 2 (Serious offences) into part 9A, which provides the legislative framework for the new minimum standard non-parole period scheme for serious offences.

New section 161BA provides for when an offender is convicted of a serious offence.

An offender is convicted of a serious offence if:

- the offender is convicted on indictment;
- the offender is convicted of an offence against a provision mentioned in schedule 1 (formerly titled, Serious Violent Offences) of the Act; or of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1;
- the offender is sentenced to five or more, but less than 10, years imprisonment;
- the offender is not declared to be convicted of a serious violent offence, as part of the sentence, under section 161B; and
- the sentencing court does not expressly decline to make a serious offence declaration under section 161BB.

New section 161BB provides for a serious offence declaration; the consequence of which is that the offender must serve, in prison, a minimum of 65 per cent of the term of imprisonment before being eligible to apply for parole.

Where the criteria set out in section 161BA (a) to (c) is satisfied, the sentencing court must declare the offender to be convicted of a serious offence unless the court is of the opinion it would be unjust to do so.

The phrase, ‘unless it would be unjust to do so’ is not defined. The characteristics and factors that might be relevant to the court in making this assessment are likely to be varied and are better able to be assessed on a case-by-case basis.

The court retains the power to set either a shorter or longer non-parole period, however the default position is that the minimum standard non-parole period will be applied. If the sentencing court decides not to make the declaration, it must state and record its decision for not doing so and the reasons why it would be unjust to require the offender to serve a minimum of 65 per cent of the term of imprisonment imposed.

A failure by the sentencing court to make the serious offence declaration, and in circumstances where the court has not stated that it has decided not to, does not affect the fact that the offender has been convicted of a serious offence and, accordingly, the offender will be required to serve a minimum of 65 per cent of the term of imprisonment before being eligible to apply for parole.

Clause 123 also inserts a new heading, ‘Division 3 – Number of years of imprisonment’ in part 9A.

Clause 124 amends section 161C by inserting a reference to new section 161BA (When an offender is convicted of a serious offence).

Section 161C applies in calculating whether an offender is sentenced to the specified years of imprisonment required under the existing serious violent offence regime and the new serious offence regime under part 9A. The amendment to section 161C is not intended to otherwise alter the current operation of the existing provision or the existing judicial interpretation given to the section, for example in *R v Powderham* [2001] 2 QdR 417.

Clause 125 inserts new sections 221 and 222. New section 221 provides that the new part 23 will apply to a sentence imposed by a court on or after the commencement of the provisions regardless of when the offence was committed. New section 222 deals with the transitional application of new division 2 in part 9A and the inclusion of nine offences in schedule 1. New section 222 confirms that the amendments operate prospectively.

Clause 126 amends schedule 1 consequential to the insertion of new division 2 in part 9A, in particular the heading of schedule 1 is changed from ‘Serious violent offences’ to ‘Serious violent offences and serious offences’.

Subclause (3) amends schedule 1 to include an additional nine Criminal Code offences, namely:

- using internet etc. to procure children under 16 (section 218A);
- obscene publications and exhibitions (section 228);
- involving child in making of child exploitation material (section 228A);
- making child exploitation material (section 228B);
- distributing child exploitation material (section 228C);
- possessing child exploitation material (section 228D);
- permitting young person etc. to be at a place used for prostitution (section 229L);
- bestiality (section 211); and
- grooming children under 16 (section 218B).

Part 26 Amendment of Queensland Civil and Administrative Tribunal Act 2009

Clause 127 states that this part amends the QCAT Act.

Clause 128 amends section 46 (Withdrawal of application or referral) to provide for the discontinuance of proceedings without leave by parties except in proceedings under the *Guardianship and Administration Act 2000*; *Power of Attorney Act 1998*; and *Disability Services Act 2006*.

Clause 129 amends section 50 (Decision by default for debt) to include a liquidated demand of money.

Clause 130 inserts a new section 50A (Decision by default for unliquidated damages) to provide QCAT with a specific power to make a default decision in an unliquidated claim or in a claim that is a mix of liquidated and unliquidated damages. Under this new provision, the applicant must prove that a copy of the application has been given to the respondent before the decision by default is made. The decision made under this new provision may be made by the principal registrar and is taken to be final.

Clause 131 amends section 51 (Setting aside decision by default) to omit the words ‘under section 50’ so that section 51 applies to decisions under section 50 and new section 50A.

Clause 132 amends section 52 (Transfer to more appropriate forum) to replace reference to a judicial member with reference to a legally qualified member. This amendment allows non-judicial legal members of QCAT to exercise the power to transfer matters to a more appropriate forum and provides for more efficient use of the tribunal’s judicial resources.

Clause 133 amends section 59 (Injunctions) to replace reference to a judicial member with reference to a legally qualified member. This amendment allows non-judicial legal members of the tribunal to grant an injunction.

Clause 134 amends section 60 (Declarations) to replace reference to a judicial member with reference to a legally qualified member. This amendment allows non-judicial legal members of the tribunal to make declarations.

Clause 135 amends section 61 (Relief from procedural requirements) to provide that under subsection (5) the tribunal’s power under section 61(1) to extend a time limit fixed for the start of a proceeding; extend or shorten a time limit; or waive compliance with another procedural requirement may be exercised by the tribunal as constituted for the proceeding or a legally qualified member, an adjudicator or the principal registrar. This removes a limitation that did not reflect the reality of the current practice.

Clause 136 amends section 62 (Directions) to provide that under subsection (7) the tribunal’s power under section 62(1) to give a direction at any time in a proceeding and do whatever is necessary for the speedy and fair conduct of the proceeding may be exercised by the tribunal as constituted for the proceeding or a legally qualified member, an adjudicator or the principal registrar.

Clause 137 amends section 63 (Obtaining a document or thing from third parties) to provide that under subsection (6) the tribunal’s power under section 63(1) to make an order requiring a person who is not a party to a proceeding to produce a document or thing to the tribunal or a party to the proceeding may be exercised by the tribunal as constituted for the proceeding or a legally qualified member, an adjudicator or the principal registrar.

Clause 138 amends section 122 (Request for written reasons) to provide QCAT with a discretion whether or not to issue written reasons for the procedural decisions under sections 51 (Setting aside decision by default), 54(1) (Consolidation), 55(1) (Sequence), 56(1) (Variation of direction), 57 (General powers), 61(1) (Relief from procedural requirements), 62(1) or (3) (Directions), 63(1) or (4) (Obtaining a document or thing from third parties) or 64(1) (Amending particular documents). Allowing a discretion as to whether written reasons are given for these procedural decisions allows for the appropriate use of the tribunal's resources.

Clause 139 amends section 142 (Party may appeal) to prohibit an appeal against a decision to set aside a default judgement. Appeals against a decision to refuse to set aside, or amend, a default decision are permitted.

Clause 140 amends section 143 (Appealing or applying for leave to appeal) to clarify the definition of 'relevant day' in subsection (5) to ensure that, for the purposes of calculating the timeframe for lodging an appeal of a QCAT decision, the appeal period runs from the date on which written reasons for a decision are given by the tribunal, or in the absence of written reasons, the date the party is given notice of the decision.

Clause 141 inserts a new section 143A (Referring matter to tribunal to consider reopening) to provide the appeals tribunal with the discretion to refer a matter back to the tribunal where the grounds of appeal are limited to, and may constitute grounds for re-opening. The flexibility to treat an appeal as a re-opening enables QCAT to resolve matters more quickly through the tribunal rather than the appeals tribunal.

Clause 142 amends section 218 (Contempt of tribunal) to extend the provisions in section 218 to conciliation.

Clause 143 amends section 237 (Immunity of participants etc) to provide an immunity for costs assessors appointed by the tribunal to assess costs under the QCAT Rules and for conciliators who conduct conciliation under those Rules.

Clause 144 amends Schedule 3 (Dictionary) to include in the definition of 'decision by default' a decision made under new section 50A and amend the definition of 'reopening ground' so that it applies to the Act as a whole. The clause also amends the definition of 'judicial member' in schedule 3 (Dictionary) to insert a new subsection (c). The expansion of the definition of 'judicial member' by the insertion of subsection (c) will enable a former judge who is a senior or ordinary member of the tribunal to be nominated to hear and decide a matter that can only be determined by a judicial member.

Presently, subsection (b) of the definition limits the matters for which a former judge can be nominated to the exercise of a power to make an order or give a direction. The amendment will facilitate more effective use of retired judges' expertise.

Part 27 Amendment of Recording of Evidence Act 1962

Clause 145 states that this part amends the *Recording of Evidence Act 1962*.

Clause 146 amends section 4, which contains the definitions of terms used in the Act. It inserts new definitions for the purpose of the new provisions in relation to the Queensland Sentencing Information Service (QIS).

Clause 147 amends section 7 (Oath of office) to omit the obsolete reference to 'stipendiary'.

Clause 148 inserts new sections 11C to 11I.

New section 11C recognises the QIS which is a searchable database of sentencing and related information, including transcripts and parts of transcripts of criminal proceedings. The purpose of the database is to help with the administration of the criminal justice system, in particular to facilitate greater consistency in sentencing.

New section 11D enables the chief executive to give sentencing information to the information technology service provider (currently the Judicial Commission of New South Wales) for inclusion of the information in the database. The information may be included in the database and access to QIS may be allowed despite any other Act that restricts or prohibits the disclosure of the information. This provision will, in particular, allow the inclusion of transcripts of sentencing remarks made by judicial officers on sentencing. These transcripts may contain information, such as identifying information about victims or defendants, the publication of which may be restricted or prohibited under other Acts. This information may be necessary for identifying like cases for the purpose of determining appropriate sentencing options.

New section 11E limits who may have access to QIS to 'relevant judicial persons' (defined to be judges and their associates, magistrates and judicial

registrars) and entities granted access by the chief executive under an arrangement. The provision limits who the chief executive may grant access to, being commonwealth, state and local government entities and non-government entities concerned with prosecuting offences, providing legal services to defendants or providing corrective services to offenders; parts of state government entities concerned with the administration of the criminal justice system and lawyers involved in prosecuting offences or providing legal services to defendants. These entities would include the commonwealth and state Directors of Public Prosecutions, the Queensland Police Service, Legal Aid Queensland, the Aboriginal and Torres Strait Islander Legal Service, the RSPCA, local government officers who prosecute offences under local laws, the Corrective Services Commission, law firms that provide legal services to defendants, court registry staff, the Sentencing Advisory Council and the Criminal Justice Research Unit in the Department of the Premier and Cabinet.

New section 11F sets out the requirements for an arrangement between the chief executive and the entity for access to QGIS. The arrangement must set out the purposes for which the QGIS information may be used, the persons or category of persons within the entity to whom the information may be disclosed and that the information may not be disclosed other than in accordance with the arrangement.

New section 11G makes it an offence to use the information for a purpose other than the purpose for which it was obtained. It is not an offence if the entity had obtained the information in the performance of its functions under another Act and the use of the information under that Act was not restricted to the purpose for which the information was obtained under the arrangement.

New section 11H enables the information to be used for the purpose for which it was obtained despite any restriction or prohibition on the use of the information under another Act.

New section 11I applies if a person, acting honestly, makes information in QGIS available to relevant judicial persons and entities which have entered into an arrangement with the chief executive under new section 11E. Subsections (2) and (3) provide that a person who gives information is not liable civilly, criminally, or under an administrative process, and cannot be held to have breached any code of professional ethics, or departed from accepted standards of professional conduct. Without limiting subsections (2) and (3), subsection (4) confers protection in relation to civil proceedings and contraventions of any Act, oath, rule of law or practice.

Clause 149 amends section 13 (Regulations) to ensure that the regulation making power in the Act, providing for, regulating and controlling the making and issuing of transcriptions, is broad enough to include copies.

Part 28 Amendment of State Penalties Enforcement Act 1999

Clause 150 states that this part amends the *State Penalties Enforcement Act 1999*.

Clause 151 amends section 12 (Protection from liability) to include in the definition of ‘official’ any other person acting under the authority or direction of the registrar.

Clause 152 amends section 34 (Default in paying fine, penalty or other amount under court order) to clarify that fines issued against corporations can be registered with the SPER.

Clause 153 inserts a new part 10, division 8 (Validating provision for Law Reform Amendment Act 2011) which validates the registration and any subsequent enforcement of an order, enforcement warrant or fine collection notice against the corporation that a court purported to give to SPER before commencement of the amended 34(2B).

Part 29 Amendment of Trustee Companies Act 1968

Clause 154 states that this part amends the *Trustee Companies Act 1968*.

Clause 155 amends section 68C (Compulsory transfer determinations) to facilitate the voluntary transfer of trustee company assets and liabilities from one trustee company to another under the new voluntary transfer regime in Part 5D.6 of the *Corporations Act 2001* (Cth) (Corporations Act). The amendments also facilitate the compulsory transfer of trustee company business to the Public Trustee of Queensland by the Australian Securities Commission (ASIC) where the licence of the trustee company

has been cancelled. In addition, the amendments provide for the registration or recording of the transfer of an asset or liability by the registrar of titles or another authorised person where a certificate of transfer issued by ASIC under section 601WBG of the Corporations Act has come into force.

Part 30 Acts and Code amended

Clause 156 states that the schedule amends the legislation it mentions.

Schedule Minor Amendments

The amendments in the schedule make minor or technical amendments to: correct and update section references; correct conjunctives; update styles; and remove or replace unused terms in various legislation.