

Queensland



# **CRIMINAL LAW AMENDMENT ACT 2002**

**Act No. 23 of 2002**



# Queensland



## CRIMINAL LAW AMENDMENT ACT 2002

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Queensland



## **Criminal Law Amendment Act 2002**

**Act No. 23 of 2002**

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**An Act to amend the criminal law, and for other purposes**

*[Assented to 23 May 2002]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Criminal Law Amendment Act 2002*.

### **2 Commencement**

(1) Section 3 commences on assent.

(2) The schedule, amendments of the Criminal Code, amendment 1 is taken to have commenced on 28 February 2002.

(3) The remaining provisions of this Act commence on a day to be fixed by proclamation.

### **3 Minor amendments**

The schedule amends the Acts it mentions.

## **PART 2—AMENDMENT OF BAIL ACT 1980**

### **4 Act amended in pt 2**

This part amends the *Bail Act 1980*.

### **5 Amendment of s 7 (Power of police officer to grant bail)**

(1) Section 7(1A)(b)—

*omit, insert—*

‘(b) may or, if it is not practicable to bring the person before a court within 24 hours after the person is taken into custody, must—

- (i) grant bail to the person and release the person from custody in accordance with this Act, unless this Act otherwise provides; or
- (ii) if the person is not a child—issue and serve on the person a notice to appear and release the person from custody; or
- (iii) if the person is a child and an attendance notice can be issued—serve on the person an attendance notice and release the person from custody.’.

(2) Section 7(4), after ‘section’—

*insert—*

‘, the issuing and serving on a person of a notice to appear or the serving on a person of an attendance notice’.

(3) Section 7—

*insert—*

‘(6) In this section—

“**attendance notice**” see the *Juvenile Justice Act 1992*, section 5.

“**child**” see the *Juvenile Justice Act 1992*, section 5.

“**notice to appear**” see the *Police Powers and Responsibilities Act 2000*, schedule 4.’.

## 6 Amendment of s 20 (Undertaking as to bail)

(1) Section 20(3)(a)—

*omit, insert—*

‘(a) the following conditions—

- (i) that the defendant must surrender into custody as required;
- (ii) that the defendant must not depart from the court unless the bail is enlarged;
- (iii) whether or not the defendant is represented, that the defendant must obey the directions of the court in relation to any further appearance, whether the directions are given to the defendant personally or to the defendant’s counsel or solicitor; and’.

(2) After section 20(3)—

*insert—*

‘(3AA) Despite subsection (3) and unless otherwise directed by the court, the defendant need not surrender into custody or appear personally if the defendant is represented by the defendant’s counsel or solicitor.’.

## PART 3—AMENDMENT OF CRIMINAL CODE

### 7 Code amended in pt 3

This part amends the Criminal Code.

### 8 Amendment of s 1 (Definitions)

Section 1—

*insert—*

‘**“family”**, for chapter 16,<sup>1</sup> see section 119A.

**“judicial officer”** includes—

- (a) an arbitrator, or umpire, appointed in relation to an arbitration in which evidence may be taken on oath; and
- (b) a member of a tribunal established under an Act to perform judicial functions or judicial functions and other functions; and
- (c) a person conducting a hearing of the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*, chapter 4;<sup>2</sup> and
- (d) a justice of the peace constituting a court.

**“judicial proceeding”**, for chapter 16,<sup>3</sup> see section 119.

**“stock”** means any of the following animals or their young—

- (a) horse, asses, mules or camels;

1 Chapter 16 (Offences relating to the administration of justice)

2 *Crime and Misconduct Act 2001*, chapter 4 (Hearings and deciding claims of privilege and excuse)

3 Chapter 16 (Offences relating to the administration of justice)

- (b) cattle, oxen or buffalo;
- (c) sheep;
- (d) swine;
- (e) deer;
- (f) goats.’.

## 9 Replacement of s 119 (Definition of “judicial proceeding”)

Section 119—

*omit, insert—*

### ‘119 Definitions for ch 16

‘In this chapter—

“**family**” see section 119A.

“**judicial proceeding**” includes any proceeding had or taken in or before any court, tribunal or person, in which evidence may be taken on oath.

### ‘119A Meaning of “family”

‘(1) Each of the following is a member of a person’s “**family**”—

- (a) a spouse, including a de facto partner, of the person;
- (b) a child of the person;
- (c) a parent, grandparent, grandchild or sibling of the person, including—
  - (i) if the person is an Aboriginal person, a person—
    - (A) who is recognised under Aboriginal tradition<sup>4</sup> as a member of the Aboriginal person’s family; and

---

4 *Acts Interpretation Act 1954*, section 36—

“**Aboriginal tradition**” means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

- (B) with whom the Aboriginal person has a relationship like that between an individual and a parent, grandparent, grandchild or sibling of the individual; or
- (ii) if the person is a Torres Strait Islander, a person—
  - (A) who is recognised under Island custom<sup>5</sup> as a member of the Torres Strait Islander’s family; and
  - (B) with whom the Torres Strait Islander has a relationship like that between an individual and a parent, grandparent, grandchild or sibling of the individual.

‘(2) For subsection (1)(a), if a person lives in a marriage-like relationship with another person but is not legally married to the other person, the person is the other person’s de facto partner, regardless of whether the persons are different sexes or the same sex.

‘(3) For subsection (1)(b)—

- (a) a biological, adopted, step or foster child of a person is a child of the person; and
- (b) an individual who is under 18 years and ordinarily a member of a person’s household is also a child of the person; and
- (c) if a person is an Aboriginal person, an individual who is recognised under Aboriginal tradition as a child of the person is also a child of the person; and
- (d) if a person is a Torres Strait Islander, an individual who is recognised under Island custom as a child of the person is also a child of the person.

### **‘119B Retaliation against judicial officer, juror, witness or family**

‘A person who, without reasonable cause, causes, or threatens to cause, any injury or detriment to a judicial officer, juror, witness or a member of the family of a judicial officer, juror or witness in retaliation because of—

5 *Acts Interpretation Act 1954*, section 36—

“**Island custom**”, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

- (a) anything lawfully done by the judicial officer as a judicial officer;  
or
- (b) anything lawfully done by the juror or witness in any judicial proceeding;

is guilty of a crime.

Maximum penalty—7 years imprisonment.’.

### **10 Amendment of s 120 (Judicial corruption)**

(1) Section 120(1)(a), ‘the holder of a judicial office’—

*omit, insert—*

‘a judicial officer’.

(2) Section 120(1)(b), ‘any person holding a judicial office’—

*omit, insert—*

‘a judicial officer’.

(3) Section 120(1)(b), ‘the person holding the judicial office’—

*omit, insert—*

‘the judicial officer’.

(4) Section 120(3)—

*omit.*

(5) Section 120(2)—

*renumber* as section 120(3).

(6) Section 120—

*insert—*

‘(2) However, if the judicial officer is an arbitrator or umpire, the maximum term of imprisonment to which the person is liable is 7 years.’.

(7) Section 120(4)—

*omit, insert—*

‘(4) A prosecution for an offence against subsection (1) can not be started without a Crown Law Officer’s consent.’.

**11 Amendment of s 122 (Corrupting or threatening jurors)**

(1) Section 122, heading—

*omit, insert—*

**‘122 Corruption of jurors’.**

(2) Section 122(b)—

*omit.*

(3) Section 122(c)—

*renumber* as section 122(b).

(4) Section 122, from ‘misdemeanour’—

*omit, insert—*

‘crime.

Maximum penalty—7 years imprisonment.’.

**12 Amendment of s 398 (Punishment of stealing)**

(1) Section 398(2), from ‘1 of’ to ‘such animal’—

*omit, insert—*

‘an animal that is stock’.

(2) Section 398, punishment in special cases, clause 9—

*omit, insert—*

**‘9 Stealing property valued at more than \$5 000**

‘If the thing stolen is property, including an animal that is stock, and its value is more than \$5 000, the offender is liable to imprisonment for 10 years.’.

**13 Replacement of ch 44, ch div 1, hdg**

Chapter 44, chapter division 1, heading—

*omit, insert—*

**‘Chapter division 1—Offences relating to animals generally’.**



**14 Amendment of s 444A (Killing animals with intent to steal)**

Section 444A(3), '\$25 000'—

*omit, insert—*

'\$50 000'.

**15 Amendment of s 444B (Using registered brands with criminal intention)**

(1) Section 444B(1), '3 years'—

*omit, insert—*

'5 years'.

(2) Section 444B(3), '\$25 000'—

*omit, insert—*

'\$50 000'.

**16 Replacement of ch 44, ch div 2, hdg**

Chapter 44, chapter division 2, heading—

*omit, insert—*

*'Chapter division 2—Offences relating to stock'.*

**17 Amendment of s 445 (Unlawfully using cattle)**

(1) Section 445, heading, '**cattle**'—

*omit, insert—*

**'stock'**.

(2) Section 445(1), from 'a horse' to 'such animal'—

*omit, insert—*

'an animal that is stock'.

(3) Section 445(1), from 'an offence' to '1 year'—

*omit, insert—*

'a misdemeanour and is liable to imprisonment for 5 years'.

(4) Section 445(2), '\$5 000'—

*omit, insert—*

'\$50 000'.

(5) Section 445(3), from 'any horse' to 'such animal, without'—

*omit, insert—*

'any animal that is stock, without'.

(6) Section 445(3), from 'such horse' to 'such animal, either'—

*omit, insert—*

'the animal, either'.

## **18 Amendment of s 446 (Suspicion of stealing cattle)**

(1) Section 446, heading, '**cattle**'—

*omit, insert—*

'**stock**'.

(2) Section 446(1), from 'any horse' to 'such animal,'—

*omit, insert—*

'any animal that is stock'.

(3) Section 446(1), 'an offence'—

*omit, insert—*

'a misdemeanour'.

(4) Section 446(1), 'on summary conviction'—

*omit, insert—*

'to imprisonment for 5 years or'.

(5) Section 446(1), ', or to imprisonment for 1 year'—

*omit.*

(6) Section 446(2), '\$5 000'—

*omit, insert—*

'\$50 000'.

**19 Amendment of s 447 (Illegal branding)**

(1) Section 447(1), after ‘an animal’—

*insert—*

‘that is stock’.

(2) Section 447(1), from ‘an offence’ to ‘conviction’—

*omit, insert—*

‘a misdemeanour, and is liable to imprisonment for 5 years or’.

(3) Section 447(1), ‘, or to imprisonment for 1 year’—

*omit.*

(4) Section 447(2), ‘\$5 000’—

*omit, insert—*

‘\$50 000’.

**20 Amendment of s 448 (Defacing brands)**

(1) Section 448(1)(a), ‘upon an animal’—

*omit, insert—*

‘on an animal that is stock’.

(2) Section 448(1), from ‘an offence’ to ‘conviction’—

*omit, insert—*

‘a misdemeanour, and is liable to imprisonment for 5 years or’.

(3) Section 448(1), ‘or to imprisonment for 1 year’—

*omit.*

(4) Section 448(2), ‘\$5 000’—

*omit, insert—*

‘\$50 000’.

**21 Amendment of s 448A (Having in possession an animal with defaced brand)**

(1) Section 448A, heading, ‘an animal’—

*omit, insert—*

**‘stock’.**

(2) Section 448A(1), ‘any animal upon’—

*omit, insert—*

‘any animal that is stock on’.

(3) Section 448A(1), ‘an offence’—

*omit, insert—*

‘a misdemeanour’.

(4) Section 448A(1), ‘on summary conviction’—

*omit, insert—*

‘to imprisonment for 5 years or’.

(5) Section 448A(1), ‘or to imprisonment for 1 year’—

*omit.*

(6) Section 448A(2), ‘\$5 000’—

*omit, insert—*

‘\$50 000’.

## **22 Omission of s 450 (Committal for trial)**

Section 450—

*omit.*

## **23 Omission of s 450C (Effect of civil proceedings)**

Section 450C—

*omit.*

## **24 Amendment of ch 44A, hdg**

Chapter 44A, heading, ‘ANIMALS’—

*omit, insert—*

**‘STOCK’.**

**25 Replacement of s 450D (Meaning of term “animal”)**

Section 450D—

*omit, insert—*

**‘450D Definition for ch 44A**

‘In this chapter—

**“animal”** means any animal that is stock.’.

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

Section 450H(1) and (4), ‘Stipendiary Magistrate’—

*omit, insert—*

‘magistrate’.

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

Section 450I(1), ‘Stipendiary Magistrate’—

*omit, insert—*

‘magistrate’.

**28 Amendment of s 468 (Injuring animals)**

Section 468(2), from ‘a horse’ to ‘such animal’—

*omit, insert—*

‘stock’.

**29 Amendment of s 568 (Cases in which several charges may be joined)**

(1) Section 568(9) and (10)—

*renumber* as section 568(11) and (12).

(2) Section 568(6) to (8)—

*omit, insert—*

‘(6) Any 2 or all of the following charges may be joined in the same indictment (a “**subsection (6) indictment**”)—

- (a) entering or being in a dwelling or premises and stealing property in the dwelling or premises;
- (b) stealing all or part of property the subject of the indictment;
- (c) receiving all or part of property the subject of the indictment having reason to believe the property is stolen.

‘(7) If a subsection (6) indictment is preferred against a person, the person may, according to the evidence, be convicted of the offence mentioned in subsection (6)(a), the offence mentioned in subsection (6)(b) or the offence mentioned in subsection (6)(c).

‘(8) If a subsection (6) indictment is preferred against 2 or more persons—

- (a) all or any of them may, according to the evidence, be convicted of the offence mentioned in subsection (6)(a), the offence mentioned in subsection (6)(b) or the offence mentioned in subsection (6)(c); or
- (b) 1 or more of them may, according to the evidence, be convicted of 1 of the offences and the other or others of them may be convicted of another of the offences, or of 1 or the other of the other offences.

‘(9) However, if the jury finds specially—

- (a) that a person charged on a subsection (6) indictment—
  - (i) entered or was in a dwelling or premises and stole property in the dwelling or premises; or
  - (ii) stole all or part of property the subject of the indictment; or
  - (iii) received all or part of property the subject of the indictment having reason to believe the property to have been stolen; or
- (b) that a person charged on a subsection (6) indictment committed 1 of any 2 of the offences mentioned in paragraph (a);

but can not say which of the offences (the “**alternative offences**”) was committed by the person, the trial judge must enter a conviction against the person for 1 of the alternative offences in accordance with subsection (10).

‘(10) For subsection (9), the trial judge must enter a conviction for the following offence—

- (a) if the same maximum penalty is provided for the alternative offences, the alternative offence decided by the trial judge; or
- (b) if a particular maximum penalty is provided for 1 of the alternative offences and the same lower maximum penalty is provided for the other alternative offences, 1 of the other alternative offences decided by the trial judge; or
- (c) otherwise, the alternative offence for which the lowest or lower maximum penalty is provided.’.

### **30 Amendment of s 588 (Charge of stealing cattle)**

(1) Section 588, heading, ‘**cattle**’—

*omit, insert—*

‘**stock**’.

(2) Section 588, from ‘a horse’ to ‘such animal’—

*omit, insert—*

‘an animal that is stock’.

(3) Section 588, ‘summarily’—

*omit.*

### **31 Amendment of s 588A (Charges of stealing certain animals and of killing certain animals with intent to steal)**

(1) Section 588A(1)—

*omit.*

(2) Section 588A(2), ‘stealing an animal’—

*omit, insert—*

‘stealing an animal that is stock’.

(3) Section 588A(2) to (4)—

*renumber* as section 588A(1) to (3).

**32 Amendment of s 671G (Grant of bail to appellant and custody when attending Court)**

Subsections (3) and (3A)—

*omit, insert—*

‘(2) The period the appellant is in custody pending the determination of the appeal counts as part of any term of imprisonment under the appellant’s sentence.

‘(3) If an appellant is released on bail pending the determination of the appeal—

- (a) the period the appellant is released on bail does not count as part of any term of imprisonment under the appellant’s sentence, whether passed by the court of trial or the Court; and
- (b) the appellant’s imprisonment under the appellant’s sentence resumes or begins to run, as the case requires, on the day the appellant is received into prison under the appellant’s sentence.’.

**33 Insertion of new ch 75**

At the end—

*insert—*

**‘CHAPTER 75—TRANSITIONAL PROVISION FOR  
CRIMINAL LAW AMENDMENT ACT 2002****‘712 Transitional provision for Criminal Law Amendment Act 2002**

‘Section 568(6) to (8), as in force at any time before the commencement of this section, continues to apply in relation to an indictment under section 568(6) presented before the commencement of this section as if the *Criminal Law Amendment Act 2002*, section 29 had not been enacted.’.



## PART 4—AMENDMENT OF CRIMINAL LAW AMENDMENT ACT 1945

### 34 Act amended in pt 4

This part amends the *Criminal Law Amendment Act 1945*.

### 35 Amendment of s 18 (Detention of persons incapable of controlling sexual instincts)

(1) Section 18(1A), ‘prison or police gaol as defined in the *Corrective Services Act 1988*’—

*omit, insert—*

‘corrective services facility or watch-house’.

(2) Section 18(5)(a), ‘any prison or police goal as defined in the *Corrective Services Act 1988*’—

*omit, insert—*

‘a corrective services facility or watch-house’.

(3) Section 18(6A)(a), ‘any prison or police goal as aforesaid’—

*omit, insert—*

‘a corrective services facility or watch-house’.

(4) Section 18(10)—

*omit.*

(5) Section 18—

*insert—*

‘(14) In this section—

“**corrective services facility**” see *Corrective Services Act 2000*, schedule 3.

“**institution**” means—

- (a) a corrective services facility or watch-house; or
- (b) another institution prescribed under a regulation to be an institution for this section.

“**release**” means unconditional release and does not include release under part 3A.’.

### 36 Insertion of new part 3A

After Part 3—

*insert—*

## ‘PART 3A—CONDITIONAL RELEASE OF OFFENDERS DETAINED UNDER PT 3

### ‘18A Definitions for pt 3A

‘In this part—

“**corrective services officer**” means a person who holds an appointment as a corrective services officer under the *Corrective Services Act 2000*, section 201.

“**detainee**” means an offender or prisoner who is detained in an institution during Her Majesty’s pleasure under a direction under section 18(3), (4) or (6).

“**institution**” see section 18.

“**post-prison community based release order**” see the *Corrective Services Act 2000*, schedule 3.

“**Queensland board**” means the Queensland Community Corrections Board established under the *Corrective Services Act 2000*, section 156.

### ‘18B Post-prison community based release orders under *Corrective Services Act 2000*

‘(1) The *Corrective Services Act 2000*, chapter 5<sup>6</sup> applies to a detainee, subject to this part, as if—

- (a) instead of being detained at Her Majesty’s pleasure, the detainee were a prisoner serving a term of life imprisonment (a “**notional term of life imprisonment**”) to whom the Criminal Code, section 305(2) does not apply;<sup>7</sup> and

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<sup>6</sup> *Corrective Services Act 2000*, chapter 5 (Post-prison community based release)

- (b) for a detainee whose detention began under section 18(7) at the end of a term of imprisonment (an **“original term of imprisonment”**)—the detainee began to serve the notional term of life imprisonment when the detainee began to serve the original term of imprisonment; and
- (c) for a detainee whose detention began under section 18(7A) when the judge ordered the detention—the detainee began to serve the notional term of life imprisonment when the judge ordered the detention.

‘(2) If a detainee committed the relevant offence before 1 July 1997, the *Corrective Services Act 2000*, chapter 5 applies to the detainee as if the period of 15 years mentioned in section 135(2)(b) of that Act were a period of 13 years.

‘(3) In this section—

**“relevant offence”** means—

- (a) for a detainee dealt with by a judge under section 18(1)—the offence mentioned in section 18(1) of which the detainee was found guilty; or
- (b) for a detainee about whom an application was made under section 18(4)—the offence mentioned in section 18(4) for which the detainee was serving a sentence of imprisonment.

### **‘18C No exceptional circumstances parole order**

‘A detainee may not apply for or be granted an exceptional circumstances parole order under the *Corrective Services Act 2000*, chapter 5.

### **‘18D Submissions by Attorney-General**

‘(1) If a detainee applies to the Queensland board for a post-prison community based release order, the Queensland board must give the Attorney-General a copy of the application.

‘(2) The Attorney-General may make written submissions to the Queensland board in relation to the application.

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7 See the *Corrective Services Act 2000*, section 135(2)(b).

‘(3) The Queensland board must consider any submissions by the Attorney-General when deciding whether to grant the application.

**‘18E Additional test for conditional release**

‘The Queensland board must not grant a detainee a post-prison community based release order unless, in addition to any other matter of which the Queensland board must be satisfied under the *Corrective Services Act 2000*, the Queensland board is satisfied the detainee does not represent an unacceptable risk to the safety of others.

**‘18F Additional conditions may be imposed**

‘A post-prison community based release order for a detainee may, in addition to any other conditions, contain conditions the Queensland board considers reasonable requiring the detainee to—

- (a) submit to medical, psychiatric or psychological treatment; or
- (b) report for drug testing to a corrective services officer.

**‘18G Detainee deemed a prisoner for offence of being unlawfully at large**

‘To remove any doubt, it is declared that a detainee released under this part is a prisoner for the *Corrective Services Act 2000*, section 94(j).

**‘18H Effect on unconditional release**

‘(1) To remove any doubt, it is declared that nothing in this part prevents the unconditional release of a detainee under section 18(5)(b) or (6A)(b).

‘(2) If a detainee released under this part is unconditionally released under section 18(5)(b) or (6A)(b), the effect of this part ends in relation to the detainee.’

## **PART 5—AMENDMENT OF DRUG REHABILITATION (COURT DIVERSION) ACT 2000**

### **37 Act amended in pt 5**

This part amends the *Drug Rehabilitation (Court Diversion) Act 2000*.

### **38 Amendment of s 15 (Deciding whether to refer for assessment)**

Section 15(2)—

*insert—*

‘(c) the maximum number of active intensive drug rehabilitation orders prescribed under a regulation has not been exceeded.’.

### **39 Amendment of s 19 (Making of order)**

(1) Section 19(g) and (h)—

*renumber* as section 19(h) and (i).

(2) Section 19—

*insert—*

‘(g) the maximum number of active intensive drug rehabilitation orders prescribed under a regulation has not been exceeded; and’.

### **40 Amendment of s 34 (Terminating rehabilitation programs)**

Section 34(3), after ‘If’—

*insert—*

‘the magistrate terminates the rehabilitation program and’.

### **41 Insertion of new s 35A**

After section 35—

*insert—*

**‘35A Inclusion of new rehabilitation program**

‘(1) This section applies when an offender is brought before a pilot program magistrate after the offender’s rehabilitation program has been terminated by a magistrate in the offender’s absence for a reason mentioned in section 34(1)(c) or (d).

‘(2) Unless the offender’s intensive drug rehabilitation order has been vacated under section 34(3), the pilot program magistrate may amend the intensive drug rehabilitation order to include a new rehabilitation program.

‘(3) The pilot program magistrate may amend the intensive drug rehabilitation order to include a new rehabilitation program only if—

- (a) the pilot program magistrate is satisfied of the matters mentioned in section 19 and is satisfied the offender has reasonable prospects of successfully completing the new rehabilitation program; and
- (b) the offender agrees to the order being amended and agrees to comply with it.’.

**42 Amendment of s 36 (Final sentence to be decided on completion or termination of rehabilitation program)**

Section 36(1)(b), after ‘reason’—

*insert—*

‘unless a new rehabilitation program is included in the offender’s intensive drug rehabilitation order under section 35A’.

**43 Amendment of s 39 (Disclosing compliance or failure to comply with rehabilitation program)**

(1) Section 39 heading—

*omit, insert—*

**‘39 Disclosure of compliance and related information’.**

(2) Section 39(1)—

*omit, insert—*

‘(1) A prescribed person—

- (a) must promptly give the corrective services' chief executive, or a pilot program magistrate, any compliance information the prescribed person has about the offender; and
- (b) may enter in the pilot program database any compliance information or related information the prescribed person has about the offender.'

(3) Section 39(2), after 'given'—

*insert—*

'or entered'.

(4) Section 39(5)—

*insert—*

**“compliance information”** means any information about the offender's compliance with, or failure to comply with—

- (a) the requirements of the offender's intensive drug rehabilitation order; or
- (b) the offender's rehabilitation program.

**“pilot program database”** means a database for the pilot court diversion program to which only a prescribed person has access.

**“related information”** means any information, other than compliance information, about the offender obtained in the administration of, or in the provision of services in connection with, the offender's rehabilitation program.'

#### 44 Amendment of s 43 (Regulation-making power)

Section 43—

*insert—*

'(2) A regulation prescribing the maximum number of active intensive drug rehabilitation orders may prescribe the maximum number of active intensive drug rehabilitation orders applicable for persons who reside within a stated locality.

'(3) A regulation may prescribe guidelines for a particular pilot program court.

‘(4) Without limiting subsection (3), a regulation may prescribe guidelines for a particular pilot program court about the following matters—

- (a) the requirements of an intensive drug rehabilitation order;

*Example—*

The maximum number of attendances ordinarily required before a pilot program magistrate during a particular period.

- (b) the contents and requirements of a rehabilitation program;

*Example—*

The maximum number of times an offender must ordinarily report for drug testing during a particular period.

- (c) the ordinary requirements for successful completion of a rehabilitation program.’.

#### **45 Amendment of s 47 (Expiry of Act)**

- (1) Section 47(1), ‘30 months’—

*omit, insert—*

‘42 months’.

- (2) Section 47—

*insert—*

‘(1A) However, a regulation made before the end of the 42 months may defer the expiry of this Act, but only for 1 year.’.

- (3) Section 47(2), ‘subsection (1)’—

*omit, insert—*

‘this section’.

#### **46 Amendment of schedule (Dictionary)**

Schedule—

*insert—*

‘ “**active intensive drug rehabilitation order**” means an intensive drug rehabilitation order other than—



- (a) an intensive drug rehabilitation order, the rehabilitation program for which has been terminated under section 34; or
- (b) an intensive drug rehabilitation order that has been vacated.’.

## **PART 6—AMENDMENT OF EVIDENCE ACT 1977**

### **47 Act amended in pt 6**

This part amends the *Evidence Act 1977*.

### **48 Insertion of new s 95A**

After section 95—

*insert—*

#### **‘95A DNA evidentiary certificate**

‘(1) This section applies to a criminal proceeding.

‘(2) A certificate, in the approved form, purporting to be signed by a DNA analyst and stating any of the following matters is evidence of the matter—

- (a) that a stated thing was received at a stated laboratory on a stated day;
- (b) that the thing was tested at the laboratory on a stated day or between stated days;
- (c) that a stated DNA profile has been obtained from the thing;
- (d) that the DNA analyst—
  - (i) examined the laboratory’s records relating to the receipt, storage and testing of the thing, including any test process that was done by someone other than the DNA analyst; and
  - (ii) confirms that the records indicate that all quality assurance procedures for the receipt, storage and testing of the thing that were in place in the laboratory at the time of the test were complied with.

‘(3) If a party intends to rely on the certificate, the party must—

- (a) at least 10 business days before the hearing day, give a copy of the certificate to each other party; and
- (b) at the hearing, call the DNA analyst to give evidence.

‘(4) If the chief executive receives a written request from a party for a copy of the laboratory’s records relating to the receipt, storage and testing of the thing, the chief executive must give the party a copy of the records within 7 business days after receiving the request.

‘(5) If a party intends to challenge a matter stated in the certificate, the party must, at least 3 business days before the hearing day, give the chief executive and each other party notice, in the approved form, of the matter to be challenged.

‘(6) A party challenging a matter stated in the certificate may, with the leave of the court, require the party relying on the certificate to call any person involved in the receipt, storage or testing of the thing to give evidence at the hearing.

‘(7) The court may give leave only if the court is satisfied that—

- (a) an irregularity may exist in relation to the receipt, storage or testing of the thing about which the person to be called is able to give evidence; or
- (b) it is in the interests of justice that the person be called to give evidence.

‘(8) Any equipment used in testing the thing at the laboratory is to be taken to have given accurate results in the absence of evidence to the contrary.

‘(9) In this section—

“**chief executive**” means the chief executive of the department within which the *Health Act 1937* is administered.

“**DNA analyst**” means a person who holds an appointment as a DNA analyst under section 133A.

“**DNA profile**” means the result from DNA analysis.

“**hearing day**” means the day fixed for the start of the hearing of the proceeding.

“**party**” means the prosecution or a person charged in the proceeding.’.

**49 Insertion of new s 133A**

After section 133—

*insert—*

**‘133A DNA analysts**

‘(1) The chief executive of the department within which the *Health Act 1937* is administered may appoint a public service officer as a DNA analyst if satisfied the officer has the necessary qualifications and experience to be a DNA analyst.

‘(2) The appointment takes effect on the day it is notified in the gazette.’.

**PART 7—AMENDMENT OF JURY ACT 1995****50 Act amended in pt 7**

This part amends the *Jury Act 1995*.

**51 Amendment of s 12 (Arrangements with commissioner of the police service)**

Section 12(3), ‘Subsection (2)’—

*insert—*

‘Subsection (1)’.

**52 Amendment of s 20 (Power of judge to excuse from jury service)**

Section 20(3), ‘in court or chambers and’—

*omit.*

**53 Amendment of s 37 (Materials to be given by sheriff)**

(1) Section 37(1)(a), ‘addresses’—

*omit, insert—*

‘locality addresses’.

(2) Section 37(1)(b), ‘address’—

*omit, insert—*

‘locality address’.

(3) Section 37—

*insert—*

‘(3) In this section—

“**locality address**”, of a person, means the city, town, suburb or other locality in which the person resides.’.

## 54 Insertion of new s 69A

After section 69—

*insert—*

### ‘69A Inquiries by juror about accused prohibited

‘(1) A person who has been sworn as a juror in a criminal trial must not inquire about the defendant in the trial until the jury of which the person is a member has given its verdict, or the person has been discharged by the judge.

Maximum penalty—2 years imprisonment.

‘(2) Subsection (1) does not prevent a juror making an inquiry being made of the court to the extent necessary for the proper performance of a juror’s functions.

‘(3) In this section—

“**inquire**” includes—

- (a) search an electronic database for information, for example, by using the Internet; and
- (b) cause someone else to inquire.’.

## 55 Amendment of s 70 (Confidentiality of jury deliberations)

Section 70(9), ‘(which may be made in chambers)’—

*omit.*

## PART 8—AMENDMENT OF JUSTICES ACT 1886

### 56 Act amended in pt 8

This part amends the *Justices Act 1886*.

### 57 Insertion of new pt 4, div 10A

After section 83—

*insert—*

#### *‘Division 10A—Direction hearing*

#### **‘83A Direction hearing**

‘(1) This section applies to a proceeding for an offence.

‘(2) A magistrate, on his or her own initiative, may direct the parties to the proceeding to attend at a direction hearing.

‘(3) A party to the proceeding may apply to a court, in the approved form, for a direction hearing.

‘(4) The party must serve a copy of the filed application on each other party at least 2 clear days before the day nominated for the direction hearing, unless the court directs otherwise.

‘(5) At a direction hearing, a magistrate may give a direction he or she is entitled to make at law about any aspect of the conduct of the proceeding, including, for example, about any of the following—

- (a) a party providing a copy of—
  - (i) a medical, psychiatric or other expert report; or
  - (ii) a statement, report or other information relevant to the proceeding;
- (b) psychiatric or other medical examination of the defendant;
- (c) joining complaints;
- (d) receiving evidence or submissions by telephone, video link or other form of communication;
- (e) issuing a summons or warrant;

- (f) changing the usual practice of the court in a way that helps an alleged victim of the offence to give evidence in the proceeding;
- (g) if the proceeding is a committal proceeding—cross-examining protected witnesses under the *Evidence Act 1977*, part 2, division 6.<sup>8</sup>

‘(6) A direction is binding unless a magistrate, for special reason, gives leave to reopen the direction.

‘(7) A direction must not be subject to interlocutory appeal but may be raised as a ground of appeal against conviction or sentence.

‘(8) To remove any doubt, it is declared that costs are not payable on a direction hearing in relation to an offence dealt with by way of committal proceeding.

‘(9) In this section—

“**direction hearing**” means a hearing before the court for a direction about the conduct of the proceeding.’.

## 58 Amendment of s 84 (Remand of defendant)

Section 84—

*insert—*

‘(2) However, if the defendant is represented by counsel or a solicitor, the defendant need not be present at the further hearing unless—

- (a) the justices before whom the defendant appears order otherwise; or
- (b) a charge is being heard and determined, an examination of a witness is being conducted or a penalty is being imposed.’.

## 59 Amendment of s 158A (Exercise of discretion in relation to an award of costs)

(1) Section 158A(2)(g) and (h)—

*renumber* as section 158A(2)(h) and (i).

(2) Section 158A(2)—

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<sup>8</sup> *Evidence Act 1977*, part 2 (Witnesses), division 6 (Cross-examination of protected witnesses)

*insert—*

‘(g) whether there was a failure to comply with a direction given under section 83A;<sup>9</sup> and’.

## **PART 9—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992**

### **60 Act amended in pt 9**

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

### **61 Amendment of s 92 (Effect of order)**

Section 92(1)(b)(i), ‘6 months’—

*omit, insert—*

‘1 year’.

### **62 Amendment of s 146 (Consequences of committing offence during operational period)**

(1) Section 146(2)—

*omit, insert—*

‘(2) If the court mentioned in subsection (1) has like jurisdiction to the court that made the order, the first court must deal with the offender under section 147 for the suspended imprisonment.

‘(2A) If the court mentioned in subsection (1) is of higher jurisdiction than the court that made the order, the first court must deal with the offender under section 147 for the suspended imprisonment unless the court considers that it would be in the interests of justice for the offender to be dealt with under section 147 by the court that made the order.

‘(2B) If, under subsection (2A), the first court does not deal with the offender under section 147 for the suspended imprisonment, it must—

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9 Section 83A (Direction hearing)

(a) commit the offender to custody to be brought; or

(b) grant bail to the offender conditioned to appear;

before a court of like jurisdiction to the court that made the order.’

(2) Section 146(7), ‘(4) or (6)’—

*omit, insert—*

‘(2B), (4) or (6)’.

### **63 Amendment of s 147 (Power of court mentioned in s 146)**

(1) Section 147(1), after ‘section 146(2)’—

*insert—*

‘, (2A)’.

(2) Section 147(1)(a)—

*omit, insert—*

‘(a) order—

(i) that the operational period be extended for not longer than 1 year; or

(ii) if the operational period has expired when the court is dealing with the offender—

(A) that the offender’s term of imprisonment be further suspended; and

(B) that the offender be subject to a further stated operational period of not longer than 1 year during which the offender must not commit another offence punishable by imprisonment if the offender is to avoid being dealt with under section 146 for the suspended imprisonment; or’.

### **64 Amendment of s 171 (Review—periodic)**

(1) Section 171(1)(a)(i) and (ii)—

*omit, insert—*

‘(i) if the offender’s nominal sentence is other than life imprisonment—50% of the offender’s nominal sentence; or



- (ii) if the offender's nominal sentence is life imprisonment and the Criminal Code, section 305(2) does not apply—15 years; or
- (iii) if the offender's nominal sentence is life imprisonment and the Criminal Code, section 305(2) applies—20 years; and'.

(2) Section 171—

*insert—*

'(3) Subsection (1)(a), as in force immediately before the commencement of this subsection, continues to apply in relation to an indefinite sentence that was imposed in relation to an offence committed before the commencement.'

## **65 Insertion of new s 210**

Part 14—

*insert—*

### **'210 Transitional provisions for Criminal Law Amendment Act 2002**

'(1) For applying section 92(1)(b)(i) for the purpose of making or amending a probation order under part 5, division 1 in relation to an offence, it does not matter whether the offence was committed before or after the commencement of this section.

'(2) For applying section 147(1)(a), it does not matter when the order mentioned in section 146(1)(a) or (b) was made under section 144.'

## **PART 10—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000**

### **66 Act amended in pt 10**

This part amends the *Police Powers and Responsibilities Act 2000*.

**67 Amendment of s 219 (Notice to appear equivalent to a complaint and summons)**

(1) Section 219(3)—

*renumber* as section 219(4).

(2) Section 219—

*insert*—

‘(3) If an officer-in-charge of a police establishment or a watch-house manager—

(a) if the person is an adult—issues and serves a notice to appear on a person under section 225(2)(b); or

(b) if the person is a child—serves on the person an attendance notice under the *Juvenile Justice Act 1992*;

the police officer who arrested the person, and not the officer-in-charge or the watch-house manager, is taken to have started the proceeding against the person.’.

**68 Amendment of s 225 (Duty of police officer receiving custody of person arrested for offence)**

(1) Section 225(2)(b) and (c)—

*renumber* as section 225(2)(d) and (e).

(2) Section 225(2)—

*insert*—

‘(b) if the person is an adult—issue and serve a notice to appear on the person; or

(c) if the person is a child—serve on the person an attendance notice under the *Juvenile Justice Act 1992*; or’.

## SCHEDULE

### MINOR AMENDMENTS

section 3

#### BAIL ACT 1980

**1 Section 28A, heading—**

*omit, insert—*

**‘28A Other warrants for apprehension of defendant’.**

**2 Section 28A(1)—**

*omit, insert—*

**(1)** A court that a defendant is required to appear before may issue a warrant for the defendant’s apprehension if the defendant fails to surrender into custody after being—

- (a) released on bail by the Supreme Court or District Court on condition that the defendant will appear before a Magistrates Court; or
- (b) released on bail by a Magistrates Court or the Childrens Court, or by any justice or justices conducting a committal proceeding, on the defendant entering into an undertaking; or
- (c) released on bail under section 7(1A)(b);<sup>10</sup> or
- (d) released on bail on the defendant making a deposit of money under section 14 or 14A;<sup>11</sup> or

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<sup>10</sup> Section 7 (Power of police officer to grant bail)

<sup>11</sup> Section 14 (Release of persons apprehended on making deposit of money as security for appearance) or 14A (Magistrates Courts may grant cash bail or permit to go at large)

## SCHEDULE (continued)

- (e) released on bail that has been continued under section 34A(2) or 34B(2);<sup>12</sup> or
- (f) permitted to go at large without bail.’.

**CRIMES (CONFISCATION) ACT 1989****1 Section 23(4)(d), ‘of’—**

*omit, insert—*

‘if’.

**2 Section 79(1), section 26 heading, ‘order’—**

*omit.*

**CRIMINAL CODE****1 Section 145A(a), from ‘, section’—**

*omit, insert—*

‘; or’.

**2 Part 5, heading, ‘and against the reputation of individuals’—**

*omit.*

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12 Section 34A (Varying bail if summary charge transmitted from court of summary jurisdiction to another court) or 34B (Varying bail if summary charge transmitted from receiving court back to court of summary jurisdiction)

## SCHEDULE (continued)

**3 Chapter 44, chapter division 3, heading—***omit, insert—**‘Chapter division 3—Arrest’.***CRIMINAL LAW AMENDMENT ACT 1945****1 Section 2A, heading—***omit, insert—***‘2A Interpretation’.****CRIMINAL OFFENCE VICTIMS ACT 1995****1 Section 10(4)(a)—***omit, insert—**‘(a) Criminal Practice Rules 1999, rule 55;<sup>13</sup>’.***DISTRICT COURT ACT 1967****1 Section 61(2)(b)—***omit, insert—*

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13 *Criminal Practice Rules 1999, rule 55 (Custody of exhibits)*

## SCHEDULE (continued)

‘(b) an offence under the Criminal Code, section 64, 65, 208, 213, 215, 216, 219, 222, 229B, 315, 316, 317, 318, 319, 319A, 349, 352, 398, 409, 411, 412, 415, 419, 421, 461 or 469.<sup>14</sup>’.

**EVIDENCE ACT 1977****1 Schedule 2—**

*omit, insert—*

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14 Criminal Code, section 64 (Rioters remaining after proclamation ordering them to disperse), 65 (Rioters demolishing buildings etc.), 208 (Unlawful sodomy), 213 (Owner etc. permitting abuse of children on premises), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 219 (Taking child for immoral purposes), 222 (Incest), 229B (Maintaining a sexual relationship with a child), 315 (Disabling in order to commit indictable offence), 316 (Stupefying in order to commit indictable offence), 317 (Acts intended to cause grievous bodily harm and other malicious acts), 318 (Obstructing rescue or escape from unsafe premises), 319 (Intentionally endangering safety of persons travelling by railway), 319A (Endangering safety of persons travelling by aircraft), 349 (Rape), 352 (Sexual assaults), 398 (Punishment of stealing), 409 (Definition of “robbery”), 411 (Punishment of robbery), 412 (Attempted robbery), 415 (Demanding property, benefit or performance of services with threats), 419 (Burglary), 421 (Entering or being in premises and committing indictable offences), 461 (Arson) or 469 (Wilful damage)

## SCHEDULE (continued)

**‘SCHEDULE 2**

section 8(4)

1. Criminal Code, section 208, 209, 210, 211, 215, 216, 219, 222, 229B, 302, 303, 306, 308, 311, 315, 316, 317, 318, 319, 319A, 320, 321, 322, 323, 324, 326, 335, 339, 340, 349, 350, 351 or 352.<sup>15</sup>.

**MENTAL HEALTH ACT 2000**

- 1 **Sections 128(b), 166(1)(b), 186(1)(b), 508(1)(c), 519(1)(c), 520(1) and (3), 540(1)(c), 543(1) and schedule 2, definition “patient”, paragraph (e)(ii) and definition “treating health service”, paragraph (a)(iv), ‘337(5)’—**

*omit, insert—*

‘337(6)’.

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15 Criminal Code section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16), 211 (Bestiality), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 219 (Taking child for immoral purposes), 222 (incest), 229B (Maintaining a sexual relationship with a child), 302 (Definition of “murder”), 303 (Definition of “manslaughter”), 306 (Attempt to murder), 308 (Threats to murder in document), 311 (Aiding suicide), 315 (Disabling in order to commit indictable offence), 316 (Stupefying in order to commit indictable offence), 317 (Acts intended to cause grievous bodily harm and other malicious acts), 318 (Obstructing rescue or escape from unsafe premises), 319 (Intentionally endangering safety of persons travelling by railway), 319A (Endangering safety of persons travelling by aircraft), 320 (Grievous bodily harm), 321 (Attempting to injure by explosive or noxious substances), 322 (Maliciously administering poison with intent to harm), 323 (Wounding and similar acts), 324 (Failure to supply necessities), 326 (Endangering life of children by exposure), 335 (Common assault), 339 (Assaults occasioning bodily harm), 340 (Serious assaults), 349 (Rape), 350 (Attempt to commit rape), 351 (Assault with intent to commit rape), 352 (Sexual assaults)

