

Queensland



**JUSTICE AND OTHER
LEGISLATION AMENDMENT
ACT 2003**

Act No. 77 of 2003

Queensland



JUSTICE AND OTHER LEGISLATION AMENDMENT ACT 2003

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Queensland



**Justice and Other Legislation Amendment
Act 2003**

Act No. 77 of 2003

**An Act to amend various Acts administered by the Attorney-General
and Minister for Justice, and for other purposes**

[Assented to 6 November 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Justice and Other Legislation Amendment Act 2003*.

2 Commencement

(1) The part amending the *Coroners Act 2003* commences on the day the *Coroners Act 2003*, section 96¹ commences.

(2) The parts amending the following Acts commence on assent—

- *Aboriginal Land Act 1991*
- *Land and Resources Tribunal Act 1999*
- *Mineral Resources Act 1989*
- *Queensland Law Society Act 1952*
- *Torres Strait Islander Land Act 1991*.

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

PART 2—AMENDMENT OF ABORIGINAL LAND ACT 1991

3 Act amended in this part

This part amends the *Aboriginal Land Act 1991*.

¹ *Coroners Act 2003*, section 96 (Application of Act to stillborn child)

4 Amendment of s 60 (Recommendation to Minister)

Section 60—

insert—

‘(6) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

5 Amendment of s 61 (Resolution of conflicting claims)

Section 61—

insert—

‘(3) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

6 Amendment of s 62 (Notification of parties)

Section 62—

insert—

‘(3) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

7 Amendment of s 109 (Conferences)

Section 109—

insert—

‘(5) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

8 Amendment of s 116 (Reasons to be given by tribunal)

Section 116—

insert—

‘(4) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

9 Amendment of s 117 (Appeals to Land Appeal Court from decisions of tribunal)

Section 117—

insert—

‘(9) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.**PART 3—AMENDMENT OF ADOPTION OF CHILDREN ACT 1964****10 Act amended in this part**This part amends the *Adoption of Children Act 1964*.**11 Amendment of s 39C (Entitlement to certain records etc.)**(1) Section 39C(1), ‘*Registration of Births, Deaths and Marriages Act 1962*’—*omit, insert—*‘*Births, Deaths and Marriages Registration Act 2003*’.(2) Section 39C(2), ‘*Registration of Births, Deaths and Marriages Act 1962*, section 29B(2)(b)(i) or (4)(b) or 29C(6)(a)’—*omit, insert—*‘*Births, Deaths and Marriages Registration Act 2003*, section 14²’.**12 Amendment of s 47A (Use of certified copy or extract)**

Section 47A—

omit.

2 *Births, Deaths and Marriages Registration Act 2003*, section 14 (Reregistering a birth or adoption)

13 Amendment of s 55A (Certified copy or extract)

(1) Section 55A(1), '*Registration of Births, Deaths and Marriages Act 1962*, section 29B(4)'—

omit, insert—

'*Births, Deaths and Marriages Registration Act 2003*, section 14³'.

(2) Section 55A(2), '*Registration of Births, Deaths and Marriages Act 1962*'—

omit, insert—

'*Births, Deaths and Marriages Registration Act 2003*'.

**PART 4—AMENDMENT OF ANTI-DISCRIMINATION
ACT 1991****14 Act amended in this part**

This part amends the *Anti-Discrimination Act 1991*.

15 Amendment of s 139 (Commissioner must reject frivolous etc. complaints)

Section 139, after 'frivolous'—

insert—

',' trivial'.

16 Amendment of s 145 (Anonymity)

Section 145(4)(a), 'containing'—

omit, insert—

'continuing'.

3 *Births, Deaths and Marriages Registration Act 2003*, section 14 (Reregistering a birth or adoption)

17 Amendment of s 166 (Complainant may obtain referral of unconciliated complaint)

(1) Section 166(2), ‘The tribunal’—

omit, insert—

‘The commissioner’.

(2) Section 166(2), ‘the tribunal’—

omit, insert—

‘the commissioner’.

18 Amendment of s 168 (Frivolous etc. complaint lapses)

Section 168(1) and (2)(a), after ‘frivolous’—

insert—

‘, trivial’.

19 Amendment of s 215A (Tribunal may dismiss frivolous and other complaints)

Section 215A(1), after ‘frivolous,’—

insert—

‘trivial,’.

20 Amendment of s 249 (Tribunal’s powers)

Section 249(3), after ‘functions’—

insert—

‘including, for example, a rule specifying a matter as a non-contentious matter.’.

21 Amendment of s 257 (Registrar and tribunal staff)

Section 257—

insert—

‘(1A) A person is not eligible for appointment as, or to perform the functions or exercise the powers of, registrar unless the person satisfies the eligibility requirement mentioned in section 250(2).’⁴.

22 Insertion of new s 257A

After section 257—

insert—

‘257A Powers of registrar to perform tribunal’s functions and exercise tribunal’s powers in non-contentious matter

‘(1) The registrar may perform the functions and exercise the powers of the tribunal⁵ in relation to a non-contentious matter.

‘(2) In exercising powers in relation to a non-contentious matter—

- (a) subject to subsection (3), the registrar is not under the control or direction of the Minister or any other entity; and
- (b) the registrar is taken to be, and anything done by the registrar is taken to be done by, the tribunal; and
- (c) the registrar may exercise the other powers in relation to a direction given or a decision made by the registrar that are incidental to the direction or decision.

Example—

The registrar may correct a clerical error or accidental slip or omission in a direction given by the registrar.

‘(3) The president may direct the registrar to refer a particular non-contentious matter to the tribunal.

‘(4) The registrar may refer a particular non-contentious matter to the tribunal if the registrar considers it would be more appropriate for the tribunal to deal with the matter.’.

4 Section 250 (Appointment of president and other members)

5 See section 249 (Tribunal’s powers).

PART 5—AMENDMENT OF APPEAL COSTS FUND ACT 1973

23 Act amended in this part

This part amends the *Appeal Costs Fund Act 1973*.

24 Amendment of s 5 (Appeal Costs Fund)

Section 5(3), ‘and (8)’, second mention—
omit.

25 Amendment of s 6 (Appeal Costs Board)

Section 6(8)—
omit.

PART 6—AMENDMENT OF BAIL ACT 1980

26 Act amended in this part

This part amends the *Bail Act 1980*.

27 Insertion of new s 33D

After section 33C—
insert—

‘33D Postponing issue or enforcement of a warrant

‘(1) This section applies if an application is made to the court for a warrant for the apprehension of a person who has failed to appear before the court.

‘(2) The court may postpone the issue or enforcement of the warrant to allow the person a further opportunity to appear before the court.’.

28 Amendment of sch (Offences in respect of which bail by way of deposit of moneys shall not be granted)

(1) Schedule, heading, after ‘MONEYS’—

insert—

‘OR CASH BAIL’.

(2) Schedule, section reference—

omit, insert—

‘sections 14 and 14A’.

PART 7—AMENDMENT OF BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT 2003**29 Act amended in this part**

This part amends the *Births, Deaths and Marriages Registration Act 2003*.

30 Amendment of s 12 (Child’s name)

(1) Section 12(4) and (5), ‘parents’—

omit, insert—

‘applicants’.

(2) Section 12—

insert—

‘(5A) Before entering a name in the register for a child under subsection (3), the registrar must give the applicant at least 14 days written notice of the registrar’s intention to do so.’.

31 Amendment of s 13 (Application to change child’s first name within a year of birth)

Section 13(2) and (4), after ‘may apply’—

insert—

‘, in the approved form.’.

32 Amendment of s 16 (Application to register change of adult’s name)

Section 16—

insert—

‘(2) In this section—

“**adult person**” includes a person under 18 years who is, or has been, married.’.

33 Amendment of s 17 (Application to register change of child’s name)

(1) Section 17(2) and (4), after ‘may apply’—

insert—

‘, in the approved form.’.

(2) Section 17—

insert—

‘(7) In this section—

“**child**” does not include a person under 18 years who is, or has been, married.’.

34 Amendment of s 20 (Notation of change of name other than by registration)

Section 20—

insert—

‘(10) In this section—

“**adult**” includes a person under 18 years who is, or has been, married.

“**child**” does not include a person under 18 years who is, or has been, married.’.

35 Amendment of 37 (Delegation)

Section 37, ‘any person.’—

omit, insert—

‘an appropriately qualified person.

‘(2) In this section—

“appropriately qualified”, in relation to the exercise of a power, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

The level at which a person is employed by an entity.’.

36 Amendment of s 44 (Obtaining information from the registrar)

Section 44—

insert—

‘(10) For the *Constitution of Queensland 2001*, section 52,⁶ issuing a commemorative birth certificate is a commercial activity.

‘(11) In this section—

“commemorative birth certificate” is a certificate about the birth of a child that is more decorative than another certificate.’.

37 Amendment of s 57 (Transitional provisions)

Section 57, heading, after ‘provisions’—

insert—

‘for Act No. 31 of 2003’.

38 Insertion of new s 57A

Part 9, after section 57—

insert—

⁶ *Constitution of Queensland 2001*, section 52 (Definitions for div 2)

‘57A Transitional—Justice and Other Legislation Amendment Act 2003

‘A delegation in force immediately before the commencement of the amendment of section 37⁷ by the *Justice and Other Legislation Amendment Act 2003* continues in force after the commencement and is unaffected by the amendment.’.

PART 8—AMENDMENT OF CIVIL LIABILITY ACT 2003**39 Act amended in this part**

This part amends the *Civil Liability Act 2003*.

40 Amendment of s 4 (Application of Act)

(1) Section 4(4)—

renumber as section 4(5).

(2) Section 4—

insert—

‘(4) Chapter 2, part 5 applies only in relation to a breach of duty happening on or after the commencement of this subsection.’.

40A Amendment of s 21 (Proactive and reactive duty of doctor to warn of risk)

(1) Section 21(1), ‘the information’—

omit, insert—

‘the following information’.

(2) Section 21(1)(a) and (b), before ‘that’—

insert—

7 Section 37 (Delegation)

‘information’.

(3) Section 21(1)(a), ‘advice; and’—

omit, insert—

‘advice;’.

41 Insertion of new ch 2, pt 5

Chapter 2, after part 4—

insert—

‘PART 5—AWARDS FOR ECONOMIC LOSS FOLLOWING STERILISATION PROCEDURE OR CONTRACEPTIVE PROCEDURE OR ADVICE

‘49A Failed sterilisation procedures

‘(1) This section applies if, following a procedure to effect the sterilisation of an individual, the individual gives birth to, or fathers, a child because of the breach of duty of a person in advising about, or performing, the procedure.

Examples of sterilisation procedures—

Tubal ligation and vasectomy.

‘(2) A court can not award damages for economic loss arising out of the costs ordinarily associated with rearing or maintaining a child.

‘49B Failed contraceptive procedure or contraceptive advice

‘(1) This section applies if, following a contraceptive procedure on an individual or the giving of contraceptive advice to an individual, the individual gives birth to, or fathers, a child because of the breach of duty of a person in advising about, or performing, the procedure or giving the advice.

‘(2) A court can not award damages for economic loss arising out of the costs ordinarily associated with rearing or maintaining a child.’.

PART 9—AMENDMENT OF CORONERS ACT 2003

42 Act amended in this part

This part amends the *Coroners Act 2003*.

43 Amendment of s 96 (Application of Act to stillborn child)

Section 96, ‘and 26(2)(c)’—

omit, insert—

‘, 26(2)(c) and 95’.

43A Amendment of sch 1 (Consequential amendments)

Schedule 1, amendments of *Police Powers and Responsibilities Act 2000*, item 3, ‘(3)’—

omit, insert—

‘(3A)’.

PART 10—AMENDMENT OF CRIMINAL CODE

44 Act amended in this part

This part amends the Criminal Code.

45 Replacement of s 140 (Attempting to pervert justice)

Section 140—

omit, insert—

‘140 Attempting to pervert justice

‘A person who attempts to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime.

Maximum penalty—7 years imprisonment.’.

46 Amendment of s 552B (Charges of indictable offences that may be dealt with summarily)

Section 552B(1)(j), after ‘328A(1)’—

insert—

‘or (2)’.

**PART 11—AMENDMENT OF CRIMINAL PROCEEDS
CONFISCATION ACT 2002**

47 Act amended in this part

This part amends the *Criminal Proceeds Confiscation Act 2002*.

48 Amendment of s 68 (Making of exclusion order)

Section 68, before ‘The Supreme Court’—

insert—

‘(1) The Supreme Court, on an application under section 65 or 66, may make an exclusion order.

‘(2)’.

49 Replacement of s 69 (What exclusion order must state)

Section 69—

omit, insert—

‘69 What is an exclusion order

‘(1) An “**exclusion order**” is an order that—

- (a) states the nature, extent and, if necessary for the order, the value, when the order is made, of the applicant’s interest in the property; and
- (b) if the application for the forfeiture order has not been decided, excludes the applicant’s property from the application for the forfeiture order; and

- (c) if a forfeiture order has been made for the property, and the property is still vested in the State, directs the State to transfer the property to the applicant; and
- (d) if a forfeiture order has been made for the property and the property is no longer vested in the State, directs the State to pay to the applicant the value of the applicant's property.

‘(2) However, if the applicant is the prescribed respondent and an application has been made for a proceeds assessment order against the prescribed respondent, subsection (1)(b) applies only if the court is satisfied the property is unlikely to be required to satisfy any proceeds assessment order the court may make against the person.’

50 Amendment of s 73 (Making of innocent interest exclusion order)

(1) Section 73(1) and (2)—

renumber as section 73(2) and (3).

(2) Section 73—

insert—

‘(1) The Supreme Court, on an application under section 71, may make an innocent interest exclusion order.’

51 Replacement of s 74 (What innocent interest exclusion order must state)

Section 74—

omit, insert—

‘74 What is an innocent interest exclusion order

‘An “**innocent interests exclusion order**” is an order that—

- (a) states the nature, extent and, if necessary for the order, the value, when the order is made, of the interest mentioned in section 73(2); and
- (b) directs the State to pay to the applicant the value of the interest.’

52 Amendment of s 81 (Application of div 3)

Section 81, heading, ‘3’—

omit, insert—

‘2’.

53 Amendment of s 155 (Exclusion of property from forfeiture order application)

Section 155(1), ‘order under section 158 (an “**innocent interest exclusion order**”)’—

omit, insert—

‘innocent interest exclusion order’.

54 Amendment of s 158 (Making of innocent interest exclusion order)

Section 158, before ‘The court’—

insert—

‘(1) The Supreme Court, on an application under section 155 or 156, may make an innocent interest exclusion order.

‘(2)’.

55 Replacement of s 159 (What innocent interest exclusion order must state)

Section 159—

omit, insert—

‘159 What is an innocent interest exclusion order

‘An “**innocent interest exclusion order**” is an order that—

- (a) states the nature, extent and, if necessary for the order, the value when the order is made, of the applicant’s interest in the property; and
- (b) if the application for the forfeiture order has not been decided, excludes the applicant’s property from the operation of any

restraining order applying to the property and the application for the forfeiture order; and

- (c) if the applicant's property has been forfeited to the State and is still vested in the State, directs the State to transfer the property to the applicant; and
- (d) if the applicant's property has been forfeited to the State and is no longer vested in the State, directs the State to pay to the applicant the value of the applicant's property.'

56 Amendment of s 165 (Third party protection from automatic forfeiture)

Section 165(1), from 'an order under section 167'—

omit, insert—

'a third party order or a buy-back order.'

57 Amendment of s 167 (When Supreme Court may make third party order)

(1) Section 167(1) and (2)—

renumber as section 167(2) and (3).

(2) Section 167—

insert—

'(1) The Supreme Court, on an application under section 165, may make a third party order.'

58 Replacement of s 168 (What third party order must state)

Section 168—

omit, insert—

'168 What is a third party order

'A **"third party order"** is an order that—

- (a) states the nature, extent and, if necessary for the order, the value, when the order is made, of the applicant's interest in the property; and

- (b) if the relevant property is still vested in the State, directs the State to transfer the property to the applicant; and
- (c) if the relevant property is no longer vested in the State, directs the State to pay to the applicant the value of the applicant's property.'

59 Amendment of s 169 (When Supreme Court may make buy-back order)

Section 169, before 'The Supreme Court'—

insert—

'(1) The Supreme Court, on an application under section 165, may make a buy-back order.

'(2)'.
'

60 Replacement of s 170 (What buy-back order must state)

Section 170—

omit, insert—

'170 What is a buy-back order

'A "buy-back order" is an order that states—

- (a) the nature, extent and value, when the order is made, of the interest; and
- (b) that the person may buy back the interest by paying to the State the amount stated as the value of the interest.'

61 Amendment of s 171 (Dealing with forfeited property prohibited)

Section 171(3), 'this'—

omit.

62 Amendment of s 174 (Notice after conviction quashed or forfeiture order discharged)

Section 174(5)(b), from ‘court that made the restraining order’—
omit, insert—
‘Supreme Court.’.

63 Amendment of s 176 (If application for order declaring value of property)

Section 176(2)(b), from ‘court that made the restraining order’—
omit, insert—
‘Supreme Court.’.

64 Amendment of s 195 (Discharge of pecuniary penalty order)

Section 195(2), after ‘court’—
insert—
‘that quashed the conviction or upheld the appeal’.

65 Amendment of s 247 (Retention of records by financial institutions)

Section 247(2)(a), ‘;’—
omit, insert—
‘document;’.

66 Amendment of sch 6 (Dictionary)

(1) Schedule 6, definitions “**buy-back order**”, “**exclusion order**”, “**innocent interest exclusion order**”, “**special forfeiture order**” and “**third party order**”—

omit.

(2) Schedule 6—
insert—

‘**“buy-back order”**’ see section 170.⁸

“exclusion order” see section 69.⁹

“innocent interest exclusion order” see—

(a) for chapter 2—section 74; or

(b) for chapter 3—section 159.¹⁰

“special forfeiture order” see section 200(2).¹¹

“third party order” see section 168.¹².

(3) Schedule 6, definition **“relevant person”**, paragraph (b), ‘part 6’—
omit, insert—

‘part 7’.

PART 12—AMENDMENT OF DISTRICT COURT OF QUEENSLAND ACT 1967

67 Act amended in this part

This part amends the *District Court of Queensland Act 1967*.

68 Amendment of s 27 (Judge may perform the duties of another judge)

Section 27—

insert—

‘(2) If a District Court judge is not available in the place where a matter is to be heard urgently, a Supreme Court judge may hear the matter and

8 Section 170 (What is a buy-back order)

9 Section 69 (What is an exclusion order)

10 Section 74 (What is an innocent interest exclusion order) or 159 (What is an innocent interest exclusion order)

11 Section 200 (Application for special forfeiture order)

12 Section 168 (What is a third party order)

may exercise all the powers and perform all the duties that a District Court judge might have exercised or performed.’.

69 Amendment of s 118 (Appeal to the Court of Appeal in certain cases)

Section 118(2)(a) and (b)—

omit, insert—

- ‘(a) is given for an amount equal to or more than the Magistrates Courts jurisdictional limit; or
- (b) relates to a claim for, or relating to, property that has a value equal to or more than the Magistrates Courts jurisdictional limit.’.

PART 13—AMENDMENT OF ELECTORAL ACT 1992

70 Act amended in this part

This part amends the *Electoral Act 1992*.

71 Amendment of s 148J (Inquiry into preselection ballot)

Section 148J(1)(b), after ‘has not’—

insert—

‘been’.

72 Amendment of s 161B (Lodging how-to-vote cards)

(1) Section 161B(1) and (2), ‘at least’—

omit, insert—

‘no later than 5 pm on the Friday that is’.

(2) Section 161B(2)—

insert—

‘Example for subsection (1) and (2)—

If polling day is Saturday, 15 January, the how-to-vote cards and statutory declaration must be lodged no later than 5pm on Friday, 7 January.’.

PART 14—AMENDMENT OF EVIDENCE ACT 1977

73 Act amended in this part

This part amends the *Evidence Act 1977*.

74 Replacement of s 58 (Proof of letters patent)

Section 58—

omit, insert—

‘58 Proof of letters patent

‘(1) The chief executive (premiers) may certify a copy of any letters patent issued by the Crown in relation to the State, or in relation to any matter that concerns the State, to be a true copy of the letters patent.

‘(2) The chief executive (premiers) may delegate the power under subsection (1) to an officer of that chief executive’s department.

‘(3) The copy of the letters patent certified by the chief executive (premiers) is, on production in any proceeding in which it is sought to prove the letters patent, evidence of the matters contained in the copy.

‘(4) In this section—

“**chief executive (premiers)**” means the chief executive of the department dealing with matters under the *Constitution of Queensland 2001*’.

75 Amendment of s 110 (Reproduction not to be admitted as evidence unless transparency in existence)

Section 110(2)(d), ‘*Life Insurance Act 1945* (Cwlth)’ and footnote—

omit, insert—

‘*Life Insurance Act 1995* (Cwlth)’.

76 Amendment of pt 9 (Transitional provision)

Part 9, heading, ‘PROVISION’—

omit, insert—

‘AND DECLARATORY PROVISIONS’.

77 Insertion of new s 137

Part 9—

insert—

‘137 Declaratory provision for Justice and Other Legislation Amendment Act 2003

‘To remove any doubt, it is declared that the chief executive (premiers) has always had the powers mentioned in section 58(1) and (2).’.

PART 14A—AMENDMENT OF FREEDOM OF INFORMATION ACT 1992**77A Act amended in this part**

This part amends the *Freedom of Information Act 1992*.

77B Amendment of sch 1 (Secrecy provisions giving exemption)

Schedule 1, ‘*Juvenile Justice Act 1992*, section 226’—

omit, insert—

‘*Juvenile Justice Act 1992*, section 288’.

PART 15—AMENDMENT OF INDUSTRIAL RELATIONS ACT 1999

78 Act amended in this part

This part amends the *Industrial Relations Act 1999*.

79 Amendment of s 341 (Appeal from commission, magistrate or registrar)

Section 341—

insert—

‘(4) Also, if—

- (a) under the decision that was appealed, the appellant was sentenced to a term of imprisonment; and
- (b) the appellant was released from custody under the *Industrial Relations (Tribunal) Rules 2000*, rule 120;¹³ and
- (c) after the appeal is decided, discontinued or struck out, the appellant is still required to serve all or part of the term of imprisonment;

the court may direct an industrial magistrate to issue a warrant for the appellant’s arrest.

‘(5) The industrial magistrate must comply with the direction.

‘(6) When arrested, the appellant must be taken to a prison within the meaning of the *Corrective Services Act 2000* to serve the unexpired portion of the term of imprisonment to which the appellant was sentenced.’

13 *Industrial Relations (Tribunal) Rules 2000*, rule 120 (Appellant to give undertaking)

PART 16—AMENDMENT OF JUDGES (PENSIONS AND LONG LEAVE) ACT 1957

80 Act amended in this part

This part amends the *Judges (Pensions and Long Leave) Act 1957*.

81 Amendment of s 2 (Definitions)

(1) Section 2—

insert—

‘**“proved incapacity”**, in relation to a judge, means proved incapacity to perform the duties of the office.’

(2) Section 2, definition **“notional pension”**, paragraph (a), ‘, because of permanent disability or infirmity’—

omit, insert—

‘because of permanent disability or infirmity, or had been removed from office because of proved incapacity’.

82 Amendment of s 5 (Pension of judge retiring on account of ill health)

(1) Section 5, from ‘Where a judge’ to ‘judge shall, on retirement, be’—

omit, insert—

‘(1) This section applies if—

(a) a judge retires from office and a medical practitioner prescribed under a regulation certifies to the Minister that the judge’s retirement is because of permanent disability or infirmity; or

(b) a judge is removed from office because of proved incapacity.

‘(2) The judge is’.

(2) Section 5(2)(a), as amended, ‘or been retired because of permanent disability or infirmity’—

omit, insert—

‘because of permanent disability or infirmity or had not been removed from office because of proved incapacity’.

83 Amendment of s 7 (Pension of spouse on death of judge)

Section 7(1)(b), from ‘retired on the’ to ‘disability or infirmity’—
omit, insert—

‘not died but had retired because of permanent disability or infirmity or had been removed from office because of proved incapacity’.

84 Amendment of s 16 (What happens if judge removed from office)

Section 16(1)—
omit, insert—

‘(1) If a judge is removed from office under the *Constitution of Queensland 2001*, section 61,¹⁴ this Act applies only if the reason for the judge’s removal is that the judge is unable to perform the duties of the office because of proved incapacity.’.

PART 17—AMENDMENT OF JUSTICES ACT 1886**85 Act amended in this part**

This part amends the *Justices Act 1886*.

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

Section 47—
insert—

‘(6) Despite subsections (4) and (5), if the proceedings for the offence were started by a notice to appear, the alleged previous conviction must be stated in a notice served—

- (a) with the notice to appear; or
- (b) a reasonable time before the time appointed for the defendant’s appearance.

14 *Constitution of Queensland 2001*, section 61 (Removal from office for misbehaviour or incapacity)

‘(7) In this section—

“**notice to appear**” means a notice to appear under the *Police Powers and Responsibilities Act 2000*, section 214(2).¹⁵.

87 Amendment of s 103 (Disobedience of summons)

(1) Section 103(1), ‘, upon oath being made before them substantiating the matter of the complaint to their satisfaction,’—

omit.

(2) Section 103—

insert—

‘(1A) However, before issuing the warrant, the matter of the complaint must be substantiated to the justices’ satisfaction by information given on oath.’.

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

Section 142(1)(b), ‘upon oath being made before them substantiating the matter of the complaint to their satisfaction’—

omit, insert—

‘if satisfied, from information given on oath, that the matter of the complaint is substantiated’.

89 Amendment of s 147A (Power of justices to reopen proceedings and rectify orders)

Section 147A(2)—

insert—

‘*Example—*

An order may be varied to correct the defendant’s name.’.

15 *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

PART 18—AMENDMENT OF LAND AND RESOURCES TRIBUNAL ACT 1999

90 Act amended in this part

This part amends the *Land and Resources Tribunal Act 1999*.

91 Insertion of new 27A

After section 27—

insert—

‘27A Membership of other decision-making entity

‘(1) A person’s appointment as a presiding member of the tribunal does not prevent the person’s appointment to another decision-making entity.

‘(2) However—

- (a) the appointment to the other decision-making entity—
 - (i) must be on a part-time basis; and
 - (ii) must not represent a conflict of interest with the person’s appointment to the tribunal; and
- (b) the person must not receive any salary or allowances, other than expense reimbursement, for the performance of duties on the other decision-making entity.

‘(3) In this section—

“**decision-making entity**” means a tribunal or other entity, other than a court, established under an Act of the Commonwealth or a State for adjudicative, investigative or similar purposes.’.

92 Insertion of new s 53A

Part 4, division 3—

insert—

‘53A Exclusive jurisdiction for contract conditions

‘(1) A relevant person may apply to the tribunal, and only to the tribunal, for an order—

- (a) for the enforcement of contract conditions; or
- (b) to decide a matter under contract conditions; or
- (c) making a declaration about the interpretation of contract conditions.

‘(2) The tribunal must hear and decide an application under subsection (1) and may make the order it considers appropriate.

‘(3) Subject to section 67, the jurisdiction given to the tribunal under this section is exclusive of the jurisdiction of any other court or tribunal.

‘(4) In this section—

“**contract conditions**” means contract conditions under the relevant provision, as applying in relation to—

- (a) a mining lease; or
- (b) another mining tenement, because of the application of the *Mineral Resources Act 1989*, part 17, division 4 to the mining tenement.

“**relevant person**” means a consultation and negotiation party under the relevant provision.

“**relevant provision**” means the *Mineral Resources Act 1989*, section 675(1)(b)(ii).’.

93 Amendment of sch 2 (Negotiated agreements)

Schedule 2, at the end—

insert—

‘NATIVE TITLE ACT 1993 (CWLTH)

‘3. An agreement obtained under the Commonwealth Native Title Act, section 31(1)(b) (Normal negotiation procedure) is a negotiated agreement.’.

94 Amendment of sch 4 (Dictionary)

Schedule 4, definition “native title (mining) provisions”, ‘division 2’—
omit, insert—
‘divisions 2 and 5’.

**PART 19—AMENDMENT OF LEGISLATIVE
STANDARDS ACT 1992****95 Act amended in this part**

This part amends the *Legislative Standards Act 1992*.

96 Amendment of s 22 (Explanatory note must be tabled with Bill or significant subordinate legislation)

Section 22(1), ‘Minister who presents a Government Bill’—
omit, insert—
‘Member who presents a Bill’.

97 Amendment of s 23 (Content of explanatory note for Bill)

Section 23(1)—
insert—

- ‘(i) if the Bill is substantially uniform or complementary with legislation of the Commonwealth or another State—
 - (i) a statement to that effect; and
 - (ii) a brief explanation of the legislative scheme.’.

PART 20—AMENDMENT OF MINERAL RESOURCES ACT 1989

98 Act amended in this part

This part amends the *Mineral Resources Act 1989*.

99 Amendment of s 175 (Mining registrar may recommend actions to ease concerns)

(1) Section 175, heading, after ‘concerns’—

insert—

‘or other action’.

(2) Section 175(1), after ‘holder,’—

insert—

‘or should take some other action.’

(3) Section 175(4), ‘to the owner’—

omit, insert—

‘to—

- (a) if the recommended action under subsection (1) relates only to native title protection conditions under section 141AA—any person identified in the conditions as a native title party; or
- (b) if the recommended action under subsection (1) relates only partly to the native title protection conditions—
 - (i) any person identified in the conditions as a native title party; and
 - (ii) the owner of the land; or
- (c) otherwise—the owner of the land’.

(4) Section 175(5), ‘The’—

omit, insert—

‘If the recommended action under subsection (1) is action to ease concerns of an owner of land or another exploration permit holder, the’.

100 Amendment of s 223 (Mining registrar may recommend action to ease concerns)

(1) Section 223, heading, after ‘concerns’—

insert—

‘or other action’.

(2) Section 223(1), after ‘holder,’—

insert—

‘or should take some other action.’

(3) Section 223(4), ‘to the owner’—

omit, insert—

‘to—

- (a) if the recommended action under subsection (1) relates only to native title protection conditions under section 194AAA—any person identified in the conditions as a native title party; or
- (b) if the recommended action under subsection (1) relates only partly to the native title protection conditions—
 - (i) any person identified in the conditions as a native title party; and
 - (ii) the owner of the land; or
- (c) otherwise—the owner of the land’.

(4) Section 223(5), ‘The’—

omit, insert—

‘If the recommended action under subsection (1) is action to ease concerns of an owner of land or another mineral development licence holder, the’.

101 Amendment of s 363 (Substantive jurisdiction)

Section 363(2)—

insert—

- ‘(ea) any dispute or other matter arising between persons identified in native title protection conditions as an explorer or as a native title party, if the conditions—

- (i) under section 25AA, are included in the conditions imposed on a prospecting permit; or
- (ii) under section 141AA, are included in the conditions determined for an exploration permit; or
- (iii) under section 194AAA, are included in the conditions determined for a mineral development licence; and’.

102 Amendment of schedule (Dictionary)

Schedule, definition “native title provisions”, ‘part 19, division 2’—
omit, insert—
‘part 19, divisions 2 and 5’.

PART 21—AMENDMENT OF PERSONAL INJURIES PROCEEDINGS ACT 2002

103 Act amended in this part

This part amends the *Personal Injuries Proceedings Act 2002*.

104 Amendment of s 9 (Notice of a claim)

Section 9(3)(b), ‘consults a lawyer about the possibility of’—
omit, insert—
‘instructs a lawyer to act on the person’s behalf in’.

105 Amendment of s 9A (Particular provision for notice of a claim procedure for medical negligence cases)

Section 9A(4)(b), ‘consults a lawyer about the possibility of’—
omit, insert—
‘instructs a lawyer to act on the person’s behalf in’.

105A Amendment of s 37 (Exchange of material for compulsory conference)

Section 37(4)(c)(ii), ‘equal to, or’—
omit.

106 Amendment of ch 4 (Transitional provisions)

Chapter 4—
insert—

**‘PART 4—TRANSITIONAL PROVISION FOR JUSTICE
AND OTHER LEGISLATION AMENDMENT ACT 2003****‘82 Time for lodging notice**

‘(1) The amendment of section 9(3)(b)¹⁶ by the *Justice and Other Legislation Amendment Act 2003* apply to claims that arose before the commencement of the amendment.

‘(2) The amendment of section 9A(4)(b)¹⁷ by the *Justice and Other Legislation Amendment Act 2003* apply to claims that arose after 9 April 2003.

**PART 22—AMENDMENT OF PUBLIC TRUSTEE
ACT 1978****107 Act amended in this part**

This part amends the *Public Trustee Act 1978*.

16 Section 9 (Notice of a claim)

17 Section 9A (Particular provision for notice of a claim procedure for medical negligence cases)

108 Amendment of s 59 (Compromise of actions by or on behalf of persons under a legal disability claiming moneys or damages valid only with sanction of court or public trustee)

(1) Section 59(6), ‘as between party and party and as between solicitor and client’—

omit, insert—

‘on the standard basis and indemnity basis’.

(2) Section 59(6A), ‘party and party and solicitor and client costs’—

omit, insert—

‘costs calculated on the standard basis and indemnity basis’.

109 Amendment of s 95 (Restrictions on property dealings or proceedings)

Section 95—

insert—

‘(2) If the court becomes aware that an action has been brought or defended in contravention of subsection (1)(b), the prisoner can take no further steps in the action without the written consent of the public trustee, in the approved form, filed in the court.

‘(3) The consent of the public trustee is then taken to have been given when the action was brought or defended.’.

PART 22A—AMENDMENT OF QUEENSLAND LAW SOCIETY ACT 1952

109A Act amended in this part

This part amends the *Queensland Law Society Act 1952*.

109B Insertion of new pt 4B, div 2A

After section 48I—

insert—

Division 2A—Speculative personal injury claims**‘48IA Definitions for div 2A**

‘In this division—

“speculative personal injury claim” means a claim for, or substantially for, damages for personal injury if the right of a practitioner or firm to charge and recover from a client for work done is made dependent on the client’s success in pursuing the claim.

‘48IB Purpose

‘The purpose of this division is to provide for the maximum payment for a practitioner’s or firm’s conduct of a speculative personal injury claim.

‘48IC Maximum payment for conduct of speculative personal injury claim

‘(1) The maximum amount of fees that a practitioner or firm may charge and recover from a client for work done in relation to a speculative personal injury claim must not be more than the amount worked out using the formula—

$$[E - (R + D)] X 0.5$$

where—

“E” means the amount to which the client is entitled under a judgment or settlement.

“R” means the total amount the client must, under an Act, or a law of the Commonwealth or another jurisdiction, or otherwise, refund on receipt of the amount to which the client is entitled under the judgment or settlement.

“D” means the total amount of disbursements the client must pay, or reimburse, to the practitioner or firm in relation to the speculative personal injury claim.

‘(2) If—

- (a) the amount of fees that a practitioner or firm may charge and recover from a client is more than the amount calculated under subsection (1); and
- (b) the practitioner or firm wishes to charge and recover the amount (the “**greater amount**”) from the client;

the practitioner may apply, in writing, to the council for approval to charge and recover the greater amount.

‘(3) The council may, in writing, approve an amount up to the greater amount.

‘(4) This section applies despite part 4A and section 48I.¹⁸

‘(5) This section applies to any request for payment made on or after the day this section commences, whether or not a client agreement was entered into before that date.’.

PART 23—AMENDMENT OF STATE PENALTIES ENFORCEMENT ACT 1999

110 Act amended in this part

This part amends the *State Penalties Enforcement Act 1999*.

111 Amendment of s 118 (Good behaviour order when imprisonment not appropriate)

Section 118—

insert—

‘(7) If the period stated in the good behaviour order ends without the registrar issuing an arrest and imprisonment warrant for the enforcement debtor, the unpaid amount is no longer payable.’.

18 Part 4A (Client agreements) and section 48I (Maximum payment for work)

112 Amendment of s 144 (Fine collection notice for regular redirection from financial institution account)

Section 144(b), 'debt'—

omit, insert—

'deposit'.

113 Amendment of s 157 (Evidentiary provisions)

Section 157(3)—

insert—

'(h) a notice of intention to suspend the driver licence of a stated person was served on the person in a stated way on a stated day.'

114 Amendment of pt 10 (Transitional provisions)

Part 10, heading—

omit insert—

'PART 10—TRANSITIONAL AND VALIDATING PROVISIONS

'Division 1—Transitional provisions'.

115 Insertion of new pt 10, div 2

Part 10—

insert—

'Division 2—Validating provisions

'173 Infringement notice for Motor Accident Insurance Act 1994

'(1) This section applies to an infringement notice for an offence against the *Motor Accident Insurance Act 1994*.

'(2) An infringement notice issued or served by a police officer before 20 December 2002 is taken to have been issued or served by an authorised person.

‘(3) In this section—

“**infringement notice**” means an infringement notice under this Act or the *Justices Act 1886*, repealed part 4A.’.

PART 24—AMENDMENT OF SUPREME COURT ACT 1995

116 Act amended in this part

This part amends the *Supreme Court Act 1995*.

117 Insertion of new s 286A

After section 286—

insert—

‘286A Magistrates Court registrar is Supreme Court registrar and deputy sheriff

‘(1) The registrar of the Magistrates Court for the Magistrates Court district in which the Supreme Court sits may perform the functions and exercise the powers of the registrar, and the deputy sheriff, of the Supreme Court for the Supreme Court district that is or includes the Magistrates Court district.

‘(2) Subsection (1) applies whether or not a registrar, or deputy sheriff, of the Supreme Court for the Supreme Court district has been appointed.

‘(3) In this section—

“**registrar**” of a Magistrates Court includes a person who is acting as the registrar.’.

118 Insertion of new s 304

Part 21—

insert—

‘304 Transitional provision—Magistrate Court registrar acting as registrar

‘(1) This section applies if, before the commencement of this section, the registrar of the Magistrates Court for the Magistrates Court district in which the Supreme Court sits purported to perform the functions and exercise the powers of the registrar, or deputy sheriff, of the Supreme Court for the Supreme Court district that is or includes the Magistrates Court district.

‘(2) Anything done or omitted to be done by the registrar is taken to have been done or omitted to be done by a registrar, or deputy sheriff, appointed under this Act.

‘(3) In this section—
“**registrar**” of a Magistrates Court includes a person who is acting as the registrar.’.

PART 25—AMENDMENT OF SUPREME COURT OF QUEENSLAND ACT 1991**119 Act amended in this part**

This part amends the *Supreme Court of Queensland Act 1991*.

120 Amendment of sch 1 (Subject matter for rules)

(1) Schedule 1, section 11(f)—

omit.

(2) Schedule 1, section 11—

insert—

‘(2) Expert evidence generally, including, for example, the following—

- (a) conferring immunity from action on experts in relation to reports tendered in evidence;
- (b) matters relating to court experts;

- (c) the appointment by the court of an expert to prepare a report about a dispute before proceedings are started for tendering as evidence in proceedings started later in relation to the dispute;
- (d) defining the duty of an expert witness in relation to the court and the parties;
- (e) prescribing the basis of and conditions for the admissibility of expert evidence.’.

PART 26—AMENDMENT OF TORRES STRAIT ISLANDER LAND ACT 1991

121 Act amended in this part

This part amends the *Torres Strait Islander Land Act 1991*.

122 Amendment of s 57 (Recommendation to Minister)

Section 57—

insert—

‘(6) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

123 Amendment of s 58 (Resolution of conflicting claims)

Section 58—

insert—

‘(3) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

124 Amendment of s 59 (Notification of parties)

Section 59—

insert—

‘(3) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

125 Amendment of s 106 (Conferences)

Section 106—

insert—

‘(5) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

126 Amendment of s 113 (Reasons to be given by tribunal)

Section 113—

insert—

‘(4) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

127 Amendment of s 114 (Appeals to Land Appeal Court from decisions of tribunal)

Section 114—

insert—

‘(9) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.