

*I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.*

*Legislative Assembly Chamber,
Brisbane,*

The Clerk of the Parliament.

15 August 20 14

In the name and on behalf of the Queen, I assent to this Bill.

Paula Jones

Government House,

Brisbane,

15 August 20 14



Queensland

**No. 39 of 2014
A BILL for**

An Act to amend the Acts Interpretation Act 1954, the Animal Care and Protection Act 2001, the Bail Act 1980, the Crime and Corruption Act 2001, the Criminal Code, the Criminal Proceeds Confiscation Act 2002, the Dangerous Prisoners (Sexual Offenders) Act 2003, the Director of Public Prosecutions Act 1984, the Drugs Misuse Act 1986, the Evidence Act 1977, the Justices Act 1886, the Penalties and Sentences Act 1992 and the Youth Justice Act 1992 for particular purposes



Queensland

Criminal Law Amendment Bill 2014

Contents

		Page
Part 1	Preliminary	
1	Short title	8
1A	Commencement	8
Part 2	Amendment of Acts Interpretation Act 1954	
2	Act amended	8
3	Insertion of new ss 34A and 34B	8
	34A Chair titles	8
	34B Deputy chair titles.	9
Part 3	Amendment of Animal Care and Protection Act 2001	
4	Act amended	9
5	Amendment of s 115 (Functions)	9
6	Amendment of s 122 (Power of entry)	10
7	Amendment of s 127 (Issue of warrant)	10
8	Amendment of s 142 (General power to seize evidence).	10
9	Amendment of s 163 (Power to require name and address)	10
10	Amendment of s 164 (Failure to comply with personal details requirement).	11
11	Insertion of new s 181A	11
	181A Interim prohibition order	11
12	Amendment of s 183 (Prohibition order)	13
13	Amendment of s 185 (Criteria for making disposal or prohibition order) 13	
14	Amendment of s 187 (Contravention of prohibition order unlawful)	13
15	Insertion of new s 187A	13
	187A Amendment or revocation of interim prohibition order	13
16	Amendment of s 209 (Liability of executive officer—particular offences committed by corporation)	15
17	Amendment of schedule (Dictionary)	15

Contents

Part 4	Amendment of Bail Act 1980	
18	Act amended	15
19	Amendment of s 7 (Power of police officer to grant bail)	15
20	Amendment of s 11 (Conditions of release on bail)	16
21	Insertion of new s 11AA	16
	11AA Release of a person only after surrender of passport	16
22	Amendment of s 20 (Undertaking as to bail)	17
23	Insertion of new s 43	17
	43 Transitional provision for Criminal Law Amendment Act 2014	18
Part 4A	Amendment of Crime and Corruption Act 2001	
23A	Act amended	18
23B	Amendment of s 228 (Consultation before nominating persons for appointment)	18
Part 5	Amendment of Criminal Code	
24	Code amended	19
25	Amendment of s 1 (Definitions)	19
26	Amendment of s 229G (Procuring engagement in prostitution)	19
27	Insertion of new pt 4, ch 25	20
	Chapter 25 Cruelty to animals	
	242 Serious animal cruelty	20
28	Amendment of s 328B (Additional power to convict for dangerous driving)	21
29	Amendment of s 398 (Punishment of stealing)	21
30	Insertion of new pt 6, div 1, ch 43	21
	Chapter 43 Match-fixing	
	443 Definitions for ch 43	22
	443A Engaging in match-fixing conduct	23
	443B Facilitating match-fixing conduct or match-fixing arrangement	23
	443C Offering or giving benefit, or causing or threatening detriment, to engage in match-fixing conduct or match-fixing arrangement	24
	443D Using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting	25
	443E Encouraging person not to disclose match-fixing conduct or match-fixing arrangement	26
	443F Using or disclosing inside knowledge for betting	27

	443G	Evidentiary provision	29
31		Amendment of s 450H (Licence disqualification where commission of offence facilitated by licence or use of vehicle)	29
32		Amendment of s 450I (Forfeiture in cases of conviction for offences under specified sections)	30
33		Amendment of s 564 (Form of indictment)	30
34		Insertion of new s 589A	30
	589A	Indictment for using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting	30
35		Amendment of s 678A (Application of ch 68)	31
36		Insertion of new ch 94	31
	Chapter 94	Transitional provisions for Criminal Law Amendment Act 2014	
	733	Extended application of ch 68	31
	734	Application of s 564	32
Part 6		Amendment of Criminal Proceeds Confiscation Act 2002	
37		Act amended	32
38		Amendment of s 237 (Charge on property subject to filed interstate restraining order)	32
Part 7		Amendment of Dangerous Prisoners (Sexual Offenders) Act 2003	
39		Act amended	33
40		Replacement of s 43AA (Contravention of relevant order)	33
	43AA	Contravention of relevant order	33
41		Replacement of s 43AC (Proceedings for offences)	34
	43AC	Indictable offences that must be heard and decided summarily on prosecution election	34
	43AD	Constitution of Magistrates Court	34
	43AE	When Magistrates Court must abstain from jurisdiction	34
	43AF	Charge may be heard and decided where defendant arrested or served	35
	43AG	Time for prosecution	35
	43AH	Maximum penalty for indictable offences dealt with summarily	35
	43AI	Appeals against decision to decide charge summarily	36
42		Insertion of new pt 9	36
	Part 9	Transitional provisions for Criminal Law Amendment Act 2014	
	64	Application of amended s 43AA to previous orders	36

Contents

	65	Application of amended definition of serious sexual offence 37	
43		Amendment of schedule (Dictionary)	37
Part 8		Amendment of Director of Public Prosecutions Act 1984	
44		Act amended	38
45		Replacement of s 13 (Police assistance for director)	38
	13	Assistance for director	38
Part 9		Amendment of Drugs Misuse Act 1986	
46		Act amended	39
47		Amendment of s 134A (Recommendation of Minister)	39
Part 10		Amendment of Evidence Act 1977	
48		Act amended	39
49		Amendment of s 39E (State courts may take evidence and submissions from outside State)	40
50		Insertion of new pt 3A, div 3A.	40
	Division 3A	Use of audio visual links or audio links for expert witnesses	
	39PA	Application of div 3A.	40
	39PB	Expert witnesses to give evidence by audio visual link or audio link	40
	39PC	Direction to jury if expert witness gives evidence by audio visual link or audio link	41
51		Amendment of s 39Q (Application of div 4)	42
52		Amendment of s 39R (Queensland courts may take evidence and submissions from external locations)	42
53		Insertion of new s 55A	42
	55A	Proof of disaster situation under Disaster Management Act 2003	42
54		Replacement of s 95 (Admissibility of statements produced by computers)	43
	95	Admissibility of statements in documents or things produced by processes or devices	43
Part 11		Amendment of Justices Act 1886	
55		Act amended	46
56		Amendment of s 4 (Definitions)	46
57		Amendment of s 39 (Power of court to order delivery of certain property) 46	
58		Amendment of s 47 (What is sufficient description of offence). . .	47
59		Amendment of s 142 (Proceedings in absence of defendant) . . .	48

60	Amendment of s 142A (Permissible procedure in absence of defendant in certain cases)	49
61	Amendment of s 146A (Proceeding at the hearing on defendant's confession in absentia)	50
62	Amendment of s 222 (Appeal to a single judge)	53
63	Insertion of new pt 11, div 7	53
	Division 7 Criminal Law Amendment Act 2014	
	281 Application of s 47	54
Part 12	Amendment of Penalties and Sentences Act 1992	
64	Act amended	54
65	Amendment of s 13A (Cooperation with law enforcement authorities to be taken into account)	54
66	Insertion of new s 13B	54
	13B Cooperation with law enforcement authorities to be taken into account—cooperation given	54
67	Amendment of s 187 (Disqualification from holding Queensland driver licence)	57
68	Insertion of new pt 14, div 9	57
	234 Application of s 13B	58
69	Amendment of sch 1 (Serious violent offences)	58
Part 13	Amendment of Youth Justice Act 1992	
70	Act amended	58
71	Insertion of new s 151A	59
	151A Permitted use and disclosure of information for pre-sentence report	59
72	Insertion of new s 153A	59
	153A Permitted use and disclosure of information in a pre-sentence report	59
73	Amendment of s 176B (Sentence orders—recidivist vehicle offences) 59	
74	Insertion of new s 282BA	60
	282BA Detention centre employees may provide services at boot camp centres	60

2014

A Bill

for

An Act to amend the *Acts Interpretation Act 1954*, the *Animal Care and Protection Act 2001*, the *Bail Act 1980*, the *Crime and Corruption Act 2001*, the Criminal Code, the *Criminal Proceeds Confiscation Act 2002*, the *Dangerous Prisoners (Sexual Offenders) Act 2003*, the *Director of Public Prosecutions Act 1984*, the *Drugs Misuse Act 1986*, the *Evidence Act 1977*, the *Justices Act 1886*, the *Penalties and Sentences Act 1992* and the *Youth Justice Act 1992* for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Law Amendment Act 2014*.

1A Commencement

Part 4A is taken to have commenced on 1 July 2014 immediately after the commencement of the *Crime and Misconduct and Other Legislation Amendment Act 2014*.

Part 2 Amendment of Acts Interpretation Act 1954

2 Act amended

This part amends the *Acts Interpretation Act 1954*.

3 Insertion of new ss 34A and 34B

Part 8—

insert—

34A Chair titles

- (1) If an Act establishes an office with a chair title (the *statutory title*), a person holding the office may choose to be referred to by the statutory title or another chair title (the *alternative title*).

[s 6]

omit, insert—

Act and the Criminal Code, sections 242 and 468.

6 Amendment of s 122 (Power of entry)

Section 122(1)(g)(i), ‘against this Act’—

omit.

7 Amendment of s 127 (Issue of warrant)

(1) Section 127(1)(b), ‘there is’—

omit.

(2) Section 127(1)(b), ‘offence against this Act’—

omit, insert—

animal welfare offence, or another offence against this Act,

8 Amendment of s 142 (General power to seize evidence)

Section 142(1)(a), from ‘of’—

omit, insert—

of—

- (i) an animal welfare offence; or
- (ii) another offence against this Act; or

9 Amendment of s 163 (Power to require name and address)

(1) Section 163(1)(a), from ‘commit,’—

omit, insert—

commit—

- (i) an animal welfare offence; or
- (ii) another offence against this Act; or

(2) Section 163(1)(b), from ‘committed’—

omit, insert—

committed—

- (i) an animal welfare offence; or
- (ii) another offence against this Act; or

10 Amendment of s 164 (Failure to comply with personal details requirement)

Section 164(2)(a), from ‘committed’—

omit, insert—

committed—

- (i) an animal welfare offence; or
- (ii) another offence against this Act; and

11 Insertion of new s 181A

Chapter 7, part 2—

insert—

181A Interim prohibition order

- (1) This section applies if a person is charged with an animal welfare offence (the *alleged offence*).
- (2) The court may order (an *interim prohibition order*) that, pending completion of the proceeding for the alleged offence, the person must not possess or purchase or otherwise acquire—
 - (a) any animal; or
 - (b) a stated type of animal; or
 - (c) any animal, or a stated type of animal, for trade or commerce or another stated purpose.

[s 11]

- (3) The court may make an interim prohibition order against the person only if the court is satisfied there are reasonable grounds for believing there is an unacceptable risk the person will commit an animal welfare offence before the completion of the proceeding for the alleged offence.
- (4) An interim prohibition order may be made against the person—
 - (a) only at the court’s initiative or on an application by the prosecution; and
 - (b) in the person’s absence.
- (5) However, the court must not make an interim prohibition order unless the person has been given an opportunity to be heard about whether the order should be made.
- (6) An interim prohibition order—
 - (a) takes effect—
 - (i) if the person or the person’s legal representative is at the hearing when the order is made—when the order is made; or
 - (ii) otherwise—when the order is served on the person; and
 - (b) ends on the earlier of the following—
 - (i) the completion of the proceeding for the alleged offence;
 - (ii) the revocation of the order under section 187A.
- (7) For this section, if the alleged offence is heard and decided on indictment, the proceeding for the alleged offence is completed when the proceeding on indictment is completed.

12 Amendment of s 183 (Prohibition order)

Section 183(1), from ‘purchase’ to ‘possession of’—

omit, insert—

possess or purchase or otherwise acquire

13 Amendment of s 185 (Criteria for making disposal or prohibition order)

(1) Section 185(2), ‘the following’—

omit, insert—

each of the following

(2) Section 185(2)—

insert—

- (e) if an interim prohibition order is in effect against the person—the person’s compliance or otherwise with the order.

14 Amendment of s 187 (Contravention of prohibition order unlawful)

Section 187, after ‘prohibition order’—

insert—

or interim prohibition order

15 Insertion of new s 187A

After section 187—

insert—

187A Amendment or revocation of interim prohibition order

- (1) This section applies if an interim prohibition order is made against a person.

[s 15]

- (2) A relevant court may amend or revoke the interim prohibition order on an application under this section.
- (3) The person may make an application if at least 6 months has passed since—
 - (a) the interim prohibition order was made; or
 - (b) the person last made an application under this section.
- (4) The prosecution may make an application at any time.
- (5) The court may amend or revoke the interim prohibition order only if satisfied that—
 - (a) there has been a substantial change in the person's circumstances since the order was made; or
 - (b) in all the circumstances, it is reasonable to amend or revoke the order.
- (6) The applicant must give the chief executive notice of the application.
- (7) In deciding the application, the court must give the chief executive and anyone else it considers appropriate an opportunity to be heard.
- (8) In this section—

relevant court means—

 - (a) the court that made the interim prohibition order; or
 - (b) if another court is dealing with the proceeding for the alleged offence on indictment—that court.

16 Amendment of s 209 (Liability of executive officer—particular offences committed by corporation)

Section 209(5), definition *executive liability provision*, after the fifth dot point—

insert—

- the Criminal Code, section 242

17 Amendment of schedule (Dictionary)

(1) Schedule—

insert—

interim prohibition order see section 181A(2).

(2) Schedule, definition *animal welfare offence*, paragraph (b), after ‘section’—

insert—

242 or

Part 4 Amendment of Bail Act 1980

18 Act amended

This part amends the *Bail Act 1980*.

19 Amendment of s 7 (Power of police officer to grant bail)

Section 7(3)—

insert—

Note—

For the release of a person on bail subject to a special condition imposed under section 11(2) requiring the person to surrender the person’s current passport, see section 11AA.

[s 20]

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

Section 11—

insert—

(4A) A court or a police officer authorised by this Act to grant bail for the release of a person who is not an Australian citizen or permanent resident must consider the imposition of a special condition under subsection (2)—

- (a) requiring the person to surrender the person's current passport; and
- (b) prohibiting the person from applying for a passport.

(10) In this section—

Australian citizen see the *Australian Citizenship Act 2007* (Cwlth), section 4.

permanent resident means—

- (a) the holder of a permanent visa within the meaning of the *Migration Act 1958* (Cwlth), section 30(1); or
- (b) a New Zealand citizen who is the holder of a special category visa within the meaning of the *Migration Act 1958* (Cwlth), section 32.

21 Insertion of new s 11AA

After section 11—

insert—

11AA Release of a person only after surrender of passport

- (1) This section applies if a court or a police officer authorised by this Act to grant bail imposes a special condition under section 11(2) requiring the person to surrender the person's current passport.

- (2) If the condition is imposed by a court, the court must order that the person be detained in custody until the passport is surrendered.
- (3) If the condition is imposed by a police officer, the person must be detained in custody until the passport is surrendered.

22 Amendment of s 20 (Undertaking as to bail)

- (1) Section 20—

insert—

- (3D) In the case of bail granted to a defendant subject to a passport surrender condition, the undertaking must include a statement that the defendant has surrendered the defendant's current passport.

- (2) Section 20(10)—

insert—

passport surrender condition, for a defendant, means—

- (a) a special condition under section 11(2) that includes a requirement that the defendant surrender the defendant's current passport; or
- (b) a requirement under section 16(3A)(b)(i) for the defendant to surrender the defendant's current passport.

23 Insertion of new s 43

After section 42—

insert—

- (3) Section 228(3), ‘a commissioner’—
omit, insert—
the chief executive officer
- (4) Section 228(1A) to (3)—
renumber as section 228(2) to (4).

Part 5 Amendment of Criminal Code

24 Code amended

This part amends the Criminal Code.

25 Amendment of s 1 (Definitions)

Section 1—

insert—

bet or *make a bet*, for chapter 43, see section 443.

encourage, for chapter 43, see section 443.

match-fixing arrangement, for chapter 43, see section 443.

match-fixing conduct, for chapter 43, see section 443.

sporting contingency, for chapter 43, see section 443.

sporting event, for chapter 43, see section 443.

26 Amendment of s 229G (Procuring engagement in prostitution)

Section 229G(2), ‘14 years’—

[s 27]

omit, insert—

20 years

27 Insertion of new pt 4, ch 25

Part 4—

insert—

Chapter 25 Cruelty to animals

242 Serious animal cruelty

- (1) A person who, with the intention of inflicting severe pain or suffering, unlawfully kills, or causes serious injury or prolonged suffering to, an animal commits a crime.

Maximum penalty—7 years imprisonment.

- (2) An act or omission that causes the death of, or serious injury or prolonged suffering to, an animal is unlawful unless it is authorised, justified or excused by—

(a) the *Animal Care and Protection Act 2001*;
or

(b) another law, other than section 458 of this Code.

- (3) In this section—

serious injury means—

(a) the loss of a distinct part or an organ of the body; or

(b) a bodily injury of such a nature that, if left untreated, would—

(i) endanger, or be likely to endanger, life;
or

- (ii) cause, or be likely to cause, permanent injury to health.

28 Amendment of s 328B (Additional power to convict for dangerous driving)

- (1) Section 328B, heading, ‘driving’—

omit, insert—

operation of a vehicle

- (2) Section 328B(1), ‘driving of a motor’—

omit, insert—

operation, or interference in any way with the operation, of a

29 Amendment of s 398 (Punishment of stealing)

Section 398, punishment in special cases, item 13—

insert—

- (c) the offence is committed in an area that—
 - (i) is a declared area for a disaster situation under the *Disaster Management Act 2003*; or
 - (ii) was, immediately before the offence was committed, a declared area for a disaster situation under the *Disaster Management Act 2003*;

30 Insertion of new pt 6, div 1, ch 43

Part 6—

insert—

Chapter 43 Match-fixing

443 Definitions for ch 43

In this chapter—

bet or *make a bet* includes—

- (a) place, change, accept or withdraw a bet; and
- (b) cause a bet to be placed, changed, accepted or withdrawn.

encourage includes ask, counsel, incite, induce, persuade, pressure (by threats or otherwise), procure or urge.

match-fixing arrangement, in relation to a sporting event or sporting contingency, means an agreement between 2 or more persons relating to any person engaging in match-fixing conduct in relation to the event or contingency for the purpose of—

- (a) obtaining a pecuniary benefit for any person; or
- (b) causing a pecuniary detriment to any person.

match-fixing conduct, in relation to a sporting event or the happening of a sporting contingency, means conduct that—

- (a) affects, or if engaged in could reasonably be expected to affect, the outcome of the event or the happening of the contingency; and
- (b) is contrary to the standards of integrity that an ordinary person would reasonably expect of persons in a position to affect or influence the outcome of the event or the happening of the contingency.

sporting contingency means a contingency—

- (a) associated with a sporting event; and

- (b) on the happening of which a person may make a bet under a law of the Commonwealth or a State.

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

443A Engaging in match-fixing conduct

- (1) A person who engages in match-fixing conduct in relation to a sporting event or the happening of a sporting contingency for the purpose of—

- (a) obtaining or receiving a pecuniary benefit for any person; or
- (b) causing a pecuniary detriment to another person;

commits a crime.

Maximum penalty—10 years imprisonment.

- (2) For subsection (1), it does not matter whether any person—

- (a) obtains or receives a pecuniary benefit; or
- (b) causes or suffers a pecuniary detriment.

443B Facilitating match-fixing conduct or match-fixing arrangement

- (1) A person who facilitates match-fixing conduct or a match-fixing arrangement in relation to a sporting event or the happening of a sporting contingency for the purpose of—

- (a) obtaining or receiving a pecuniary benefit for any person; or

[s 30]

(b) causing a pecuniary detriment to any person;

commits a crime.

Maximum penalty—10 years imprisonment.

(2) For subsection (1), a person *facilitates* match-fixing conduct or a match-fixing arrangement if the person agrees or offers to—

(a) engage in the match-fixing conduct; or

(b) participate in the match-fixing arrangement;
or

(c) encourage another person to—

(i) engage in the match-fixing conduct; or

(ii) participate in the match-fixing arrangement.

(3) For subsection (1), it does not matter whether any person—

(a) engages in the match-fixing conduct; or

(b) obtains or receives a pecuniary benefit; or

(c) causes or suffers a pecuniary detriment.

443C Offering or giving benefit, or causing or threatening detriment, to engage in match-fixing conduct or match-fixing arrangement

(1) A person who, as an inducement for any person to engage in, or to procure any other person to engage in, match-fixing conduct or participate in a match-fixing arrangement in relation to a sporting event or the happening of a sporting contingency—

(a) offers or gives any person a pecuniary benefit; or

(b) causes, or offers or threatens to cause, a pecuniary detriment to any person;
commits a crime.

Maximum penalty—10 years imprisonment.

(2) For subsection (1), it does not matter whether any person engages in the match-fixing conduct.

443D Using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting

(1) A person who has knowledge of match-fixing conduct or a match-fixing arrangement in relation to a sporting event or sporting contingency and—

(a) makes a relevant bet in relation to the event or contingency; or

(b) encourages another person to make a relevant bet in relation to the event or contingency; or

(c) discloses the knowledge to another person who the first person knows, or ought reasonably to know, would be likely to make a relevant bet in relation to the event or contingency;

commits a crime.

Maximum penalty—10 years imprisonment.

(2) For subsection (1)(b) or (c), it does not matter whether a person mentioned in that paragraph makes a relevant bet in relation to the event or contingency.

(3) In this section—

relevant bet, in relation to a sporting event or a sporting contingency, means a bet on the

[s 30]

outcome of the event or the happening of the sporting contingency on behalf of any person.

443E Encouraging person not to disclose match-fixing conduct or match-fixing arrangement

- (1) A person who—
- (a) encourages another person to conceal any information about match-fixing conduct or a match-fixing arrangement in relation to a sporting event or the happening of a sporting contingency from any of the following—
 - (i) a law enforcement agency;
 - (ii) a law enforcement officer;
 - (iii) the chief executive of the department in which the *Wagering Act 1998* is administered;
 - (iv) a responsible entity for the sporting event; and
 - (b) for encouraging the other person to conceal the information mentioned in subsection (1)(a)—
 - (i) receives or obtains, or offers to receive or obtain, a pecuniary benefit from any person; or
 - (ii) gives, or offers to give, a pecuniary benefit to any person; or
 - (iii) causes, or offers, threatens or agrees to cause, a pecuniary detriment to any person;

commits a crime.

Maximum penalty—10 years imprisonment.

- (2) In this section—

responsible entity, for a sporting event, means an entity responsible for the administration, conduct or management of the event.

443F Using or disclosing inside knowledge for betting

- (1) For this section, information or knowledge that a person has about a sporting event or sporting contingency is *inside knowledge* if—
 - (a) a person possesses the information or knowledge because the person—
 - (i) is or was involved in, or connected to, the conduct, management or organisation of the sporting event or any part of the event; or
 - (ii) has or had a connection to an entity that is, or will be, a participant in the sporting event or any part of the event; and
 - (b) the information or knowledge is not publicly available information; and
 - (c) if the information or knowledge were publicly available information, would, or would be likely to, influence persons betting on the event or contingency in deciding whether to bet on the event or contingency; and
 - (d) use of the information by the person to make a relevant bet would be contrary to the standards of integrity that an ordinary person would reasonably expect of persons in possession of the knowledge or information.
- (2) A person who has inside knowledge in relation to a sporting event or sporting contingency and—

[s 30]

(a) makes a relevant bet in relation to the event or contingency; or

(b) encourages another person to make a relevant bet in relation to the event or contingency;

commits a crime.

Maximum penalty—2 years imprisonment.

(3) A person who—

(a) has inside knowledge in relation to a sporting event or sporting contingency; and

(b) discloses the inside knowledge to another person for the purpose of the other person making a relevant bet in relation to the event or contingency;

commits a crime.

Maximum penalty—2 years imprisonment.

(4) A person who—

(a) receives information in relation to a sporting event or sporting contingency from another person; and

(b) knows, or ought reasonably to know, the information is inside knowledge in relation to the event or contingency; and

(c) after receiving the inside knowledge—

(i) makes a relevant bet in relation to the event or contingency; or

(ii) encourages another person to make a relevant bet in relation to the event or contingency;

commits a crime.

Maximum penalty—2 years imprisonment.

-
- (5) For subsection (2)(b), (3)(b) or (4)(c)(ii), it does not matter whether a person mentioned in that provision makes a relevant bet in relation to the event or contingency.
- (6) In this section—
- publicly available information* means information that—
- (a) is readily available to the public; or
 - (b) has been made known in a manner that would, or would be likely to, bring it to the attention of the public; or
 - (c) consists of deductions, conclusions or inferences made or drawn from information mentioned in paragraph (a) or (b).

relevant bet, in relation to a sporting event or a sporting contingency, means a bet on the outcome of the event or the happening of the sporting contingency on behalf of any person.

443G Evidentiary provision

For a proceeding for an offence under this chapter, it does not matter whether any person is successful in affecting the outcome of the sporting event or the happening of the sporting contingency.

31 Amendment of s 450H (Licence disqualification where commission of offence facilitated by licence or use of vehicle)

Section 450H(1), after ‘section’—

insert—

242,

[s 32]

32 Amendment of s 450I (Forfeiture in cases of conviction for offences under specified sections)

Section 450I(1), after ‘section’—

insert—

242,

33 Amendment of s 564 (Form of indictment)

Section 564—

insert—

(2A) Despite subsection (2), a relevant circumstance of aggravation may be relied on for the purposes of sentencing an offender for the offence charged in the indictment despite the relevant circumstance of aggravation not being charged in the indictment for the offence.

(5) In this section—

relevant circumstance of aggravation means a circumstance of aggravation that is a previous conviction of the offender.

34 Insertion of new s 589A

Part 8, chapter 61—

insert—

589A Indictment for using or disclosing knowledge of match-fixing conduct or match-fixing arrangement for betting

If, on the trial of a person charged with an indictable offence under section 443D, the evidence establishes that the person is not guilty of the offence charged but is guilty of any offence under section 443F, the person may be convicted of the offence under section 443F.

35 Amendment of s 678A (Application of ch 68)

(1) Section 678A(1)—

omit, insert—

(1) This chapter applies if a person has been acquitted of an offence, whether before, on or after the commencement of this section.

(2) Section 678A(2) and examples, ‘is’—

omit, insert—

was

36 Insertion of new ch 94

After section 732—

insert—

Chapter 94 Transitional provisions for Criminal Law Amendment Act 2014

733 Extended application of ch 68

Chapter 68 applies to a person acquitted of an offence—

- (a) whether the person has been acquitted of the offence before, on or after the commencement of—
 - (i) chapter 68 on 25 October 2007; or
 - (ii) the *Criminal Law Amendment Act 2014*, section 35; and
- (b) whether the circumstances supporting an order for a retrial of the person arose before,

- (b) an interstate pecuniary penalty order is filed under the *Service and Execution of Process Act 1992* (Cwlth).

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

39 Act amended

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

40 Replacement of s 43AA (Contravention of relevant order)

Section 43AA—

omit, insert—

43AA Contravention of relevant order

- (1) A released prisoner who contravenes the relevant order for the released prisoner without a reasonable excuse commits a misdemeanour.

Maximum penalty—2 years imprisonment.

- (2) If a released prisoner commits an offence against subsection (1) by removing or tampering with a stated device for the purpose of preventing the location of the released prisoner to be monitored, the released prisoner commits a crime.

Minimum penalty—1 year's imprisonment served wholly in a corrective services facility.

Maximum penalty—5 years imprisonment.

- (3) In this section—

[s 41]

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

stated device means a device a released prisoner is required to wear under the relevant order or a monitoring direction made under the relevant order.

41 Replacement of s 43AC (Proceedings for offences)

Section 43AC—

omit, insert—

43AC Indictable offences that must be heard and decided summarily on prosecution election

- (1) This section applies to a charge before a Magistrates Court of an offence against section 43AA.
- (2) The charge must be heard and decided summarily if the prosecution elects to have the charge heard and decided summarily.
- (3) This section is subject to section 43AE.

43AD Constitution of Magistrates Court

A Magistrates Court that summarily deals with an indictable offence under section 43AC must be constituted by a magistrate.

43AE When Magistrates Court must abstain from jurisdiction

- (1) A Magistrates Court must abstain from dealing summarily with a charge under section 43AC if satisfied, at any stage, and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the

defendant, if convicted, may not be adequately punished on summary conviction.

- (2) If the court abstains from jurisdiction, the proceeding for the charge must be conducted as a committal proceeding.

43AF Charge may be heard and decided where defendant arrested or served

Without limiting the places a charge may be heard summarily under section 43AC, the charge may also be heard and decided at a place appointed for holding magistrates courts within the district in which the accused person was arrested on the charge or served with the summons for the charge under the *Justices Act 1886*.

43AG Time for prosecution

If a Magistrates Court hears and decides a charge summarily under section 43AC, the Magistrates Court has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

43AH Maximum penalty for indictable offences dealt with summarily

- (1) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 3 years imprisonment or the maximum prescribed for the offence, whichever is the lesser.
- (2) However, in no case may a person be punished more than if the offence had been dealt with on indictment.

[s 42]

43AI Appeals against decision to decide charge summarily

- (1) This section applies if a person is summarily convicted or sentenced under section 43AC.
- (2) The grounds on which the person may appeal include that the Magistrates Court erred by deciding the conviction or sentence summarily.
- (3) The grounds on which the Attorney-General may appeal against sentence include that the Magistrates Court erred by deciding the sentence summarily.
- (4) On an appeal against a sentence relying on a ground that the Magistrates Court erred by proceeding summarily, the court deciding the appeal may, if it decides to vary the sentence, impose the sentence the court considers appropriate up to the maximum sentence that could have been imposed if the matter had been dealt with on indictment.

42 Insertion of new pt 9

After section 63—

insert—

Part 9 Transitional provisions for Criminal Law Amendment Act 2014

64 Application of amended s 43AA to previous orders

- (1) Amended section 43AA applies to any contravention of a previous order that happens after the commencement.
- (2) Previous section 43AA applies, or continues to apply, in relation to any contravention of a

previous order that happened before the commencement.

(3) In this section—

amended section 43AA means section 43AA as amended by the *Criminal Law Amendment Act 2014*.

commencement means the commencement of this section.

previous order means a supervision order or an interim supervision order made before the commencement.

previous section 43AA means section 43AA as in force immediately before the commencement.

65 Application of amended definition of serious sexual offence

(1) For the purposes of this Act, the amended definition of serious sexual offence applies to include an offence mentioned in the amended definition that was committed before the commencement of the *Criminal Law Amendment Act 2014*.

(2) In this section—

amended definition of serious sexual offence means the schedule, definition *serious sexual offence* as amended by the *Criminal Law Amendment Act 2014*.

43 Amendment of schedule (Dictionary)

Schedule, definition *serious sexual offence*, paragraph (b)—
omit, insert—

(b) against a child; or

- (4) The commissioner of the police service or a chief executive must, as far as possible, comply with a request under subsection (2).

Part 9 Amendment of Drugs Misuse Act 1986

46 Act amended

This part amends the *Drugs Misuse Act 1986*.

47 Amendment of s 134A (Recommendation of Minister)

Section 134A—

insert—

- (2) However, the Minister may decide to recommend the prescription of a thing without complying with subsection (1) if the Minister is satisfied it is necessary to recommend the prescription of the thing as a matter of urgency having regard to 1 or more of the matters listed in subsection (1).

Part 10 Amendment of Evidence Act 1977

48 Act amended

This part amends the *Evidence Act 1977*.

[s 49]

49 Amendment of s 39E (State courts may take evidence and submissions from outside State)

Section 39E(1)—

insert—

Note—

See division 3A in relation to expert witnesses giving evidence by audio visual link or audio link.

50 Insertion of new pt 3A, div 3A

Part 3A—

insert—

Division 3A Use of audio visual links or audio links for expert witnesses

39PA Application of div 3A

This division applies to any proceeding, including a criminal proceeding, before a Queensland court.

39PB Expert witnesses to give evidence by audio visual link or audio link

- (1) This section applies if a person is called to give evidence as an expert witness in the proceeding.
- (2) Subject to subsection (3) and any rules of the court, the person is to give the evidence to the court by audio visual link or audio link.
- (3) The court may, on its own initiative or on the application of a party to the proceeding, direct that the person is to give oral evidence to the court other than by audio visual link or audio link if the court is satisfied it is in the interests of justice to give the direction.

- (4) In deciding whether it is in the interests of justice to give a direction under subsection (3), the court may have regard to the following matters—
 - (a) the nature and scope of the evidence the person is to give in the proceedings;
 - (b) whether the use of audio link or audio visual link is likely to affect the court's or a jury's ability to assess the credibility or reliability of the person or the person's evidence;
 - (c) the availability of appropriate audio or audio visual facilities in the court to which the person is to give evidence;
 - (d) any submission made to the court by the person or any party to the proceedings about the way in which the person should give evidence.
- (5) Subsection (4) does not limit the matters the court may have regard to in deciding whether it is in the interests of justice to make a direction under subsection (3).
- (6) The court may, at any time, vary or revoke a direction made under this section on its own initiative or on the application of a party to the proceeding.
- (7) The court must not give the person's evidence any more or less weight, or draw any adverse inferences against a party to the proceeding, only because the person gave the evidence by audio visual link or audio link.

39PC Direction to jury if expert witness gives evidence by audio visual link or audio link

- (1) This section applies if—
 - (a) a person gives evidence in the proceeding as an expert witness; and

[s 51]

- (b) the evidence is given by audio visual link or audio link under section 39PB; and
 - (c) there is a jury in the proceeding.
- (2) The court must direct the jury not to give the person's evidence any more or less weight, or draw any adverse inferences against a party to the proceeding, only because the person gave the evidence by audio visual link or audio link.

51 Amendment of s 39Q (Application of div 4)

Section 39Q(2), '2 or 3'—

omit, insert—

2, 3 or 3A

52 Amendment of s 39R (Queensland courts may take evidence and submissions from external locations)

Section 39R(1)—

insert—

Note—

See division 3A in relation to expert witnesses giving evidence by audio visual link or audio link.

53 Insertion of new s 55A

Part 5—

insert—

55A Proof of disaster situation under Disaster Management Act 2003

- (1) Any of the following is evidence of the declaration of a disaster situation—
- (a) a copy of a declaration (a *relevant declaration*) for the disaster situation made

under the *Disaster Management Act 2003*, section 64(1) or 69;

- (b) the gazette purporting to contain notice of the relevant declaration;
- (c) for an oral declaration—a statement from the responsible person for the oral declaration that the oral declaration was made under the *Disaster Management Act 2003*.

(2) In this section—

disaster situation means a disaster situation within the meaning of the *Disaster Management Act 2003*.

oral declaration means a declaration of a disaster situation made orally under the *Disaster Management Act 2003*, section 65(5) or 70(5), that, at the time of the hearing, has not been recorded under the *Disaster Management Act 2003*, section 65(7) or 70(7).

responsible person, for an oral declaration, means the person who made the oral declaration under the *Disaster Management Act 2003*, section 65(5) or 70(5).

54 Replacement of s 95 (Admissibility of statements produced by computers)

Section 95—

omit, insert—

95 Admissibility of statements in documents or things produced by processes or devices

- (1) In a proceeding where direct oral evidence of a fact would be admissible, a statement contained in a document or thing produced wholly or partly by a device or process and tending to establish

[s 54]

that fact is, subject to this part, admissible as evidence of that fact.

- (2) A court may presume the process or device produced the document or thing containing the statement if the court considers an inference can reasonably be made that the process or device, if properly used, produces a document or thing of that kind.
- (3) In a proceeding, a certificate purporting to be signed by a responsible person for the process or device and stating any of the following matters is evidence of the matter for the purpose of subsection (2)—
 - (a) that the document or thing was produced wholly or partly by the process or device;
 - (b) that the document or thing was produced wholly or partly in a particular way by the process or device;
 - (c) that, if properly used, the process or device produces documents or things of a particular kind;
 - (d) any particulars relevant to a matter mentioned in paragraph (a), (b) or (c).
- (4) A person who signs a certificate mentioned in subsection (3) commits an offence if—
 - (a) a matter is stated in the certificate that the person knows is false or ought reasonably to know is false; and
 - (b) the statement of the matter is material in the proceeding.

Maximum penalty—20 penalty units or 1 year's imprisonment.

- (5) If a party (the *relying party*) to a proceeding intends to rely on the certificate, the party must

give a copy of the certificate to each other party to the proceeding—

- (a) at least 10 business days before the hearing day; or
 - (b) if, in the particular circumstances, the court considers it just to shorten the period mentioned in paragraph (a)—by a later date allowed by the court.
- (6) If a party to the proceeding, other than the relying party, intends to challenge a matter stated in the certificate, the party must give the relying party notice in writing of the matter to be challenged—
- (a) at least 3 business days before the hearing day; or
 - (b) if, in the particular circumstances, the court considers it just to shorten the period mentioned in paragraph (a)—by a later date allowed by the court.
- (7) In this section—

hearing day means the day fixed for the start of the hearing of the proceeding.

responsible person, for a process or device that produced a document or thing, means a person responsible, at or about the time the process or device produced the document or thing, for—

- (a) the operation of the process or device; or
- (b) the management of activities for which the document or thing was produced by the process or device.

[s 55]

Part 11 **Amendment of Justices Act 1886**

55 Act amended

This part amends the *Justices Act 1886*.

56 Amendment of s 4 (Definitions)

Section 4(6)—

insert—

RSPCA inspector means a person who—

- (a) holds an appointment as an inspector under the *Animal Care and Protection Act 2001*; and
- (b) is an employee of the Royal Society for the Prevention of Cruelty to Animals Queensland Incorporated.

57 Amendment of s 39 (Power of court to order delivery of certain property)

Section 39(6), definition *public officer*—

omit, insert—

public officer—

- (a) in relation to a complaint of an offence against the Criminal Code, section 242 or 468, includes an RSPCA inspector; and
- (b) other than in relation to a thing seized by a police officer that is in the possession of the Crime and Corruption Commission, does not include a police officer.

58 Amendment of s 47 (What is sufficient description of offence)

(1) Section 47(2), ‘summons’—

omit, insert—

complaint

(2) Section 47(3)—

omit, insert—

(3) Any person who serves a notice specifying any alleged previous conviction of the defendant may serve, and document service of, the notice in the same way as is provided for the service and documenting of service of a notice to appear under the *Police Powers and Responsibilities Act 2000*.

Note—

For documenting service, see the *Police Powers and Responsibilities Act 2000*, section 389(2).

(3) Section 47(3A), ‘or a deposition as to service’—

omit.

(4) Section 47(3A)(a), ‘or deposition’—

omit.

(5) Section 47(5), from ‘notice served’—

omit, insert—

notice—

(a) served with the complaint; or

(b) served before the day appointed for the defendant’s appearance; or

(c) given to the defendant on the day appointed for the defendant’s appearance.

(6) Section 47(6)—

omit, insert—

[s 59]

- (6) For subsection (5)(c), if the notice of an alleged previous conviction is given to the defendant on the day appointed for the defendant's appearance, the court may, if the court is satisfied it is in the interests of justice to do so, adjourn the hearing of the proceeding to allow the defendant to consider the notice.
- (7) Subject to subsection (2), the circumstance that the defendant has been previously convicted of an offence may be relied on for the assessment of penalty for a simple offence whether or not a notice has been served or given under subsection (5).
- (8) If a notice has not been served or given under subsection (5), reliance on the circumstance that the defendant has been previously convicted of an offence does not render the defendant liable to a greater penalty than that to which the defendant would otherwise have been liable.

59 Amendment of s 142 (Proceedings in absence of defendant)

(1) Section 142—

insert—

- (3B) Also, if section 146A applies to the proceeding, a notice required under subsection (3) may be given electronically.
- (5A) If, under subsection (3B), the defendant is given a notice electronically, the clerk of the court may endorse a copy of the notice with a certificate stating the following—
 - (a) that the document is a copy of the notice given to the defendant named in the document;

- (b) that the notice was given to the defendant electronically;
 - (c) the way in which notice was given electronically to the defendant;
 - (d) the day on which the notice was given electronically to the defendant.
- (5B) A document purporting to be a copy of the notice given to the defendant electronically, signed by the clerk and endorsed with a certificate under subsection (5A), is evidence that the notice was given to the defendant and of the matters stated in the certificate.

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

(1) Section 142A—

insert—

- (7B) Also, if section 146A applies to the proceeding, a notice required under subsection (7) may be given electronically.
- (9A) If, under subsection (7B), the defendant is given a notice electronically, the clerk of the court may endorse a copy of the notice with a certificate stating the following—
 - (a) that the document is a copy of the notice given to the defendant named in the document;
 - (b) that the notice was given to the defendant electronically;
 - (c) the way in which notice was given electronically to the defendant;
 - (d) the day on which the notice was given electronically to the defendant.

[s 61]

(9B) A document purporting to be a copy of the notice given to the defendant electronically, signed by the clerk and endorsed with a certificate under subsection (9A), is evidence that the notice was given to the defendant and of the matters stated in the certificate.

(2) Section 142A, before subsection (10A)—

insert—

(10AA) Also, despite subsection (10) and section 150(3), if the justices convict a person in a proceeding to which section 146A applies, notice of the conviction or order may be given to the person electronically.

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

(1) Section 146A(1)(a)—

omit, insert—

(a) an indictable offence; or

(2) Section 146A(2), after 'receives a notification'—

insert—

(a defendant's plea notification)

(3) Section 146A(2)(a), from 'absence'—

omit, insert—

absence of—

(i) the defendant in the same way as if the defendant had appeared and pleaded guilty; and

(ii) if the complainant consents to the justices hearing and determining the matter in the complainant's absence—the complainant; or

-
- (4) Section 146A(2)(b) and (2A)(a), ‘notification aforesaid’—
omit, insert—
defendant’s plea notification
- (5) Section 146A(2A)(b), from ‘shall cause’—
omit, insert—
must—
- (i) if the complainant has consented to the justices hearing and determining the matter in the complainant’s absence under subsection (2)(a)(ii), consider—
 - (A) the defendant’s plea notification and any submission given with the notification by or on behalf of the defendant that the defendant wishes to be brought to the justices’ attention in relation to mitigation of penalty; and
 - (B) any other written information with respect to the facts relating to the offence to be made by or on behalf of the complainant; or
 - (ii) otherwise—
 - (A) cause the defendant’s plea notification and any submission given with the notification by or on behalf of the defendant that the defendant wishes to be brought to the justices attention in relation to mitigation of penalty to be read out before the court; and
 - (B) require a statement with respect to the facts relating to the offence to be made by or on behalf of the complainant.

[s 61]

(6) Section 146A—

insert—

- (2B) Also, if the clerk of the court receives a defendant's plea notification, the clerk may change the time appointed for the hearing of the complaint to which the notification relates to an earlier time not less than 7 business days after the day on which the clerk gives the parties notice of under subsection (2C).
- (2C) If the clerk of the court changes the time appointed for the hearing of the complaint under subsection (2B), the clerk must, as soon as practicable, give written notice of the new time appointed for the hearing to the complainant and defendant.
- (2D) The clerk may give a notice required under subsection (2C) electronically.
- (3C) Also, if the defendant's plea notification was received electronically, the defendant is taken to have had adequate notice of the adjourned hearing if the defendant has been given notice of the adjournment electronically.
- (3D) If, under subsection (3C), the defendant is given notice of the adjournment electronically, the clerk may endorse a copy of the notice with a certificate stating the following—
- (a) that the document is a copy of the notice given to the defendant named in the document;
 - (b) that the notice was given to the defendant electronically;
 - (c) the way in which notice was given electronically to the defendant;
 - (d) the day on which the notice was given electronically to the defendant.

- (3E) A document purporting to be a copy of the notice of the adjournment given to the defendant electronically, signed by the clerk and endorsed with a certificate under subsection (3D), is evidence that the notice was given to the defendant and of the matters stated in the certificate.
- (3F) Also, despite section 150(3), if the justices convict a person in the person's absence under subsection (2), notice of the conviction or order may be given to the person electronically.
- (3G) If subsection (3F) applies, section 150(5) applies to a warrant of commitment or execution in relation to the conviction or order as if the reference in that subsection to subsection (3) were a reference to subsection (3F) of this section.

62 Amendment of s 222 (Appeal to a single judge)

Section 222—

insert—

- (2A) The Attorney-General may appeal against an order made by justices or a justice in a summary way on a complaint for an offence or breach of duty within 1 month after the date of the order to a District Court judge.

63 Insertion of new pt 11, div 7

Part 11—

insert—

[s 64]

Division 7 Criminal Law Amendment Act 2014

281 Application of s 47

Section 47(7) and (8) applies to the sentencing of an offender for an offence whether the proceeding for the offence was started before, on or after the commencement of this section.

Part 12 Amendment of Penalties and Sentences Act 1992

64 Act amended

This part amends the *Penalties and Sentences Act 1992*.

65 Amendment of s 13A (Cooperation with law enforcement authorities to be taken into account)

Section 13A, heading—

omit, insert—

13A Cooperation with law enforcement authorities to be taken into account—undertaking to cooperate

66 Insertion of new s 13B

After section 13A—

insert—

13B Cooperation with law enforcement authorities to be taken into account—cooperation given

(1) This section applies for a sentence if—

- (a) the sentence is to be reduced by the sentencing court because the offender has significantly cooperated with a law enforcement agency in its investigations about an offence or a confiscation proceeding; and
 - (b) section 13A does not apply for the sentence.
- (2) For subsection (1), an offender has not significantly cooperated with a law enforcement agency in its investigations about an offence only because the offender has admitted guilt for the offence.
- (3) Before the sentencing proceeding starts, a party to the proceeding—
- (a) must advise the relevant officer—
 - (i) that the offender has significantly cooperated with a law enforcement agency; and
 - (ii) that written or oral submissions or evidence will be made or brought before the court relevant on that account to the reduction of sentence; and
 - (b) may give the relevant officer copies of any proposed written submissions mentioned in paragraph (a)(ii).
- (4) After the offender is invited to address the court—
- (a) an affidavit, provided by a person representing the law enforcement agency, must be handed up to the court; and
 - (b) any party may hand up to the court written submissions relevant to the reduction of sentence.
- (5) The affidavit must—

[s 66]

- (a) state the nature, extent and usefulness of the cooperation given to the law enforcement agency by the offender; and
 - (b) be in an unsealed envelope addressed to the sentencing judge or magistrate.
- (6) If oral submissions are to be made to, or evidence is to be brought before, the court about the cooperation or the reduction of sentence, the court must be closed for that purpose.
- (7) The penalty imposed on the offender must be stated in open court.
- (8) After the imposition of the penalty, the sentencing judge or magistrate must cause the following to be sealed and placed on the court file with an order that it may be opened only by an order of the court—
 - (a) the affidavit;
 - (b) a record of evidence or submissions made relevant to the reduction of sentence;
 - (c) a record of the sentencing remarks relevant to the reduction of sentence, as opposed to the sentence imposed.
- (9) The sentencing judge or magistrate may make an order prohibiting publication of all or part of the proceeding or the name and address of any witness on his or her own initiative or on application.
- (10) In deciding whether to make an order under subsection (9), the judge or magistrate may have regard to—
 - (a) the safety of any person; and
 - (b) the extent to which the detection of offences of a similar nature may be affected; and

(c) the need to guarantee the confidentiality of information given by an informer.

(11) A person who contravenes an order made under subsection (9) commits an offence.

Maximum penalty—

(a) for an order made by a judge—5 years imprisonment; or

(b) for an order made by a magistrate—3 years imprisonment.

(12) In this section—

relevant officer means—

(a) for a proceeding before the Supreme or District Court—the sentencing judge's associate; or

(b) for a proceeding before a Magistrates Court—the relevant clerk of the court.

67 Amendment of s 187 (Disqualification from holding Queensland driver licence)

(1) Section 187(1)(a), 'with, or arising out of, the driving'—

omit, insert—

with or arising out of the operation, or the interference in any way with the operation,

(2) Section 187(2), 'with, or arose out of, the driving'—

omit, insert—

with or arose out of the operation, or the interference in any way with the operation,

68 Insertion of new pt 14, div 9

Part 14—

insert—

Division 9 Transitional provisions for Criminal Law Amendment Act 2014

234 Application of s 13B

- (1) Section 13B applies to the sentencing of an offender for an offence on or after the commencement, even if—
 - (a) the proceeding for the offence was started before the commencement; or
 - (b) some or all of the offender's cooperation with a law enforcement agency occurred before the commencement.
- (2) In this section—

commencement means the commencement of section 13B.

69 Amendment of sch 1 (Serious violent offences)

Schedule 1, entry for 'Criminal Code'—

insert—

- 14A section 229G(1) (Procuring engagement in prostitution), if section 229G(2) applies

Part 13 Amendment of Youth Justice Act 1992

70 Act amended

This part amends the *Youth Justice Act 1992*.

71 Insertion of new s 151A

After section 151—

insert—

151A Permitted use and disclosure of information for pre-sentence report

The chief executive may make information about a child, obtained under this Act or another Act, available to a person in order to assist the chief executive comply with section 151(1).

72 Insertion of new s 153A

After section 153—

insert—

153A Permitted use and disclosure of information in a pre-sentence report

- (1) This section applies to information—
 - (a) given under section 152; or
 - (b) included in a pre-sentence report.
- (2) Subject to a direction given under section 153(3), nothing in this Act or another Act limits or restricts the use or disclosure of the information in court.
- (3) Nothing in this section permits the publication of information that contravenes the *Child Protection Act 1999*, section 189.

73 Amendment of s 176B (Sentence orders—recidivist vehicle offences)

Section 176B (1)—

omit, insert—

[s 74]

- (1) This section applies if, under section 206A(1), a court must make a boot camp (vehicle offences) order against a child.

74 Insertion of new s 282BA

After section 282B—

insert—

282BA Detention centre employees may provide services at boot camp centres

- (1) The chief executive may enter into an arrangement with a boot camp centre provider for a detention centre employee to provide services (the *services*) to maintain good order and discipline at a boot camp centre.
- (2) A detention centre employee may only provide the services prescribed by regulation.
- (3) A detention centre employee providing the services is subject to the direction and control of the chief executive to the extent the detention centre employee is providing the services.

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