

Criminal Code and Other Acts Amendment Bill 2008

Explanatory Notes

Objectives of the Bill

The Bill seeks to:

1. Amend the Criminal Code (the Code) to:
 - streamline the Code and modernise the law relating to criminal offences;
 - ensure drafting consistency with regards the structure of offences;
 - rectify existing penalty anomalies;
 - insert a new section 364A which provides the offence of leaving a child under 12 years unattended for an unreasonable time without making reasonable provision for the supervision and care of the child; and
 - provide a special disclosure regime for an audio or video recorded statement admissible under section 93A of the *Evidence Act 1977*.
2. Amend the *Bail Act 1980* to:
 - clarify that legally represented defendants will only be excused from appearing at mentions; and
 - expand the circumstances when an application for the revocation or variation of bail can be made upon issue of a notice so as to include juveniles on watchhouse bail.
3. Amend the *Criminal Law Amendment Act 1945* to provide that, upon release on parole, a Queen's Pleasure detainee loses the ability to be released unconditionally by the Governor in Council.
4. Amend the *Criminal Law (Sexual Offences) Act 1978* to:
 - facilitate information sharing across agencies where appropriate;

- allow adult complainants to consent to the publication of their identifying particulars; and
 - improve the readability and accessibility of the Act generally.
5. Amend the *Penalties and Sentences Act 1992* to:
- provide that a sentencing court must have regard to whether a child under 16 years of age was a witness to the offence in question or was directly exposed to the offence;
 - provide that the principle that a sentence of imprisonment should only be imposed as a last resort, does not apply to offences under the *Classification of Computer Games and Images Act 1995* and other such Acts; nor does it apply to the child exploitation material offences in the Code;
 - clarify that a sentencing court may deal with an offender who re-offends during the extended operational period of a suspended sentence;
 - clarify that a sentencing court, in ordering a person to serve the unexpired portion of an intensive correction order, is empowered to order release on parole or set a parole eligibility date; and
 - amend the provisions relating to the Court Diversion Program for a Minor Drugs Offence to reflect the practice of notifying offenders of breach proceedings as opposed to issuing an arrest warrant.
6. Amend the *Summary Offences Act 2005* to insert a number of minor offences relocated from the Code.

Reasons for the Bill

Criminal Code

The Bill streamlines and modernises certain chapters of the Code, working from the following principles:

- amalgamating the numerous very narrow and specific provisions contained in the Code into more general offences where it is reasonable to do so;
- repealing provisions which proscribe conduct covered in other more general provisions or where the provisions are obsolete;

- redrafting archaic provisions into more modern language and concepts;
- relocating a number of minor offences into the *Summary Offences Act 2005*; and
- rationalising existing penalty anomalies.

Criminal Law (Sexual Offences) Act 1978

The Bill makes a number of amendments to the *Criminal Law (Sexual Offences) Act 1978*, some of which were identified by the Crime and Misconduct Commission in its report entitled *Seeking Justice: An Inquiry into how sexual offences are handled by the Queensland Criminal Justice System* (2003).

Penalties and Sentences Act 1992

Children are often present and witness serious offences which endanger their short term and long term health and well being, even though they are not the direct victim of the offence. While the court often takes these factors into account in sentencing, the amendment to section 9(2) of the *Penalties and Sentences Act 1992* recognises the particular vulnerability of children who are exposed to a criminal offence.

The *Penalties and Sentences Act 1992* is also amended to correct current anomalies in the Act by clarifying that a sentencing court:

- may deal with an offender who re-offends during the extended operational period of a suspended sentence, addressing issues identified by the Court of Appeal in *R v Muller* [2005] QCA 417; and
- is empowered to order release on parole or set a parole eligibility date when ordering a person to serve the unexpired portion of an intensive correction order.

Other legislation

The Bill also amends other criminal justice legislation to ensure the on-going effectiveness of the legislation.

Achievement of the Objectives

The Bill achieves the objectives by way of the proposed new offences and amendments to existing legislation described below.

Estimated Cost for Government Implementation

Any costs will be met within existing resources.

Consistency with Fundamental Legislative Principles

The amendment to the *Criminal Law Amendment Act 1945* raises a fundamental legislative principle issue in that the amendment is removing an existing right of a Queen's Pleasure detainee to seek unconditional release. However, the amendment is considered justified in the interests of community protection and is consistent with the Government's policy that serious sex offenders should only be released into the community under supervision.

During consultation on the Bill there was argument that the amendments to the disclosure regime raises fundamental issues about the ability to provide legal representation and the ability of a self-represented accused to make an adequate defence. New section 590AOA of the Code does not deny the accused access to the section 93A audio or video statement or its contents. Rather, the section's purpose is to prevent a copy of the audio or video statement being given to the accused, so as to prevent it being further copied and distributed for purposes unconnected with the court proceedings. There is no restriction on the ability of the accused to view the statement or on the provision of a transcript of the contents of the statement.

Consultation

A consultation draft of the Bill, containing amendments to the Code, *Criminal Law Amendment Act 1945*, some of the *Penalties and Sentences Act 1992* amendments and the amendments to the *Summary Offences Act 2005*, was sent to all Government departments and to the following: the Chief Justice of the Supreme Court; the Chief Judge of the District Court; the Chief Magistrate; the Director of Public Prosecutions; the Bar Association of Queensland; the Queensland Law Society; the Crime and Misconduct Commission; Legal Aid Queensland; and Queensland Council for Civil Liberties. Consultation on particular areas of interest was undertaken with the Integrity Commissioner and the Office of the Public Service Commissioner. The other amendments included in the Bill were provided to particular stakeholders.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides that the Act's short title is the Criminal Code and Other Acts Amendment Act 2008.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Criminal Code

Clause 3 provides that this part amends the Code.

Clause 4 amends section 1, the definition section in the Code.

Subclause (1) omits the definition of 'intellectually impaired person' which refers to the meaning given in section 229F and omits the definition of 'disclose' which refers to section 590AD.

Subclause (2) inserts definitions of : 'canal'; 'inland water'; and 'port' due to a recasting of the punishment in special cases for section 469, wilful damage. A definition of 'damage' in relation to a document, is transferred to section 1 from section 460 and expanded to include 'rendering irrecoverable'. A definition of 'detriment caused to a person' is inserted and is defined to include detriment caused to a person's property. The Code contains a mix of references to 'detriment' with some references also mentioning injury to person or property. The insertion of the definition ensures consistency through the Code that 'detriment' caused to a person includes detriment to the person and to the person's property. The definition of 'intellectually impaired person' is transferred from section 229F. Whilst the definition remains unchanged the phrase is omitted and replaced with 'person with an impairment of the mind', given that the definition includes disabilities other than 'intellectual' impairments.

Subclause (3) amends the definition of 'vehicle' to omit the reference to 'motor cycle'. The definition of 'vehicle' includes 'motor vehicle'. The

definition of ‘motor vehicle’ includes a ‘motor cycle’. Therefore the reference to ‘motor cycle’ in the definition of ‘vehicle’ is superfluous.

Clause 5 amends section 31 (Justification and excuse – compulsion) to omit the reference to sections 81(2) and 82, as a consequence of the new offence of piracy provided in new section 79 and the penalty provided in section 80 (which does not retain the current circumstances of aggravation).

Clause 6 omits sections 47 to 49 on the basis that the proscribed conduct can be properly dealt with under the conspiracy offences in the Code (sections 309 and 541 to 543).

Clause 7 amends section 54 to omit the terms ‘advisedly’ and ‘calculated’ and to insert an element of ‘intention’ to interfere with the free exercise of the duties or authority of the office.

Clause 8 amends section 54A to omit the references to ‘injury or’. This is consequential to the new definition of ‘detriment’ inserted into section 1 by the Bill.

Clause 9 amends section 55 to omit the term ‘advisedly’ and to insert an element of ‘intentionally’ interfering with the free exercise of the authority of the Legislative Assembly or with the free exercise of the duties and authority of its members.

Clause 10 amends the heading of chapter 9 to reflect the fact that the offence of unlawful assembly is relocated to the *Summary Offences Act 2005*.

Clause 11 omits sections 61 to 66 and replaces the provisions with new section 61 which provides the offence of riot. The offence applies where 12 or more persons, present together, use or threaten to use unlawful violence to person or property, for a common purpose, and the conduct of them taken together would cause a person in the vicinity to reasonably fear for the person’s personal safety. The offence makes clear that for an accused to be guilty as a principal offender, he or she must use or threaten to use violence to person or property. The provision expressly states that it is immaterial whether there is or is likely to be a fearful person in the vicinity. This is to ensure the provision is interpreted in line with the other sections in chapter 9 which are concerned with the hypothetical bystander.

New section 61 carries a maximum penalty of three years imprisonment unless a circumstance of aggravation applies. If the offender is armed with a dangerous or offensive weapon, or with an explosive substance, or if the

rioters damage property, a penalty of seven years applies. Life imprisonment applies to an offender who causes grievous bodily harm to a person, causes an explosive substance to explode or destroys or starts to destroy a building, vehicle or machinery. The term 'starts to destroy' is used to reflect the wording in current section 65 which applies where a person destroys or 'begins' to destroy. For the purposes of the provision, 'building' is defined to include 'structure'. It is intended that the term 'structure' will be interpreted with some limitation given its association with 'building'.

Clause 12 amends section 70 to substitute the phrase 'breach of the peace' with the concept of violence to a person or property. The penalty is increased from one to two years imprisonment to recognise that the proscribed conduct is more than a mere trespass in terms of the manner of entering on the land and because an intention to take possession is required (see *Prideaux v Director of Public Prosecutions* (1987) 163 CLR 483).

Clause 13 amends section 71 to substitute the phrase 'breach of the peace' with the concept of violence to a person or property. The penalty is increased from one to two years to coincide with section 70.

Clause 14 amends section 72 (Affray) to replace the term 'highway' with 'place'.

Clause 15 omits section 73 (Challenge to fight a duel) as the provision is obsolete.

Clause 16 omits section 77 (Unlawful processions) as the provision is obsolete.

Clause 17 replaces chapter 11 which deals with the offence of piracy and inserts new sections 79 and 80. Pursuant to a cooperative scheme between the Commonwealth and the States, the criminal law of Queensland applies to 200 nautical miles out from the baseline for the State or the outer limit of the continental shelf, whichever is the greater distance.

New section 79 provides that a person does an act of piracy if the person, in relation to a ship travelling at sea, unlawfully boards a ship without the master's consent and commits robbery or boards with intent to commit robbery. The offence also applies if a person boards a ship without the master's consent and deals with the ship, her equipment or a passenger or crew member, in a way that would endanger or be likely to endanger the safe use of the ship; or boards with intent to commit such acts. Piracy is also committed if a person, in relation to a ship travelling at sea,

unlawfully: steals the ship or directly or indirectly takes control of the ship, in circumstances that constitute robbery; or confines the ship's master against his or her will. Pursuant to subsection (2), a person also does an act of piracy if the person knowingly (or when they ought reasonably to know) trades with a pirate or builds a ship with the intention that she will be used for an act of piracy.

The provision requires that the conduct occurs in relation to a ship travelling at sea. This will ensure that acts committed in relation to vessels anchored or moored at ports and marinas are not charged as piracy. However, it is intended that the provision will apply to a ship at sea, even if anchored at sea.

Clause 18 amends the heading to part 3 of the Code.

Clause 19 redrafts section 97 to extend the offence to apply to public officers and not merely public service employees.

Clause 20 amends section 98, the definition section for chapter 14, which provides the electoral offences. A definition of 'authorising Act', which is a phrase used in new sections 112 and 114, is inserted in section 98.

Clause 21 omits section 98B(3) on the basis that the provision is included in new section 566(1), to give it general application. Section 98B(3) provides that it is enough for a charge against a person for an offence of providing false or misleading information, to state that the information, without specifying which part of the information, was 'false or misleading'. The usual wording of this kind of provision is directed at the issue of having to prove whether information was false or whether it was misleading. This is reflected in new s 566(1).

Clause 22 omits sections 99 to 106 and inserts new sections 99 to 104.

New section 99 provides the offence of unlawful voting and covers conduct currently proscribed in sections 99, 100, 105(a) and (b), and 116 of the Code.

New section 100 provides the offence of hindering or interfering with voting conduct and covers conduct currently proscribed in section 102 of the Code.

New section 101 provides the offence of bribery and covers conduct currently proscribed in section 103 of the Code. For consistency, new section 101 is drafted in terms similar to section 98C.

New section 102 provides the offence of publishing false information about a candidate and covers conduct currently proscribed in section 105(c) and (d) of the Code.

New section 103 provides the offence of providing money for illegal payments and replaces section 106(a) of the Code.

New section 104 provides the offence of failing to include certain information in election notices and replaces section 106(b) of the Code.

Clause 23 amends section 107 as a consequence of the replacement of existing section 106.

Clause 24 replaces section 108 to remove the offence of intruding into a polling booth.

Clause 25 amends section 109 to ensure drafting consistency with regards the structure of offences.

Clause 26 omits sections 110 to 117 and inserts new sections 110, 111, 112, 113 and 114.

New section 110 provides the offence of stuffing ballot boxes and replaces section 111 of the Code.

New section 111 (Presiding officer helping an elector with a disability) replaces section 112.

New section 112 provides the offence of providing false or misleading information and replaces section 113. For consistency, new section 112 is drafted in terms similar to section 98B.

New section 113 (Interfering with secrecy at elections) replaces section 114 of the Code.

New section 114 (Breaking the seal of a parcel at elections) replaces section 115 of the Code.

Clause 27 redrafts section 129 with no substantive change apart from the penalty increase from three to seven years imprisonment. The penalty increase is appropriate given section 126 (Fabricating evidence) carries seven years.

Clause 28 amends section 130 (Preventing witnesses from attending) to increase the maximum penalty from one year to three years imprisonment. The penalty increase is appropriate given section 128 (Deceiving witnesses) carries three years.

Clause 29 amends section 133 (Compounding crimes) to apply to all indictable offences, on the basis that such conduct is a serious attack on the administration of justice. Subclause (4) inserts a provision which acknowledges contemporary justice mediation and dispute resolution.

Clause 30 omits section 134 (Compounding penal actions) as it is considered sufficient to retain the expanded compounding offence in section 133.

Clause 31 omits section 135 (Advertising a reward for the return of stolen property) as the offence is relocated to the *Summary Offences Act 2005*.

Clause 32 replaces section 136 to omit the conduct proscribed by section 136(a) (Justices acting oppressively), on the basis that if excessive bail is required the defendant may appeal.

Clause 33 amends section 137 (Delay to take person arrested before Magistrate) to provide that with regard to a police arrest, it is sufficient if the officer complies with section 393 of the *Police Powers and Responsibilities Act 2000*. In the case of a citizen's arrest, it is sufficient if the arrested person is immediately delivered into the custody of a police officer.

Clause 34 omits section 138 (Bringing fictitious action on penal statute) as the provision is obsolete. Depending on the circumstances, such proscribed conduct is an offence under section 131 (Conspiracy to bring false accusation), section 140 (Attempting to pervert justice) or section 408C (Fraud).

Clause 35 amends section 148 (Obstructing officers of courts of justice) to increase the maximum penalty from one year to two years imprisonment. The increase is appropriate given that section 199 (Resisting public officers) carries two years.

Clause 36 redrafts section 193 (False statements in statements required to be under oath or solemn declaration) with no substantive change.

Clause 37 omits sections 201 to 203.

Section 201 (Neglect of officers to suppress riot) is omitted. An officer's duty to suppress a riot is provided in current section 64(1), which is a duty to read the proclamation. That duty is omitted in new section 61 (Riot). The *Police Powers and Responsibilities Act 2000*, provides police officers with the power to suppress a riot, as opposed to a duty.

Section 202 (Neglect to aid in suppressing riot) is omitted as it is inappropriate to impose such a dangerous obligation on non-law enforcement officials.

Section 203 (Neglect to aid in arresting offenders) is omitted on the basis that a failure to perform such a potentially dangerous duty by a civilian should not be the subject of a criminal offence.

Clause 38 amends section 208 (Unlawful sodomy) to include ‘attempts’, for consistency with current sections 215 (Carnal knowledge with or of children under 16) and 216 (Abuse of intellectually impaired persons), which are framed to include an offender who ‘has or attempts to have’ unlawful carnal knowledge. The amendment results in an increase in the maximum penalty for attempted sodomy simpliciter from seven years to 14 years imprisonment. The section is also amended to recognise the more appropriate phrase of ‘person with an impairment of the mind’.

Clause 39 omits section 209 as a consequence of the amendment to section 208.

Clause 40 is a consequential amendment to section 216 to reflect the new definition heading of ‘a person with an impairment of the mind’.

Clause 41 is a consequential amendment to section 217 to reflect the new definition heading of ‘a person with an impairment of the mind’.

Clause 42 amends section 228G (Forfeiture of child exploitation material etc) to include section 218A (Using internet etc to procure children under 16).

Clause 43 amends section 229B (Maintaining a sexual relationship with a child) as a consequence of the omission of section 209 and amendment of section 208.

Clause 44 is a consequential amendment to section 229E to reflect the new definition heading of ‘a person with an impairment of the mind’.

Clause 45 is a consequential amendment to section 229F to reflect the new definition heading of ‘a person with an impairment of the mind’.

Clause 46 is a consequential amendment to section 229G to reflect the new definition heading of ‘a person with an impairment of the mind’.

Clause 47 is a consequential amendment to section 229H to reflect the new definition heading of ‘a person with an impairment of the mind’.

Clause 48 is a consequential amendment to section 229I to reflect the new definition heading of ‘a person with an impairment of the mind’.

Clause 49 is a consequential amendment to section 229K to reflect the new definition heading of ‘a person with an impairment of the mind’.

Clause 50 is a consequential amendment to section 229L to reflect the new definition heading of ‘a person with an impairment of the mind’.

Clause 51 omits chapter 25 on the basis that sections 242 (Frauds on land laws) and 243 (Dealing with land fraudulently acquired from the Crown), proscribe conduct covered by the general fraud offence provided in section 408C of the Code.

Clause 52 amends section 317A (Carrying or sending dangerous goods in a vehicle) to insert new subsection (1A). The amendment transfers to section 317A, conduct currently proscribed in section 333(b) and extends such conduct to all vehicles.

Clause 53 replaces sections 319 (Intentionally endangering safety of persons travelling by railway) and 319A (Endangering safety of persons travelling by aircraft) with a new section 319 which creates the offence of endangering the safety of a person in a vehicle with intent. The offence applies to a person who does anything (or omits to do a duty) that endangers, or is likely to endanger, the safe use of a vehicle, with intent to injure or endanger the safety of any person in the vehicle. Like the sections it replaces, new section 319 carries life imprisonment.

Clause 54 replaces sections 322 and 323 with new sections 322 (Administering poison with intent to harm) and 323 (Wounding). The conduct proscribed in current section 323(1)(b) covers the same conduct as section 322 but without the element of causing an adverse consequence. Therefore, the amendment transfers the conduct in section 323(1)(b) to new section 322 with such conduct forming the offence simpliciter carrying seven years and with the consequence of endangering life or doing grievous bodily harm, forming the circumstance of aggravation carrying 14 years.

Clause 55 amends section 326 (Endangering life of children by exposure) to increase the maximum penalty from three years to seven years imprisonment to reflect the seriousness of the conduct and for penalty consistency with section 364 (Cruelty to children under 16).

Clause 56 omits sections 331 (Endangering steamships by tampering with machinery) and 332 (The like by engineers) on the basis that the sections

are obsolete and the conduct proscribed is covered in new section 467 (Endangering the safe use of vehicles and related transport infrastructure).

Clause 57 amends section 333 (Evading laws as to equipment of ships and shipping dangerous goods) to omit section 333(b) as that proscribed conduct has been inserted in section 317A to apply to all vehicles.

Clause 58 amends section 334 (Landing explosives) to omit subsection (2) as it is obsolete.

Clause 59 omits section 338 (Assaults on persons protecting wrecks) as the conduct is covered by the general assault provisions.

Clause 60 amends section 338A (Assaults of member of crew on aircraft) to omit the term 'injury' as it superfluous.

Clause 61 amends section 340 (Serious assaults). Subclause (1) omits sections 340(1) (c), (d) and (e). New subparagraph (c) applies to an unlawful assault on a person performing a duty imposed by law. This extends omitted section 340(1)(e) which provided that such an assault had to be committed 'on account' of an act done by the person performing the duty.

Subclauses (2) and (3) insert the term 'unlawfully' into section 340(1)(g) and (h) and section 340(2), to remove any argument that the absence of the term precludes reliance by an accused on appropriate defences, for example, provocation and self defence.

Subclause (4) inserts a new subsection (2AA) to apply to assaults on public officers performing a function of their office or employment. The term 'public officer' is defined in section 1 of the Code. That definition includes a person, other than a judicial officer, discharging a duty of a public nature or executing any process of a court. Therefore, persons protected under current section 340(1)(c) and (d) will continue to fall under the provision. Subclause (5) inserts into section 340 an inclusive definition of 'public officer' to ensure assaults on emergency services personnel, health service employees and child safety officers (an authorised officer appointed under section 149 of the *Child Protection Act 1999* would not necessarily be a public service employee) are captured by the provision.

Clause 62 amends section 354A (Kidnapping for ransom) as a consequence of the definition of 'detriment' inserted into section 1 of the Code.

Clause 63 amends section 359 (Threats) to extend the provision to threats to harm a third person.

Clause 64 replaces section 364 (Cruelty to children under 16) with a new section 364. New section 364 requires proof that the child was ‘harmed’ which is defined to mean any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing, whether temporary or permanent. The element of ‘harm’ replaces the previous concept of ‘suffering’. The definition is based on the definition of ‘harm’ in the *Child Protection Act 1999*.

New section 364 requires proof that the carer knew or ought reasonably to have known, that their conduct would be likely to cause harm to the child. The amendment ensures that the section only applies to carers who are aware of the likely consequences of their conduct, or where a reasonable person in the position of the carer would be aware of the likely consequences of such conduct.

Clause 64 also inserts new section 364A which provides the offence of leaving a child under 12 unattended. The offence applies where a parent or carer leaves a child under 12 years for an unreasonable time without making reasonable provision for the supervision and care of the child. Whether an offence is committed is dependent on the arbiter of fact determining the issue of ‘reasonableness’ based on the circumstances of the case, including the age, physical condition and intellectual capacity of the child.

Clause 65 omits section 392(3) on the basis that it is outdated and there is no practical requirement for such a specific provision.

Clause 66 omits section 397 on the basis that it is no longer relevant given the 1997 repeal of section 35 (Liability of husband and wife for offences committed by either with respect to the other’s property).

Clause 67 amends section 398 (Punishment of stealing) to reduce the penalty for stealing a will to 14 years from life imprisonment. The offence of concealing wills with an intent to defraud, carries a maximum penalty of 14 years imprisonment as does the offence of wilfully damaging or destroying a will. The amendment to section 398 rectifies this existing penalty anomaly. Subclauses (1) and (3) transfer subsection (2) to the punishment in special cases division with no substantive change.

Clause 68 omits sections 399 to 401 and inserts a new section 399 which proscribes the fraudulent concealment of particular documents. A person is liable to 14 years imprisonment if the person, with intent to defraud, conceals the whole or part of a register or record kept by lawful authority or

a will. If such conduct relates to a document recording title to property, an offender is liable to three years imprisonment.

Clause 69 omits section 405 (Fraudulently dealing with minerals in mines) as the proscribed conduct falls under section 408C (Fraud) of the Code, either as a completed offence or an attempt, depending on the circumstances.

Clause 70 omits sections 407 (Fraudulent disposition of mortgaged goods) and 408 (Fraudulent appropriation of power) on the basis that the proscribed conduct falls under section 408C (Fraud) of the Code.

Clause 71 amends section 408C (Fraud) to raise the maximum penalty for aggravated fraud from 10 years to 12 years imprisonment. Subclause (2) amends section 408C(2)(d) to raise the monetary minimum from \$5000 to \$30000. The limit has not been increased since the insertion of the offence in 1997. The increase ensures that the circumstance of aggravation is not diminished because a majority of offenders fall within it. Further, the amendment takes into account the increase in the maximum penalty.

Clause 72 omits section 410 (Loaded arms) as the concept is obsolete given that the Code refers to 'dangerous or offensive weapons'.

Clause 73 omits sections 415 (Demanding property, benefit or performance of services with threats), 416 (Attempts at extortion by threats) and 417 (Procuring execution of deeds etc. by threats) and inserts a new section 415 which provides the offence of extortion. New section 415 applies where a person, without reasonable cause, makes a demand, with intent to gain a benefit for any person or cause a detriment to any person (other than the demander) and the demand is made with a threat to cause a detriment to any person (other than the demander). New section 415 omits the distinction between written and oral demands. The threat to cause a detriment to any person does not need to specify the detriment to be caused or the person to whom the detriment is to be caused and includes a threat to cause detriment to the public. Whilst the threat must be a threat to cause a detriment to someone other than the demander, where the demander threatens to cause a detriment to himself/herself and carrying out that threat gives rise to others being harmed, then the element is satisfied.

Clause 74 omits section 426 (Unlawful entry of vehicle) as the offence is relocated to the *Summary Offences Act 2005*.

Clause 75 omits sections 430 (Conspiracy to defraud) and 431 (Frauds on sale or mortgage of property). The conduct proscribed in section 430 is

covered by the general conspiracy provisions in the Code. The conduct proscribed in section 431 falls under section 408C (Fraud) either as a completed offence or an attempt, depending on the circumstances.

Clause 76 inserts a new section 432 which defines ‘tainted property’ to mean: a thing obtained by way of an act constituting an indictable offence (pursuant to section 36 of the *Acts Interpretation Act 1954* ‘indictable offence’ includes an act or omission committed outside Queensland that would be an indictable offence if it were committed in Queensland); if tainted property is converted into other property, the other property; and where tainted property is mortgaged, pledged or exchanged for other property, any proceeds of the mortgage pledge or exchange. Section 432(2) provides that a thing stops being tainted property after a person acquires a lawful title to it. New section 432 reflects existing section 434 (Receiving after change of ownership).

Clause 77 amends section 433 (Receiving stolen property) to give effect to the new definition of ‘tainted property’ but otherwise does not substantively change the section.

Clause 78 omits sections 434 (Receiving after change of ownership) and 435 (Taking reward for recovery of property obtained by means of indictable offences). Section 434 is omitted given new section 432. Section 435 is omitted and replaced with a new section 435 which redrafts the section without substantive change.

Clause 79 omits sections 436 (Trustees fraudulently disposing of trust property), 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), 439 (Defence), and 440 (Misappropriation by members of local governments).

Section 436 is omitted on the basis that the conduct proscribed is covered by section 408C (Fraud) of the Code.

Section 437(1)(a) is omitted on the basis that the conduct proscribed is covered by section 408C (Fraud). Section 437(1)(b) is omitted on the basis that the conduct proscribed is covered by section 441 (Fraudulent falsification of records) and sections 1101F and 1307 of the *Corporations Act 2001* (Cth).

Section 438 is omitted given section 408C (Fraud) of the Code and sections 1308 and 1309 of the *Corporations Act 2001*.

Section 440 is omitted on the basis that the conduct proscribed is covered by the stealing and fraud provisions in the Code.

Clause 80 relocates section 441 (Fraudulent falsification of records) to chapter 40 and renumbers the provision as section 430.

Clause 81 relocates section 442 (False accounting by public officer) to chapter 40 and renumbers the provision as section 431.

Clause 82 omits chapter 44B (Other offences analogous to stealing punishable on summary conviction) on the basis that sections 451 and 452 proscribe conduct that is covered by section 16 of the *Summary Offences Act 2005* (Unlawful possession of suspected stolen property).

Clause 83 omits section 460 as the definition is transferred to section 1 of the Code.

Clause 84 amends section 461 to ensure the provision covers the arson of a train.

Clause 85 replaces section 462 to omit current section 462(a) on the basis that the subsection is obsolete given the new penalty regime for 'attempts' introduced by this Bill.

Clause 86 omits sections 464 (Attempting to set fire to crops etc.), 465 (Casting away ships) and 466 (Attempts to cast away ships). Section 464 is omitted given the new penalty regime for 'attempts' introduced by this Bill.

Sections 465 and 466 are omitted on the basis that the conduct proscribed is covered by section 469 (Wilful damage) of the Code and new sections 319 and 467.

Clause 87 omits sections 467 (Obstructing and injuring railways) and 467A (Endangering the safe use of an aircraft) and inserts a new section 467 which provides the offence of endangering the safe use of a vehicle and related transport infrastructure. The provision applies where a person, with intent to prejudice the safe use of a vehicle or related transport infrastructure, or to injure property in or on a vehicle or related transport infrastructure, does anything (or omits to do a duty) that endangers or is likely to endanger, the safe use of the vehicle or related transport infrastructure. The offence carries a maximum penalty of life imprisonment.

Clause 88 amends the punishment in special cases in section 469 (Wilful damage). Special case 1 is amended to extend the provision beyond a dwelling, vessel or aircraft to apply to a 'premises' which by definition

(refer to section 1 of the Code) includes all buildings and structures and vehicles.

Special case 2 is amended to omit subparagraphs (b) and (c) on the basis that such conduct is covered in new sections 319 and 467 and the existing offence of sabotage (section 469A).

Special case 7 is redrafted to exclude subparagraph (e) on the basis of new sections 319 and 467. Subparagraphs (h) to (k) are omitted given new section 471.

Clause 89 amends section 470A (Unlawful deposition of explosives) to include the term 'noxious substances' (which is included in section 321) and to insert the term 'unlawfully' in substitution for the phrase 'without reasonable cause or excuse', for consistency with section 470.

Clause 90 redrafts section 471 without substantive change.

Clause 91 omits section 476 (Removing boundary marks) on the basis that the conduct proscribed is covered by section 408C (Fraud) either as a complete offence or an attempt.

Clause 92 omits the punishment in special cases for section 488 (Forgery) and inserts a simplified set of circumstances of aggravation. The offence will carry seven years imprisonment if the document is a power of attorney, contract or document kept or issued by lawful authority. If the document is a valuable security, insurance policy, a will, a document kept or issued by the Registrar of Births, Deaths and Marriages, or a document which is evidence of an interest in land, then the offence carries 14 years.

Clause 93 omits sections 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), 496 (Purchasing forged bank notes) and 497 (False certificate of message received by telegraph).

The conduct proscribed in section 492 is covered in section 408C(1)(f). Sections 493 and 494 proscribe conduct covered in section 488 (Forgery and uttering). The offence of fraud (section 408C) covers the conduct proscribed in section 495. Section 496 proscribes conduct covered by offences in the *Crimes (Currency) Act 1981*. The conduct covered in section 497 is covered in section 488 (Forgery and uttering) and section 408C (Fraud).

Clause 94 amends the heading of section 502 (Attempts to procure unauthorised status) to omit the reference to 'attempts'.

Clause 95 omits sections 503 (Counterfeiting trademarks) and 504 (Circulating false copies of rules or lists of members of societies or companies). The conduct proscribed in section 503 is covered in section 488 (Forgery and uttering) and section 408C (Fraud) either as a completed offence or an attempt according to how far the scheme proceeds. The conduct proscribed in section 504 is covered by section 408C (Fraud) or an attempt to commit fraud.

Clause 96 omits chapter 50 (Forgery and like offences punishable on summary conviction).

Section 506 (Forgery of sailors' tickets or documents relating to regulation of factories and shops) proscribes conduct covered by section 488 (Forgery and uttering), section 408C (Fraud) and section 514 (Personation in general).

Sections 507 (Fraudulent use of adhesive stamps) and 508 (False warranties or labels relating to the sale of food) proscribe conduct covered by sections 488 and 408C.

Clause 97 omits sections 516 (Personation of a person named in a certificate) and 517 (Lending certificates for personation) on the basis that where there was evidence of an intent to defraud, the conduct is covered in section 514 (Personation in general). Also the conduct is covered by section 502 (Attempts to procure unauthorised status) and sections 408C and 408D. In relation to section 517, if in fact the certificate was used, the lender would be a party to an offence of personation or fraud.

Clause 98 omits section 534 (Intimidation of workers and employers) on the basis that the conduct proscribed is covered in a range of offences in the Code such as assault, wilful damage, threats and stalking.

Clause 99 omits sections 535 to 537 which provide the penalty regime for attempts to commit indictable offences. New section 535 provides that a person who attempts to commit a crime, commits a crime and a person who attempts to commit a misdemeanour, commits a misdemeanour. New section 536 provides that a person who attempts to commit an indictable offence punishable by: mandatory life imprisonment is liable to a maximum penalty of life imprisonment; a maximum penalty of life imprisonment is liable to a maximum penalty of 14 years imprisonment; and in other cases, is liable to punishment equal to one-half of the greatest punishment to which an offender convicted of the offence is liable.

Clause 100 amends section 538 (Reduction of punishment) to increase the penalty provided in subsection (2) from seven to 14 years imprisonment. The amendment is consequential to the increase in the penalties for ‘attempts’. Therefore, if a person desists in attempting to commit the offence of murder, the person will be liable to a maximum penalty of 14 years. If a person desists in attempting to commit the offence of rape, the person will be liable to seven years imprisonment.

Clause 101 redrafts section 540 (Preparation to commit crimes with explosives etc) without substantive change.

Clause 102 amends section 543A (Industrial disputes) as a consequence of the omission of section 543.

Clause 103 omits sections 544 and 545 which provide the penalty regime for ‘accessories after the fact’ to offences. New section 545 provides that an accessory after the fact to an indictable offence punishable by: mandatory life imprisonment is liable to a maximum penalty of life imprisonment; a maximum penalty of life imprisonment is liable to a maximum penalty of 14 years imprisonment; and in other cases, is liable to punishment equal to one-half of the greatest punishment to which an offender convicted of the offence is liable.

Clause 104 amends section 552 (Duty of person arresting) to allow a person who arrests another to deliver the arrested person into the custody of a police officer.

Clause 105 amends section 566 (Particular indictments) to insert a new subsection (1) which provides that in an indictment for an offence relating to giving information or a document that is false or misleading, the indictment need not specify whether in fact the information was false or whether in fact it was misleading.

Clause 106 amends section 568 (Cases in which several charges may be joined) as a consequence of the omission of section 436.

Clause 107 amends section 578 (Charge of offence of a sexual nature) as a consequence of the omission of section 209 and amendment of section 208.

Clause 108 amends section 590AD (Definitions for ch div 3) to: include a reference to the definition of ‘Evidence Act section 93A device statements’ (defined in new section 590AFA); to define ‘view’ to include ‘listen to’, and to delete the definition of ‘disclose’.

Clause 109 inserts a new section 590AFA (Meaning of *Evidence Act section 93A device statement*). Section 93A of the *Evidence Act 1977* deals

with the admissibility of statements made by children and persons with an impairment of the mind. An *Evidence Act section 93A device statement* is a statement recorded in an audio or an audiovisual format (such as a video tape or DVD) that is: made to a person investigating an alleged offence; given in anticipation of criminal proceedings about the alleged offence; and potentially admissible under section 93A of the *Evidence Act 1977*.

Clause 110 amends section 590AI (When mandatory disclosure must be made) to include a reference to disclosure under new section 590AOA.

Clause 111 amends section 590AK (When requested disclosure must be made) to include a reference to disclosure under new section 590AOA.

Clause 112 amends section 590AO (Limit on disclosure of sensitive evidence) to provide that section 590AO does not apply to an *Evidence Act section 93A device statement*. This is because the obligations and limitations with respect to disclosure of these statements are now contained in new section 590AOA.

Subsections (2) and (4) are also amended to ensure that access to original sensitive evidence for the purposes of examination of it, will only be for a legitimate purpose connected with the relevant proceeding.

Clause 113 inserts new section 590AOA dealing with the disclosure of *Evidence Act section 93A device statements*, to ensure that audio and audiovisual recordings of vulnerable witnesses are only disclosed under rules designed to minimise the potential for unauthorised copying and distribution.

For these statements, the prosecution satisfies its obligation to disclose by providing a copy of the statement to a lawyer acting for the accused, subject to the conditions set out in subsection (3). Under those conditions, the lawyer cannot make a further copy of the statement, and can only give the copy of the statement to another lawyer acting for the accused; a lawyer (for example, a barrister) from whom the lawyer is seeking advice; to an expert (for example, for the purpose of adducing expert evidence in the proceedings); and to persons (such as paralegals) employed by the lawyer in the ordinary practice of the law in relation to the particular proceedings. The statement may only be given to those other persons if it is for a legitimate purpose connected with the relevant proceedings.

The lawyer and anyone else given the copy of the statement must return the copy to the prosecution within 14 days after the lawyer or other person is no longer authorised to have a copy (for example, if the lawyer is no longer

acting for the accused), or within 14 days of the end of proceedings. While this ensures accountability for all copies of the statements, it also ensures that a lawyer who is given a copy of the statement in anticipation of a committal hearing or a trial is entitled to retain the copy while the lawyer continues to act for the accused, and until all proceedings are finally concluded.

Where the accused is not legally represented, subsection (6) provides that the prosecution is not obliged to give the accused a copy of the statement. Instead, the prosecution must allow the accused, a lawyer appointed to conduct the cross-examination of a protected witness under section 21O of the *Evidence Act 1977*, or another person the prosecution considers appropriate (such as an interpreter or an expert witness) to view the statement.

If the prosecution refuses to allow an appropriate person to view the statement on behalf of an unrepresented accused, subsection (7) provides the court may direct that an appropriate person be permitted to view the statement. Under subsection (8), the court may make such a direction only if it is satisfied that there is a legitimate purpose to be achieved and that the terms of the direction can ensure that there is no unauthorised reproduction or circulation of the statement.

Subsection (9) provides that a person who deals with a statement in contravention of section 590AOA commits an offence under section 93AA of the *Evidence Act 1977* (Unauthorised possession of, or dealing in, s 93A criminal statements).

Subsection (10) provides that making a transcript of the contents of the statements is not a copy for the purposes of this section.

Subsection (11) defines a number of the terms used in section 590AOA, including 'appropriate person', 'associate', 'copy', 'end of proceedings', 'relevant charge', 'sound device' and 'visual image device'.

Clause 114 replaces section 590AR (Viewing evidence that is not original evidence) to include a reference to new section 590AOA.

Clause 115 amends section 590AS (Viewing particular evidence) to include a reference to new section 590AOA and to change the heading of the section.

Clause 116 amends section 590AV (Disclosure directions) to include a reference to new section 590AOA.

Clause 117 amends section 636 (Evidence of blood relationship) as a consequence of the amendment to section 208 and omission of section 209.

Clause 118 amends section 641 (Evidence on certain charges of stealing money) as a consequence of the omission of section 436.

Clause 119 amends section 644A (Witness giving incriminating answers) to omit the reference to section 103 and insert references to sections 98C and 101.

Clause 120 inserts a new chapter 82 into the Code which provides the transitional provisions for the *Criminal Code and Other Acts Amendment Act 2008*.

Part 3 Amendment of *Bail Act 1980*

Clause 121 provides that this part amends the *Bail Act 1980*.

Clause 122 amends section 11A (Release of intellectually impaired person) to recognise the preferred phrase ‘person with an impairment of the mind’.

Clause 123 inserts a new subsection 20(3AA) into section 20 (Undertaking as to bail). This section is amended to provide that defendants are not excused from personally appearing or surrendering into custody, despite being represented by a lawyer, where a charge is being heard or determined, an examination of witnesses is being conducted or a penalty is being imposed. The wording of a similar provision in section 84(2) of the *Justices Act 1886* has been adopted. The ability for the court to direct the defendant to appear has been retained.

Clause 124 amends section 30 (Apprehension on variation or revocation of bail). Subclause 1 amends section 30(1) with respect to who can make an application for the variation or revocation of bail under this section. The subsection currently refers to an ‘application of the Crown or as the case may be, the complainant’. The clause amends the wording of this subsection to refer to an ‘application of the complainant, prosecutor or person appearing on behalf of the Crown’ to ensure consistency with other such references in the Act and the terminology used in subclause (2).

Subclause (2) inserts a new subsection (1A) into section 30. Section 30 currently allows for an application to vary or revoke bail to be made to the court that granted bail; the court before which an indictment has been

presented; or the Supreme Court upon issue of a notice or ex parte in some cases. Whilst the section does not currently make provision for an application to be made to vary or revoke bail granted by police, new subsection (1A) will make provision for this to occur. The new subsection provides that such applications can be made to the Magistrates Court or Childrens Court (if the defendant is required to appear before the Childrens Court).

Subclause 4 confirms that section 30 does not prevent police officers from exercising their powers under section 367(3) of the *Police Powers and Responsibilities Act 2000* to arrest a child defendant.

Part 4 **Amendment of *Criminal Law Amendment Act 1945***

Clause 125 provides that this part amends the *Criminal Law Amendment Act 1945*.

Clause 126 amends section 18 (Detention of persons incapable of controlling sexual instincts) to make clear that the obligation to examine the prisoner ceases upon the prisoner's release under part 3A.

Clause 127 replaces section 18H to make clear that, upon release on parole, a Queen's Pleasure detainee loses the ability to be released unconditionally by the Governor in Council.

Part 5 **Amendment of *Criminal Law (Sexual Offences) Act 1978***

Clause 128 provides that this part amends the *Criminal Law (Sexual Offences) Act 1978*.

Clause 129 amends section 6 (Publication at large of complainant's identity prohibited).

Clause 130 amends section 7 (Publication prematurely of defendant's identity prohibited).

The amendments to sections 6 and 7 incorporate the penalty provisions and provisions relating to court orders which are currently contained in section 10(1), (2), (4) and (6). This makes both sections distinct and self-contained provisions.

The maximum penalty for individuals and corporations who contravene the prohibitions in section 6 and 7 has been increased to 100 penalty units or two years imprisonment for individuals and 1000 penalty units for corporations. This ensures consistency with the maximum penalties for similar offences in the *Juvenile Justice Act 1992* and the *Child Protection Act 1999*.

Clause 131 amends section 8 (Exempted reports) of the Act. The section exempts various reports from the prohibitions in sections 6 and 7. The amendment extends this exemption to include reports made to or on behalf of: the Department of Education, Training and the Arts (the department for the time being administering the *Education (General Provisions) Act 2006* and the *Vocational Education, Training and Employment Act 2000*) if the report relates to a defendant mentioned in column 1, item 5(1) or 5(7) of the table in section 9A of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*.

Clause 132 subclause (1) omits the heading of section 10 and replaces it with ‘When other publication of complainant’s or defendant’s identity is prohibited’.

Subclause (2) omits sections 10(1) and 10(2) of the Act. These subsections have been incorporated into sections 6 and 7 as amended by the Bill.

Subclause (3) inserts reference to ‘any other particular that is likely to lead to the identification’ into the prohibition in section 10(3). This amendment ensures that the offence in section 10 is worded consistently with the prohibitions in section 6 and 7.

Subclause (5) inserts a maximum penalty provision into the prohibition in section 10(3). The maximum penalties for both individuals and corporations are consistent with the new penalties inserted into sections 6 and 7.

Subclause (6) renumbers section 10(3), which contains the prohibition, as section 10(1).

Subclause (7) omits subsections (4) and (5) of section 10, which have been incorporated into sections 6 and 7 by this Bill and inserts new subsections

(2) and (3) into this section. Subsection (2) provides a defence to a proceeding for an offence in subsection 10(1)(a). Under this defence, the person must prove that, before they made or published a statement or representation revealing the name, address, school, place of employment or any other particular likely to lead to the identification of the complainant, the complainant gave their written authorisation and at the time the authorisation was given, the complainant was at least 18 years of age and had capacity to give that authorisation (see the definition in the *Guardianship and Administration Act 2000* – subsection (3)).

Clause 133 inserts a new section 10A into the Act (Provisions do not affect other laws). This section confirms that the prohibitions in section 6, 7 and 10 are not intended to prevent a person giving information that is permitted or required to be given under another law. This confirms that the Act does not prevent information sharing which is permitted or required by another Act.

Clause 134 amends section 11 (Authorised purposes) to substitute references to ‘section 10(3)’ with references to ‘section 10(1)’. This amendment reflects the renumbering of that section by this Bill.

Part 6 Amendment of *Penalties and Sentences Act 1992*

Clause 135 provides that this part amends the *Penalties and Sentences Act 1992*.

Clause 136 amends section 9 (Sentencing guidelines). Subclause (1) amends subsection (2) to include, as a factor relevant to sentencing, the effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to, the offence.

Subclause (4) inserts new subsections (6A) and (6B) into section 9 which provides that the principle that imprisonment should only be imposed as a sentence of last resort, does not apply to the sentencing of an offender for certain offences against the *Classification of Computer Games and Images Act 1995*, the *Classification of Films Act 1991* and the *Classification of Publications Act 1991* and the child exploitation material offences in the Code. New subsection (6B) outlines the primary matters that the court must

have regard to when sentencing an offender to whom subsection (6A) applies.

Clause 137 amends section 15E (Meaning of disqualifying offence) to omit the reference to section 209 of the Code as a consequence of the amendments made by this Bill.

Clause 138 amends section 20 of the Act (Contravention of order). Subclause (1) inserts a new subsection (1A) into the section which provides that an offender who contravenes a drug diversion condition of the offender's recognisance can be brought back before the court by way of a notice issued by the proper officer of the court.

Subclause (2) amends section 20(2) to clarify that a court can act under this subsection when an offender, who contravenes a drug diversion condition of their recognisance, is brought back before the court by way of a notice issued under the new subsection (1A).

It is made clear that the court retains the ability to issue an arrest warrant and subsequently deal with the offender whether or not the offender appears before the Court under a warrant or pursuant to a notice.

Clause 139 amends section 146 (Consequences of committing offence during operational period).

Clause 140 amends section 146A (Summons or warrant for offender whose sentence of imprisonment has been suspended).

Clause 141 amends section 147 (Power of court mentioned in s 146).

The amendments to sections 146, 146A and 147 clarify that a court may deal with an offender who re-offends during an extended operational period of a suspended sentence. This is achieved by inserting references to 'an extension of the operational period ordered under section 147(1)(a)(i)' or 'further stated operational period ordered under section 147(1)(a)(ii)(B)' into sections 146(1)(a)(ii), 146(1)(b)(ii) and the definition of 'subsequent offence' in section 147(5). A reference to 'section 147(1)(a)' has been inserted into section 146A(1)(a) enabling a warrant or summons to be obtained.

Clause 142 extends the definition of 'impose' in section 160 (Definitions for div 3) to include reference to an order that the offender serve 'the unexpired portion of an intensive correction order for the offence'. This amendment clarifies that ordering a person to serve the unexpired portion of an intensive correction order is imposing a term of imprisonment and

accordingly the sentencing court is empowered to set a parole eligibility date or order release on parole.

Clause 143 inserts a new section 216 which is a transitional provision for the *Criminal Code and Other Acts Amendment Act 2008*.

Clause 144 provides consequential amendments to the schedule (Serious violent offences).

Part 7 **Amendment of *Summary Offences Act 2005***

Clause 145 provides that this part amends the *Summary Offences Act 2005*.

Clause 146 inserts a new part 2, division 1A, which inserts the offence of unlawful assembly, transferred from the Code. New section 10A applies where three or more persons are present together for a common purpose and the conduct of them taken together would cause a person in the vicinity to reasonably fear that unlawful violence will be used to a person or property. It is intended that new section 10A reflects the offence currently contained in section 61(1) of the Code. The offender must participate in the conduct that causes fear to the notional bystander and must do so for the common purpose. New section 10A carries a maximum penalty of one years imprisonment. However, if the offender continues to participate in the unlawful assembly, knowing of, or where they ought reasonably to know of, the fact that violence has occurred, the offender is liable to two years imprisonment. The circumstance of aggravation requires proof of continued participation, therefore if the offender remained in the unlawful assembly in order to give assistance to a victim or to attempt to calm the assembly down, they would not be caught.

Clause 147 amends section 18 (Particular body piercing of minor prohibited) to reflect the preferred phrase ‘person with an impairment of the mind’.

Clause 148 amends section 25 (Use of vehicles) to include the unlawful entry of a vehicle. This is a consequence of the omission of section 426 from the Code.

Clause 149 inserts a new section 25A which provides the offence of advertising a reward for the return of stolen property. The offence is relocated from section 135 of the Code with no substantial change.

Part 8 Other Acts Amended

Clause 150 provides a schedule of consequential amendments to other Acts which are self explanatory.

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