

Queensland



CRIMINAL LAW AMENDMENT ACT 2000

Act No. 43 of 2000

Queensland



**CRIMINAL LAW AMENDMENT ACT
2000**

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Queensland



Criminal Law Amendment Act 2000

Act No. 43 of 2000

An Act to amend the criminal law and for other purposes

[Assented to 13 October 2000]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Law Amendment Act 2000*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF BAIL ACT 1980

Act amended in pt 2

3. This part amends the *Bail Act 1980*.

Amendment of pt 2 heading

4. Part 2, heading, after ‘BAIL’—

insert—

‘AND OTHER RELEASE’.

Amendment of s 8 (Power of court as to bail)

5. Section 8(2), ‘shall’—

omit, insert—

‘or released under section 11A¹ must’.

¹ Section 11A (Release of intellectually impaired person)

Insertion of new ss 11A and 11B

6. After section 11—

insert—

‘Release of intellectually impaired person

‘11A.(1) This section applies if a police officer or court authorised by this Act to grant bail considers—

- (a) a person held in custody on a charge of or in connection with an offence is, or appears to be, an intellectually impaired person; and
- (b) the person does not, or appears not to, understand the nature and effect of entering into an undertaking under section 20; and
- (c) if the person understood the nature and effect of entering into the undertaking, the person would be released on bail.

‘(2) The police officer or court may release the person without bail by—

- (a) releasing the person into the care of another person who ordinarily has the care of the person or with whom the person resides; or
- (b) permitting the person to go at large.

‘(3) A person’s release is on condition the person will surrender, at the time and place stated in the notice under section 11B, into the custody of the court stated in the notice.

‘(4) If the person surrenders into the custody of the court stated in the notice, the court may release the person again under subsection (2).

‘(5) A court authorised by this Act to grant bail may revoke a release.

‘(6) A person’s release by a police officer discharges any duty to take the person before a justice to be dealt with according to law.

‘(7) In this section—

“intellectually impaired person” means a person who has a disability that—

- (a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and
- (b) results in—
 - (i) a substantial reduction of the person’s capacity for

- communication, social interaction or learning; and
- (ii) the person needing support.

‘Release notice

‘11B.(1) This section applies if a person is released under section 11A, whether for the first time or because of section 11A(4).

‘(2) The police officer or court releasing the person must give the person a notice in the approved form stating—

- (a) the person’s name and place of residence; and
- (b) the charge on which or the offence in connection with which the person was in custody; and
- (c) if the person is released into the care of another person, the other person’s name and place of residence; and
- (d) the court into whose custody the person is required to surrender as a condition of release; and
- (e) the time and place the person is required to surrender into the court’s custody.

‘(3) The notice must also include a warning that a warrant will be issued for the person’s arrest if the person fails to surrender into the court’s custody at the time and place stated.

‘(4) If the person is released into the care of another person, the police officer or court must also give the other person a copy of the notice.’.

Amendment of s 12 (Restriction on publication of information, evidence and the like given in bail application)

7.(1) Section 12(1), ‘the grant of bail to a defendant’—

omit, insert—

‘a defendant’s release under this part’.

(2) Section 12(1), after ‘refusal of bail’—

insert—

‘or release under section 11A’.

Amendment of s 15 (Procedure upon application for bail)

8. Section 15, ‘In a proceeding with respect to bail’—

omit, insert—

‘In a proceeding about the release of a person under this part’.

Amendment of s 16 (Refusal of bail)

9. Section 16(3), from ‘where bail is granted’—

omit, insert—

‘if bail is granted or the defendant is released under section 11A,² must include in the order a statement of the reasons for granting bail or releasing the defendant.’.

Amendment of s 18 (Endorsement of decision as to bail on papers and warrant)

10.(1) Section 18, heading, after ‘bail’—

insert—

‘or release’.

(2) Section 18, after ‘to a defendant’—

insert—

‘or releases a defendant under section 11A³’.

(3) Section 18, after ‘as to bail’—

insert—

‘or release’.

(4) Section 18(b)—

renumber as section 18(c).

(5) Section 18—

² Section 11A (Release of intellectually impaired person)

³ Section 11A (Release of intellectually impaired person)

insert—

- ‘(b) where the defendant is released under section 11A—
- (i) consent to the defendant’s release without bail; and
 - (ii) whether the defendant is released into the care of another person or permitted to go at large; and
 - (iii) if the defendant is released into the care of another person, the person’s name; and
 - (iv) the court into whose custody the defendant is required to surrender as a condition of release; and
 - (v) the time and place the defendant is required to surrender into the court’s custody; or’.

Amendment of s 19B (Review of certain bail decisions)

11.(1) Section 19B, heading—

omit, insert—

‘Review of particular decisions’.

(2) Section 19B(1) and (2), ‘bail’—

omit, insert—

‘release under this part’.

Amendment of s 19C (Review by Supreme Court of magistrate’s decision on a review)

12. Section 19C(1), ‘bail decision’—

omit, insert—

‘decision about release under this part’.

Insertion of new s 28C

13. After section 28B—

insert—

‘Warrant for apprehension of person released under section 11A

‘28C.(1) If a person is released under section 11A⁴ on condition the person will surrender into the custody of a particular court at the time and place stated in the notice under section 11B⁵ and the person fails to surrender into the court’s custody at the time and place—

- (a) the court may issue a warrant for the apprehension of the person directing that the person be brought before the court; and
- (b) the person is not liable to any other penalty for the failure to surrender.

‘(2) The warrant must—

- (a) name or describe the person; and
- (b) state the name of the court; and
- (c) state the time and place stated in the notice under section 11B at which the person was required to surrender into the court’s custody; and
- (d) state the person failed to surrender into the court’s custody at the stated time and place; and
- (e) order the police officers to whom it is directed to apprehend the person and cause the person to be brought before the court to be dealt with according to law.

‘(3) The court may withdraw and cancel the warrant if—

- (a) the person surrenders into the court’s custody as soon as is practicable after the stated time; and
- (b) the court is given a satisfactory explanation as to why the person failed to surrender into custody as required.’.

⁴ Section 11A (Release of intellectually impaired person)

⁵ Section 11B (Release notice)

PART 3—AMENDMENT OF CRIMINAL CODE

Act amended in pt 3

14. This part amends the Criminal Code.

Amendment of s 1 (Construction of terms)

15.(1) Section 1, heading—

omit, insert—

‘Definitions’.

(2) Section 1—

insert—

“**consent**”, for chapter 32,⁶ see section 348.

“**genitalia**” includes surgically constructed genitalia.

“**penetrate**”, for chapter 32,⁷ see section 347.

“**penis**” includes a surgically constructed penis, whether provided for a male or female.

“**vagina**” includes a surgically constructed vagina, whether provided for a male or female.

“**vulva**” includes a surgically constructed vulva, whether provided for a male or female.’.

Amendment of s 31 (Justification and excuse—compulsion)

16.(1) Section 31(1)(d)—

omit, insert—

‘(d) when—

(i) the person does or omits to do the act in order to save

⁶ Chapter 32 (Rape and sexual assaults)

⁷ Chapter 32 (Rape and sexual assaults)

himself or herself or another person, or his or her property or the property of another person, from serious harm or detriment threatened to be inflicted by some person in a position to carry out the threat; and

- (ii) the person doing the act or making the omission reasonably believes he or she or the other person is unable otherwise to escape the carrying out of the threat; and
- (iii) doing the act or making the omission is reasonably proportionate to the harm or detriment threatened.’

(2) Section 31(2), ‘(2) But’—

omit, insert—

‘(2) However,’.

Amendment of s 215 (Carnal knowledge of girls under 16)

17.(1) Section 215, heading, ‘of girls’—

omit, insert—

‘with or of children’.

(2) Section 215(1), ‘of a girl’—

omit, insert—

‘with or of a child’.

(3) Section 215(2) to (5), ‘girl’—

omit, insert—

‘child’.

(4) Section 215(4), ‘her guardian’—

omit, insert—

‘the child’s guardian’.

(5) Section 215(4), ‘has her’—

omit, insert—

‘has the child’.

Amendment of s 228 (Obscene publications and exhibitions)

18.(1) Section 228(1)(a)—

omit, insert—

‘(a) publicly sells, distributes or exposes for sale any obscene book or other obscene printed or written matter, any obscene computer generated image or any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals; or’.

(2) Section 228—

insert—

‘**(6)** In this section—

“**computer generated image**” means electronically recorded data capable, by way of an electronic device, of being produced on a computer monitor, television screen, liquid crystal display or similar medium as an image, including an image in the form of text.’.

Insertion of new ss 323A and 323B

19. After section 323—

insert—

‘Female genital mutilation

‘**323A.(1)** Any person who performs female genital mutilation on another person is guilty of a crime.

Maximum penalty—14 years imprisonment.

‘**(2)** It is not a defence that the other person, or, if the other person is a child, a parent or guardian of the other person, consented to the mutilation.

‘**(3)** In this section—

“**female genital mutilation**” means—

(a) clitoridectomy; or

- (b) excision of any other part of the female genitalia; or
- (c) a procedure to narrow or close the vaginal opening; or
- (d) any other mutilation of the female genitalia;

but does not include—

- (e) a sexual reassignment procedure; or
- (f) a medical procedure for a genuine therapeutic purpose.

“medical procedure for a genuine therapeutic purpose” means a medical procedure that is—

- (a) directed only at curing or alleviating a physiological disability, physical abnormality, psychological disorder or pathological condition; or
- (b) performed on a person in labour or who has just given birth and directed only at alleviating physical symptoms in relation to the labour or birth or for other medical purposes; or
- (c) performed on a person who has been subjected to female genital mutilation and directed only at treating the effects, or to reversing the effects, of the previous mutilation.

“sexual reassignment procedure” means a surgical procedure to give a person the genital appearance of a particular sex, whether male or female.

‘Removal of child from State for female genital mutilation

‘323B.(1) Any person who takes a child from the State, or arranges for a child to be taken from the State, with the intention of having female genital mutilation performed on the child is guilty of a crime.

Maximum penalty—14 years imprisonment.

‘(2) In the absence of proof to the contrary, it is to be presumed that a person took a child, or arranged for a child to be taken, from the State with the intention of having female genital mutilation performed on the child if it is proved—

- (a) the person took the child, or arranged for the child to be taken, from the State; and

(b) female genital mutilation was performed on the child while outside the State.

‘(3) In this section—

“**child**” means a person under 18 years.

“**female genital mutilation**” see section 323A.’.

Relocation of s 336 (Assault with intent to commit rape)

20. Section 336—

relocate and renumber as section 351.

Omission of s 337 (Sexual assaults)

21. Section 337—

omit.

Replacement of ch 32 heading (Assaults on Females—Abduction)

22. Chapter 32, heading—

omit, insert—

‘CHAPTER 32—RAPE AND SEXUAL ASSAULTS’.

Renumbering of s 349 (Attempt to commit rape)

23. Section 349—

renumber as section 350.

Replacement of ss 347 and 348

24. Sections 347 and 348—

omit, insert—

‘Definitions for ch 32

‘347. In this chapter—

“**consent**” see section 348.

“**penetrate**” does not include penetrate for a proper medical, hygienic or law enforcement purpose only.

‘**Meaning of “consent”**’

‘**348.(1)** In this chapter, “consent” means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

‘**(2)** Without limiting subsection (1), a person’s consent to an act is not freely and voluntarily given if it is obtained—

- (a) by force; or
- (b) by threat or intimidation; or
- (c) by fear of bodily harm; or
- (d) by exercise of authority; or
- (e) by false and fraudulent representations about the nature or purpose of the act; or
- (f) by a mistaken belief induced by the accused person that the accused person was the person’s sexual partner.

‘**Rape**’

‘**349.(1)** Any person who rapes another person is guilty of a crime.

Maximum penalty—life imprisonment.

‘**(2)** A person rapes another person if—

- (a) the person has carnal knowledge with or of the other person without the other person’s consent; or
- (b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person’s body that is not a penis without the other person’s consent; or
- (c) the person penetrates the mouth of the other person to any extent with the person’s penis without the other person’s consent.’

Omission of s 351 (Abduction)

25. Section 351—

omit.

Insertion of new s 352

26. Chapter 32—

insert—

‘Sexual assaults

‘352.(1) Any person who—

- (a) unlawfully and indecently assaults another person; or
- (b) procures another person, without the person’s consent—
 - (i) to commit an act of gross indecency; or
 - (ii) to witness an act of gross indecency by the person or any other person;

is guilty of a crime.

Maximum penalty—10 years imprisonment.

‘(2) However, the offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in subsection (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.

‘(3) Further, the offender is liable to a maximum penalty of life imprisonment if—

- (a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or
- (b) for an offence defined in subsection (1)(a), the indecent assault includes the person who is assaulted penetrating the offender’s vagina, vulva or anus to any extent with a thing or a part of the person’s body that is not a penis; or
- (c) for an offence defined in subsection (1)(b)(i), the act of gross

indecenty includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.’.

Replacement of s 354 (Kidnapping)

27. Section 354—

omit, insert—

‘Kidnapping

‘354.(1) Any person who kidnaps another person is guilty of a crime.

Maximum penalty—7 years imprisonment.

‘(2) A person kidnaps another person if the person unlawfully and forcibly takes or detains the other person with intent to gain anything from any person or to procure anything to be done or omitted to be done by any person.’.

Amendment of section 578 (Charge of offence of a sexual nature)

28.(1) Section 578(1), ‘218 or 337’—

omit, insert—

‘218, 222 or 352’.

(2) Section 578(1A), ‘337’—

omit, insert—

‘352’.

(3) Section 578(2), ‘of a girl’—

omit, insert—

‘with or of a child’.

(4) Section 578(4), from ‘216’—

omit, insert—

‘215, 216, 217, 218, 349, 350 or 352.’.

Insertion of new s 590C

29. After section 590B—

insert—

‘Advance notice of representation if person who made it is unavailable

‘590C.(1) If a party to a trial intends to adduce evidence of a representation under the *Evidence Act 1977*, section 93B,⁸ the party must, as soon as practicable before the trial date, give each of the other parties to the trial written notice of the party’s intention.

‘(2) The notice must state—

- (a) the party intends to adduce evidence of a representation under the *Evidence Act 1977*, section 93B; and
- (b) the name of the person with personal knowledge of an asserted fact who made a representation and the reason the person is unavailable to give evidence about the asserted fact; and
- (c) the name of the person who saw, heard or otherwise perceived the representation; and
- (d) details of the representation and the circumstances in which it was made.

‘(3) The directions judge under section 592A or trial judge may fix a time for compliance with subsection (1).’.

Amendment of s 592A (Pre-trial directions and rulings)

30.(1) Section 592A(2)(l)—

renumber as section 592A(2)(m).

(2) Section 592A(2)—

insert—

‘(1) the *Evidence Act 1977*, part 2, division 6;⁹ or’.

⁸ *Evidence Act 1977*, section 93B (Admissibility of representation in prescribed criminal proceedings if person who made it is unavailable)

⁹ *Evidence Act 1977*, part 2 (Witnesses), division 6 (Cross-examination of protected witnesses)

Amendment of s 632 (Corroboration)

31. Section 632(3), ‘complainants’—

omit, insert—

‘persons’.

Amendment of ch 69 (Seizure and detention of property connected with offences—Custody of women unlawfully detained for immoral purposes—Restitution of property unlawfully acquired)

32. Chapter 69, heading, ‘Custody of women unlawfully detained for immoral purposes—’—

omit.

Omission of s 684 (Women detained for immoral purposes)

33. Section 684—

omit.

Omission of s 701 (Custody of girls under 18)

34. Section 701—

omit.

Insertion of new ch 74

35. After chapter 73—

insert—

**‘CHAPTER 74—TRANSITIONAL PROVISION
FOR CRIMINAL LAW AMENDMENT ACT 2000****‘Transitional provision for Criminal Law Amendment Act 2000**

‘711.(1) In relation to an indictment mentioned in section 578(1), (1A)

or (4)¹⁰ charging a person with an offence that was committed before the commencement of this section, the reference in those provisions to section 352 is a reference to section 337 as in force at any time before the commencement of this section.

‘(2) In relation to an indictment presented before the commencement of this section, the person charged in the indictment may be convicted of an offence because of section 578 only if the person could have been convicted of the offence because of section 578 as in force immediately before the commencement of this section.’

PART 4—AMENDMENT OF CRIMINAL LAW (SEXUAL OFFENCES) ACT 1978

Act amended in pt 4

36. This part amends the *Criminal Law (Sexual Offences) Act 1978*.

Amendment of s 3 (Meaning of terms)

37.(1) Section 3, heading—

omit, insert—

‘Definitions’.

(2) Section 3, definition “complainant”, from ‘, but does not include’—

omit.

(3) Section 3, definition “prescribed sexual offence”, paragraph (d)—

omit, insert—

‘(d) an offence defined in the Criminal Code, section 352.¹¹’.

¹⁰ Section 578 (Charge of offence of a sexual nature)

¹¹ The Criminal Code, section 352 (Sexual assaults)

Amendment of s 4 (Special rules of evidence concerning sexual offences)

38.(1) Section 4, ‘prescribed’—

omit.

(2) Section 4, rule 2, ‘other than the defendant’—

omit.

(3) Section 4, rule 4, first sentence—

omit, insert—

- ‘4.** Evidence relating to or tending to establish the fact that the complainant has engaged in sexual activity with a person or persons must not be regarded as having substantial relevance to the facts in issue only because of any inference it may raise about general disposition.

Example of inference about general disposition—

An inference that the complainant, because of having engaged in conduct of a sexual nature, is more likely to have consented to the conduct involved in the offence.’.

(4) Section 4, rule 5—

renumber as rule 6.

(5) Section 4—

insert—

- ‘5.** Evidence relating to or tending to establish the fact that the complainant has engaged in sexual activity with a person or persons is not proper matter for cross-examination as to credit unless, because of special circumstances, the court considers the evidence would be likely to materially impair confidence in the reliability of the complainant’s evidence.

The purpose of this rule is to ensure that a complainant is not regarded as less worthy of belief as a witness only because the complainant has engaged in sexual activity.’.

Insertion of new s 14

39. After section 13—

insert—

‘Transitional provision for Criminal Law Amendment Act 2000

‘**14.** The reference in the definition of “prescribed sexual offence” in section 3 to a sexual assault defined in the Criminal Code, section 352 is, in relation to an offence that was committed before the commencement of this section, a reference to a sexual assault defined in the Criminal Code, section 337 as in force at any time before the commencement of this section.’.

**PART 5—AMENDMENT OF CRIMINAL OFFENCE
VICTIMS ACT 1995****Act amended in pt 5**

40. This part amends the *Criminal Offence Victims Act 1995*.

Amendment of s 14 (Information during sentencing of impact of crime on victim)

41.(1) Section 14(3)—

renumber as section 14(4).

(2) Section 14—

insert—

‘(3) However—

- (a) it is not mandatory for a victim to give the prosecutor details of the harm caused to the victim by the crime; and
- (b) the fact that details of the harm caused to a victim by the crime are absent at the sentencing does not of itself give rise to an inference that the crime caused little or no harm to the victim.’.

PART 6—AMENDMENT OF EVIDENCE ACT 1977

Act amended in pt 6

42. This part amends the *Evidence Act 1977*.

Amendment of s 3 (Definitions)

43. Section 3—

insert—

‘**“intellectually impaired person”** means a person who has a disability that—

- (a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and
- (b) results in—
 - (i) a substantial reduction of the person’s capacity for communication, social interaction or learning; and
 - (ii) the person needing support.

‘**“protected witness”**, for part 2, division 6, see section 21M.’

Replacement of ss 9 and 9A

44. Sections 9 and 9A—

omit, insert—

‘Evidence of person who does not understand oath

‘9.(1) This section applies if the court considers a person called as a witness in a proceeding (the **“witness”**) does not understand the nature of an oath.

‘(2) The court must explain to the witness the duty of speaking the truth.

‘(3) Whether or not the witness understands the duty of speaking the truth, the court must receive the witness’s evidence even though it is not given on oath.

‘(4) Subsection (3) does not apply if the court is satisfied the witness

does not have sufficient intelligence to give reliable evidence.

‘(5) If evidence is admitted under subsection (3)—

- (a) the probative value of the evidence is not decreased only because the evidence is not given on oath; and
- (b) a person charged with an offence may be convicted on the evidence; and
- (c) the witness is liable to be convicted of perjury to the same extent as if the witness had given the evidence on oath.

‘(6) Evidence admitted under subsection (3) that is written down as a deposition is taken to be a deposition for all purposes.

‘Expert evidence of ability to give reliable evidence

‘9A.(1) This section applies if—

- (a) a court is deciding whether a person who does not understand the nature of an oath has sufficient intelligence to give reliable evidence; or
- (b) the evidence of a child less than 12 years is admitted.

‘(2) Expert evidence is admissible in the proceeding about the witness’s level of intelligence, including the witness’s powers of perception, memory and expression, or another matter relevant to the witness’s ability to give reliable evidence.’

Replacement of ss 20 and 21

45. Sections 20 and 21—

omit, insert—

‘Cross-examination as to credit

‘20.(1) The court may disallow a question as to credit put to a witness in cross-examination, or inform the witness the question need not be answered, if the court considers an admission of the question’s truth would not materially impair confidence in the reliability of the witness’s evidence.

‘(2) In this section—

“question as to credit”, for a witness, means a question that is not relevant to the proceeding except that an admission of the question’s truth may affect the witness’s credit by injuring the witness’s character.

‘Improper questions

‘21.(1) The court may disallow a question put to a witness in cross-examination or inform a witness a question need not be answered, if the court considers the question is an improper question.

‘(2) In deciding whether a question is an improper question, the court must take into account—

- (a) any mental, intellectual or physical impairment the witness has or appears to have; and
- (b) any other matter about the witness the court considers relevant, including, for example, age, education, level of understanding, cultural background or relationship to any party to the proceeding.

‘(3) Subsection (2) does not limit the matters the court may take into account in deciding whether a question is an improper question.

‘(4) In this section—

“improper question” means a question that uses inappropriate language or is misleading, confusing, annoying, harassing, intimidating, offensive, oppressive or repetitive.’.

Amendment of s 21A (Evidence of special witnesses)

46.(1) Section 21A(1)—

insert—

“relevant matter”, for a person, means the person’s age, education, level of understanding, cultural background or relationship to any party to the proceeding, the nature of the subject-matter of the evidence, or another matter the court considers relevant.’.

(2) Section 21A(1), definition “special witness”, paragraph (b)(i), ‘intellectual impairment or cultural differences’—

omit, insert—

‘a mental, intellectual or physical impairment or a relevant matter’.

(3) Section 21A(2), ‘make 1 or more of the following orders—’—

omit, insert—

‘make or give 1 or more of the following orders or directions—’.

(4) Section 21A(2)—

insert—

- ‘(f) another order or direction the court considers appropriate about the giving of evidence by the special witness, including, for example, a direction about rest breaks for the special witness or a direction that questions for the special witness be kept simple.’.

Insertion of new pt 2, div 6

47. Part 2—

insert—

‘Division 6—Cross-examination of protected witnesses

‘Application of division 6

‘21L. This division applies only to criminal proceedings, other than summary proceedings under the *Justices Act 1886*.

‘Meaning of “protected witness”

‘21M.(1) For this division, each of the following persons is a “**protected witness**”—

- (a) a witness under 16 years;
- (b) a witness who is an intellectually impaired person;
- (c) for a proceeding for a prescribed special offence, an alleged victim of the offence;
- (d) for a proceeding for a prescribed offence, an alleged victim of the offence who the court considers would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma,

unless treated as a protected witness.

‘(2) It does not matter whether the proceeding mentioned in subsection (1)(c) or (d) relates also to another offence that is not a prescribed special offence or a prescribed offence.

‘(3) In this section—

“alleged victim” of an offence means a person, other than the person charged, who is—

(a) alleged to be a person in relation to whom the offence was committed; or

(b) alleged to have been subject to violence in relation to the offence.

“prescribed offence” means an offence defined in the Criminal Code, section 75, 122, 127, 206, 308, 309, 323, 335, 338, 338A, 339, 340, 346, 354, 354A, 355, 359, 413, 414, 415, 416, 417, 417A or 419.¹²

“prescribed special offence” means an offence defined in the Criminal Code, section 208, 209, 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 229B, 306, 313, 315, 316, 317, 320, 320A, 322, 323A, 323B, 359E, 363, 363A, 364, 409 or 412 or chapter 32.¹³

¹² Criminal Code, section 75 (Threatening violence), 122 (Corrupting or threatening jurors), 127 (Corruption of witnesses), 206 (Offering violence to officiating ministers of religion), 308 (Threats to murder in document), 309 (Conspiring to murder), 323 (Wounding and similar acts), 335 (Common assault), 338 (Assaults on persons protecting wrecks), 338A (Assaults of member of crew on aircraft), 339 (Assaults occasioning bodily harm), 340 (Serious assaults), 346 (Assaults in interference with freedom of trade or work), 354 (Kidnapping), 354A (Kidnapping for ransom), 355 (Deprivation of liberty), 359 (Threats), 413 (Assault with intent to steal), 414 (Demanding property with menaces with intent to steal), 415 (Demanding property, benefit or performance of services with threats), 416 (Attempts at extortion by threats), 417 (Procuring execution of deeds etc. by threats), 417A (Taking control of aircraft) or 419 (Burglary)

¹³ Criminal Code, section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16), 213 (Owner etc. permitting abuse of children on premises), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 217 (Procuring young person etc. for carnal knowledge), 218 (Procuring sexual acts by coercion etc.), 219 (Taking child for immoral purposes), 221 (Conspiracy to defile), 222 (Incest), 227 (Indecent acts), 229B (Maintaining a sexual relationship with a child), 306 (Attempt to murder), 313 (Killing unborn child), 315 (Disabling in order to commit indictable offence), 316 (Stupefying in order to commit indictable

“violence” means—

- (a) an assault on, or injury to, a person; or
- (b) a threat of an assault on, or an injury to, a person.

‘No cross-examination of protected witness by person charged

‘21N. A person charged may not cross-examine a protected witness in person.

‘Procedure for cross-examination of protected witness if person charged has no legal representative

‘21O.(1) This section applies if—

- (a) a person charged does not have a legal representative for a proceeding; and
- (b) the court rules that a person is a protected witness for the proceeding.

‘(2) The court must advise the person charged present before the court that—

- (a) the person charged may not cross-examine the protected witness in person; and
- (b) the court will arrange for the person charged to be given free legal assistance by Legal Aid for the cross-examination unless the person charged—
 - (i) arranges for legal representation; or
 - (ii) does not want the protected witness to be cross-examined.

‘(3) The court must also require the person charged to advise the court by a particular date or time the court considers reasonable if the person

offence), 317 (Acts intended to cause grievous bodily harm and other malicious acts), 320 (Grievous bodily harm), 320A (Torture), 322 (Maliciously administering poison with intent to harm), 323A (Female genital mutilation), 323B (Removal of child from State for female genital mutilation), 359E (Punishment of unlawful stalking), 363 (Child-stealing), 363A (Abduction of child under 16), 364 (Cruelty to children under 16), 409 (Definition of “robbery”) or 412 (Attempted robbery) or chapter 32 (Rape and sexual assaults)

charged—

- (a) has arranged for a legal representative to act for the person charged for the proceeding; or
- (b) has arranged for a legal representative to act for the person charged for cross-examination of the protected witness; or
- (c) does not want the protected witness to be cross-examined.

‘(4) If, by the particular date or time, the court has not received advice from the person charged under subsection (3) that the person charged has arranged for a legal representative or does not want the protected witness cross-examined, the court must make an order that the person charged be given free legal assistance by Legal Aid for the cross-examination of the protected witness by a lawyer.

‘Legal assistance for cross-examination of protected witness

‘21P. If a person charged is given legal assistance by Legal Aid because of an order under section 21O(4), the lawyer who cross-examines the protected witness for the person charged is the person’s legal representative for the purposes only of the cross-examination.

‘Satisfaction of Criminal Code, section 616

‘21Q.(1) This section applies if a person charged who does not have a legal representative for the cross-examination of a protected witness refuses legal assistance, available because of an order under section 21O(4), to cross-examine the witness.

‘(2) The Criminal Code, section 616¹⁴ is taken to have been satisfied for the person charged in relation to cross-examination of the witness despite the person charged being unable to cross-examine the witness because of section 21N.

‘Jury direction

‘21R.(1) This section applies if there is a jury and a person charged—

¹⁴ Criminal Code, section 616 (Defence by counsel)

- (a) does not have a legal representative other than for the cross-examination of a protected witness; or
- (b) does not have a legal representative for the cross-examination of a protected witness.

‘(2) The court must give the jury any warning the court considers necessary to ensure the person charged is not prejudiced by any inference that might be drawn from the fact the person charged has been prevented from cross-examining the protected witness in person.

‘Orders, directions and rulings concerning protected witnesses

‘21S. The court may make any orders or give any directions or rulings it considers appropriate for the purposes of this division on the court’s own initiative or on an application made to the court by a party to the proceeding.’.

Amendment of pt 6 (Admissibility of statements)

48. Part 6, heading—

omit, insert—

‘PART 6—ADMISSIBILITY OF STATEMENTS AND REPRESENTATIONS’.

Amendment of s 93A (Statement made before proceeding by child under 12 years or intellectually impaired person)

49. Section 93A(5)—

omit.

Insertion of new ss 93B and 93C

50. After section 93A—

insert—

‘Admissibility of representation in prescribed criminal proceedings if person who made it is unavailable

‘93B.(1) This section applies in a prescribed criminal proceeding if a person with personal knowledge of an asserted fact—

- (a) made a representation about the asserted fact; and
- (b) is unavailable to give evidence about the asserted fact because the person is dead or mentally or physically incapable of giving the evidence.

‘(2) The hearsay rule does not apply to evidence of the representation given by a person who saw, heard or otherwise perceived the representation, if the representation was—

- (a) made when or shortly after the asserted fact happened and in circumstances making it unlikely the representation is a fabrication; or
- (b) made in circumstances making it highly probable the representation is reliable; or
- (c) at the time it was made, against the interests of the person who made it.

‘(3) If evidence given by a person of a representation about a matter has been adduced by a party and has been admitted under subsection (2), the hearsay rule does not apply to the following evidence adduced by another party to the proceeding—

- (a) evidence of the representation given by another person who saw, heard or otherwise perceived the representation;
- (b) evidence of another representation about the matter given by a person who saw, heard or otherwise perceived the other representation.

‘(4) To avoid any doubt, it is declared that subsections (2) and (3) only provide exceptions to the hearsay rule for particular evidence and do not otherwise affect the admissibility of the evidence.

‘(5) In this section—

“prescribed criminal proceeding” means a criminal proceeding against a

person for an offence defined in the Criminal Code, chapters 28 to 32.¹⁵

“representation” includes—

- (a) an express or implied representation, whether oral or written; and
- (b) a representation to be inferred from conduct; and
- (c) a representation not intended by the person making it to be communicated to or seen by another person; and
- (d) a representation that for any reason is not communicated.

‘Warning and information for jury about hearsay evidence

‘93C.(1) This section applies if evidence is admitted under section 93B (**“hearsay evidence”**) and there is a jury.

‘(2) On request by a party, the court must, unless there are good reasons for not doing so—

- (a) warn the jury the hearsay evidence may be unreliable; and
- (b) inform the jury of matters that may cause the hearsay evidence to be unreliable; and
- (c) warn the jury of the need for caution in deciding whether to accept the hearsay evidence and the weight to be given to it.

‘(3) It is not necessary for a particular form of words to be used in giving the warning or information.

‘(4) This section does not affect another power of the court to give a warning to, or to inform, the jury.’.

Amendment of s 98 (Rejection of evidence)

51. Section 98(1), after ‘statement’—

insert—

‘or representation’.

¹⁵ Chapters 28 (Homicide—Suicide—Concealment of Birth), 29 (Offences endangering life or health), 30 (Assaults) and 32 (Rape and sexual assaults)

PART 7—AMENDMENT OF LEGAL AID QUEENSLAND ACT 1997

Act amended in pt 7

52. This part amends the *Legal Aid Queensland Act 1997*.

Replacement of pt 2, div 3

53. Part 2, division 3, heading—

omit, insert—

‘Division 3—Reviews and court orders and recommendations’.

Insertion of new s 21A

54. After section 21—

insert—

‘Legal assistance ordered by court for cross-examination of protected witness

‘21A. If a court makes an order under the *Evidence Act 1977*, section 21O(4)¹⁶ that a person be given free legal assistance by Legal Aid for the cross-examination of a protected witness, Legal Aid must give the person the assistance.’.

¹⁶ *Evidence Act 1977*, section 21O (Procedure for cross-examination of protected witness if person charged has no legal representative)

**PART 8—AMENDMENT OF PENALTIES AND
SENTENCES ACT 1992**

Act amended in pt 8

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

Amendment of s 162 (Definitions)

56. Section 162, definition “violent offence”, paragraph (b), ‘337 or 347’—

omit, insert—

‘349 or 352’.

Insertion of new s 208

57. At the end—

insert—

‘Transitional provisions for Criminal Law Amendment Act 2000

‘208.(1) The definition of “violent offence” in section 162 applies as if the reference in the definition to the provision of the Criminal Code mentioned in column 1 included a reference to the provision of the Criminal Code mentioned in column 2 as in force at any time before the commencement of this section.

Column 1

215

349

352

Column 2

215

347

337

‘(2) The Criminal Code items in the schedule (Serious violent offences) apply as if the reference in the item mentioned in column 1 to the provision of the Criminal Code mentioned in column 2 included a reference to the provision of the Criminal Code mentioned in column 3 as in force at any time before the commencement of this section.

Column 1	Column 2	Column 3
9.	215	215
35.	349	347
36.	350	349
37.	351	336
38.	352	337
39.	354	351 or 354'.

Amendment of schedule (Serious violent offences)

58.(1) Schedule, Criminal Code items, items 9 and 33 to 39—

omit, insert—

- 9.** Section 215 (Carnal knowledge with or of children under 16)
- 33.** Section 339 (Assaults occasioning bodily harm)
- 34.** Section 340 (Serious assaults)
- 35.** Section 349 (Rape)
- 36.** Section 350 (Attempt to commit rape)
- 37.** Section 351 (Assault with intent to commit rape)
- 38.** Section 352 (Sexual assaults)'.

(2) Schedule, Criminal Code items, items 40 to 46—

renumber as items 39 to 45.