

CRIMINAL CODE BILL 1995

EXPLANATORY NOTES

NOTE—A notation to the effect that there has been no change to the current law means that there has been no change to the law other than a change in the drafting of the clause in accordance with drafting current drafting practice.

NOTE—Use of the term “current Code” means the Criminal Code Act 1899.

CHAPTER 1—GENERAL

PART 1—INTRODUCTION

Clause 1 sets out the short title of the Bill—the *Criminal Code*.

Clause 2 provides for the commencement of the Act on a day to be fixed by proclamation.

PART 2—INTERPRETATION

Clause 3 explains that the dictionary in Schedule 5 of the Bill defines particular words used and that certain definitions are signposted in the dictionary, in that the reader is directed to the section in which the particular definition is to be found.

PART 3—APPLICATION

Division 1—General Effect of the Code

Clause 4 replaces section 15 of the current Code and provides that the Bill applies to all persons, including the State.

Clause 5(1) replaces section 2 of the current Code and states that the Code is the law of Queensland about the matters it deals with.

Clause 5(2) replaces section 36(2) of the current Code. The provisions of Chapter 1 of the Bill apply to all offences against an Act.

There has been no change to the current law.

Clause 5(3) provides that an Act which provides for an indictable offence must be read with the Bill to the extent that the Act provides for the offence and the context allows.

Clause 6 replaces section 5 of the current Code and provides that a person is not liable to be tried or punished in Queensland for an indictable offence that is not contained expressly in the Bill or another Act.

Clause 7 states that the Bill applies to both acts and omissions.

Clause 8 replaces section 8 of the current Code and provides that the Bill does not affect the power of the courts to punish for contempt.

Division 2—Multiple proceedings

Clause 9 replaces section 16 of the current Code and provides that a person must not be punished twice for the same act or omission, except where the act or omission causes the death of someone else after a person has been convicted and punished for that act or omission. In that case, a person may be again prosecuted and punished in respect of the same act or omission, but for the offence of which the person is guilty because the person caused the death of someone else.

The application of this section is explained by Williams J. in the decision of the Court of Criminal Appeal in R v Gordon ex parte the Attorney-General [1975] Qd R 301 at 323:—

“In the final result it seems to me that the proper test is whether the same wrongful act or omission which previously resulted in conviction and punishment, is the central theme, the focal point or for want of a more apt choice of words and perhaps more appropriately, the basic act or omission in the later offence charged. If it is, then except in the case of resulting death in terms of the exception in section 16, a person may not be twice punished for that same act or omission. In my view it would be dangerous to attempt to state the position more specifically in the hope of propounding a general rule. Each set of situations should be considered on their own particular “acts or omission”.

There has been no change to the current law.

Clause 10 replaces sections 17 and 700 of the current Code and provides for a defence of previous acquittal or conviction. It is not limited to convictions or acquittals on indictment and extends to prior proceedings in the Magistrates Court. Accordingly, this provision replaces the current section 700 [Certificate of dismissal by justices]. The operation of the provision depends on the offence charged and the alternatives to that offence, and is best explained by example.

If the current offence is an alternative to the earlier offence then clause 10(a) applies.

Under clause 10(a) it is a defence to a charge [the “current charge”] of an offence [the “current offence”] to show that the accused has already been tried, and convicted or acquitted on a charge on which an accused could have been convicted of the current offence.

e.g. Unlawful vaginal intercourse with a female under 16 years is an alternative to rape. It is a defence to a charge of unlawful vaginal intercourse with a female under 16 [the current charge] to show that the accused has already been tried and convicted or acquitted of rape, because on the charge of rape, the accused could have been convicted of the offence of unlawful vaginal intercourse with a female under 16 years.

If the earlier offence is an alternative to the current offence, then clause 10(b) applies.

Under clause 10(b) it is a defence to a charge [the “current charge”] of an offence [the “current offence”] to show that the accused has already been tried, and convicted or acquitted on a charge of an offence of which the accused could be convicted on the current charge.

e.g. Manslaughter is an alternative to murder. It is a defence to a charge of murder [the current offence] to show that the accused has already been convicted or acquitted on a charge of manslaughter, because manslaughter is an offence of which the accused could be convicted on the charge of murder.

Apart from the extension of the defence to previous convictions or acquittals upon complaint in the Magistrates Court, there has been no change to the current law.

Clause 11 provides that an issue to be decided under Division 2 of the Bill [Effect of application of multiple proceedings] is an issue of law.

Division 3—Territorial Jurisdiction

Clause 12 is derived from section 12 of the current Code. It sets out the application of the Bill to offences wholly or partially committed in Queensland.

The application of the Bill is extended to the situation where an offence is composed of a number of acts or omissions, and any of those acts or omissions happen in Queensland. The person who does the act or makes the omission commits an offence as if all of the acts or omissions which comprise the offence had occurred in Queensland.

The application of the Bill is extended to the situation where an event happens in Queensland, which is caused by an act done or omission made outside of Queensland. If the act or omission would be an offence if it happened in Queensland, then the person who did the act or made the omission commits an offence as if the act or omission had happened in Queensland.

The application of the Bill is extended to the situation where an act done or omission made in Queensland causes an event to happen outside of Queensland. If the act or omission would be an offence if the event happened in Queensland, then the person who does the act or makes the omission commits an offence as if the event happened in Queensland.

The current Code section 12 did not extend to a case where an act or omission was done out of Queensland which caused the death of a person in Queensland, if the deceased was out of Queensland when the act or omission happened. The new provision does not contain this restriction.

Clause 13 replaces section 13 of the current Code. It extends liability under the Bill to a person who, while out of Queensland:—

- does an act or makes an omission to enable or aid someone else to commit an offence that is actually committed in Queensland;
- aids someone else to commit an offence that is actually committed in Queensland;
- counsels or procures someone else to commit an offence actually committed in Queensland.

Clause 13 also extends liability under the Bill to a person who, while out of Queensland, procures someone else to do an act or make an omission in Queensland which is an offence in Queensland.

There has been no change to the current law.

Clause 14 replaces section 14 of the current Code. It extends liability under the Bill to a person who, in Queensland, procures someone else to do an act or make an omission out of Queensland which would have been an offence in Queensland and an offence in the place where it was to be committed. The punishment must not be more than the punishment to which the person would have been liable had the person done the act or made the omission in the place where it was to be done or made, under the laws in force at the place.

There has been no change to the current law.

Clause 15 provides for the application of the Bill to the coastal waters of Queensland.

Clause 16 replaces section 14A of the current Code and sets the jurisdictional limit of the Bill at matter occurring within 320 kilometres of Queensland.

There has been no change to the current law.

Division 4—Effect of being taken to have committed an offence

Clause 17 explains the effect of a provision that declares that a person is taken to commit an offence as if particular facts were true.

Division 5—Criminal responsibility of State and Commonwealth

Clause 18 provides that the State cannot be prosecuted for an offence even though the Act against which the offence was committed is expressly applied to the State. An employee or agent of the State who is a party to the offence may be prosecuted.

Division 6—Civil remedies

Clause 19 replaces section 6 of the current Code and sets out the effect of the Bill on civil remedies. Where the Bill declares that an act or omission is lawful, or that a person may do an act or omission, no civil action can be taken claiming that the act or omission is unlawful. Otherwise, the Bill does not affect civil rights of action.

Clause 20 replaces section 702 of the current Code and provides that unless otherwise expressly provided, the prosecution or conviction of a person for an offence does not affect a civil remedy which a person, dissatisfied by the offence, may have against the offender.

There has been no change to the current law.

Division 7—Bodies Corporate

Clause 21 provides that all provisions creating offences apply to bodies corporate as well as individuals.

PART 4—OFFENCES AND OFFENCE TYPES

Clause 22 replaces section 2 of the current Code and defines an offence as an act or omission that makes the person who does the act or makes the omission liable to punishment.

There has been no change to the current law.

It should be noted that the onus of proof rules applied by the High Court in *Mullen v R* [1938] St.R.Qd 97 are applicable to all offences under the law of Queensland.

Clause 23 replaces section 3 of the current Code. Under clause 20 an offence is either a criminal offence or a regulatory offence and a criminal offence is either a crime or a simple offence. There are no misdemeanours. This Bill contains crimes only, in respect of which an offender may be arrested without warrant.

A crime is an indictable offence for which an offender may only be prosecuted or convicted on indictment.

Clause 24 states that every offence defined by the Bill is a crime and that every indictable offence under an Act is a crime.

Clause 25 defines what are simple offences for the purposes of the Bill.

Clause 26 defines what are regulatory offences for the purpose of the Bill.

Clause 27 defines what are indictable offences for the purposes of the Bill and provides that a person who commits an indictable offence must be dealt with by judge and jury unless an act of parliament expressly provides for prosecution by summary proceedings.

Clause 28 outlines the jurisdiction of a Magistrates Court to deal with every simple offence, every regulatory offence, and every indictable offence for which a summary proceeding under the *Justices Act 1886* may be taken.

**PART 5—PARTIES, ATTEMPTS, PREPARATION,
CONSPIRACIES AND ACCESSORIES AFTER THE
FACT**

Division 1—Parties

Clause 29 states that each person who is a party to an offence is taken to commit the offence.

Clause 30 replaces section 7 of the current Code, and defines parties to offences.

A party to an offence is a person who:—

- actually does the act or makes the omission that is the offence;
- does an act or makes an omission to enable or aid someone else to commit the offence;
- aids someone else in committing the offence; or
- counsels or procures someone else to commit the offence.

If a person procures someone else to do an act or make an omission that would be an offence by the person, had the person done the act or made the omission, then the person is taken to have committed an offence of the same type.

There has been no change to the current law.

Clause 31 replaces section 8 of the current Code and deals with offences committed in the prosecution of a common unlawful purpose. If:—

- two or more persons form a common intention to prosecute an unlawful purpose in conjunction with each other; and
- an offence is committed in the prosecution of that unlawful purpose; and
- the commission of an offence of the nature of the offence committed was a probable result of the prosecution of the unlawful purpose,

then each person is taken to be a party to the offence and to have committed the offence.

The provision states that it applies despite clause 50 of the Bill, which provides that a person is not criminally responsible for an act or omission that happens independently of the exercise of the person's will, or for an event that occurs by accident. This reflects the law as stated in R v Solomon [1959] Qd R 123:—

“Criminal responsibility for acts occurring independently of the exercise of the will of the accused is provided for in [inter alia] sub-sections 8 and 9...[Section 8] extends the criminal responsibility of persons who have made a concert to commit an offence. They are responsible not only for the concerted—the willed—offence, but also for such offences—but only such offences—as are objectively the probable consequence of the prosecution of the concert...In my view s.7 is not intended to create responsibility for unwilled acts arising out of a plan or concert. The creation and limitation of responsibility for unwilled acts arising from a plan or concert is to be found solely in s.8.”

per Philp J. at pp 129 & 130

There has been no change to the current law.

Clause 32 replaces section 9 of the current Code and deals with the situation when a person is counselled or procured to commit an offence.

Under clause 32, when an offence is committed that is a probable result of the counselling or procuring, it is immaterial whether the offence actually committed was the same as that counselled or procured. It is also immaterial whether the offence actually committed was committed in the way counselled or procured.

The current law referred to counselling only. The new provision covers counselling and procuring. Otherwise, the law has not been changed.

Clause 33 provides that if a person withdraws from the commission of an offence or the prosecution of an unlawful purpose or the counselling to commit an offence a reasonable time before the offence is committed, and communicates that withdrawal to the other parties and takes all reasonable steps to prevent the commission of the offence or the further prosecution of the common unlawful purpose or the counselling to commit an offence, then the person is not taken to have committed the offence under clauses 29, 31 or 32 of the Bill.

A defence of withdrawal or timely countermand exists under the current law, although it is not contained in the current Code.

The defence was discussed by the Court of Criminal Appeal in R v Menniti [1984] 13 A Crim R 417. In that case, the Court of Criminal Appeal accepted the common law principle as stated by Gibbs J. in White v Ridley [1978] 140 CLR 342 at 350-1; namely, that an accessory may withdraw before the crime is committed; but that if his or her withdrawal is to save him or her from criminal liability, it must be evidenced by action or countermanding that is capable of being effective and it must be accompanied by such action as he or she can reasonably take to undo the effect of his or her previous encouragement or participation.

The defence provided for in this clause incorporates that principle.

Division 2—Attempts and preparation to commit offences

Clause 34 replaces section 4 of the current Code and has been derived from section 1(1) of the *Criminal Attempts Act 1981* [UK].

Under clause 34, a person attempts to commit an offence if the person, intending to commit the offence, does an act or makes an omission more than merely preparatory to the commission of the offence, but does not fulfil the person's intention to the extent of committing the offence. Under clause 34(4), a person may still be convicted of an attempt even if there is evidence that the person actually committed the offence.

It is immaterial [other than for punishment] whether the person has done all that is necessary on the persons part to commit the offence; whether circumstances independent of the person's will prevent the fulfilment of the person's intention; or whether the person voluntarily stops the attempt.

It is immaterial that the offence is impossible to commit.

The same facts may amount to one offence and an attempt to commit another offence.

Clause 35 amalgamates and replaces section 535 and 536 of the current Code and creates the crime of attempting to commit a crime.

Apart from an increase in penalty, there has been no change to the current law.

Clause 36 replaces section 539 of the current Code. The provision applies if a person, in Queensland, seeks to procure someone else to do a criminal act or make a criminal omission in Queensland or elsewhere; or, if

a person, outside Queensland, attempts to procure someone else to do a criminal act or make a criminal omission in Queensland. In those circumstances, the person is taken to commit an offence of the same type as the person would have committed if the person had attempted to do the relevant act or omission in Queensland. If the act or omission was to be done or made outside Queensland, punishment is limited to the liability provided for under the laws of the place at which the act or omission was to happen.

There has been no change to the current law.

Clause 27 replaces sections 425 and 540 of the current Code and creates the crime of criminal preparation. The offence focuses on the possession of anything intended to be used in the commission of any crime where the thing is to be used to cause or threaten injury to anyone or to enter premises without the occupier's consent.

Division 3—Conspiracies

Clause 38 defines “conspiracy” [see R v Carusi [1990] 64 ALJR 657].

Clause 39 sets out the relationship between the criminal responsibility of co-conspirators. A person may be convicted of a conspiracy even though the other party to the conspiracy:—

- cannot be convicted of the conspiracy;
- cannot be convicted of the offence in respect of which the conspiracy exists;
- is not charged with the conspiracy;
- cannot be identified; or
- has been acquitted—unless the conviction of the person would be inconsistent with the acquittal of the other party to the conspiracy.

Clause 40 provides that a person may conspire with another without knowing the other's identity. If a person [the “first person”], who is in conspiracy with a second person, knows that the second person is in conspiracy with a third person for the same purpose, then the first person commits the offence of conspiring with the third person even if the first person does not know the identity of the third person.

Clause 41 provides that a corporation may be convicted of conspiracy. A conspiracy cannot exist however, between a corporation and a director of the corporation or someone else responsible for the corporation's control or management, or with a wholly owned subsidiary of the corporation.

Clause 42 A person may be convicted of conspiracy even though it is impossible to carry out the purpose of the conspiracy.

Clause 43 applies the previous provisions of Division 3 of the Bill [Conspiracies] to every offence of conspiracy under an Act.

Clause 44 replaces sections 541 and 542 of the current Code and creates the crime of conspiracy to commit an offence.

There has been no change to the current law.

The offences contained in the current Code sections 221 [Conspiracy to defile] and 430 [Conspiracy to defraud] will be covered by this provision.

Clause 45 replaces section 543A of the current Code and protects persons involved in industrial disputes from liability for conspiracy.

There has been no change to the current law.

Division 4—Accessories after the Fact

Clause 46 replaces section 10 of the current Code and defines those persons who are accessories after the fact to an offence. Clause 46 does not contain the immunity for spouses which exists under the current Code section 10.

The clause also makes a person who obtains and keeps property derived from an offence an accessory after the fact to the offence.

Clause 47 replaces section 544 of the current Code and creates the crime of accessory after the fact to the particular crime.

There has been no change to the current law.

PART 6—RESPONSIBILITY

Division 1—State of mind, emergency and immaturity

Clause 48 replaces section 22 of the current Code.

Paragraph (1), read with paragraph (5), states the general common law principle that an ignorance of, or mistake about, the law does not excuse a person from criminal liability for an offence.

Paragraph (2) provides an exception to the general principle for offences relating to property. A person is not criminally responsible for an act or omission that would otherwise be a property offence if the act is done or the omission is made in the exercise of an honest claim of right made in an honest way. To establish the excuse, the claim must be pursued honestly. This reflects the law in R v Hopley [1915] 11 Crim App R 248:—

“...Intent to defraud is a necessary element in many offences, but there are different forms of it. One case is where there is no claim at all; there is no question about the intent there. Another case is where there is a genuine claim which a man could prove if he adopted proper means, but in respect of which he uses documents which are not genuine. Because he might have done a thing honestly it does not follow that he cannot be convicted if he uses false documents; the jury might find an intent to defraud...where a material part of the document which made the claim genuine was put forward falsely, knowing it to be false, the jury might well find an intent to defraud.”

Under paragraph 4, a person is not criminally responsible for contravening a statutory instrument which was not known to the person and which had not been published or otherwise made reasonably available or known to the public or persons likely to be affected by it.

Clause 49 replaces section 24 of the current Code and provides that an honest and reasonable but mistaken belief in the existence of any state of things may exonerate a person from criminal responsibility. The mistake must be one of fact, see R v. Warner [1980] Qd.R. 207 for the operation of this clause with other excuse provisions. This provision can permit an accused to recite themselves into other excuse clauses.

There has been no change to the current law.

Clause 50 replaces section 23 of the current Code. Subject to the Bill’s provisions about negligent acts or omissions, a person is not criminally

responsible for an act or omission that happens independently of the exercise of the person's will, or for an event that happens by accident.

Under paragraph (2) it is stated that an event does not happen by accident because the person to whom force is applied has a weakness, defect or abnormality unknown to the person using the force.

Paragraph (2) changes the law. It reflects the decision of the Court of Criminal Appeal in R v Martyr [1962] QD R 398, in which it was held that an event, such as the death of a person who had been assaulted, did not occur by "accident" because the person assaulted had an inherent weakness or defect, such as an egg-shell skull or an inherent weakness in the brain. It was held that a person was criminally responsible for the immediate and direct result of an intentional act.

The correctness of the decision in R v Martyr was challenged in R v Van Den Bemd [unreported C.A.236 of 1992, [Davies, McPherson JJA, de Jersey J], judgment delivered 30 October 1992]¹.

In R v Van Den Bemd, the Court of Appeal held that the decision in R v Martyr was no longer good law because its interpretation of section 23 reversed the second rule in section 23, by treating it as imposing rather than excluding criminal responsibility. The Court held that the test of criminal responsibility under section 23 in these circumstances was whether the death was such an *unlikely consequence of that act that an ordinary person could not reasonably have foreseen it*.

Special leave to appeal from the decision of the Court of Appeal was refused by the High Court by a 5:2 majority. The majority [Mason CJ, Deane, Dawson, Toohey and Gaudron JJ] stated that the Court of Appeal's interpretation favoured the individual and reflected accepted notions of culpability and responsibility for criminal conduct.

The minority [Brennan and McHugh JJ] stated that the Court of Appeal decision was inconsistent with the decision of the High Court in Mamoute-Kulang v The Queen [1964] 111 CLR 62 which had authoritatively decided the point and confirmed the decision in Martyr.

¹ The applicant was convicted of manslaughter. He brought an appeal against conviction on the ground that the trial judge did not leave section 23 to the jury. The appellant had struck the deceased at most twice. The deceased suffered a subarachnoid haemorrhage following a blow to the left side of his neck during the fight.

It is artificial to consider a death which is caused by a deliberate blow as accidental. Under clause 50, the High Court decision in Van Den Bemd has been overruled, and the law has been returned to that stated by the Court of Criminal Appeal in R v Martyr. As Brennan J stated in Van Den Bemd at 204:—

“It has never been thought hitherto that, under the Code, a death which is caused by the deliberate [or “willed”] infliction of a fatal blow is “accidental” merely because the death was not foreseen or intended and was not reasonably foreseeable by the accused or by a lay bystander. A deceased whose death is facilitated or accelerated by some bodily infirmity not known to the accused has not been thought to have died accidentally. It has been said both in the United Kingdom and in Canada that offenders ‘must take their victims as they find them’. Nor has the chain of causation between the blow and the death been regarded as severed for the purposes of criminal responsibility.

That is the only practical approach to the operation of the criminal law...If, as a matter of fact, the trauma inflicted by an accused does cause the death of a victim and nothing has intervened between the trauma and the death, there is no factor that warrants the treating of the death as accidental”.

Unless a specific intention is an element of an offence, the intention with which an act is done or an omission is made is immaterial to criminal responsibility. Motive is immaterial to criminal responsibility unless it is otherwise expressly declared.

Clause 51 replaces section 28 of the current Code. A person who becomes intoxicated voluntarily or intentionally cannot rely on that state of intoxication to establish that acts done or omissions made by the person happened independently of the person’s will or by accident.

If a person becomes involuntarily or unintentionally [i.e. without foresight] intoxicated however, clause 51 will absolve the person of criminal responsibility on the basis that the act or omission happened independently of the person’s will or by accident.

Where a specific state of mind or an intention to cause a specific result is an element of an offence, a person may rely on their intentional or unintentional intoxication to establish that they did not have or could not form the requisite state of mind or intent [see R v. Crump [1966] Qd. R. 340].

Clause 52 replaces sections 26 and 27 of the current Code and deals with the concept of unsoundness of mind.

Clause 52(1) and (2) replace the current Code section 27. A person is not criminally responsible for an act done or omission made at a time when the person was suffering from a brain injury, mental illness or mental defect that deprives the person of the capacity to understand what the person is doing; or to control the person's actions; or to know that the person ought not to do the act or make the omission.

If a person is deluded, but not suffering from unsoundness of mind, the person is criminally responsible to the same extent as if delusional state of things was the actual state of things.

The law reflects the decision in Falconer [1990] 65 ALJR 20. In the joint judgment of Mason CJ, Brennan and McHugh JJ, their Honours cited the judgment of King CJ in Radford [1985] 42 SASR 266 at 274:—

“...if a jury is called upon to decide whether a state of automatism is due to disease of the mind, upon conflicting evidence or conflicting interpretations of the evidence, it must be told what the law understands by the phrase and it should be told that in language which a jury of laymen is likely to grasp. The expression “disease of the mind” is synonymous, in my opinion, with “mental illness”. In his charge to the jury in Porter [1933] 55 CLR 182 Dixon J used the expression “disease disorder or disturbance”. But the words “disorder” and “disturbance” must take their colour from the word “disease” and refer to a disorder or disturbance of the mental faculties that can be characterised as mental illness. In one sense automatism must always involve some disorder or disturbance of the mental faculties, but I do not think that a temporary disorder or disturbance of an otherwise healthy mind caused by external factors can properly be regarded as a disease of the mind as that expression is used in the McNaghten Rules....The essential notion appears to be that in order to constitute insanity in the eyes of the law, the malfunction of the mental faculties called “defect of reason” in the McNaghten Rules, must result from an underlying pathological infirmity of the mind, be it of long or short duration and be it permanent or temporary, which can properly be called mental illness, as distinct from the reaction of a healthy mind to extraordinary external stimulus. In my opinion, the notion of “disease of the mind” should be explained to the jury in such terms.

Their Honours described the dichotomy between mental illness and a healthy mind as “correctly drawn” but added “we would think it necessary that a temporary mental disorder or disturbance must not be prone to recur if it is to avoid classification as a disease of the mind. That is because a malfunction of the mind which is prone to recur reveals an underlying pathological infirmity. Subject to that qualification, the law is as stated by King CJ.”

Clause 52(3) replaces the current Code section 26. A person is presumed to have been of sound mind at the time of doing the act or omission that is the offence, unless the contrary is proved.

Either the prosecution or the defence may raise the issue of unsoundness of mind. Under the current law, it is doubtful whether the prosecution can raise the issue of the soundness of mind of the accused, and an accused of unsound mind is able to instruct his or her counsel not to raise the issue of unsoundness of mind even when that issue should be raised in the interests of the community and of justice.

The onus of proving that a person is or was not of sound mind falls on the party raising the issue and the standard of proof is proof on the balance of probabilities.

Clause 52(4) states the position concerning a person who is merely drunk but is not suffering from any mental illness or mental defect. Such a person is not entitled to the defence in clause 44. The clause adopts the law as stated by Philp J in Dearnley v. R [1947] St.R. Qd 51 at 61.

Clause 53 replaces section 25 of the current Code. Clause 53 establishes an overriding excuse of necessity, subject to the provisions about acts done on compulsion, on provocation or in self-defence. A person is not criminally responsible for an act done or omission made in circumstances so sudden or extraordinary that an ordinary person of ordinary self-control could not reasonably be expected to act otherwise.

There has been no change to the current law.

Clause 54 replaces section 29 of the current Code. Children under 10 are not criminally responsible. The prosecution must establish the capacity of children aged from 10 to under 15 years to know that what they did was wrong.

There has been no change to the current law.

Clause 55 provides that clauses 49 and 50(1) do not apply to regulatory offences.

There has been no change to the current law.

Division 2—Law enforcement and legal process

Clause 56 replaces section 30 of the current Code and protects a judicial officer exercising judicial functions from criminal responsibility, unless an Act specifically imposes criminal responsibility.

There has been no change to the current law.

Clause 57 replaces sections 31(1) and 31(2) of the current Code.

Clause 57(1) absolves persons who hold an official position from criminal responsibility for acts done or omissions made by them in the execution of the law.

Under clause 57(2), persons acting in obedience to lawful orders are absolved from criminal responsibility. The clause applies the law outlined in Hunt v. Maloney; Ex Parte Hunt [1959] Qd R 164 at 173

The clause does not provide for justification of or excuse for the use of force that is intended or likely to cause death or grievous bodily harm.

There has been no change to the current law.

Clause 58 amalgamates and replaces sections 247, 248, 249, 250, 251 and 253 of the current Code and empowers and protects a person who is required by law to give effect to legal process.

There has been no change to the current law.

Clause 59 replaces section 252 of the current Code and absolves from criminal responsibility a person who arrests the wrong person under an honest and reasonable but mistaken belief that the person arrested was the person who should have been arrested. Those who assist the person making the arrest and those who receive and detain the person arrested are absolved from criminal responsibility to the same extent as if the arrest had been made of the person who should have been arrested.

There has been no change to the current law.

Clause 60 replaces section 254 of the current Code and provides that reasonable force against resistance may be used in:—

- the lawful execution of a sentence, process or warrant;
- the making of an arrest; or
- the lawful assistance of another in the execution or arrest.

There has been no change to the current law.

Clause 61 replaces section 257 of the current Code and authorises a person to use reasonable force to stop someone else escaping arrest. The force used must not be intended to likely to cause death or grievous bodily harm.

Under the current Code sections 256 and 257 there is a distinction between the degree of force which a police officer and a person who is not a police officer may use to stop someone escaping arrest. Under section 256 a police officer is empowered to use force which is intended to cause death or grievous bodily harm where the person sought to be arrested is reasonably suspected of having committed an offence which is punishable by life imprisonment [and where the person has been called upon to surrender]. A person other than a police officer cannot use force which is intended or likely to cause death or grievous bodily harm.

The new provision applies to all persons and accordingly does not authorise the use of force that is intended or likely to cause death or grievous bodily harm. The power to be given to police in these circumstances will be contained in the new police powers and authorities legislation.

Clause 62 replaces section 258 of the current Code and empowers a person to use reasonable force to stop someone else who has been arrested from escaping, or to stop someone else rescuing a person who has been arrested. The force used must not be likely or intended to cause death or grievous bodily harm unless the person has been arrested for an offence which carries life imprisonment.

Clause 63 replaces section 260 of the current Code and provides that a person present at a breach of the peace may intervene to stop the breach of the peace or the renewal of the breach of the peace. The force that may be used by the person intervening must be reasonable and reasonably proportioned to the danger faced. The provision provides for the detention of anyone committing or about to join in or renew the breach, in the custody of a police officer, until the person's detention is no longer necessary to stop the breach of the peace.

Clause 64 replaces the first part of section 266 of the current Code. A person may use reasonable force to stop an act or omission which the person reasonably believes is an offence in respect of which an offender may be arrested without warrant.

This new provision is intended to cover the force authorised under the following sections of the current Code:—

- 261 Suppression of riot
- 262 Suppression of riot by Magistrates and police officers
- 263 Suppression of riot by person acting under lawful orders
- 264 Suppression of riot by person acting without order in case of emergency
- 265 Riot—persons subject to military law

Clause 65 replaces the later part of section 266 of the current Code and provides that a person may use reasonable force to stop violence by a person of unsound mind.

There has been no change to the current law.

Clause 66 empowers a person to use reasonable force to stop another from committing suicide.

Division 3—Personal safety and provoked force

Clause 67 replaces sections 31(4) and 31(3) of the current Code and provides for the defence of necessity.

Clause 67(1) provides an excuse of necessity when resisting threats of immediate death or grievous bodily harm. If anyone is threatened with immediate death or grievous bodily harm by someone able to carry out the threat, and a person reasonably believes that the only way to prevent the death or grievous bodily harm is to do an act or make an omission, then the person is not criminally responsible for that act or omission. The person making the threats does not have to be present.

Clause 67(2) provides an excuse of necessity when resisting threatened violence. If a person, or anyone else in the person's presence, is threatened with actual and unlawful violence, and the person does an act or makes an omission to resist the violence, and that act or omission is reasonable, then the person is not criminally responsible for that act or omission.

An act or omission that is intended to cause death or grievous bodily harm is not however, justified or excused. In addition, where the person using the force or the threatened person is a party to an unlawful association or conspiracy, and the threat made is a probable result of that unlawful association or conspiracy, then an act done or omission made in response to the threat is not justified or excused.

There has been no change to the current law.

Clause 68 replaces sections 271 and 272 of the current Code and provides that a person may use reasonable force in self-defence.

Under this provision, the test is an objective one. The accused must use the force in genuine self-defence not on a pretence of self-defence [see R v McKay [1957] V.R. 560 at 562].

The clause must be read with Clause 83. If the accused raises some evidence that the force used was reasonable in the circumstances, then the State must negative that evidence to gain a conviction [see R v Dziduch [1990] 47 A.Crim.R.378].

Clause 69 replaces section 273 of the current Code and provides for the defence of someone else. It is lawful for anyone helping a person acting in self-defence to use the same degree of force that the person defending himself/herself may lawfully use.

There has been no change to the current law.

Clause 70 replaces section 269 of the current Code and provides for the excuse of provocation.

“Provocation” is defined in clause 84 of the Bill.

The excuse applies only to an offence of which an assault is an element. If a person is provoked, and is deprived by the provocation of the power of self control, and acts suddenly, before the person regains self-control, the person is not criminally responsible for an assault on another *if* the force used is proportionate to the provocation and *not intended* or likely to cause death or grievous bodily harm.

Clause 71 replaces section 270 of the current Code and provides for the defence of repetition of provocation. A person may use reasonable force to prevent the repetition of a provoking act. The force must not be intended or likely to cause death or grievous bodily harm.

Clause 72 replaces the third paragraph of section 458 of the current Code and provides that a person is not criminally responsible for using reasonable force which consists of damage to property to defend or protect anyone from injury that the person reasonably believes to be imminent.

This provision applies to the protection of persons. *Clause 77* of the Bill provides a similar excuse for the protection of property.

There has been no change to the current law.

Division 4—Property defence and enforced claims

Clause 73 replaces section 267 of the current Code and provides for a defence of premises against crime. A person in peaceable possession of premises, and anyone lawfully helping the person, may use *reasonable force* to stop someone else from entering the premises, or remaining on the premises, with intent to commit a crime.

“Premises” is widely defined in Schedule 5 of the Bill and includes buildings or structures [which include dwelling houses], motor vehicles, aircraft, boats, tents, caves etc.

Clause 74 replaces the first and third paragraphs of section 277 and sections 278 and 279 of the current Code and provides for the defence of a place against trespassers, or against persons acting under a claim or right.

A person in peaceable possession of a place or who has the right to control or manage of place, may use *reasonable force* to prevent someone else wrongfully entering or wrongfully remaining in the place. A person in peaceable possession of a place may use *reasonable force* to defend their peaceable possession of a place under a claim of right. A person in peaceable possession of a place may use *reasonable force* to prevent someone entering or remaining on the place when the right under which the person has entered or remained on the place is disputed by the person in peaceable possession of the place.

The force used in any case must not be intended or likely to cause death or grievous bodily harm.

“Place” is defined in Schedule 5 of the Bill to include vacant land, a place in Queensland waters and premises.

Clause 75 replaces sections 274 and 275 of the current Code and provides for the defence of moveable property against trespassers or acting under a claim of right.

A person may use reasonable force to defend the person's moveable property against trespassers or persons acting under a claim of right. A person may use *reasonable force* to defend the person's peaceable possession of moveable property under a claim of right. The force used however, must not be intended or likely to cause death or grievous bodily harm.

Clause 76 replaces section 276 of the current Code and provides for the forcible taking of moveable property from a person who has no claim of right to it.

A person may use reasonable force to take the person's moveable property from someone who has no claim to possess it. The force used however, must not be intended or likely to cause death or grievous bodily harm.

Clause 77 replaces the third paragraph of section 458 of the current Code and provides that a person may use reasonable force causing damage to property to defend or protect any property from damage the person reasonably believes to be imminent. This provision applies to the protection of property. Clause 64 of the Bill provides a similar defence for the protection of a person.

There has been no change to the current law.

Clause 78 provides like protection to a person acting under the authority of a property owner.

There has been no change to the current law.

Division 5—Orderly control

Clause 79 replaces the second paragraph of section 277 of the current Code and provides for the removal of disorderly persons. A person may remove a disorderly person from a place with reasonable force. The force used however, must not be intended or likely to cause death or grievous bodily harm.

Clause 80 replaces section 281 of the current Code. A person in charge of a vehicle may use *reasonable force* to keep good order and discipline in the vehicle. A “vehicle” is defined in Schedule 5 of The Bill, and includes a motor vehicle, train, boat and aircraft.

Apart from the extension to all types of vehicles, there has been no change to the current law.

Clause 81 replaces section 280 of the current Code and provides for the reasonable corrective discipline of a child by parents and teachers. In determining whether the force used has exceeded what is reasonable under the circumstances, the court must consider both from an objective and subjective standpoint such matters as the nature of the offence calling for correction, the age and character of the child and the likely effect of the punishment on the particular child, the degree of gravity of the punishment, the circumstances under which it was inflicted and the injuries, if any, suffered [see *R v Dupperon* [1984] 16 C.C.C (3d) 453].

Division 6—Surgical operations and medical treatment

Clause 82 replaces section 282 of the current Code. A person is not criminally responsible for performing a surgical operation, providing or withdrawing medical treatment or providing pain relief in good faith, with reasonable skill and care, for the benefit of a patient, if the operation or the treatment is reasonable, having regard to the patient’s state at the time and all the circumstances.

Sterilisation performed with the patient’s consent is taken to be surgical or medical treatment for the patient’s benefit.

Division 7—Objective concept of reasonable force, act or belief

Clause 83 explains the objective meaning of reasonable. It sets out the criteria to which a jury are to have regard when determining whether the use of force, an act or omission or a specific belief was reasonable [see *Zecevic v. D.P.P.* [1987] 162 C.L.R. 645 at 663].

Division 8—Provocation and the ordinary person

Clause 84 defines “provocation”.

Clause 85 explains that where the conduct of a person is to be judged by reference to the conduct of an *ordinary* person, the characteristics attributed to the ordinary person are not limited to the person’s age [see R v Hill [1986] 25 C.C.C. (3d) 322].

PART 7—GENERAL DUTIES

Clause 86 explains that Part 7 imposes duties, but does not create offences, and renders a person upon whom a duty is imposed responsible for the consequences which result from the criminally negligent breach of that duty.

The common law distinction between civil and criminal negligence is retained [see R v Scarth [1945] St R Qd 38], and accordingly, to establish criminal negligence it must be proved that the negligence was “gross”; that it went “beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment” [R v Bateman [1925] 19 Cr App R 8 at 11 & 12].

Clause 87 replaces section 285 of the current Code and imposes a duty to provide the necessaries of life upon a person in charge of anyone who cannot provide for himself or herself.

There has been no change to the current law.

Clause 88 replaces section 286 of the current Code and imposes a duty upon a parent or adult in charge of a child to provide the necessaries of life to the child; to use reasonable care and take reasonable precautions to avoid or prevent danger to the child; and to take all reasonable action to rescue the child from danger.

Apart from extending the imposition of the duty to all adults in charge of a child, there has been no change to the current law.

Clause 89 replaces section 287 of the current Code and imposes a duty to provide the necessaries of life to an employee under 16 years upon an employer who is required to provide the necessaries of life to a such an employee under the employee's work conditions.

There has been no change to the current law.

Clause 90 replaces section 288 of the current Code and imposes upon a person doing an act that may be dangerous to anyone's life or health, a duty to have reasonable skill and to use reasonable care in doing that act, other than in a case of necessity.

There has been no change to the current law.

Clause 91 replaces section 290 of the current Code and imposes upon a person who undertakes to do an act, the duty to perform that act, where a failure to perform that act may be dangerous.

There has been no change to the current law.

Clause 92 replaces section 289 of the current Code and imposes upon a person in charge of a dangerous thing, a duty to use reasonable care and take reasonable precautions in its use or management to avoid danger to anyone else.

Examples are given of dangerous things.

There has been no change to the current law.

PART 8—DEFENCES

Clause 93 provides for the onus and standard of proof for a defence strictly so called under the Bill. The onus of proof is upon the person raising the defence and the standard of proof is on the balance of probabilities. This clause reflects the law in Loveday v. Ayre and Ayre; ex parte Ayre and Ayre [1955] St R Qd 264 per Philp J.

CHAPTER 2—PERSONAL OFFENCES

PART 1—HOMICIDE AND ASSOCIATED OFFENCES

Division 1—Unlawful killing

Clause 94 replaces section 302 of the current Code and defines “murder”. The clause includes the intentional transmission of a serious disease which causes death. Apart from that extension, there has been no change to the current law.

Clause 95 replaces section 305 of the current Code and creates the crime of murder.

There has been no change to the current law.

Clause 96 replaces section 310 of the current Code and creates the crime of manslaughter.

There has been no change to the current law.

Division 2—Matters related to unlawful killing

Clause 97 replaces section 293 of the current Code and defines “killing” in the following way:—

A person who in any way causes another’s death is taken to have killed the other person.

The definition in these terms incorporates the effect of the following sections of the current Code:—

- 295 Causing death by threats;
- 296 Acceleration of death; and
- 297 When injury or death might be prevented by proper precaution.

There has been no change to the current law.

Clause 98 replaces section 292 of the current Code and defines when a child becomes a person capable of being killed.

There has been no change to the current law.

Clause 99 replaces section 298 of the current Code and deals with the situation where a person has caused grievous bodily harm to another person and that other person has died as a result of surgical or medical treatment received. The person who caused the grievous bodily harm is taken to have caused the death of the victim.

There has been no change to the current law.

Clause 100 replaces section 294 of the current Code and provides that if a child dies because of an act done or omission made by a person before or during the child's birth, the person is taken to have killed the child.

There has been no change to the current law.

Clause 101 replaces section 284 of the current Code and provides that a deceased's consent to death does not affect the criminal responsibility of the person who caused the death.

There has been no change to the current law.

Clause 102 replaces section 304 of the current Code and provides for the reduction of murder to manslaughter where the killing is done on provocation.

The Bill's definition of "provocation" applies under this clause.

Clause 103 replaces section 304A of the current Code and provides for the reduction of murder to manslaughter where the person who kills is of diminished responsibility.

This issue of diminished responsibility may be raised by the prosecution or the defence, otherwise there has been no change to the current law.

Division 3—Associated offences

Clause 104 replaces section 306 of the current Code and creates the crime of attempted murder.

There has been no change to the current law.

Clause 105 replaces section 307 of the current Code and creates the crime of becoming an accessory after the fact to murder.

There has been no change to the current law.

Clause 106 replaces section 308 of the current Code and creates the crime of giving a threat to murder. The clause extends beyond written threats, to documented threats in other than written form e.g taped.

Clause 107 replaces section 309 of the current Code and creates the crime of conspiring to murder.

There has been no change to the current law.

Clause 108 replaces section 311 of the current Code and creates the crime of aiding suicide.

There has been no change to the current law.

Clause 109 replaces section 313 of the current Code and creates the crime of killing an unborn child.

There has been no change to the current law.

Clause 110 replaces section 314 of the current Code and creates the crime of trying to hide a child's birth.

There has been no change to the current law.

PART 2—GRIEVOUS BODILY HARM AND ASSAULT

Division 1—Grievous Bodily Harm

Clause 111 replaces section 320 of the current Code and creates the crime of doing unlawful grievous bodily harm. “Grievous bodily harm” is defined in Schedule 5 of the Bill. The definition of grievous bodily harm includes serious disfigurement. This addresses the ruling in R v Tranby [1991] 52 A Crim R 228, in which it was held that permanent cosmetic disfigurement did not amount to grievous bodily harm.

There is no offence of wounding in the Bill. Under the current Code, a wounding simply requires the breaking of the true skin. There is no

distinction between minor lacerations and serious injuries. Under the Bill, a person who seriously wounds another may be prosecuted under this provision for causing serious disfigurement. A person who causes less serious wounds may be prosecuted under clause 144 [acts causing bodily harm] or clause 114 [assault].

Clause 112 provides that the victim's consent to the doing of grievous bodily harm does not affect the criminal responsibility of the offender.

Division 2—Assault generally

Clause 113 replaces section 245 of the current Code and defines an "assault".

There has been no change to the current law.

Clause 114 amalgamates and replaces sections 335, 339, 340 and 343A of the current Code and creates the following crimes:—

- assault with intent [to commit a crime];
- assault of a person under 16 or over 60;
- assault of a person with an impairment [that is, a person who relies on a guide dog, wheel chair or other remedial device];
- assault a person known by the offender to be pregnant;
- assault of a person operating a vehicle;
- assault of a person performing a lawful duty [e.g. a public officer performing a function of his or her employment];
- assault with bodily harm and while armed or in company;
- assault with bodily harm; and
- assault.

Clause 114 also covers the offence contained in the current section 206 [Offering violence to officiating ministers of religion] to the extent that provision relates to assaults.

Clause 115 replaces section 338A of the current Code and creates the crime of assaulting or threatening a crew member on an aircraft.

There has been no change to the current law.

Division 3—Rape and other sexual assaults

Clause 116 replaces section 348 of the current Code and creates the crime of rape, which is vaginal or anal intercourse without consent. “Consent” is defined in Schedule 5 of the Bill.

The crime of attempted rape may be prosecuted under the general attempt provisions [clauses 34 and 35 of the Bill].

Clause 117 and clause 118 replace section 337 of the current Code. Clause 117 creates the following crimes:—

- indecent assault—grievous sexual assault;
- indecent assault—aggravated sexual assault; and
- indecent assault.

The insertion of a part of the body [other than the penis] into the vagina, vulva or anus of another; the insertion of any thing into the vagina, vulva or anus of another; and the insertion of the penis into the mouth of another, without consent is a grievous sexual assault.

Where the offender does or threatens bodily harm; is or pretends to be armed with a dangerous or offensive weapon or instrument; is in company with someone else; or the victim is under 16 or over 60 years, or relies on a guide dog, wheel chair or other remedial device, the assault is an aggravated sexual assault.

“Consent” is defined in Schedule 5 of the Bill.

Clause 118 creates the following crimes:—

- procuring a serious act of gross indecency;
- procuring an act of gross indecency—with bodily harm, while armed or in company;
- procuring an act of gross indecency—from a person under 16 or over 60;
- procuring an act of gross indecency—from a person with an impairment [that is, a person who relies on a guide dog, wheel chair or other remedial device]; and
- procuring an act of gross indecency.

A serious act of gross indecency is committed when a person is, without consent, procured by another to insert a part of their own body, or any thing into their own vagina, vulva or anus; or procured by another to insert their penis into someone's mouth.

“Consent” is defined in Schedule 5.

PART 3—INTERFERING WITH LIBERTY

Division 1—Deprivation of liberty

Clause 119 replaces section 354A(1) of the current Code and defines “kidnapping for ransom”.

Clause 120 creates the crime of kidnapping for ransom.

The maximum penalty is reduced if the hostage is unconditionally released by the person not more than one month after the hostage is taken or deprived of liberty, without having suffered grievous bodily harm.

Clause 121 replaces section 354 of the current Code and defines “kidnap”. The requisite intent with which the hostage is deprived of his or her liberty is a general one; the intent to compel the hostage to do something for the offender or for anyone else, without the hostage's consent.

Clause 122 replaces section 354 of the current Code and creates the crime of kidnapping.

Clause 123 defines what is deprivation of liberty.

Clause 124 replaces section 355 of the current Code and creates the crime of deprivation of liberty. The maximum penalty is reduced where the offender releases the hostage unconditionally not more than one month after the hostage is deprived of liberty, without the hostage having suffered grievous bodily harm.

The maximum penalty is reduced where the offender releases the hostage unconditionally not more than one month after the hostage is deprived of liberty, without the hostage having suffered grievous bodily harm.

Division 2- Children and mental patients

Clause 125 defines “guilty intent”.

Clause 126 replaces section 363(1)(a) of the current Code and creates the crime of taking a child under 16 years with intent [to deprive the person in lawful care of the child of the possession of the child].

There has been no change to the current law.

Clause 127 replaces section 363(1)(b) of the current Code and creates the crime of receiving or harbouring a child under 16 with intent [to deprive the person in lawful care of the child of the possession of the child].

Clause 128 replaces section 363A of the current Code and creates the crime of unlawfully taking a child under 16 years out of the custody or protection of the person who has the lawful care of the child.

Apart from an increase in penalty, there has been no change to the current law.

Clause 129 replaces section 358 of the current Code and creates the crime of unlawful custody of a mental patient.

Apart from an increase in penalty, there has been no change to the current law.

Division 3—Threats

Clause 130 defines “guilty intent”.

Clause 131 replaces section 359 of the current Code and creates the following crimes:—

- making a threat to kill or do grievous bodily harm or cause damage by explosives or fire; and
- making a threat.

To amount to an offence the threat of detriment must be *unreasonable* in all the circumstances.

This clause also covers the offence contained in the current section 206 [Offering violence to officiating ministers of religion] to the extent that

provision relates to threats, and the offence contained in the current Code section 478 [Sending letters threatening to burn or destroy].

Division 4—Unlawful stalking

Clause 132 replaces sections 359A(2), 359A(3), 359A(5), 359A(7) of the current Code and defines unlawful stalking.

There has been no change to the current law.

Clause 133 replaces section 359A(1), 359A(4) and 359A(6) of the current Code and creates the following crimes:—

- unlawful stalking with violence;
- unlawful stalking while armed;
- unlawful stalking in contravention of a court order; and
- unlawful stalking.

Apart from an increase in penalty, there has been no change to the current law.

PART 4—OTHER OFFENCES ENDANGERING LIFE, HEALTH OR SAFETY

Division 1—Offences involving vehicles

Clause 134 replaces section 328A of the current Code and creates the following crimes:—

- dangerous vehicle operation causing death or grievous bodily harm and with a blood-alcohol level of at least 0.15;
- dangerous vehicle operation causing death or grievous bodily harm and while intoxicated;
- dangerous vehicle operation causing death or grievous bodily

harm;

- dangerous vehicle operation while intoxicated; and
- dangerous vehicle operation.

“Vehicle” is defined in Schedule 5 to mean a motor vehicle, train, boat, aircraft, water ski, surf board or anything else used or to be used to carry persons or goods from place to place.

Clause 135 and *clause 137* replace sections 329, 330, 331, 332, 333 and 334 of the current Code. *Clause 127* creates the crime of operating a commercial vehicle causing danger. The provision applies where the danger is the result of a contravention of a law about the construction, maintenance or use of the vehicle.

Clause 136 replaces sections 317A of the current Code and creates the crime of causing a destructive thing to be on a vehicle.

Apart from extending the operation of the provision to all vehicles, there has been no change to the current law.

Clause 137 amalgamates and replaces sections 319, 319A, 329-334 of the current Code and creates the following crimes:—

- doing an unlawful act with intent to harm [that is, injure or endanger] a passenger; and
- doing an unlawful act causing harm to a passenger.

The clause is concerned with a person unlawfully dealing with a vehicle or anything connected with the vehicle’s control, operation or maintenance [for example, a railway line or airport]; unlawfully making or interfering with a signal or communication; or unlawfully omitting to do something that the person has a duty to do.

This provision covers the offences contained in the current Code sections 465 [Casting away ships], 466 [Attempts to cast away ships], 467 [Obstructing and injuring railways], 467A [Endangering the safe use of an aircraft], 472 [Interfering with marine signals], 473 [Interfering with navigation works], and 477 [Obstructing railways] where the relevant criminal activity is done with intent to harm a passenger, or endangers the safety of a passenger. Where such an intent or result does not exist, the relevant criminal activity falls within the offence of unlawful damage.

Division 2—Other dangerous acts and omissions

Clause 138 amalgamates and replaces section 315 and 316 of the current Code and creates the crime of disabling, or attempting to disable, with intent to commit a crime.

There has been no change to the current law.

Clause 139 replaces section 317 of the current Code and creates the crime of doing a harmful act with intent to cause serious harm or prevent arrest.

A “harmful act” includes, for example, doing grievous bodily harm, transmitting a serious disease, sending an explosive substance to someone else or throwing corrosive fluid at someone else.

The *Penalties and Sentences Act 1992* repealed the “year and a day” rule which was contained in section 299 of the current Code [section 299 provided that a person was not deemed to have killed another if the death of that other person did not take place within a year and a day of the cause of death]. So, for example, if a person intentionally transmits a serious disease to another, and that other person dies at any time after the transmission of the serious disease, then the person may be charged with murder.

Clause 140 replaces section 321 of the current Code and creates the crime of placing an explosive or noxious substance with intent [to do bodily harm].

There has been no change to the current law.

Clause 141 replaces section 470A of the current Code and creates the crime of wilfully and unlawfully placing an explosive substance where it may cause bodily harm. An intention to cause bodily harm is not an element of this offence.

There has been no change to the current law.

Clause 142 replaces section 327(1) and 327(3) of the current Code and creates the crime of setting a trap.

A “trap” includes anything likely to kill or do grievous bodily harm to a person.

There has been no change to the current law.

Clause 143 replaces section 327(2) and 327 (3) of the current Code and creates the crime of permitting a trap to remain in a place.

There has been no change to the current law.

Clause 144 replaces section 328 of the current Code and creates the crime of unlawfully causing bodily harm. The provision is not restricted to *negligent* acts or omissions causing harm.

Clause 145 replaces section 318 of the current Code and creates the crime of obstructing rescue or escape from dangerous, destroyed or otherwise unsafe premises.

Apart from the extension of the provision to all premises, there has been no change to the current law.

Clause 146 replaces sections 322 and 323(1)(b) of the current Code and creates the following crimes:—

- administering poison with intent [to injure or annoy] and causing harm [that is, it endangers life or does grievous bodily harm]; and
- administering poison with intent.

There has been no change to the current law.

Division 3—Offences against persons under care

Clause 147 replaces section 324 of the current Code and creates the crime of failing to supply the necessities of life. The offence is committed where the failure endangers life or causes, or is likely to cause, permanent injury to health.

Apart from an increase in penalty, there has been no change to the current law.

Clause 148 replaces section 325 of the current Code and creates the crime of failing to provide necessary food, clothing or lodging to an employee under 16 years. The provision applies where the failure endangers the employee's life or causes, or is likely to cause, permanent injury to health. An employer who causes bodily harm to an employee may be prosecuted under the general assault provision [clause 114 of the Bill].

There has been no change to the current law.

Clause 149 replaces section 326 of the current Code and creates the crime of endangering a child by abandonment or exposure. The provision protects children up to seven years of age.

Clause 150 replaces section 364 of the current Code and creates the crime of cruelty to a child under 16 years. The offence is committed where the cruelty causes unnecessary suffering to the child.

To desert the child, or to fail to provide the child with adequate food are examples of cruelty which could cause unnecessary suffering.

CHAPTER 3—PROPERTY OFFENCES, DISHONESTY OFFENCES AND ASSOCIATED OFFENCES

PART 1—STEALING, MISAPPROPRIATION AND ASSOCIATED OFFENCES

Division 1—Property concepts

Clause 151 replaces section 390 of the current Code and defines “property”. “Property” includes electrical or other energy, gas and water.

Clause 152 defines the meaning of owner of property for the purposes of this Part of the Bill.

Clause 153 sets out the circumstances in which property in respect of which a person has an interest is the property of someone else.

Clause 154 replaces sections 393, 394 and 395 of the current Code and sets out the circumstances in which property received remains the property of the person who gave it. Clause 154(3) is intended to cover, among other situations, the situation where property is received upon a direction that it be applied to a particular purpose.

The expression “or account for” in clause 154(3) has the meaning given in R v. Allard [1987] 29 A.Crim.R. 418

Division 2—Stealing and dishonest appropriation offences**Subdivision 1—Stealing**

Clause 155 replaces sections 391(1) and (2) of the current Code and defines “stealing” and fraudulent taking or converting.

There has been no change to the current law.

The offence contained in section 451 of the current Code [Unlawful possession of shipwrecked goods] will be covered by this clause or clause 165 [Receiving], on the basis of recent possession.

Clause 156 replaces section 398 of the current Code and creates the following crimes:—

- stealing—from the person;
- stealing—looting;
- stealing—property of a value of \$10000 or above
- stealing—a firearm stolen with intent [that it be used to commit a crime];
- stealing—a testamentary instrument;
- stealing—in contravention of a fiduciary duty; and
- stealing.

Subdivision 2—Dishonest appropriation

Clause 157 and *clause 158* replace section 408C of the current Code. *Clause 157* defines how a person “appropriates” property.

Clause 158 creates the following crimes:—

- dishonest appropriation—as a corporation director;
- dishonest appropriation—as an employee;
- dishonest appropriation—with intent to commit a crime;

- dishonest appropriation—in contravention of a trust, direction, or condition;
- dishonest appropriation—of property held for someone else;
- dishonest appropriation—of property of a value of \$10000 or above; and
- dishonest appropriation.

The concept of dishonesty has been delineated in R v Laurie [1986] 23 A. Crim. R. 219 at 220 and the Bill accepts this definition.

The only new offence created is that of “dishonest appropriation—with intent to commit a crime”. Apart from an increase in penalty, there has been no other change to the current law.

The crimes contained in the current Code sections 405 [Fraudulently dealing with minerals in mines], 407 [Fraudulent disposition of mortgaged goods], 408 [Fraudulent appropriation of power], 444B [Using registered brands with criminal intention], 447 [Illegal branding], 454 [Unlawfully taking fish] and 588 [Charge of stealing cattle] will be covered by this new provision.

Subdivision 3—Provisions common to stealing and dishonest appropriation

Clause 159 replaces sections 391(2), (2A) and (3) and 408C(3)(b) and 408C(3)(c) of the current Code and sets out the fraudulence or dishonesty of certain acts, including where a person receives property because of someone else’s mistake and, knowing of the mistake, takes or converts the property to their own or someone else’s use.

Clause 160 replaces section 391(4) of the current Code and provides that a person may convert property whether the person takes possession of the property for the purposes of conversion; or whether the property is in the person’s possession when the conversion happens.

There has been no change to the current law.

Clause 161 provides for examples of acts that are not dishonest.

Clause 162 replaces section 392 of the current Code and sets out what is not stealing or dishonest appropriation e.g. if an employee, against the

orders of his/her employer, takes the employer's food to an animal belonging to the employer, the employee does not steal or dishonestly appropriate the food.

There has been no change to the current law.

Clause 163 replaces section 403 of the current Code and creates the crime of making something moveable with intent [to steal or dishonestly appropriate it].

Division 3—Offences about property derived from other offences

Clause 164 replaces section 406 of the current Code and creates the crime of bringing stolen property into Queensland.

The provision covers property that has been stolen or dishonestly appropriated in the other state.

Clause 165 replaces sections 433 and 434 of the current Code and creates the crime of dishonestly receiving tainted property. The offence requires belief only, not knowledge that the property was stolen.

Clause 166 replaces section 435 of the current Code and creates the crime of dishonestly taking a reward for recovery of tainted property.

There has been no change to the current law.

PART 2—ROBBERY AND EXTORTION

Clause 167 amalgamates and replaces sections 409 and 411 of the current Code and creates the following crimes:—

- robbery—while armed [with a dangerous thing, which includes a dangerous or offensive weapon or instrument and an explosive or noxious substance];
- robbery—in company;

- robbery—with violence; and
- robbery.

The current circumstances of aggravation that a person is wounded or the victim of personal violence have been replaced by the circumstance of aggravation that the offender did bodily harm to another person.

Clause 168 replaces section 412 of the current Code and creates the following crimes:—

- attempted robbery while armed [with a dangerous thing, which includes a dangerous or offensive weapon or instrument and an explosive or noxious substance] and with bodily harm;
- attempted robbery—while armed;
- attempted robbery—in company; and
- attempted robbery.

The crime created by the current Code section 413 [assault with intent to steal] is covered by clause 114(a)(i) assault with intent to commit a crime.

Clause 169 amalgamates and replaces sections 54A, 414, 415, 416 and 417 of the current Code and creates the crime of extortion see R v. Dymond [1920] 2 KB 260 and Thorne v. Motor Trade Association [1937] AC 797.

PART 3—BURGLARY

Clause 170 amalgamates and replaces sections 419, 420, 421 and 422 of the current Code and creates the following crimes:—

- burglary with grievous bodily harm;
- burglary with violence;
- burglary while armed with a dangerous thing [which includes a dangerous or offensive weapon or instrument and an explosive or noxious substance];
- burglary of premises at night;

- burglary of a dwelling house; and
- burglary.

The provision simplifies the existing law by removing the element of “breaking” from the crimes created. To establish the offence, the prosecution must prove that a person [who is not an occupier] has entered or is in premises with intent to commit a crime, or has entered or is in premises and has committed a crime.

“Premises” is defined widely in Schedule 5 of the Bill and includes, a building, a structure, the land or water on which a building or structure is situated, a vehicle, a caravan, a tent and a cave.

PART 4—UNLAWFUL USE, POSSESSION OR CONTROL

Clause 171 replaces section 408A of the current Code and creates the following crimes:—

- unlawful use or possession of a vehicle with property interference;
- unlawful use or possession of a vehicle for a crime; and
- unlawful use or possession of a vehicle.

Under Schedule 5 of the Bill, “vehicle” means a motor vehicle, train, boat, aircraft, water ski, surf board or anything else used or to be used to carry persons or goods from place to place.

Apart from the extension to all types of vehicles, there has been no change to the current law.

Clause 172 replaces section 417A of the current Code and creates the following crimes:—

- taking control of an aircraft with violence;
- taking control of an aircraft while armed;
- taking control of an aircraft in company;

- taking control of an aircraft by deception;
- taking control of an occupied aircraft; and
- taking control of an aircraft.

There has been no change to the current law.

Clause 173 defines “restricted computers.”

Clause 174 defines the meaning of “computer controller”.

Clause 175 creates the following crimes:—

- unauthorised use of a computer with intent [to commit a crime];
and
- unauthorised use of a computer.

This new provision is aimed at unauthorised access to, or use of, “restricted computers.” It is designed to cover, among other things, “hacking” and the planting of “viruses” in computer systems.

PART 5—TAMPERING, FORGERY, FRAUD AND IMPERSONATION

Division 1—Concepts of gaining benefit and causing detriment

Clause 176 defines the meaning of benefit under the Bill.

Clause 177 gives the meaning of “to gain a benefit” under the Bill.

Clause 178 gives the meaning of detriment under the Bill.

Clause 179 gives the meaning of “to cause a detriment” under the Bill.

Division 2—Offences

The new provisions differentiate between forgery [where the record itself tells a lie] and the falsification of records. In Ex parte Charles Windsor [1865] 10 Cox CC 18 at 123, Blackburn J. said:—

“Forgery is the false making of an instrument purporting to be that which it is not; it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery, because it is reduced to writing”.

Clause 180 replaces section 441 of the current Code. It defines “tamper” and creates the following crimes:—

- dishonestly tampering with a legal document; and
- dishonestly tampering with a document.

“Tamper” with a document means:—

- (a) damage the document;
- (b) hide the document;
- (c) falsify the document

The offence requires an intent to dishonestly gain a benefit or cause a detriment to anyone.

It is intended that the insertion of false information into a document be covered by clause 180(2)(c) of the definition of “tamper”.

Clause 181 defines when a person engages in forgery. The definition of forgery incorporates the extension included in the *Western Australian Criminal Law Amendment Act 1990*, and section 485(c) of the current Code.

The definition is two-fold. It covers making, amending or dealing with a document to change its purport as well as the *use* of a forged document to gain a benefit or cause a detriment. Accordingly, there is no separate definition of “uttering”.

Clause 182 replaces sections 485, 486, 488 and 489 of the current Code and creates the following crimes:—

- forgery—contravening a fiduciary duty;
- forgery—affecting property of a value of \$10000 or more; and
- forgery.

Clause 183 replaces sections 510, 511, 512 and 513 of the current Code and creates the crime of dealing with things used or for use in forgery.

Clause 184 amalgamates and replaces section 426, 427, 427A, 428, and 429 of the current Code and creates the following crimes:—

- fraud affecting something of a value of \$10000 or more; and
- fraud.

The provision is modelled on section 409 of the *Criminal Code* of Western Australia.

Under clause 184(a), a person must not dishonestly by any deception obtain property from someone else. The word “obtain” is not defined in the Bill, and it is intended that it have the meaning given to it in R v Beck [1980] Qd R 123, namely that the offender must be shown to have induced the victim to lose both ownership and possession of the object obtained.

The crime of conspiracy to defraud created by the current section 430 is covered by clause 44 of the Bill [Conspiracy to commit an offence].

Clause 185 replaces section 514 of the current Code and creates the offence of dishonest impersonation. The provision extends to the impersonation of fictitious persons. The offences proscribed by section 516 and 517 of the current Code Personation of a person named in a certificate and Lending certificates for personation, are covered by this clause.

This clause also replaces section 97 of the current Code to the extent that there is an element of dishonesty in the impersonation of a public officer.

Clause 186 replaces section 515 of the current Code and creates the crime of unlawful acknowledgment of a liability, deed or other instrument in someone else’s name. It is for the prosecution to prove that the acknowledgment in someone else’s name was unlawful.

Clause 187 replaces section 502 of the current Code and creates the crime of gaining or giving unauthorised status, in the sense of a right to a certain office, privilege, rank, right or status.

The provisions of Part 3 of this Chapter of the Bill are intended to cover the offences proscribed by the following sections of the current Code:—

- 242 Frauds on land laws
- 243 Dealing with land fraudulently acquired from the Crown
- 244 Fraudulent destruction or removal of goods liable to duty
- 405 Fraudulently dealing with minerals in mines
- 407 Fraudulent disposition of mortgaged goods
- 408 Fraudulent appropriation of power
- 430 Conspiracy to defraud
- 431 Frauds on sale or mortgage of property
- 432 Pretending to exercise witchcraft or tell fortunes [where the conduct involves fraud]
- 436 Trustees fraudulently disposing of trust property
- 437 Directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts or falsifying book or accounts.
- 438 False statements by officials of companies
- 440 Misappropriation by members of local government
- 476 Removing boundary marks
- 489 Uttering false documents and counterfeit seal
- 490 Uttering cancelled or exhausted documents [where the conduct involves fraud]
- 491 Uttering cancelled stamps
- 492 Procuring execution of documents by false pretences
- 493 Obliterating crossings on cheques
- 494 Making documents without authority

- 495 Demanding property upon forged testamentary instruments
- 497 False certificate of message received by telegraph [with dishonest intent]
- 498 Falsifying warrants for money payable under public authority
- 500 Sending false certificates of marriage to registrar
- 504 Circulating false copies of rules of lists of members of societies or companies
- 506 Forgery of sailors' tickets or documents under *Factories and Shops Act*
- 507 Fraudulent use of adhesive stamps
- 508 False warranties or labels relating to the sale of food
- 532 Falsification of books of companies

PART 6—DAMAGE TO PROPERTY

Division 1—Basic concepts

Clause 188 replaces paragraphs 1 and 2 of section 458, and section 459 of the current Code and sets out what acts, which cause damage to property, are unlawful.

There has been no change to the current law.

Clause 189 replaces section 460 of the Current Code and defines “damage”. The provision covers, among other things, damage to computer records and injury to animate property.

Division 2—Offences

Clause 190 replaces sections 461, 462(2), 463, 465, 467, 467A, 468, 469 and 470A of the current Code. Clause 190(1) creates the following crimes:—

- unlawful damage—endangering life;
- unlawful damage—by infecting an animal;
- unlawful damage—by explosion in an occupied place;
- unlawful damage—arson;
- unlawful damage—by fire or explosive or noxious substance;
- unlawful damage—to valuable property; and
- unlawful damage.

“Wilfully” is defined in Schedule 5 [Dictionary] of the Bill to mean “deliberately or recklessly” [see R v Lockwood [1981] Qd R 209].

The offence of attempted arson under section 462(1) of the current Code may be prosecuted under the general attempt provisions [clause 34 and 35 of the Bill].

The “unlawful damage—arson” offence created by clause 190(1)(iv) applies where a person wilfully and unlawfully sets fire to relevant property.

Clause 190(2) replaces section 462(2) of the current Code and creates the crime of endangering relevant property by fire. The current section 462(2) provides:—

“462. Attempts to commit arson. Any person who—...(2) Wilfully and unlawfully sets fire to anything so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it, is guilty of a crime....”

Things “mentioned in the last preceding section” [section 461] included buildings, aircraft and motor vehicles.

In R v Webb, ex parte the Attorney-General [1990] 2 Qd R 275, it was held that the mental element of “wilfully”, in section 462(2), related to the property which was ultimately jeopardised, not to the initial thing which was set on fire:—

“The adverb “wilfully” [in section 462(2)] relates to the entire balance of the subsection. The gravamen of the offence is not in the lighting of some kindling or the initial object, but rather in the lighting of something in a situation where one of the specially listed items of property [i.e. the property listed in section 461] is jeopardised... Plainly the element of wilfulness has its principle application in relation to the prospect of the greater damage occurring...[T]he elements of “wilfully” and “unlawfully” in section 462(2) have no direct relationship to the setting fire of the initial object. Each word [“wilfully” and “unlawfully”] looks ahead to the prospective damage to the building or other thing prescribed in s 461.”

per Thomas J at p 286

The law as stated by Thomas J is altered by clause 190(2) of the Bill.

Clause 191 replaces section 470A of the current Code and creates the following crimes:—

- causing danger to property by placing explosive or noxious substance; and
- placing explosive or noxious substance in a place with intent [to commit the crime of unlawful damage].

The offence created by the current section 321 [Any person who unlawfully and with intent to do any bodily harm to another, puts any explosive substance in any place whatever] is covered by clause 140 of the Bill.

There has been no change to the current law.

Clause 192 replaces section 471 of the current Code and creates the crime of obstructing a mine, or interfering with mine equipment, with intent [to damage a mine].

There has been no change to the current law.

The provisions of Part 4 of this Chapter of the Bill are intended to cover the offences proscribed by the following sections of the current Code:—

- 444A Killing animals with intent to steal
- 463 Setting fire to crops and growing plants

- 465 Casting away ships
- 466 Attempts to cast away ships
- 467 Obstructing and injuring railways
- 467A Endangering the safe use of an aircraft
- 468 Injuring animals
- 472 Interfering with marine signals
- 473 Interfering with navigation works
- 474 Communicating infectious diseases to animals
- 477 Obstructing railways

CHAPTER 4—PUBLIC ORDER AND AUTHORITY OFFENCES

PART 1—SEDITION, INTERFERING WITH POLITICAL LIBERTY AND INFLUENCING MLAs

Clause 193 and *clause 194* amalgamate and replace sections 44, 45, 46 and 52 of the current Code. *Clause 193(1)* defines a “seditious intention”.

There has been no change to the current law.

Clause 194 creates the following crimes:—

- sedition—aggravated; and
- sedition.

The offence is aggravated where the offender has been previously convicted of sedition.

Clause 195 replaces the first paragraph of section 78 of the current Code and creates the crime of interfering with political liberty.

Apart from an increase in penalty, there has been no change to the current law.

Clause 196 creates the crime of interfering with an election. An “election” includes an election for the Legislative Assembly or a local government and an election held under an Act to fill a public office.

Clause 197 replaces section 60(2) of the current Code and creates the crime of attempting to unlawfully influence an MLA.

There has been no change to the current law.

PART 2—PUBLIC ADMINISTRATION OFFENCES

Clause 198 replaces section 86 of the current Code and creates the crime of disclosing official secrets. It is wider than the current provision in that it encompasses public officers [defined in Schedule 5 of the Bill], not only persons employed in the public service. It applies to past and current officers.

Clause 199 amalgamates and replaces sections 87, 88, 89, 90, 92, 93 and 200 of the current Code and creates the crime of abuse of office by a public officer. The provision covers the abuse of the public officer’s office or its powers generally, as well as the following conduct:—

- acting on knowledge of information obtained because of the public officer’s office or employment;
- performing a function of the public officer’s office or employment in relation to something in which the officer has a direct or indirect financial interest; or
- failing to perform a function of the officer’s office.

To fall within clause 199 it is required that the public officer must act unlawfully and with intent to obtain a benefit for, or cause a detriment to, anyone.

Clauses 199 and 200 also replace section 499 of the current Code to the extent that they cover the falsification of documents by a public officer.

Clause 200 amalgamates and replaces section 91, 94, 356, and 357 of the current Code and creates the crime of breach of duty by a public officer. The breaches with which the provision is concerned relate to documents, certificates and returns.

The crime created by the current Code sections 399, 400 and 401 [concealing a will, deed or register] is covered by clause 180 of the Bill [tampering with documents]. The crime created by the current Code section 357(2) [giving false information] is covered by clause 199 of the Bill [Abuse of office by public officer].

The crime created by the current Code section 532 [falsification of books of companies] is covered by clause 200 of the Bill [breach of duty of public officer], which includes the making of a false entry in a document; or clause 180 [tampering with documents].

Clause 201 replaces section 199 of the current Code and creates the crime of obstructing a public officer. The obstruction must be unlawful. The offence contained in the current section 148 [Obstructing officers of courts of justice] will be covered by this provision.

The provisions of Part 2 of this Chapter of the Bill are intended to cover the offences contained in the following sections of the current Code:—

- 437 Directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts;
- 438 False statements by officials of companies;
- 442 False accounting by public officer;
- 499 Falsification of registers;
- 500 Sending false certificate of marriage to registrar
- 501 false statements for the purpose of registers of births, deaths and marriages
- 532 Falsification of books of companies

PART 3—JUSTICE ADMINISTRATION OFFENCES

Clause 202 replaces section 122(a) of the current Code and creates the crime of dishonestly attempting to influence a juror.

Apart from an increase in penalty, there has been no change to the current law.

Clause 203 replaces section 122(b) of the current Code and creates the crime of threatening a juror.

Apart from an increase in penalty, there has been no change to the current law.

Clause 204 amalgamates and replaces section 123, 124 and 125 of the current Code and creates the crime of perjury.

Clause 204 (4) is identical to section 331 of the *Crimes Act [New South Wales]* and allows a jury to convict an accused of perjury where the jury is satisfied that the accused has made two statements on oath, which are irreconcilably in conflict with each other, and the jury is satisfied that one of the statements is deliberately false but they cannot be certain which of the statements is false [cf clause 223].

Clause 205 replaces section 126(1) of the current Code and creates the crime of fabricating evidence with intent [to mislead a tribunal in a judicial proceeding].

There has been no change to the current law.

Clause 206 replaces section 126(2) of the current Code and creates the crime of knowingly using fabricated evidence with intent.

There has been no change to the current law.

Clause 207 replaces section 128 of the current Code and creates the crime of deceiving a witness, or attempting to deceive a witness, with intent to affect a witness's testimony.

There has been no change to the current law.

Clause 208 replaces section 129 of the current Code and creates the crime of damaging evidence with intent to prevent it being used in evidence.

Clause 209 replaces section 130 of the current Code and creates the crime of wilfully preventing, or attempting to prevent, a witness from attending a tribunal.

Apart from an increase in penalty, there has been no change to the current law.

Clause 210 replaces section 131 of the current Code and creates the following crimes:—

- conspiracy to falsely charge with an offence punishable with life imprisonment;
- conspiracy to falsely charge with an offence punishable with imprisonment; and
- conspiracy to falsely charge with an offence.

There has been no change to the current law.

Clause 211 replaces section 132 of the current Code and creates the crime of conspiracy to obstruct justice. “Obstruct” includes prevent, pervert or defeat [Schedule 5 of the Bill].

There has been no change to the current law.

Clause 212 replaces section 140 of the current Code and creates the crime of attempting to obstruct justice. “Obstruct” includes prevent, pervert or defeat [Schedule 5 of the Bill].

Apart from an increase in penalty, there has been no change to the current law.

Clause 213 replaces section 137 of the current Code and creates the crime of wilfully delaying to take an arrested person before a Magistrates Court.

Apart from an increase in penalty, there has been no change to the current law.

Clause 214 replaces section 147 of the current Code and creates the crime of interfering with lawfully seized property.

Apart from an increase in penalty, there has been no change to the current law.

PART 4—PUBLIC AUTHORITY OFFENCES

Clause 215 replaces section 145A of the current Code and provides that Part 4 does of the Bill does not apply to persons held in custody under section 66 of the *Mental Health Act 1974* or in custody in care under the *Children's Services Act 1965*, unless the person is held in a prison within the meaning of the *Corrective Services Act 1988*.

There has been no change to the current law.

Clause 216 replaces sections 141(a) and (b) of the current Code and creates the crime of aiding escape from lawful custody.

There has been no change to the current law.

Clause 217 replaces section 141(c) of the current code and creates the crime of freeing a person from lawful custody without authority.

There has been no change to the current law.

Clause 218 replaces section 142 of the current Code and creates the crime of escaping from lawful custody.

There has been no change to the current law.

Clause 219 replaces section 143 of the current Code and creates the crime of permitting a person to escape from lawful custody.

There has been no change to the current law.

Clause 220 replaces section 144 of the current Code and creates the crime of harbouring a person who has escaped from lawful custody.

There has been no change to the current law.

Clause 221 replaces section 193 of the current Code and creates the crime of verifying a false statement, which incorporates making a false statement under oath.

Clause 221 and *clause 222* also cover the offence created by the current section 501 [false statements for the purpose of registers of births, deaths and marriages].

Clause 222 replaces section 194 of the current Code and creates the crime of making a false statement before someone else.

There has been no change to the current law.

Clause 223 applies to the trial of an offence under clause 221 or 222 of the Bill. If the jury is satisfied that the accused has made two statements which are irreconcilably in conflict with each other, and the jury is satisfied that one of the statements was deliberately false, but cannot say which statement was false, the jury may make a special finding to that effect and find the person guilty of the relevant crime [cf clause 204(4) of the Bill].

Clause 224 replaces sections 205 and 229J of the current Code and section 48(5) of the *Drugs Misuse Act 1986* and creates the following crimes:—

- unlawfully disobeying a lawful order prohibiting publication about a drugs misuse offence;
- unlawfully disobeying a lawful order prohibiting publication of identifying matter about a person charged with attending a place being used for unlawful prostitution; and
- unlawfully disobeying a lawful order.

The provision applies to orders issued by a court and orders issued by a person authorised under an Act to make the order. It is for the prosecution to establish that the disobedience was unlawful.

A person cannot be prosecuted for any of these crimes without the consent of a State Law Officer. This will ensure that only in appropriate cases will those who disobey an order issued under statutory authority be charged on indictment for a crime.

The provision operates subject to the power of the court to punish for contempt.

Clause 225 replaces section 543(1)(a) of the current Code and creates the crime of conspiracy to prevent an Act's enforcement.

There has been no change to the current law.

CHAPTER 5—OTHER PUBLIC INTEREST OFFENCES

PART 1—SEXUAL OFFENCES

Clause 226 replaces section 210 of the current Code and creates the following crimes:—

- indecently dealing with a child under 16 by an ancestor;
- indecently dealing with a child under 16 by a guardian or carer;
- indecently dealing with a child under 12;
- indecently dealing with a child under 16.

Indecently dealing with a child includes the unlawful use of a child for anyone's sexual gratification.

Clause 227 replaces section 215 of the current Code and creates the following crimes:—

- having unlawful vaginal intercourse with a female under 16, by a guardian or carer;
- having unlawful vaginal intercourse with a female under 12; and
- having unlawful vaginal intercourse of a female under 16.

The current Code section 215 deals also with attempted unlawful carnal knowledge. That offence, now called attempted unlawful vaginal intercourse, will be covered by the general attempt provisions [see clauses 33 and 34 of the Bill].

Clause 228 and *clause 229* replace section 219 of the current Code. Clause 228 of the Bill creates the following crimes:—

- taking a female under 12 for unlawful vaginal intercourse;
- taking a child under 12 for indecent dealing;
- taking a child under 16 for an immoral purpose;

“Take” includes entice and detain [Schedule 5 of the Bill].

Clause 229 creates the following crimes:—

- taking a child under 12 for anal intercourse; and
- taking a child for anal intercourse.

A child is a person under 18 years.

This provision includes the following defence to bring it in line with similar offences: If the child was at least 12 years when the crime was committed, it is a defence to prove that the person reasonably believed that the child was an adult.

Clause 230 replaces section 229B of the current Code and creates the following crimes:—

- maintaining an unlawful sexual relationship, with a child under 16 years, involving a sexual offence punishable by imprisonment for life or at least 14 years;
- maintaining an unlawful sexual relationship, with a child under 16, involving a sexual offence punishable by imprisonment for at least 5 years; and
- maintaining an unlawful sexual relationship with a child under 16.

The offence of unlawfully using a child for sexual gratification is an act upon which the charge of maintaining may be based.

The provisions of the current Code section 229B(2) are covered by clause 340.

Clause 231 and *clause 232* replace section 213 of the current Code. Clause 231 of the Bill creates the following crimes:—

- inducing a female under 12 to be on premises for unlawful vaginal intercourse;
- inducing a child under 16 to be on premises for incest;
- inducing a child under 12 to be on premises for indecently dealing; and
- inducing a child under 16 to be on premises for an immoral act.

“Induce” includes knowingly permit.

The provision is aimed at the owner of premises who induces, or knowingly permits, a child to be on his or her premises for anyone to commit any of the specified sexual offences on the child.

Clause 232 creates the following crimes:—

- inducing a child under 12 to be on premises for anal intercourse; and
- inducing a child to be on premises for anal intercourse.

A “child” is a person under 18 years.

“Induce” includes knowingly permit.

The provision is aimed at the owner of premises who induces, or knowingly permits, a child to be on his or her premises for anyone to have anal intercourse with the child.

This provision includes the following defence to bring it in line with similar offences: If the child was at least 12 years when the crime was committed, it is a defence to prove that the owner reasonably believed that the child was an adult.

Clause 233 replaces sections 216(1), 216(3)(a) and 216(4) of the current Code and creates the following crimes:—

- having, or attempting to have, unlawful sexual intercourse with a person who has an intellectual or psychiatric impairment by a guardian or carer; and
- having, or attempting to have, unlawful sexual intercourse with a person who has an intellectual or psychiatric impairment.

The provision covers vaginal and anal intercourse.

Clause 234 replaces section 216(2), 216(3) and 216(4) of the current Code and creates the following crimes:—

- indecently dealing with a person who has an intellectual or psychiatric impairment by an ancestor;
- indecently dealing with a person who has an intellectual or psychiatric impairment by a guardian or carer; and
- indecently dealing with a person who has an intellectual or psychiatric impairment.

Clause 235 and *clause 236* replace section 217 of the current Code.

Clause 235 covers vaginal and anal intercourse. The gravamen of the offence is the procuring of the child for the purpose of the child engaging in sexual intercourse. Sexual intercourse need not happen for the offence to be complete.

Clause 236 creates the crime of procuring a person who has an intellectual or psychiatric impairment for sexual intercourse.

The provision covers vaginal and anal intercourse. The gravamen of the offence is the procuring of the person who has an intellectual or psychiatric impairment for the purpose of the person engaging in sexual intercourse. Sexual intercourse need not happen for the offence to be complete.

Clause 237 replaces sections 218(1)(a), and (b) of the current Code and creates the following crimes:—

- unlawfully procuring a child under 16 or a person who has an intellectual or psychiatric impairment to engage in a sexual act; and
- unlawfully procuring a person to engage in a sexual act.

The provision is aimed at procuring by deception as to the nature of the act or the identity of the offender, or by threats or intimidation. The sexual act need not happen for the crime to be complete.

Clause 238 replaces section 218(1)(c) of the current Code and creates the following crimes:—

- drugging a child under 16, or a person who has an intellectual or psychiatric impairment, to allow a sexual act to be engaged in; and
- drugging a person to allow a sexual act to be engaged in.

An intent to stupefy or overpower without consent is required.

Clause 239 replaces section 227(2) of the current Code and creates the crime of doing something indecent with intent to insult or offend. This offence is confined to offences involving the specific intent to insult or offend.

Clause 240 replaces sections 228(1) and (2) of the current Code and creates the following crimes:—

- dealing with obscene material depicting a child; and
- dealing with obscene material.

Clause 241 replaces section 228(3) of the current Code and creates the following crimes:—

- publicly exhibiting an indecent show involving a child under 12;
- publicly exhibiting an indecent show involving a child under 16; and
- publicly exhibiting an indecent show.

Apart from an increase in penalty, there has been no change to the current law.

Clause 242 creates the crime of permitting a child under 12 to witness the public exhibition of an indecent show. It is a defence to prove that the exposure of the child to the indecent show was for the public benefit.

Clause 243 replaces section 208 of the current Code and creates the following crimes:—

- having anal intercourse with a child under 12;
- having anal intercourse with a child under 16 by an ancestor, guardian or carer;
- having anal intercourse with a child under 16; and
- having anal intercourse with a child.

“Child” means a person under 18 years. Under this Bill, the offence of attempting to have unlawful anal intercourse will be covered by the general attempt provisions [see clauses 33 and 34 of the Bill].

Clause 244 replaces section 222 of the current Code and creates the crime of incest with female. The offence now covers sexual intercourse with an adopted daughter and any female ancestor e.g. grandmother. The offence of attempted incest will be covered by the general attempt provisions [see clauses 33 and 34 of the Bill].

Clause 245 replaces section 223 of the current Code and creates the crime of incest with male. The offence now covers sexual intercourse with an adopted brother, adoptive son, adoptive father and any male lineal ancestor e.g. grandfather.

Clause 246 replaces section 211 of the current Code and creates the crime of bestiality.

There has been no change to the current law.

Clause 247 replaces section 229 of the current Code and provides that, unless it is stated otherwise, where an offence is committed in relation to a person under a stated age, it is immaterial that the accused person did not know the person was under the age or believed the person was not under the age.

There has been no change to the current law.

PART 2—BREACHES OF THE PEACE

Division 1—Riot

Clause 248 defines “violence” for the purposes of clause 249 of the Bill.

Clause 249 is derived from sections 61, 63 and 66 of the current Code and creates the following crimes:—

- riot destroying a building; and
- riot.

A riot requires 12 persons who are present together and who use or threaten unlawful violence for a common purpose in circumstances where their conduct would cause a person of reasonable firmness, present at the scene, to fear for his or her personal safety.

Division 2—Affray

Clause 250 defines “violence” for the purposes of clause 251 of the Bill.

Clause 251 replaces section 72 of the current Code and creates the crime of affray.

A person makes an affray if the person uses or threatens unlawful violence in circumstances where the person's conduct would cause a person of reasonable firmness present at the scene to fear for his or her personal safety.

The new clause reflects the law in New South Wales as stated in section 93 of the *Crimes Act [NSW]* and covers criminal conduct such as a shooting spree between rival gangs.

Division 3—Other breaches of the peace

Clause 252 replaces section 69 of the current Code and creates the crime of being armed in a way likely to cause fear.

Clause 253 replaces section 70 of the current Code and creates the crime of forcibly entering land in someone else's possession.

Apart from an increase in penalty, there has been no change to the current law.

Clause 254 replaces section 71 of the current Code and creates the crime of unlawfully holding land against someone entitled to its possession.

Apart from an increase in penalty, there has been no change to the current law.

Clause 255 replaces section 75(1)(a) of the current Code and creates the following crimes:—

- threatening, at night, to enter or damage premises with intent [to intimidate or annoy]; and
- threatening to enter or damage premises with intent [to intimidate or annoy].

Apart from an increase in penalty, there has been no change to the current law.

Clause 256 replaces section 75(2) of the current Code and creates the following crimes:—

- committing a breach of the peace, at night, with intent [to alarm anyone]; and
- committing a breach of the peace with intent [to alarm anyone].

Apart from an increase in penalty, there has been no change to the current law.

PART 3—BRIBERY

The provisions in this part replace sections 59 [Member of Parliament receiving bribes], 60 [Bribery of member of Parliament], 118 [Bargaining for offices in public service] and section 442A to 442M [Secret Commissions] of the current Code.

Division 1—Bribery of Agents, MLA’s and Public Officers

Clause 257 defines “agent”, “MLA” and “prescribed person” for the division.

Clause 258 creates the following crimes with respect to bribing an agent, MLA, or public officer:—

- seeking or accepting a bribe as an MLA while serving as a Minister; and
- seeking or accepting a bribe as a public officer with intent; and
- seeking or accepting a bribe as a particular class of prescribed person.

The *Legislative Assembly Act* is to be amended to provide that where an offence is committed by or in respect of:—

- (a) a Minister of the Crown, and the offender is a Minister, the offender is disqualified from sitting or voting in the Legislative Assembly for 7 years:

- (b) a member of the Legislative Assembly, and the offender is a member of the Legislative Assembly, the offender is disqualified from sitting or voting for 7 years.

Clause 259 creates the following crimes with respect to the giving a bribe in relation to the actions of an agent, MLA, or public officer:—

- [Where the offender is a Minister, or the bribe is given or sought to be given in relation to something an MLA who is a Minister has done or not done, or will do or not do]; giving a bribe for an MLA's act or omission involving a Minister;
- [Where the offender is a public officer, and the bribe is given or sought to be given in relation to something an MLA has done or not done, or will do or not do with intent to interfere with the proper administration of justice, to procure or assist the commission of another offence, or to protect someone who has committed, or intends to commit, an offence, from being found out or punished]; giving a bribe for an MLA's act or omission by a public officer, with intent;
- [Where the bribe is given or sought to be given in relation to something a public officer has done or not done, or will do or will not do, with intent to interfere with the proper administration of justice, to procure or assist the commission of another offence, or to protect someone who has committed, or intends to commit, an offence, from being found out or punished]; giving a bribe for a public officer's act or omission with intent; and
- giving a bribe for a prescribed person's act or omission.

"Public officer" is defined in Schedule 5 of the Bill.

Clause 260 creates the following crimes with respect to the seeking or accepting of bribes in relation to the actions of an agent, MLA, or public officer:—

- [Where the offender is a Minister, or the bribe is sought or accepted in relation to something a Minister has done or not done, or will do or not do]; seeking or accepting a bribe for an MLA's act or omission, involving a Minister;
- [Where the offender is a public officer, and the bribe is sought or accepted in relation to something an MLA has done or not done, or will do or not do with intent to interfere with the proper

administration of justice, to procure or assist the commission of another offence, or to protect someone who has committed, or intends to commit, an offence, from being found out or punished]; seeking or accepting a bribe for an MLA's act or omission by a public officer, with intent; and

- seeking or accepting a bribe for a prescribed person's act or omission.

Clause 261 provides that it is not a defence that the seeking, accepting or giving of a benefit is customary in a trade, business or calling.

Division 2—Bribery relating to the administration of justice

Clause 262 replaces section 120(1)(a) of the current Code and creates the crime of seeking or accepting a bribe as a judicial officer.

“Judicial officer” is defined in Schedule 5 of the Bill. “Judicial officer” includes an arbitrator or umpire, and a member of a tribunal established under an Act to perform judicial functions as well as other functions.

Apart from an increase in penalty for arbitrators and umpires and an extension to members of statutory tribunals, there has been no change to the current law.

Clause 263 and *Clause 264* replace of section 120(1)(b) of the current Code. *Clause 263* creates the crime of giving a bribe for a judicial officer's act or omission.

There has been no change to the current law.

Clause 264 creates the crime of seeking or accepting a bribe for a judicial officer's act or omission.

There has been no change to the current law.

Clause 265 and *Clause 266* replace section 122(c) of the current Code. *Clause 265* of the Bill concerns that which a juror is to do in a judicial proceeding. *Clause 266* concerns that which a juror has done in a judicial proceeding. *Clause 265* of the Bill creates the crime of seeking or accepting a bribe for something to be done as a juror.

Apart from an increase in penalty, there has been no change to the current law.

Clause 266 creates the crime of seeking or accepting a bribe for something done as a juror.

Apart from an increase in penalty, there has been no change to the current law.

Clause 267 replaces section 127(3) of the current Code and creates the crime of seeking or accepting a bribe for a witness to give false testimony. The provision applies where the bribe is sought by the witness.

Clause 268 replaces section 127(1) of the current Code and creates the crime of giving a bribe for a witness to give false testimony.

Clause 269 replaces section 127(2) of the current Code and creates the crime of inducing a witness to give false testimony.

There has been no change to the current law.

Clause 270 replaces section 133 of the current Code and creates the following crimes:—

- seeking or accepting a bribe to affect proceedings about an offence punishable with life imprisonment; and
- seeking or accepting a bribe to affect proceedings about an offence.

The provision is drafted to allow for plea bargaining by the Director of Public Prosecutions.

The current section 121(1)(a) concerns official corruption relating to the administration of justice, the commission of any offence, or the protection of offenders from detection or punishment ["corruption in relation to offences"] by (1) a justice not acting judicially or (2) a person employed in the public service in any capacity not judicial for the prosecution or detention or punishment of offenders [the "relevant capacity"].

A judicial officer retains that status even when exercising non-judicial functions. Accordingly, clause 262 will cover corruption in relation to offences on the part of a justice not acting judicially.

The current Code section 121(1)(b) also concerns the corruption, in relation to offences, of a justice not acting judicially or a person employed in the public service in the relevant capacity. Clauses 263 and 264 of the Bill will cover the corruption of a justice. Clause 259 and 260 of the Bill will cover the corruption of a person employed in the public service in the relevant capacity.

PART 4—ORGANISED CRIME

Clause 271 and *clause 272* creates the new crime of engaging in organised crime.

The provisions focuses on an organised scheme of criminal activity in relation to certain nominated offences, for example, bribing judicial officers, dealing with obscene material, prostitution, trafficking in a dangerous drug or forgery.

Clause 271 defines when a person engages in organised crime.

A person engages in organised crime if the person commits a nominated offence on three occasions, and the three offences formed the whole or a part of a substantially planned and organised activity carried out by the person and at least one other person.

Clause 272 creates the crime of engaging in organised crime.

To ensure that only offences of the most serious kind are prosecuted under this provision, a prosecution for the crime of engaging in organised crime cannot be commenced without the consent of a State Law Officer.

PART 5—DRUG OFFENCES

Clause 273 defines “dangerous drug”.

There has been no change to the definition of “dangerous drug” contained in section 4 of the *Drugs Misuse Act 1986* [the “DMA”].

Clause 274 defines “drug dependent person”.

There has been no change to the definition of “drug dependent person” contained in section 4 of the DMA.

Clause 275 replaces section 5 of the DMA and creates the following crimes:—

- trafficking in a Schedule 1, part 1 dangerous drug; and
- trafficking in a Schedule 1, part 2 dangerous drug.

The consent of the State Law officer is not required to prosecute this offence. Otherwise, there has been no change to the current law.

Clause 276 replaces section 6 of the DMA and creates the following crimes:—

- aggravated supply of a Schedule 1, part 1 dangerous drug;
- supply of a Schedule 1, part 2 dangerous drug;
- aggravated supply of a Schedule 1, part 2 dangerous drug; and
- supply of a Schedule 1, part 2 dangerous drug.

The supply of a dangerous drug is aggravated if the supplier is an adult, and the person to whom the drug is supplied is a child, has an intellectual or psychiatric impairment, is within an educational or correctional institution or does not know that he or she is being supplied with a drug.

The new provision incorporates the defence contained in section 51(1) of the DMA [defence of supply of lawfully prescribed drug in small quantity].

There has been no change to the current law.

Clause 277 replaces section 7 of the DMA and creates the following crimes:—

- knowingly receiving or possessing property derived from trafficking in or supplying a dangerous drug; and
- knowingly receiving or possessing property converted from property derived from trafficking in or supplying a dangerous drug.

There has been no change to the current law.

Clause 278 replaces section 8 of the DMA and creates the following crimes:—

- producing a high level quantity of Schedule 1, part 1 dangerous drug;
- producing a certain quantity of Schedule 1, part 1 dangerous drug;
- producing a high level quantity of a Schedule 1, part 1 dangerous drug by a drug dependent person;
- producing a high level quantity of a Schedule 1, part 2 dangerous drug; and
- producing a Schedule 1, part 1 dangerous drug.

A “high level quantity” of a dangerous drug is a quantity at least of the quantity specified in Schedule 1, part 4 in relation to the drug.

A “certain quantity” of a dangerous drug is a quantity at least of the quantity specified in Schedule 1, part 3, but less than the quantity specified in schedule 1, part 4 in respect of that drug.

There has been no change to the current law.

Clause 279 replaces section 9 of the DMA and creates the following crimes:—

- possessing a high level quantity of Schedule 1, part 1 dangerous drug;
- possessing a certain quantity of Schedule 1, part 1 dangerous drug;
- possessing a high level quantity of Schedule 1, part 1 dangerous drug by a drug dependent person;
- possessing a high level quantity of a Schedule 1, part 2 dangerous drug; and
- possessing a Schedule 1, part 1 or 2 dangerous drug.

A “high level quantity” of a dangerous drug is a quantity at least of the quantity specified in schedule 1, part 4 in relation to the drug.

A “certain quantity” of a dangerous drug is a quantity at least of the quantity specified in schedule 1, part 3, but less than the quantity specified in schedule 1, part 4 in respect of that drug.

The new provision incorporates the defence contained in section 51(2) of the DMA [defence of possession of lawfully prescribed drug in small quantity].

There has been no change to the current law.

Clause 280 replaces section 10 of the DMA and creates the following crimes:—

- possessing a thing used, or for use, in connection with the commission of a drugs misuse offence;
- * possessing a thing used, or for use, in connection with the administration, consumption or smoking of a dangerous drug;
- * supplying a needle to administer a dangerous drug;
- * failing to take reasonable care and precautions with a needle; and
- * failure to dispose of a used needle in the prescribed way.

Under the current law, the offences marked with an asterisk were offences against the DMA. With the incorporation of the provisions of the DMA into the Bill, those offences are now crimes. The maximum penalty for those offences has not changed.

Clause 281 replaces section 11 of the DMA and creates the crime of permitting a place to be used to commit a drugs misuse offence.

There has been no change to the current law.

Clause 282 replaces section 12 of the DMA and provides for the liability of a person who is a party to a drugs misuse offence committed outside of Queensland. A person in Queensland, who is a party to an act done outside Queensland, which would be a drugs misuse offence in Queensland, and is an offence in the place where it is done, commits a drugs misuse offence as if the act were done in Queensland.

There has been no change to the current law.

Clause 283 replaces section 44A of the DMA and provides that a person who attempts to commit a drugs misuse act offence is taken to have committed the attempted offence. If a person is charged summarily with a drugs misuse offence however, then the person may be summarily convicted of an attempt to commit the offence.

There has been no change to the current law.

Clause 284 replaces section 46 of the DMA and protects informers from identification. It creates the crime of disclosing information likely to identify informer.

There has been no change to the current law.

Clause 285 replaces section 52A of the DMA and empowers persons authorised by the Minister who administers the *Health Act 1937* to receive and dispose of dangerous drugs.

There has been no change to the current law.

PART 6—PROSTITUTION

Clause 286 replaces section 229C of the current Code and defines the following terms:—

arrangement;
capacity;
control;
entity;
participate.

Clause 287 replaces section 229E of the current Code and defines “prostitution”.

There has been no change to the current law.

Clause 288 replaces section 229G of the current Code and creates the following crimes:—

- procuring prostitution of a child or a person who has an intellectual or psychiatric impairment; and
- procuring prostitution of a person.

Clause 289 replaces section 229H of the current Code and creates the following crimes:—

- knowingly participating in the provision of prostitution by a child or a person who has an intellectual or psychiatric impairment; and

- knowingly participating in the provision of prostitution.

There has been no change to the current law.

Clause 290 replaces section 229I of the current Code and creates the following crimes:—

- attending a place being used for unlawful prostitution and a which a person known to be a child, or a person who has an intellectual or psychiatric impairment, is present; and
- attending a place being used for unlawful prostitution.

The word “for” is defined in Schedule 5 of the Bill to include “for the purpose of”.

Clause 291 replaces section 229K of the current Code and creates the following crimes:—

- allowing premises, at which a person known to be a child or a person who has an intellectual or psychiatric impairment is present, to be used for unlawful prostitution;
- allowing premises to be used for unlawful prostitution.

There has been no change to the current law.

Clause 292 replaces section 229K(8) of the current Code and creates the crime of failing to comply with a requirement made under clause 291.

Under clause 291 of the Bill, a police officer may serve on an interested person [that is, a person who has an interest in the premises, for example, the owner or lessee] a written warning to the effect that the premises are being used for the purposes of prostitution by two or more prostitutes. An interested person who, because of the warning or otherwise, has reasonable grounds to suspect that the premises are being used for the purposes of prostitution by two or more prostitutes, may serve written notice on the occupier or user of the premises to leave within seven days and not return.

It is a crime to contravene, without reasonable excuse, the requirement to leave.

Clause 293 replaces section 229L of the current Code and creates the offence of causing or permitting a child or a person who has an intellectual or psychiatric impairment to be at a place used for unlawful prostitution.

There has been no change to the current law.

PART 7—OTHER OFFENCES***Division 1—Abortion***

Clause 294 replaces section 224 of the current Code and creates the crime of unlawfully attempting to procure an abortion.

There has been no change to the current law.

Clause 295 replaces section 225 of the current Code and creates the offence of unlawfully attempting to procure own abortion.

There has been no change to the current law.

Clause 296 replaces section 226 of the current Code and creates the offence of unlawfully supplying a thing to procure an abortion.

There has been no change to the current law.

Division 2—Corpses

Clause 297 defines a “corpse”.

Clause 298 replaces section 236(1) of the current Code and creates the offence of failing to perform a duty about a corpse. It is for the prosecution to establish that the failure was unlawful.

Clause 299 replaces section 236(2) of the current Code and creates the offence of interfering improperly or indecently with a corpse. It is for the prosecution to establish that the interference was unlawful. Clause 299 does not cover the offering of an indignity to a corpse.

Division 3—Common nuisance, common gaming and betting houses and lotteries

Clause 300 replaces section 230 of the current Code and creates the crime of causing a public nuisance. It is for the prosecution to prove that the nuisance was unlawful.

Clause 301 replaces section 232 of the current Code and creates the crime of unlawfully keeping a common gaming house.

There has been no change to the current law.

Clause 302 replaces section 233 of the current Code and creates the crime of unlawfully opening, keeping or using a common gaming house.

There has been no change to the current law.

Clause 303 replaces section 234 of the current Code and creates the crime of unlawfully carrying on a lottery.

There has been no change to the current law.

CHAPTER 6—PROCEDURE

PART 1—ARREST

Clause 304 and *clause 305* replace section 5 of the current Code. Clause 304 applies the Bill provisions relating to the arrest of offenders without warrant to an Act under which, for an offence, an offender may be arrested without warrant. Conversely, the Bill provisions relating to the arrest of offenders without warrant do not apply to an Act, under which for an offence, an offender cannot be arrested without warrant.

There has been no change to the current law.

Clause 305 provides that every crime is an offence for which an offender may be arrested without warrant, unless otherwise stated.

There has been no change to the current law.

Clause 306 replaces sections 546, 548 and 549 of the current Code and empowers a person to arrest without warrant another person who is committing an offence [for which a person may be arrested without warrant]; who is found at night in circumstances that provide reasonable grounds for believing that the person is committing such an offence; or who the person arresting reasonably believes has committed such an offence.

There has been no change to the current law.

Clause 307 replaces section 547 of the current Code. If an Act states that an offender may be arrested without warrant, subject to a condition, then the provisions of clause 306 apply subject to that condition.

There has been no change to the current law.

Clause 308 replaces section 547A of the current Code and empowers a pilot to use reasonable force to arrest without warrant a person who is committing, is about to commit, is attempting to commit, or has committed an offence on the aircraft or relating to the aircraft's use.

There has been no change to the current law.

Clause 309 replaces section 550 of the current Code and empowers a person to arrest without warrant another who has committed an offence and is attempting to escape.

There has been no change to the current law.

Clause 310 replaces section 551 of the current Code and empowers a person to arrest without warrant another person who offers to sell, pawn, dispose of or give him or her property which was acquired by the commission of an offence for which an offender may be arrested without warrant.

There has been no change to the current law.

Clause 311 replaces section 552 of the current Code and provides that a person who has been arrested must be taken to a Magistrates Court as soon as reasonably practicable.

Clause 312 replaces section 255 of the current Code. Persons executing any process or warrant must have with them a copy of the process or warrant and produce it if required. A person arresting must give notice of the process, warrant or cause of arrest under which the person is acting. If a person is arresting in pursuance of a power given only to a particular type of person, the person must give notice that they are a person of that type.

There has been no change to the current law.

Division 1—Jurisdiction of particular types of courts

Clause 313 replaces section 553 of the current Code and provides that the laws about the jurisdiction and constitution of courts of justice apply at trials and sentences.

There has been no change to the current law.

Division 2—Place of trial

Clause 314 replaces section 557 of the current Code and prescribes the place at which a person may be tried for an offence.

Clause 315 replaces section 558 of the current Code and sets out the consequences of person being brought before the wrong court.

There has been no change to the current law.

Clause 316 replaces section 559 of the current Code and provides for an application to be brought for a change to the place of trial.

There has been no change to the current law.

Division 3—Committal proceedings and other summary proceedings before Magistrates Courts

Clause 317 replaces section 554 of the current Code and provides that the practice and procedure for the examination of witnesses about indictable offences and the committal of offenders for trial are stated in the *Justices Act 1886*.

There has been no change to the current law.

Clause 318 provides that summary proceedings in a Magistrates Court are governed by the *Justices Act 1886*.

Clause 319 replaces section 556 of the current Code and provides that a summary prosecution of an indictable offence must be begun within two years of the date of the commission of the offence. The time limit has been extended from one to two years to prevent matters being unnecessarily brought before the higher courts.

Clause 320 replaces section 480 and 481 of the current Code and the other provisions in the current Code which provide for the determination of certain offences summarily.

Under clause 320, certain matters may be dealt with summarily in the Magistrates Court, where it is appropriate to do so having regard to all relevant circumstances.

The following offences may be dealt with summarily:—

- indictable offences that carry a maximum of seven years imprisonment;
- burglary, with or without any circumstance of aggravation;
- unlawful use or possession of a vehicle, with or without any circumstance of aggravation;
- dishonestly receiving tainted property; and
- drugs misuse offences that carry a maximum of 15 years imprisonment.

The discretion in this clause is judicial and must be exercised according to law [see R v. Bodmin Justices; ex parte Mc Ewen [1947] K.B. 321].

Clause 320(3) lists, as examples and not exhaustively, certain matters to which a Magistrate must have regard when deciding whether to deal with a matter summarily.

At any time before sentence, the Magistrate may decide to convert the proceedings to a committal hearing and commit the defendant to trial [subsection 9]. A magistrate may take such a course because for example the defendant's record makes summary disposal inappropriate [see Kiely v Henderson [1989] 19 NSWLR 139].

In exercising its discretion, the Court should note that property offences which do not involve proof of actual or threatened violence and where the property is worth not more than 84 penalty units [\$5040] must ordinarily be dealt with summarily.

The procedure applicable to summary hearings under this clause is the procedure set out in the *Justices Act 1886* for the determination of charges for simple offences, subject to any provision of this Code which applies to a summary proceeding for an indictable offence.

Clause 320(7) provides the maximum penalty to which a defendant is liable on summary conviction under this clause.

Clause 321 provides for a hearing to change from a summary determination of an indictable offence to a committal hearing if the Magistrates court decides that the charge should not be dealt with summarily.

Clause 322 provides that a summary conviction for an indictable offence is taken to be a conviction for a simple offence only.

Division 4—Simple offence charges dealt with in Supreme Court or a District Court

Clause 323 provides for the hearing and determination of summary offences by the Supreme Court or a District Court. The provision applies if a person is before the court on a charge of an indictable offence, and the person has also been charged with a summary offence that would have been joinable with the indictable offence had it [the summary offence] been an indictable offence.

The court may summarily hear and decide the summary charge on the application of the prosecution if the accused consents and pleads guilty to the charge, and the prosecution has filed a complaint for the summary charge under the *Justices Act 1886* in the court.

The court may make any order on conviction that a Magistrates Court can make on a similar conviction.

PART 3—INDICTMENTS

Division 1—Application of Part

Clause 324 replaces section 574 of the current Code and states that Divisions 3 and 4 of this Part apply to a charge for an indictable offence whether the charge is dealt with on indictment or summarily.

Division 2—Indictments Generally

Clause 325 replaces section 560 of the current Code and sets out the nature of indictments, and who can sign and present indictments.

Clause 326 replaces section 561 of the current Code and empowers a State Law Officer or an authorised person to present *ex officio* indictments—that is an indictment against a person whether or not the person has been committed for trial.

There has been no change to the current law.

Clause 327 replaces section 564 of the current Code and sets out the requirements of form of an indictment.

Clause 328 replaces section 571 of the current Code and provides for an objection to an indictment because of a formal defect. The clause sets out the circumstances in which an indictment is not open to objection, and the circumstances in which an indictment cannot be set aside for a formal defect.

There has been no change to the current law.

Clause 329 replaces section 572 of the current Code and provides for the amendment of an indictment.

Clause 330 replaces section 573 of the current Code and empowers a court to order particulars of anything alleged in the indictment. The court may permit the State to amend the particulars on the terms it may consider just.

Clause 331 replaces section 563 of the current Code and provides for the withdrawal of a charge before [No true bill] or after [Nolle prosequi] an indictment has been presented.

Clause 332 states the court's inherent jurisdiction to stay vexatious or oppressive proceedings.

Clause 333 replaces section 562 of the current Code and provides for the arrest of a person charged on an indictment who is not in custody and who has not been committed for trial or released on bail or who does not appear to be tried upon indictment.

There has been no change to the current law.

Division 3—Statement of a charge

Clause 334 replaces sections 565, 566(5), 566(6) and 566(15) of the current Code and sets out general rules in relation to the statement of a charge in an indictment.

Clause 335 replaces section 566 of the current Code and sets out rules in relation to the statement, specifications or allegations of a charge in indictments of particular types.

Clause 336 replaces section 570 of the current Code and sets out the detail required for the statement of a previous conviction on an indictment.

There has been no change to the current law.

Division 4—Joinder

Clause 337 replaces sections 567(1) and 567(2) of the current Code and provides for the joinder of charges in one indictment.

There has been no change to the current law.

Clause 338 replaces sections 568(1), (1C) and (2) of the current Code and provides for the charging of more than one offence as one offence e.g. on one charge of assault, an accused may be prosecuted for a series of contemporaneous assaults upon the same victim; on one charge of stealing, a person may be prosecuted for a number of offences of stealing committed over a period of time, even if it is impossible to identify each time the stealing happened.

Clause 339 replaces section 568(4), (4A) and (4B) of the current Code and provides for the joinder of the following charges:—

- (a) Burglary
- (b) committing the crime;
- (c) if the crime charged is stealing or dishonest appropriation—receiving the property the subject of the crime.

The clause sets out the verdicts available on those charges, including a verdict that the accused is guilty of one or more of the offences, but the jury cannot say which. In that case, the accused is convicted of the offence which

bears the lesser punishment.

Clause 340 replaces section 229B(2) of the current Code and provides for the joinder of the following charges:—

- (a) maintaining an unlawful sexual relationship with a child under 16 years; and
- (b) any offence of a sexual nature committed during the course of the unlawful sexual relationship.

A cumulative sentence of imprisonment cannot be imposed in respect of any of the joined offences.

There has been no change to the current law.

Clause 341 replaces section 568(5) and (6) of the current Code and sets out the circumstances in which a number of persons may be charged with different or separate offences in the same indictment and tried together.

There has been no change to the current law.

Clause 342 replaces section 569 of the current Code and provides for the joinder of parties and accessories after the fact in the same indictment.

There has been no change to the current law.

PART 4—EFFECT OF INDICTMENT OR CRIME COMPLAINT

Division 1—Application

Clause 343 replaces section 574 of the current Code and applies the provisions of Divisions 2 and 3 of Part 4 of the Bill [Indictments] apply to summary proceedings for indictable offences.

Clause 344 provides that a provision of Division 2 or 3 of the Bill does not limit, and is not limited by, any other provision of those Divisions.

Clause 345 replaces section 585 of the current Code and provides that a person convicted under any of the provisions of Part 4 of the Bill [Effect of

Indictment] is liable to the same punishment as if the person was charged on indictment with the same offence of which the person is actually convicted.

There has been no change to the current law.

Division 2—General

Clause 346 replaces section 575 of the current Code and sets out the alternative verdicts open on a charge of an offence with circumstances of aggravation.

There has been no change to the current law.

Clause 347 replaces section 584 of the current Code and sets out the consequences where, at a trial of a person for one offence, the evidence establishes the person's guilt on another offence.

There has been no change to the current law.

Clause 348 replaces the first paragraph of section 582 of the current Code and sets out the alternative verdicts open on a charge of procuring the commission of an offence.

There has been no change to the current law.

Clause 349 replaces the second paragraph of section 582 of the current Code and sets out the alternative verdicts open on a charge of procuring the commission of a wrongful act or omission.

There has been no change to the current law.

Clause 350 replaces section 583 of the current Code and sets out the circumstances in which a person charged with an offence may be convicted of an attempt.

There has been no change to the current law.

Clause 351 replaces section 579 of the current Code and sets out the alternative verdicts open on a charge of an offence of which the causing of a specific result is an element.

There has been no change to the current law.

Division 3—Particular offences

Clause 352 sets out the alternative verdicts open on a charge of conspiring to commit an offence; namely, the commission of the relevant offence or an attempt to commit the relevant offence.

Clause 353 provides for an alternative verdict of becoming an accessory after the fact to an offence on a charge of committing the relevant offence.

Clause 354 replaces section 576 of the current Code and sets out the alternative verdicts open on a charge of murder or unlawful killing.

There has been no change to the current law.

Clause 355 replaces section 577 and sets out the alternative verdicts open on a charge of murder or unlawful killing when the victim was a recently born child.

There has been no change to the current law.

Clause 356 replaces section 578 of the current Code and sets out the alternative verdicts open on the following charges:—

- rape;
- attempting to commit rape;
- having unlawful vaginal intercourse with a child under 16 years;
- indecent assault;
- incest;
- attempted incest.

Alternatives in addition to those currently available are created for charges of rape and attempted rape.

Clause 357 replaces section 328B of the current Code and provides an additional power to convict of the crime of dangerously operating a vehicle in a public place on an indictment which charges a person with an offence connected with or arising from the operation of a vehicle.

Apart from the extended definition of vehicle, there has been no change to the current law.

Clause 358 replaces section 581 of the current Code and sets out the alternative verdicts open on the following charges:—

- stealing;
- dishonest appropriation;
- fraud;
- procuring another to commit an offence of stealing, dishonest appropriation or fraud.

There has been no change to the current law.

Clause 359 replaces section 589 of the current Code and applies to a trial on an indictment charging two or more persons jointly with an offence of which the receiving of property is an element. If the evidence proves that one or more persons separately received any part of the property in circumstances that constitute an offence, then that person or those persons may be convicted of the offence.

There has been no change to the current law.

Clause 360 replaces section 580 of the current Code and sets out the alternative verdict open on a charge of an offence, an element of which is the wilful and unlawful doing of specific damage to property.

There has been no change to the current law.

PART 5—TRIAL PROCEEDINGS GENERALLY

Division 1—Directions and rulings before trial

Clause 361 provides for directions and rulings before trial. The direction or ruling may be made by any Judge of the court before which the trial is to be held. The direction or ruling may be made on the application of any party, or on the Judge's own initiative. Clause 346 lists a number of matters about which a direction or ruling may be made; for example, the joinder of charges or the admissibility of evidence. The list is not intended to be exhaustive. The parties are bound by the direction or ruling at trial, unless the trial judge directs otherwise for special reasons. The direction or ruling is not subject to an interlocutory appeal, but may be the subject of appeal after the trial has been heard.

Division 2—Separate trials

Clause 362 applies this division to charges of an indictable offence dealt with summarily.

Clause 363 replaces section 597A of the current Code and empowers a court to sever counts on an indictment where the court considers that an accused may be prejudiced or embarrassed in defence because more than one offence is charged, or because for another reason it is desirable that the accused be tried separately for an offence.

Clause 364 is intended to overcome the ruling in Hoch v R [1988] 165 CLR 292. As a general rule charges should not be joined, if the evidence on each count is not admissible on the other counts and there is a risk of impermissible prejudice to an accused in the conduct of a single trial on all counts. Separate trials should be ordered.

In a case where a number of complainants make allegations of sexual abuse against an accused, and there is a striking similarity in each account of the sexual abuse, then the evidence on one count may be admissible as evidence on another count as similar fact evidence.

In accordance with the ruling in Hoch, applying Reg v Boardman [1975] A.C. 4212, the evidence will not be admissible where there is a possibility—not a probability or real chance—of concoction or collaboration between the complainants. Accordingly, where more than one complainant alleges sexual abuse by the same person, and the complainants are associated in some way e.g as school students or siblings, and there is a possibility that the complainants could have “put their heads together”, even if there is no evidence of it, the allegations of each complainant are to be the subject of separate trials.

² Lord Wilberforce:

“This probative force is derived, if at all, from the circumstance that the facts testified to by the several witnesses bear to each other such a striking similarity that they must, when judged by experience and common sense, either all be true, or have arisen from a cause common to witnesses or from pure coincidence....something much more than mere similarity and absence of proved conspiracy is needed if this evidence is to be allowed...This is well illustrated by Reg. v Kilbourne where the judge excluded “intra group” evidence because of the possibility, as it appeared to him, of collaboration between boys who knew each other well. This is, in my respectful opinion, the right course rather than to admit the evidence unless a case of collaboration is made out.” (original emphasis)

Clause 364 is intended to overcome the Hock decision. It provides that an indictment is not to be severed because of a possibility of concoction between complainants, unless there is a *real* chance that concoction between the complainants has happened.

Clause 365 replaces section 606 of the current Code and provides for the separate trial of two or more accused charged in the same indictment, on the application of an accused person.

Clause 365 applies to summary proceedings for an indictable offence.

Division 3—Bringing on trial and ordering adjournment

Clause 366 replaces section 590 of the current Code. A person who has been committed for trial may apply to be brought to trial. If the person is not brought to trial by the last day of the sittings after the sittings during which the application to be brought to trial was made, then the person has the right to be discharged from the effect of the committal.

The wording of clause 366(6) reflects the judgment of the Court of Appeal in Re Jenkin [1994] 1 Qd R 266. The competing arguments for the interpretation of the expression “entitled to be discharged” under section 590(3) of the current Code were (1) that “discharged” meant no more than discharged from obligations pursuant to the committal, and (2) that “discharged” meant discharged from any liability to be further tried in respect of the alleged offence.

The majority [Ryan and Mackenzie JJ, Thomas J dissenting] held that “discharged” meant discharged from the consequential orders made following committal for trial or sentence, not discharged from liability to further prosecution for the same offence.

Clause 367 replaces section 591 of the current Code and deals with the situation of undue delay on the part of the prosecution following the presentation of an ex officio indictment. The court may order that person’s trial to be brought on if it considers there has been undue delay.

Clause 368 replaces section 592 of the current Code and empowers a court to adjourn a trial, or to postpone a trial if the accused has not been called on to plead to the indictment.

There has been no change to the current law.

Clause 369 replaces section 593 of the current Code and provides that a trial may be adjourned to a later sittings of the same court, or to before another court of competent jurisdiction.

There has been no change to the current law.

Clause 370 replaces section 593A of the current Code and provides for the enlargement of notices to witnesses upon the adjournment of a trial.

There has been no change to the current law.

Division 4—Applications by charged person about indictment

Clause 371 replaces section 595 of the current Code and provides that the court, on the application of a person against whom an indictment is presented, must order that a copy of the indictment be delivered to the person without fee.

There has been no change to the current law.

Clause 372 replaces section 596 of the current code and provides for an application by the accused to the court to set aside an indictment on the basis that it does not disclose an offence; is calculated to prejudice or embarrass the accused in his or her defence; or is formally defective.

Clause 373 replaces section 597 of the current Code and allows a court to amend an indictment where the accused has been wrongly named in it.

There has been no change to the current law.

Division 5—Pleas

Clause 374 replaces section 594 of the current Code and provides than an accused person must be called upon to plead to the indictment upon arraignment. The clause also provides for bulk arraignment on multiple count indictments. Where an indictment contains more than one count, an accused person may plead to one charge on the basis that their plea will be the same to another similar charge.

A trial commences when a person is called on to plead to a charge.

Clause 375 replaces section 598 of the current Code and sets out the

pleas which may be made to an indictment.

There has been no change to the current law.

Clause 376 replaces section 600 of the current Code and sets out the pleas which a person committed for sentence may make to an indictment and provides for the situation where an accused person wishes to change a guilty plea to a plea of not guilty.

There has been no change to the current law.

Clause 377 replaces section 601 of the current Code. If a person does not plead or answer directly to the indictment, the court may, if it considers it appropriate, order a plea of not guilty to be entered for the accused person. It is intended to cover the situation where a person is unable or unwilling to plead.

Clause 378 replaces section 602 of the current Code and sets out the way in which a person may plead that the person has already been formerly convicted or acquitted of a relevant charge.

The clause applies to a summary proceeding for an indictable offence.

Clause 379 replaces section 603 of the current Code and provides that where an accused pleads to the jurisdiction of the court, or pleads former conviction or acquittal, the court must satisfy itself, as a matter of law, whether the plea is made out.

The clause applies to a summary proceeding for an indictable offence.

Clause 380 replaces section 613 of the current Code and provides for a jury finding of the want of understanding of an accused person.

The clause applies to a summary proceeding for an indictable offence.

Division 6—Corporation as charged person

Clause 381 replaces section 594A of the current Code and provides for the representation of a corporation against which an indictment is presented. The corporation's representative may enter a written plea to the charge upon arraignment. If the representative does not enter a written plea, or if the corporation is not present in court by its representative, then the court must order a plea of not guilty to be entered for the corporation.

There has been no change to the current law.

Division 7—Appearances and fair conduct

Clause 382 replaces section 616 of the current Code and provides that a person charged with an offence has the right to defend himself or herself or to be represented by counsel. The term “Counsel” is defined in Schedule 5 of the Bill.

There has been no change to the current law.

Clause 383 replaces section 617 of the current Code and provides for the circumstances in which a trial may proceed in the absence of the accused.

The clause applies to a summary proceeding for an indictable offence.

Clause 384 empowers a presiding judge to make any order necessary for the fair conduct of a trial.

The clause applies to a summary proceeding for an indictable offence.

Division 8—Trial of issues

Clause 385 replaces section 604 of the current Code and provides for trial by jury. The current law has been changed to the extent that a plea of former acquittal or conviction will be determined by the trial judge and not by the jury.

Clause 386 foreshadows the introduction of the new *Jury Act*. The substance of sections 607, 608, 609, 610, 611, 614, 615, 621, 622, 623, 626, 627 and 628 of the current Code will be contained in the *Jury Act 1995*.

The *Jury Act 1995* will state the law about the following:—

- the obligation to perform jury service;
- the organisation of juries generally;
- the selection of a jury;
- the arrangements for a jury during trial;

- juror's remuneration and allowances

Clause 387 replaces section 618 of the current Code and provides that at the close of the prosecution case, the accused must be asked whether he or she intends to give evidence in defence.

The clause applies to a summary proceeding for an indictable offence.

Clause 388 replaces section 619 of the current Code and provides for opening and closing speeches or addresses by counsel. In every case, the defence has the right of last address, subject to the prosecution making a submission in reply, with the leave of the trial judge, when something is said in the defence address which is unsupported by the evidence.

The clause applies to a summary proceeding for an indictable offence.

Clause 389 replaces section 620 of the current Code and provides for the summing up by the trial judge to the jury.

There has been no change to the current law.

Clause 390 replaces section 624 of the current Code and provides for a special verdict when the guilt or punishment of the accused depends on a specific fact.

There has been no change to the current law.

Division 9—Other provisions

Clause 391 replaces section 630 of the current Code and sets out the procedure to be followed where a person is charged on indictment with committing an offence after a previous conviction.

The clause applies to summary proceedings for an indictable offence.

Clause 392 replaces section 631 of the current Code and provides that if the issues raised by a plea, other than a plea of not guilty, have been found against an accused person, then the person must be called upon to plead afresh.

The clause applies to summary proceedings for an indictable offence.

Clause 393 replaces section 631A of the current Code and provides for the change of plea by an accused from not guilty to guilty during the course of a trial.

The clause applies to summary proceedings for an indictable offence.

PART 6—EVIDENCE

Division 1—General

Clause 394 replaces section 638 of the current Code and provides that a statement in an indictment that the prosecution is at the direction of, or with the consent of a State Law Officer, or at the request of the government of the Commonwealth or a State, that is sufficient evidence of that fact unless the contrary is proved.

There has been no change to the current law.

Clause 395 replaces section 671K of the current Code and provides that all proceedings before a trial court must be recorded and that a copy of the record of proceedings may be given to an interested party under the criminal practice rules. The Attorney-General may also give a copy to a person in circumstances and on conditions that the Attorney-General considers appropriate.

There has been no change to the current law.

Clause 396 replaces section 671J of the current Code and provides for the trial court's custody of documents, exhibits or anything else connected with a proceeding before a trial court during the appeal period.

There has been no change to the current law.

Division 2—Evidence about offences

Clause 397 replaces section 636 of the current Code. Where a blood relationship has to be proved in the trial of a person charged with the following crimes:—

- indecently dealing with child under 16, where the complainant is the descendant of the accused; or

- indecently dealing with a person who has an intellectual or psychiatric impairment, where the complainant is the descendant of the accused;
- anal intercourse with a child under 16 who is the descendant of the accused;
- incest;
- an attempt to commit any of these crimes; or
- conspiring to commit any of these crimes,

the blood relationship is sufficiently proved by proof that the relationship is reputed to exist.

There has been no change to the current law.

Clause 398 replaces the first and second paragraphs of section 641 of the current Code.

The provision applies to persons charged with stealing or dishonestly appropriating their employer's money, money that was in their possession or control subject to a trust direction or condition that it be applied to a particular purpose or to someone else, or money held on account of someone else. In those circumstances, an entry in a book of account kept by the person purporting to indicate the receipt of money is evidence that money was received by the person. It is unnecessary to prove that the person stole or dishonestly appropriated a specific amount if there is proof of stealing or dishonestly appropriating money over a period, and there is proof that the person stole or dishonestly appropriated it or part of it.

There has been no change to the current law.

Clause 399 replaces the third paragraph of section 641 of the current Code.

The provision applies to the trial of a person charged with stealing or dishonestly appropriating money in the person's possession or control, subject to a trust, direction or condition that it be applied to a particular purpose or person. In the indictment, the ownership of, right in, title to, or use or benefit of the money may be alleged in the name of one of the beneficiaries "and others". It is sufficient to prove that the property in the money, or the right in, title to, or use or benefit of the money was in any of the beneficiaries, without deciding which one.

There has been no change to the current law.

Clause 400 removes the privilege against self-incrimination [see section 10 *Evidence Act 1977*] from a witness in a proceeding for any of the following crimes:—

- Chapter 5 Bribery of agents, MLAs and public officers;
- Clause 248 Bribing a judicial officer;
- Clause 249 Giving a bribe in relation to a judicial officer;
- Clause 250 Seeking a bribe in relation to a judicial officer;
- Clause 256 Compounding etc., offences.

The incriminating answer is not admissible against the witness in another proceeding, other than a proceeding for perjury about the answer.

Clause 401 replaces section 634 of the current Code and provides that on a trial of an offence of which the giving of false testimony at a previous trial is an element, a certificate stating the effect of the charge and the previous trial proceedings is evidence of the previous trial.

There has been no change to the current law.

Clause 402 replaces section 229O of the current Code and provides that a health services provider may refuse to provide any document or information, or answer any question, in relation to an investigation of a prostitution offence on the ground that it would disclose information gained in providing a health service.

There has been no change to the current law.

Clause 403 replaces section 56 of the *Drugs Misuse Act 1986* [the "DMA"] and provides for the use of an analyst's certificate in drugs misuse offences as evidence of:—

- the identity and quantity of the thing analysed;
- the result of the analysis or examination; and
- any other relevant matters stated in the certificate.

There has been no change to the current law.

Clause 404 replaces section 57 and 58 of the DMA and sets out certain evidentiary provisions which apply to a person charged with a drugs misuse offence.

The evidentiary provisions concern the particularisation of a dangerous drug, conclusive proof of possession, proof of authorisation, and a finding that a person received or was in possession of some, but not all of the property alleged by the prosecution.

Clause 405 replaces section 229N of the current Code and sets out what evidence may and may not be used for the purpose of inferring that a “place” is being used for prostitution.

There has been no change to the current law.

Clause 406 replaces section 637 of the current Code and provides that where evidence of gaming is required, it is unnecessary to prove that the game was played for money, wager or stake.

There has been no change to the current law.

Clause 407 replaces section 643 of the current Code and provides that for an offence of which dishonesty is an element, it is unnecessary to prove that the dishonesty was directed towards a particular person, unless the provision defining the offence indicates a contrary intention.

Clause 408 provides that for an offence of which an intent to kill, or to injure is an element, it is not necessary to prove an intention to kill or injure a particular person, unless the provision defining the offence indicates a contrary intention.

PART 7—VERDICTS AND JUDGMENTS

Clause 409 replaces sections 26 and 645 of the current Code.

A person is presumed to be of sound mind at the time of the trial unless the contrary is proved.

Either the prosecution or the defence may seek a finding that the accused is of unsound mind. The trial judge, on his or her own initiative, may also raise the issue of unsoundness of mind.

The onus of proving the issue falls on the party who raises it. When the issue is raised by the trial judge, the trial judge directs upon whom the onus falls.

A jury is to decide the issue of unsoundness. Where a finding of unsoundness of mind is made, the court must order that the person be kept in strict custody until the person is dealt with under the *Mental Health Act 1974*. A person found to be unsound of mind may be indicted and tried again for the offence.

Clause 410 replaces section 647 of the current Code. Where a person is acquitted because of a finding by the jury that the person was of unsound mind at the time of the relevant act or omission, the court must order that the person be kept in strict custody until the person is dealt with under the *Mental Health Act 1974*. The Governor may order the appropriate safe custody of the person at the Governor's pleasure.

There has been no change to the current law.

Clause 411 replaces section 646 of the current Code and provides for the discharge of persons acquitted.

There has been no change to the current law.

Clause 412 replaces section 648 of the current Code and provides that an accused person who pleads or is found guilty is to be asked whether the person has anything to say why the court should not sentence immediately.

Clause 413 empowers the Attorney-General to apply for a re-sentence when an accused person does not co-operate as promised before the original sentence was passed. If a court has reduced a convicted person's sentence because the convicted person has undertaken to co-operate with law enforcement agencies, the court must state that the sentence is reduced because of that undertaking, and the sentence that would have been imposed, but for the reduction. If the convicted person does not co-operate under the undertaking, the Attorney-General may apply for a new sentence at any time when the convicted person is under the original sentence.

Clause 414 replaces section 49 of the DMA and provides that certain drugs misuse offences maybe heard and decided in chambers where the defence and the prosecution consent. Unless ordered, there is to be no transcript of the proceedings. No record or notice of the proceedings is to be published.

There has been no change to the current law.

Clause 415 applies the provisions of Part 7 of the Bill to proceedings on indictable offences, whether held summarily or on indictment.

PART 8—OTHER TRIAL PROVISIONS

Division 1—Prohibition on Publication of proceedings

Clause 416 replaces section 48 of the DMA and empowers the presiding judge or magistrate to make an order, in chambers, prohibiting the publication of drugs misuse offence proceedings or the name and address of a witness.

There has been no change to the current law.

Division 2—Certificate of discharge

Clause 417 replaces section 229J of the current Code and provides for the issue of a certificate of discharge for the crime of attending a place being used for unlawful prostitution where the person charged with that crime provides full and true disclosure of all relevant and material matters.

The person may apply for an order prohibiting the publication of matter that may identify the person, if the certificate is granted.

There has been no change to the current law.

Division 3—Order for delivery of property

Clause 418 replaces section 685B of the current Code and provides for an order for delivery of property, which is in the custody of a police officer or the court at the end of a trial, to the lawful owner of the property. Where the owner cannot be identified, the court may make an appropriate order.

PART 9—COURT OF APPEAL PROCEEDINGS

Division 1—Preliminary

Clause 419 replaces section 668 of the current Code and defines the following words and expressions:—

- appellant;

- convicted person;
- Court;
- indictable offence;
- jury;
- notice of appeal;
- registrar;
- sentence;
- trial court; and
- trial Judge.

There has been no change to the current law.

Clause 420 replaces the third paragraph of section 668 of the current Code and provides that, for the purposes of Part 9 of the Bill, if a person is acquitted on the basis of unsoundness of mind, and the person did not set up unsoundness of mind as a defence, then the person is taken to be a convicted person, and an order to keep the person in custody is taken to be a sentence.

There has been no change to the current law.

Division 2—Appeal by convicted person

Clause 421 replaces section 668D and the first paragraph of section 673 of the current Code and provides for an appeal by a person convicted of an indictable offence against their conviction, and with leave, against their sentence.

There has been no change to the current law.

Clause 422 replaces the second paragraph of section 673 of the current Code and provides that rights given under Part 9 of the Bill, to a person convicted summarily of an indictable offence are given to the exclusion of any other right of appeal under the *Justices Act 1886*.

There has been no change to the current law.

Clause 423 replaces section 668E of the current Code and sets out the basis upon which, in ordinary cases, an appeal against conviction must be

upheld or dismissed, and the consequences of a successful appeal against conviction. The provision also sets out the basis upon which, in ordinary cases, an appeal against sentence must be upheld or dismissed and the consequences of a successful appeal against sentence.

There has been no change to the current law.

Clause 424 replaces section 668F of the current Code and provides for the powers of the Court of Appeal on appeals in special cases, namely where the Court of Appeal considers that:—

- An appellant has not been properly convicted on a charge or part of an indictment or complaint, but has been properly convicted on another charge or part of the indictment or complaint;
- An appellant has been convicted of an offence, and the jury could have found the appellant guilty of another offence, and the jury's finding is consistent with the jury having been satisfied of facts which prove the guilt of the appellant on the other offence;
- On the appellant's conviction, the jury found a special verdict and the trial court has arrived at a wrong conclusion with respect to the effect of that verdict; and
- The appellant was not of sound mind when the appellant committed the act or omission charged.

There has been no change to the current law.

Clause 425 replaces section 669 of the current Code and empowers the Court of Appeal, upon an appeal against conviction, to order a new trial where the Court considers that a miscarriage of justice has occurred and that the most adequate remedy is a retrial.

There has been no change to the current law.

Clause 426 replaces section 671D of the current Code. An appellant has the right to be present at the hearing of the appellant's appeal with the leave of the Court.

Clause 427 replaces section 671E of the current Code and provides for the presentation of appeals in writing with the leave of the Court.

Division 3—Proceedings started by Attorney-General

Clause 428 replaces section 669A(1) of the current Code and provides for appeals by the Attorney-General against sentence.

There has been no change to the current law.

Clause 429 replaces sections 669A(2) to (6) of the current Code and provides for references of questions of law, which arise at the trial of a person, to the Court of Appeal, for the Court's consideration and opinion.

There has been no change to the current law.

Clause 430 provides that the Attorney-General may appeal against a order staying a charge of an indictable offence.

Division 4—Time limitation on start of proceedings

Clause 431 replaces section 671 of the current Code and provides for 28 days notice of an appeal.

There has been no change to the current law.

Division 5—Custody, imprisonment and detention

Clause 432 replaces section 671G of the current Code and deals with the custody, imprisonment and detention of an appellant; the nature of the appellant's time in custody, the provisions that must be made under the laws about prisons and detention centres for the transport of appellants, and the effect of a new sentence by the Court of Appeal that imposes a term of imprisonment or detention on an appellant.

There has been no change to the current law.

Division 6—Suspension of other orders

Clause 433 replaces section 670 of the current Code and provides the operation order for restitution or compensation made upon conviction, and

the operation of the provisions of the civil law with respect to the re-vesting of property of stolen goods upon conviction, are suspended until the end of the time for appealing or the outcome of any appeal lodged.

There has been no change to the current law.

Division 7—Other powers of Court of Appeal

Clause 434 empowers the Court of Appeal to make any order the trial court could have made on sentence.

Clause 435 replaces section 671B of the current Code and gives additional powers to the Court of Appeal which may be exercised in the interests of justice to assist the Court in its determination of the appeal e.g. a power to order the production of a document, a power to appoint an assessor.

There has been no change to the current law.

Division 8—Miscellaneous provisions about appeals to Court of Appeal

Clause 436 replaces section 671F of the current Code and provides that costs are not allowed on an appeal, but certain expenses are to be defrayed out of the Consolidated Fund.

There has been no change to the current law.

Clause 437 replaces sections 671H(1) and 671H(3) of the current Code and sets out the duties of the registrar of the Court of Appeal after receipt of a notice of appeal.

There has been no change to the current law.

Clause 438 replaces section 671H(2) of the current Code and provides that the registrar of the Court of Appeal may refer to the Court of Appeal, for summary decision, any notice of appeal which does not contain a substantial ground of appeal. The Court may dismiss summarily any appeal which it considers is frivolous or vexatious.

There has been no change to the current law.

Clause 439 replaces section 671K(2) of the current Code and provides

that the trial record be given to the registrar for the use of the Court.

There has been no change to the current law.

Clause 440 replaces section 671A of the current Code and provides that the trial judge must furnish their notes of the trial to the Registrar if there is an appeal or an application to an appeal and no other record of the proceeding.

Division 9—Appeals from the Court of Appeal

Clause 441 replaces section 672 of the current Code and applies when an appeal against conviction is upheld and the appellant has the right to have the conviction set aside, but the State intends to appeal against the decision of the Court of Appeal to the High Court. The State may apply for, and the Court of Appeal may order, the stay of the execution of the order setting aside the conviction for an appropriate time, not more than seven days.

The Court, or a Judge thereof, must make an appropriate order for the detention, return to former detention or bail of the appellant during the stay.

The Court or a Judge thereof may, on an application by the State Law Officer, make an order for the detention or bail of the appellant pending the hearing of an appeal to the High Court of Australia.

An appellant who is dissatisfied by a failure to diligently prosecute the appeal may apply to the Court of Appeal or a Judge thereof for the immediate execution of the Court's original order setting aside the conviction; the appellant's immediate release and an award of just compensation to the appellant.

There has been no change to the current law.

Division 10—Reserving issues of law

Clause 442 replaces section 668B of the current Code and provides for the reservation of a question of law for the consideration of the Court of Appeal.

There has been no change to the current law.

This clause does not authorise, before the accused is placed in charge of a jury, reservations of issues of law arising out of directions or rulings before trial, under clause 361 of the Bill.

PART 10—PREROGATIVE OF MERCY

Clause 443 replaces section 18 and section 672A of the current Code. The Bill does not affect the prerogative of mercy. The Attorney-General may refer the whole case of, or a particular point about, a person's conviction or sentence to the Court of Appeal for the Court's decision or opinion.

Clause 444 replaces section 675 of the current Code and incorporates the suspended sentence provisions of the *Penalties and Sentences Act 1992* into the Governor's power to release a person conditionally in the exercise of the Governor's prerogative of mercy. The Governor may effectively impose a suspended sentence upon an offender, who may be dealt with under Part 8 of the *Penalties and Sentences Act 1992* for any breach of that suspended sentence.

Clause 445 replaces section 677 of the current Code and provides that a pardon by the Governor, in the exercise of the prerogative of mercy, discharges a convicted person from the effects of the conviction, subject to the Governor's power to release a person conditionally under clause 444 of the Bill.

PART 11—MISCELLANEOUS

Division 1—Search Provisions

Clause 446 replaces section 679 of the current Code and provides for the issue of a search warrant by a justice.

There has been no change to the current law.

Clause 447 replaces section 679A of the current Code and provides for the search of an aircraft, a person on board or about to board an aircraft and luggage or freight on board, or about to be placed on board, an aircraft, by the person in command of the aircraft, and the seizure of property which provides evidence of the commission of an offence, or which is intended to be used to commit an offence.

Under clause 449(1) of the Bill, the property seized must be taken before a justice as soon as practicable.

There has been no change to the current law.

Division 2—Property provisions

Clause 448 replaces section 680 of the current Code and provides that when a person who has been arrested on a charge of a property offence is in possession of property about which the offence was committed, the person arresting may take that property before a Magistrates Court to be dealt with according to law.

There has been no change to the current law.

Clause 449 replaces section 682 of the current Code and provides for the disposal of property seized under the provision of the Code.

There has been no change to the current law.

Clause 450 replaces section 683 of the current Code and provides that a person who seizes an explosive or noxious thing found in a vehicle may use that vehicle to take the thing to a safe place. The owner of the vehicle can be sufficiently compensated for the vehicle's use.

There has been no change to the current law.

Division 3—Consent to Prosecution

Clause 451 applies if a person cannot be prosecuted for an offence without the consent of a State Law Officer and prescribes the time at which the consent of a State Law Officer must be given.

Division 4—Provisions generally helping charged person

Clause 452 replaces section 704 of the current Code and provides that there are no court fees in criminal cases.

There has been no change to the current law.

Clause 453 replaces section 705 of the current Code and provides that a copy of the depositions must be given on demand to the person committed for trial on those depositions. Under the current section, the accused is only entitled to a copy of the depositions if the demand is made prior to the commencement of the sittings of the court to which the accused has been committed. Under the current section, a court may postpone a trial on account of the accused not having previously had a copy of the depositions. This power is not contained in the Bill, but is part of the court's inherent jurisdiction to ensure a fair trial.

Clause 454 replaces section 706 of the current Code and provides that an accused has a right to inspect, at his or her trial, without fee, the depositions taken against him or her and returned into the court before which the trial is heard.

There has been no change to the current law.

Division 5—Confidentiality

Clause 455 replaces section 47(1) of the DMA and provides protection for informants who have supplied information about a drugs misuse offence. In a proceeding in respect of which an informant has supplied information, the prosecutor, a prosecution witness or a police officer or officer of a law-enforcement agency called as a witness for the defence must not be asked, and if asked must not be compelled, to disclose the name of the informer, any particular that is likely to lead to the informer's identification, the fact that information from an informer was received, or the nature of that information.

There has been no change to the current law.

Clause 456 replaces section 47(2) of the DMA and provides further protection for a police officer in a proceeding arising out of a charge for a drugs misuse offence. A police officer who appears as prosecutor or as a

witness must not be compelled to produce reports or documents made or received in the police officer's official capacity, or containing information about the offence, or to make a statement about the report, document or information.

There has been no change to the current law.

Division 6—Forms

Clause 457 replaces the first paragraph of section 707(1) of the current Code and provides that a form prescribed under the Criminal Practice Rules is sufficient for the purpose for which it is approved to be used.

Division 7—Amendments and repeals

Clause 458 provides that the Acts mentioned in Schedule 2 of the Bill are amended as set out in the Schedule.

Clause 459 provides for the consolidation, amendment and relocation of certain laws as set out in Schedule 3.

Clause 460 provides for the repeal of the Acts set out in Schedule 4 of the Bill.

SCHEDULES

Schedule 1 is divided into five parts.

Part 1 replaces Schedule 1 of the DMA and lists the most serious dangerous drugs for the purpose of the drugs misuse offences.

Part 2 replaces Schedule 2 of the DMA and lists dangerous drugs, excluding those listed in Part 1, for the purpose of the drugs misuse offences.

Part 3 replaces Schedule 3 of the DMA and sets out specific quantities of the dangerous drugs listed in parts 1 and 2, for the purpose of

determining whether the offences of unlawful possession or production of the dangerous drug are aggravated because of the quantity involved.

Part 4 replaces Schedule 4 of the DMA and sets out specific quantities of the dangerous drugs listed in Part 1 for the purpose of determining whether the unlawful possession or production of the dangerous drug is further aggravated because of the quantity involved.

Part 5 replaces Schedule 5 of the DMA and lists certain dangerous drugs and, where relevant, quantities of those drugs, for the purpose of the defence to a charge of unlawfully supplying or possessing a dangerous drug, that the drug has been lawfully prescribed and it is supplied or possessed in a small quantity.

Schedule 2 sets out amendments to *Acts Interpretation Act 1954*, the *Evidence Act 1977*, the *Justices Act 1886*, the *Juvenile Justice Act 1992*, and the *Transport Operations [Passenger Transport] Act 1994*.

The current law relating to the exclusion of confessions [section 10 *Criminal Law Amendment Act 1894*], evidence of alibi [section 590A current Code], evidentiary matters for offences about animals [section 450E, section 450G current Code], evidentiary and related matters about proceedings for sexual offences [*Criminal Law [Sexual Offences] Act 1978*], evidence of previous conviction [section 635 current Code], admissions [section 644 current Code], evidence of lawful custody [section 145B current Code], evidence of domestic violence and similar fact evidence has been inserted into the *Evidence Act 1977*.

Corroboration

A witness' testimony is *corroborated* when there exists independent evidence that supports, confirms or strengthens that testimony.

Under clause 130A of the *Evidence Act 1977*, a person may be convicted on the uncorroborated testimony of one witness, whether or not the witness is a complainant, the person's accomplice or someone else. A Judge is not required by any rule of law or practice, to warn a jury that it is unsafe to convict on the uncorroborated testimony of one witness. A Judge may make an appropriate comment on testimony in the interests of justice.

Domestic Violence

Clause 132 is inserted into the *Evidence Act*. Under section 132, in a criminal proceeding against a person for a personal offence, relevant evidence of the history of the domestic relationship between the offender and the victim is admissible.

Clause 132 reflects the law in *The Queen v R* [1981] 28 SASR 321. The accused killed her husband by attacking him with an axe while he was sleeping. She was convicted of murder. At her trial, provocation was withdrawn from the jury. She appealed. The question for the Supreme Court [In Banco] was whether the trial judge was correct in withdrawing provocation from the jury. At page 326 of the report King CJ said:—

“In determining whether the deceased’s actions and words on the fatal night could amount to provocation in law, it is necessary to consider them against the background of family violence and sexual abuse. I have reached the conclusion that, at least on the version of the facts most favourable to the appellant, it was open to a reasonable jury to take the view that an ordinary person possessing those characteristics of the appellant which rendered her susceptible, might suffer, in consequence of the deceased’s words and actions on the fatal night, a loss of self-control to the extent of doing what the appellant did. The deceased’s words and actions in the presence of the appellant on the fatal night might appear innocuous enough on the face of them. They must, however, be viewed against the background of brutality, sexual assault, intimidation and manipulation. When stroking the appellant’s arm and cuddling up to her in bed telling her that they could be one happy family and that the girls would not be leaving, the deceased was not only aware of his own infamous conduct but must have at least suspected that the appellant knew or strongly suspected that, in addition to the long history of cruelty, he had habitually engaged in sexual abuse of her daughters. The implication of the words was therefore that this horror would continue and that the girls would be prevented from leaving by forms of intimidation and manipulation which were only too familiar to the appellant. In this context it was, in my opinion, open to the jury to treat the words themselves and the caressing actions which accompanied them as highly provocative and quite capable of producing in an ordinary mother endowed with the natural instincts of love and protection of her daughters, such a loss of self control as might lead to killing. A jury might find, to adopt the words of Dixon J. in Parker v The Queen [[1936] 111 CLR 610 @ 630] “all the elements of suddenness in the unalleviated pressure and the breaking down of control” as the night’s events reached their climax in the bed. There was the effect of the sustained course of cruelty over the years: Reg v Jeffrey [[1967] VR 467 @ 484]. There was, moreover the progressive build-up of tension and horror from the time the girls returned on the previous Friday night. There was the intensification of the tension on the Wednesday night. The effect of the final actions and words must be gauged in this context. There was, it is true, some interval between the provocative conduct and the killing, but in the words of

Windeyer J in Parker v The Queen, [at 663] "passion and emotion were mounting not declining".

[underlining added]

Similar fact evidence

Section 132A is inserted into the *Evidence Act*. Clause 132A provides that in a criminal proceeding, similar fact evidence from different complainants is inadmissible if there is a real chance the evidence is concocted. The mere possibility that the complainants concocted the evidence does not make the evidence inadmissible [see discussion under clause 364].

Schedule 3 sets out the consolidation, amendments and relocation of the following laws:—

- Consolidation and amendment of defamation law; the criminal defamation provisions in the current Code are relocated to the *Defamation Act 1889*.
- Amendment of laws about the Legislative Assembly; section 7AA is inserted into the *Legislative Assembly Act 1867* providing for the disqualification of Members who are convicted of bribing an MLA [clause 259] or bribing a public officer [clause 262]; the offences against the Legislative Assembly provisions of the Current Code are relocated to the *Legislative Assembly Act*.
- Amendment of laws about the Government of Queensland; the offences against the Governor in the current Code are relocated to the *Constitution [Office of Governor] Act 1987*.

Schedule 4 lists the Acts which are repealed.

Schedule 5 is the Dictionary, defining words and phrases used in the Bill.