Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2010

Explanatory Notes

Objectives of the Bill

The objectives of the Bill are to:

- expand the jurisdiction of the Magistrates Courts to determine indictable offences in the Criminal Code and *Drugs Misuse Act 1986*;
- increase the general criminal jurisdiction of the District Court from offences with a maximum penalty of 14 years or less, to those with a maximum of 20 years or less;
- increase the monetary limit for civil disputes in the District Court to $750,000 and in the Magistrates Court to $150,000;
- provide specific powers for the courts to deal with non-compliance with disclosure obligations in criminal cases;
- streamline the committal process and the management of matters in the Magistrates Courts which proceed by way of ex-officio indictment;
- make various amendments to improve the operation of and consistency between Queensland Courts including, for example, amendments to the *Workers' Compensation and Rehabilitation Act 2003* to transfer the jurisdiction for workers' compensation appeals from Industrial Magistrates to the Queensland Industrial Relations Commission (QIRC) where dual appeal rights currently exist; and
- make miscellaneous amendments to the *Public Trustee Act 1978*, the *Financial Accountability Act 2009*, the *State Penalties Enforcement Act 1999*, the *Body Corporate and Community Management Act 1997* and the *Queensland Civil and Administrative Tribunal Act 2009*.

Reasons for the Bill

In July 2008 the Hon Martin Moynihan AO QC was appointed to conduct a review of the civil and criminal justice system in Queensland. The Terms of Reference for the review required a report on the workings of the Queensland Courts in the civil and criminal jurisdictions with a view to making more effective use of public resources. Specifically, the review was to examine the following matters:

- Monetary limits for the civil jurisdiction;
- Summary disposition of indictable offences;
- Reform of the committal proceedings process;
- Sentencing discounts for an early plea; and
- Case conferencing.

On 21 July 2009 Mr Moynihan's report entitled *Review of the civil and criminal justice system in Queensland* (the report) and the Queensland Government Response were publicly released.

The Queensland Government Response indicates that legislative reforms will be initially introduced based on the report in two stages which are focussed on delivering key efficiencies and improvements to Queensland's justice system. The Bill contains the first stage of reforms.

The Bill also makes some changes that are not based on the report but are intended to:

- provide increased efficiency and consistency across Queensland Courts;
- facilitate the payment of unclaimed money held by the State into the Public Trustee Office's Unclaimed Moneys Fund; and
- clarify the operation of aspects of the *State Penalties Enforcement Act 1999*, the *Body Corporate and Community Management Act 1997* and the *Queensland Civil and Administrative Tribunal Act 2009*.

Achievement of the Objectives

The objectives are achieved by making the amendments in the Bill to various Acts and subordinate legislation.

Estimated Cost for Government Implementation

The costs associated with implementation of the Bill will be met from existing resources.

The amendments in the Bill are directed at facilitating earlier resolution of criminal matters and achieving a more effective use of public resources across the justice system in delivering fair and just results.

While some of the reforms based on the report will increase the jurisdiction of Magistrates Courts, the risk of any increase in workload is considered minimal, particularly given other cost saving reforms in the Bill. This includes, for example, amendments to transfer jurisdiction for a number of appeals under the *Workers' Compensation and Rehabilitation Act 2003* from Industrial Magistrates to the Queensland Industrial Relations Commission. While these amendments are likely to increase the workload of the Commission, the amendments are not expected to have any significant cost implications. The Commission already has concurrent jurisdiction for these appeals and it is anticipated that it will be able to absorb the additional workload within existing resources.

The impacts of the reforms will be closely monitored and subject to an evaluation. The Bill also provides that the majority of reforms will only apply to new actions and prosecutions so that the impacts will be incremental and gradual.

Consistency with Fundamental Legislative Principles

Does the legislation have sufficient regard for the rights and liberties of individuals?

Summary disposition of indictable offences

The reforms in the Bill will provide that a number of indictable offences in the Criminal Code must be dealt with summarily. The amendments will also expand the possession of dangerous drug offences under the *Drugs Misuse Act 1986* that are subject to a prosecution election for summary disposition.

The reforms have the effect of increasing the number of indictable offences heard and determined summarily. This may result in reduced access to a trial by jury for defendants. However, in practice, only a small number of matters committed to the Supreme or District Court actually result in a trial by jury (refer to pages 59-60 of the report).

Under section 552D of the Criminal Code, as amended by the Bill, defendants will also have the ability to take a matter before a jury if, on application to a magistrate, the magistrate is satisfied there are exceptional circumstances that mean that the matter should not be dealt with summarily and therefore should be committed. The current restriction in section 552D of the Criminal Code will also be retained. This provision states that magistrates must abstain from dealing summarily with an offence if satisfied that because of the nature or seriousness of the offence or any other relevant consideration the defendant may not be adequately punished. Under section 552H of the Criminal Code, generally magistrates only have jurisdiction to impose a maximum penalty of 3 years imprisonment for indictable offences. Further, section 552J of the Criminal Code (as amended by the Bill) provides that if a person is summarily convicted or sentenced under the new provisions, the grounds on which the person may appeal include that the Magistrates Court erred by deciding the conviction or sentence summarily.

The amendments expanding summary disposition under the *Drugs Misuse Act 1986* in the Bill will only apply if the prosecution does not allege a commercial purpose. Also, section 118 of the *Drugs Misuse Act 1986* will continue to apply. This section provides that if a magistrate forms the opinion that the charge ought to be prosecuted on indictment, the magistrate must abstain from determining the charge summarily and shall instead deal with the proceedings as proceedings with a view to the committal of the defendant for trial or sentence.

The reforms in relation to the summary disposition of indictable offences are intended to promote the more expeditious disposal of charges. This will provide benefits to a wide range of persons, including the defendants, witnesses, victims and the community generally.

Committals

The amendments in the Bill to the *Justices Act 1886* will restrict the right of a defendant to require a person to attend to give oral evidence and be cross-examined at committal.

In most jurisdictions around Australia (except Western Australia and Tasmania which have abolished committal hearings altogether) the calling of witnesses to give oral evidence, by both the prosecution and defence, is generally restricted or restricted in relation to particular witnesses.

The *Evidence Act 1977* (Qld) also already contains provisions restricting the right of a defendant to require an affected child witness to attend at, and be cross-examined at, committal.

As noted at page 191 of the report, the issue about the calling of witnesses and cross-examination at committal was the most canvassed aspect of Mr Moynihan's review.

Mr Moynihan sets out in detail in Chapter 9 of his report the justification for his recommendations in this area. These include:

"*.....Ultimately, I have not been persuaded that the retention of an unrestricted right to call and cross examine witnesses should be sustained. There are undoubtedly many benefits to the accused, to the prosecution and the criminal justice system generally from a well prepared and conducted committal hearing. On the other hand there are undoubted effects and costs to the system from unnecessary, inappropriate and wasteful use of the committal: court costs, delay, excessive 'churning' through unproductive court events. There are also obvious costs to individuals – witnesses who must be available for cross-examination only to be told at the last minute that they are no longer required and excessive legal costs to accused*."

According to the High Court (*Grassby v. Queen* (1988) 168 CLR 1 and *Barton v. The Queen* (1980) 147 CLR 75), the principal purposes of a committal hearing are to:

- ensure the defendant is not put on trial on indictment without sufficient cause;
- allow the defendant to learn the case against him or her; and
- marshal the evidence into deposition (written) form.

Restricting the right to cross-examine witnesses in the manner proposed in the Bill does not compromise the purposes of a committal hearing. The Bill recognises that in some cases it is necessary to permit the calling and cross-examination of prosecution witnesses at the committal by allowing a witness to be called and cross-examined where a magistrate is satisfied on their own initiative or on application by the defendant that substantial reasons, in the interests of justice, exist.

The provisions restricting cross-examination in the Bill are based on section 91 of the *Criminal Procedure Act 1986* (NSW). Mr Moynihan was of the view that the *Criminal Procedure Act 1986 NSW* (the Act) provides a suitable model. It has been in place for a number of years, has been tested by judicial considerations and is generally regarded as working

satisfactorily. It was also noted that the principles that apply to section 91 applications in New South Wales are clearly articulated and, as a consequence, there are now few applications to review the magistrate's decision.

The relevant principles applying in New South Wales to the operation of section 91 of the *Criminal Procedure Act 1986* (NSW) and the meaning of "substantial reasons, in the interests of justice", were summarised in *Sim v. Magistrate Corbett & Anor* [2006] 665AT [20] by Whealy J as follows:

"1. The purpose of the legislation is to avoid delays in the criminal process by unnecessary or prolix cross-examination at committal.

2. The onus is on the defence to satisfy the Local Court that an order should be made directing the attendance of witnesses.

3. The process is an important part of the committal proceedings. The refusal of an application may have a significant impact upon the ability of the defendant to defend himself. As well, the prosecution has a real interest in ensuring only appropriate matters are sent for trial.

4. In relation to matters falling within s91 of the Criminal Procedure Act 1986, the defendant must show that there are reasons of substance for the defendant to be allowed to cross-examine a witness or witnesses.

5. The obligation to point to substantial reasons is not as onerous as the reference to "special reasons" in s93; nevertheless it raises a barrier, which must be surmounted before cross-examination will be permitted.

6. Each case will depend on its own facts and circumstances. It is not possible to define exhaustively or even at all what might, in a particular case, constitute substantial reasons. It may be a situation where cross-examination may result in the discharge of the defendant or lead to a successful no-bill application; it may be a situation where cross-examination is likely to undermine substantially the credit of a significant witness. It may simply be a situation where cross-examination is necessary to avoid the defendant being taken by surprise at trial. The categories are not closed and flexibility of approach is required in the light of the issues that may arise in a particular matter.

7. Substantial reasons might exist, for example, where the attendance of a witness is sought to enable cross-examination in respect of a matter which

itself might give rise to a discretion or determination to reject evidence at trial.

8. The expression "substantial reasons" is not to be ascertained by reference to synonyms or abstract dictionary definitions. The reasons advanced must have substance in the context of the committal proceedings, having particular regard to the facts and circumstances of the particular matter and the issues, which critically arise or are likely to arise in the trial."

Other amendments in the Bill will also help ensure that defendants are not unduly prejudiced by the limits on the right to cross-examination, including the amendments aimed at improving the operation of the prosecution pre-trial disclosure provisions by providing specific measures to address non-compliance with disclosure obligations.

Specific provisions are also included to ensure that where a defendant is not legally represented a Magistrates Court will only be able to admit written statements for prosecution witnesses if satisfied of certain criteria, including that the defendant has been made aware that he or she has a right to apply to require the maker of the statement to attend for cross-examination. Even where written statements are admitted, if the defendant is unrepresented the court will have to be satisfied, after hearing any submissions the defendant wishes to make, that the evidentiary threshold test is met before the defendant can be committed. Mr Moynihan identified in the review that an anomaly exists with the current procedure in that an unrepresented accused cannot be committed by way of the full hand-up process whether or not they intend to plead guilty. In all such cases it is necessary for witnesses to give evidence and be available for cross-examination. Mr Moynihan noted that there was abundant support for reform to enable an unrepresented accused to be committed without that being necessary.

In accordance with recommendation 52 in the report, the amendments in the Bill will also allow clerks of the court to conduct registry committals (i.e. paper or administrative committals). These committals will only apply to defendants who are legally represented and are not in custody. Clerks of the court will not have any bail powers in these circumstances. Similar to hand-up committals under the existing section 110A(6) of the *Justices Act 1886* an administrative committal does not involve any consideration of the evidentiary threshold but can only be done with the consent of the defendant's legal representative. Mr Moynihan agreed with the views of some

stakeholders that the current process for hand-up committals is a cumbersome and outdated procedure which does not require judicial resources.

The Bill also adopts Mr Moynihan's recommendation that the management of ex officio indictments in the Magistrates Courts should be transferred to the registry and the process aligned with the process for administrative committals by the registry. The Attorney-General and the Director of Public Prosecutions (DPP) have discretion to present an indictment without committal (called an "ex officio indictment") under section 561 of the Criminal Code. In the case of the DPP this may occur for example, where there is a clear indication of a plea of guilty, where an accused is prepared to plead guilty to charges different from the original charges, or where a magistrate did not commit but the DPP decides to proceed. The report states that presentation by the Attorney-General is rare.

Mr Moynihan noted that, currently, a matter proceeding by way of ex officio indictment continues to be listed in the Magistrates Court until it is dealt with in the Supreme or District Court. This means that it needs to be managed through repeated "callovers" in the Magistrates Court, sometimes for months, even though no action can or will be taken in that court. These court events in the Magistrates Court require ongoing appearances by the parties and court time until the matter is resolved in the higher court.

Allowing the court to determine applications for directions on the papers

To facilitate the speedy and cost effective resolution of direction hearings about non-compliance with disclosure obligations, amendments are included in the Bill to the *Criminal Practice Rules 1999* allowing the court to dispose of an application for a direction without requiring the parties to attend before the court (i.e. on the papers). However, to ensure natural justice, this provision is subject to a requirement that allows an oral hearing where a party requests it.

Pre-trial directions and rulings

The Bill contains amendments to give judges and magistrates power to issue pre-trial and pre-hearing directions about disclosure and committals.

A direction or ruling under section 590AA of the Criminal Code and section 83A of the *Justices Act 1886* is binding unless the judicial officer presiding at the trial or pre-trial hearing, for special reason, gives leave to re-open the direction or ruling. A direction or ruling must not be subject to interlocutory appeal but may be raised as a ground of appeal against conviction or sentence. However, section 668A of the Criminal Code

(*Reference of pre-trial direction or ruling by Attorney-General*) permits the Attorney-General to refer to the Court of Appeal a point of law arising in relation to a direction or ruling under section 590AA.

These existing restrictions on appeal rights about directions are considered justified given that decisions made under these sections are of an interim and procedural nature.

Extending the limitation period of the commencement of prosecutions for certain simple offences under the *Justices Act 1886*

The Scrutiny of Legislation Committee has expressed the view that the administrative power to start a prosecution or proceeding under legislation should be responsive to the general principle that there must be an end to liability to prosecution or proceedings at some reasonable point [AD 2003/7, p. 8].

Section 52 of the *Justices Act 1886* currently provides that in the case of a simple offence or breach of duty, unless there is some other time limit, a complaint must be made within one year from the time when the matter of complaint arose. A *simple offence* is defined in section 4 of the Act to mean any offence (indictable or not) punishable, on summary conviction before a Magistrates Court, by fine, imprisonment, or otherwise.

The Bill contains an amendment to the *Justices Act 1886* to clarify that, despite the definition of *simple offence* in section 4 of the Act, the time limit in section 52 does not apply to certain indictable offences dealt with summarily. For example, section 552F of the Criminal Code provides that if a Magistrates Court hears and decides a charge summarily, the Magistrates Court has jurisdiction regardless of the time that has elapsed from the time when the matter of complaint of the charge arose.

An amendment is also made to provide that the time limit is extended to two years for simple and regulatory offences where a proceeding originally started as an indictable offence under the Criminal Code or *Drugs Misuse Act 1986*.

In his report Mr Moynihan recommended that the time limit for all summary matters provided by section 52 of the *Justices Act 1886* be increased to two years from the date the complaint arose. While it is not considered appropriate to implement this recommendation for all summary and regulatory offences, the amendments reflect that there are some limited circumstances, such as where a charge is reduced on referral by the Director of Public Prosecutions, where a longer time limit is justified. The current time

limit may mean that a person is charged with an indictable offence (which is not subject to any time limit) because the time limit for a more suitable simple offence has expired. This amendment will facilitate the handling of matters summarily rather than the Director of Public Prosecutions having to take inappropriate charges to the District or Supreme Court or having to discontinue prosecutions.

Civil jurisdictional limits - Appeal provisions and jury trials

Currently, section 45 of the *Magistrates Courts Act 1921* provides that any party who is dissatisfied with the judgment or order of a Magistrates Court involving an amount of more than $5000 may appeal to the District Court. Where the amount is not more than $5000 an appeal can be made with the leave of the District Court or a District Court judge if the court or judge is satisfied that some important principle of law or justice is involved.

Section 45A of the *Magistrates Courts Act 1921* also provides that no appeal lies from a judgment in a proceeding for a minor debt claim or, if the parties agree in writing, a judgment in a proceeding to which any of the simplified procedures prescribed by the rules apply.

The jurisdiction for minor civil debts and small claims now forms part of the minor civil disputes jurisdiction of the Queensland Civil and Administrative Tribunal which commenced operation on 1 December 2009.

The Bill will increase the monetary limit in section 45 of the *Magistrates Courts Act 1921* consistent with the monetary limit applying to minor civil disputes as defined in the *Queensland Civil and Administrative Tribunal Act 2009*. Alignment of the monetary limit in section 45 of the *Magistrates Courts Act 1921* with that applying to the small claims tribunal and minor debt claims is consistent with the original intention of this section.

Amendments are also made in the Bill to section 75 (*When a jury may be summoned*) of the *District Court of Queensland Act 1967*. These amendments will align the monetary limit in section 75 with that applying to the civil jurisdiction of the Magistrates Courts.

Section 75 of the *District Court of Queensland Act 1967* currently provides that a party may require a jury to be summoned in any of the following cases (unless the action or matter is one which if brought in the Supreme Court would be required to be heard and determined by a judge without a jury):

(a) in any action or matter in which the amount claimed exceeds $10000;

(b) in any action for the recovery of possession of land of which the value exceeds $10000;

(c) in proceedings in interpleader in which the amount claimed or the value of the goods in question exceeds $10000; and

(d) in an action or matter which before the commencement of the *District Courts Act and Other Acts Amendment Act 1989* might have been commenced only in the Supreme Court unless the parties agreed to it being heard and determined in another jurisdiction.

While the amendment to section 75 in this Bill may have the effect of limiting a person's right to a jury trial, in practice parties only elect to proceed by way of a jury trial in very few civil matters. In 2008 there was only one civil trial involving a jury in the District Court and in 2007 there were only two civil trials involving a jury.

Non-compliance with disclosure obligations and directions

The Bill inserts new provisions which allow the court to deal with non-compliance with the obligations for disclosure in criminal cases. These obligations are set out in the Criminal Code.

Specifically, judicial officers will have power to issue pre-trial and pre-hearing directions about disclosure. They will also have power to adjourn proceedings and make associated cost awards where there has been non-compliance with a disclosure direction if certain requirements are satisfied, including that it is proper that the costs order be made and the costs applied for are just and reasonable.

To ensure that these provisions in the Bill work effectively and are not defeated by a claim for privilege against self incrimination because of the possibility of a person being convicted for failing to comply with the statutory obligations or a direction issued by the court, the Bill includes a provision to remove the privilege in this context. However, immunity is provided against the use of any evidence that would ordinarily be privileged in any subsequent criminal or contempt proceedings subject to some limited exceptions in relation to the falsity of evidence.

The Scrutiny of Legislation Committee has frequently reported on provisions which deny persons the benefit of the rule against self-incrimination. The Committee's general view is that this denial is only potentially justifiable if:

- the question posed concerns matters which are particularly within the knowledge of the persons to whom they are directed and which it

would be difficult or impossible to establish by any alternative means; and

- the legislation prohibits the use of information obtained in prosecutions against the persons; and
- in order to secure the restriction on the use of information, the person should not be required to fulfil any conditions (such as formally claiming the right).

It is considered that all of these conditions apply in relation to the provisions in the Bill. While it is acknowledged that the provisions apply to police officers, Mr Moynihan notes significant issues regarding compliance in his report. In particular reference is made to the following comments at pages 95-96:

"As I have mentioned earlier, failure to comply with the requirements of the law for disclosure can give rise to grave injustice. A graphic example of this is Mallard v The Queen [2005] HCA 68. In that case a man was convicted of murder and served years of imprisonment before the High Court of Australia set the conviction aside on the basis that investigating Western Australian police had concealed or not made available to the defence information in their possession which might have (and did, as is evidenced by the successful appeal to the High Court) advanced the accused's case. There are a plethora of other cases in the law reports, too many to canvass here, which make the same point.

In their submissions the Queensland Law Society and Legal Aid Queensland provide examples of miscarriages of justice being averted by disclosable information coming to hand fortuitously or because of active investigation and requests by defence lawyers rather than as a result of compliance with the disclosure process.

It is of course recognised that events outside the control of the Queensland Police Service may compromise that Service's ability to make disclosure in a comprehensive and timely way. For example, delays in scientific testing results or a witness may not be able to be located etc. The need to investigate fresh crimes puts pressure on the time available to comply with disclosure in cases where an offender has been identified and charged. That however emphasises the benefit of the expeditious disposition of cases rather justifying delay, other than in exceptional circumstances.

*Such considerations do not however excuse compliance with ongoing disclosure obligations, nor do they provide a satisfactory explanation fo*r

much of the failure to make proper and timely disclosure which occurs, as anyone who has been involved in the criminal justice processes on an ongoing basis knows there has been a substantial body of information in submissions, consultations and proceedings at the round tables convened by the Review to found concern that disclosure obligations are not being met. In particular it has been said that s 590AB(2)(b) which requires disclosure of 'all things in the possession of the prosecution … that would tend to help the case for the accused', is deliberately not being carried out or is being 'overlooked' in a concerning number of cases. It is open to conclude that there is a pattern here rather than the presence of exceptional omissions.

The Queensland Law Society, the Bar Association of Queensland and Legal Aid Queensland were unanimous in expressing concerns about the persistent and pervasive problem of non-compliance by the Queensland Police Service with the statutory disclosure obligations. The ODPP also expressed concerns about the need for timely compliance of disclosure by police.

There have been, for example, accounts of experienced high ranking detectives directing a lower rank and inexperienced police prosecutor as to what disclosure to make rather than the prosecutor making an independent assessment."

The new provisions may also have some limited application to an accused given the disclosure obligations under chapter division 4 in chapter 62 of the Criminal Code. However, the provisions in this Bill are directed specifically at a claim for privilege against self-incrimination in the context of failing to comply with disclosure obligations and directions about disclosure. Further, any evidence given about non-compliance will not be able to be used in the criminal proceeding against the accused.

Amendments to the *Public Trustee Act 1978*

The amendments to the *Public Trustee Act 1978* include an amendment to allow the Public Trustee to remove unclaimed money that has been in unclaimed moneys fund for more than twenty five years from the public register of unclaimed moneys.

This amendment, which may have insufficient regard to the rights and liberties of individuals, is required due to operational reasons. It is reasonable to presume that a person who has not made a claim in 25 years will more than likely never make a claim. Furthermore, the removal of the

person's name from the public register will not prevent the person from later claiming the money.

Does the legislation adversely affect rights and liberties and impose obligations retrospectively?

Amendments relating to criminal procedure

Section 11 of the Criminal Code ensures that where an existing offence is changed or a new offence created, a person cannot be punished for an act unless the act was committed after the law making it an offence came into force.

Changes to criminal procedure and jurisdiction in the Bill will have retrospective effect, in that they will apply regardless of when the offence was committed. However, this will not adversely affect the rights or liberties of the accused and is consistent with the common law. In the absence of any indication to the contrary, a "procedural" statute is to be construed as retrospective, that is, it can apply to past events. The High Court considered the issue of "procedural" statutes in *Rodway v The Queen* (1990) 169 CLR 515, where it held that:

"... ordinarily an amendment to the practice or procedure of a court, including the admissibility of evidence and the effect to be given to evidence, will not operate retrospectively so as to impair any existing right. It may govern the way in which the right is to be enforced or vindicated, but that does not bring it within the presumption against retrospectivity. A person who commits a crime does not have a right to be tried in any particular way; merely a right to be tried according to the practice and procedure prevailing at the time of trial. The principle is sometimes succinctly, if somewhat sweepingly, expressed by saying, as did Mellish LJ in the passage cited by Dixon CJ in Maxwell v Murphy, that no one has a vested right in any form of procedure. It is a principle which has been well established for many years . . ."

In *Rodway,* the High Court was considering the abolition of the corroboration warning and held that the abolition applied regardless of the fact that the rule was in place at the time the offence was committed. In other words, despite the fact that the warning was required to be given at the time the offence was committed, it did not have to be given at the trial and the accused had not been deprived of a substantive right.

However, in order to provide certainty to the courts, legal profession and other interested persons, the Bill contains transitional provisions to ensure

that, in most cases, only prosecutions started after the Act commences will be subject to the new provisions.

Amendments to the *Queensland Civil and Administrative Tribunal Act 2009*

the Bill amends section 50 of the *Queensland Civil and Administrative Tribunal Act 2009* to clarify the costs that can be claimed in an application to the Queensland Civil and Administrative Tribunal (QCAT) for default judgment in a proceeding to recover a debt or liquidated demand of money up to the amount of $25,000 (known as a minor debt claim and part of QCAT's minor civil dispute jurisdiction). It also provides that section 50, as amended, is always taken to have applied to a non-legal costs default judgment decision for a minor civil dispute as if the amendment had commenced on 1 December 2009, that is, from commencement of the *Queensland Civil and Administrative Tribunal Act 2009* and QCAT's operations. This will validate such decisions made since that time.

This amendment breaches the fundamental legislative principle that legislation should not adversely affect rights and liberties retrospectively (section 4(3)(g) *Legislative Standards Act 1992*). The amendment is necessary to clarify an internal inconsistency within the Act in relation to what amounts may be ordered in a judgment in default. The approach adopted by the amendments is to continue the law and practice that existed for minor debts before the Magistrates Court by not permitting legal costs to be awarded against the respondent. This is consistent with the intention to retain the low cost jurisdiction for minor debt claims before QCAT.

Consultation

Community

Extensive consultation was undertaken with government and non-government stakeholders in the review (refer to pages 37-39 of the report). The results of consultation are noted in the report.

An exposure draft of the Bill was publicly released for comment on 25 November 2009. The consultation period closed on 31 January 2010. A total of 13 written submissions were received. A number of changes have been made that seek to address comments made and issues raised by stakeholders.

Consultation has also been undertaken with the Chief Magistrate, the Chief Judge of the District Court of Queensland, the Chief Justice of Queensland and the President of the Queensland Court of Appeal.

Government

Consultation on the Bill has been undertaken with all relevant Government departments including the Department of Premier and Cabinet, the Department of Communities, Queensland Health and Queensland Treasury. Consultation has also been undertaken with the Director of Public Prosecutions, Queensland Police Service and Legal Aid Queensland.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 provides that the amendments in the Act commence on a day to be fixed by proclamation.

Part 2 Amendment of Bail Act 1980

Clause 3 provides that Part 2 of the Bill amends the *Bail Act 1980*.

Clause 4 amends section 15A (*Applications for bail in special circumstances*) of the Act to clarify that the requirements in subsection (6) relate to the necessity to make an application by a remote communication device and that the form of communication used was appropriate.

Clause 5 inserts a new section 15B (*Application for bail outside district or division*) into the Act. This amendment will allow an application for bail to be made by a remote communication device to a magistrate at a location

prescribed under a practice direction by the Chief Magistrate which is outside the relevant court district. This amendment will provide additional flexibility for the Chief Magistrate to manage the consideration of bail applications over public holidays, vacation periods and on other occasions (for example when a resident magistrate is ill). Applications will only be able to be made under this new section if certain conditions are met, including:

- a police officer has refused to grant bail to a person under section 7 of the Act for an offence; and
- a Magistrates Court is authorised under the Act to grant bail to the person for the offence; and
- having regard to all the circumstances, the person may not reasonably or practicably be brought personally before a court to apply for bail.

Other requirements in section 15A will also apply except subsection (6). This will include, for example, subsection (3) which provides that the application may only be made when:

(a) the magistrate is constituting a Magistrates Court; or

(b) the court registry where the magistrate usually constitutes the court is open for business.

The requirements in section 15A(6) are not necessary given section 15B(4) provides that the application must comply with the practice direction issued by the Chief Magistrate.

Clause 6 amends section 28A (*Other warrants for apprehension of defendant*) of the Act to include references to new sections 34BA and 34BB which are inserted by the following clause. This amendment will enable a court to issue a warrant for the defendant's apprehension if the defendant fails to surrender into custody where bail is continued and varied under these new sections.

Clause 7 amends the *Bail Act 1980* to insert a new section 34BA (*Varying bail on registry committal*) and 34BB (*Varying bail for charge for indictable offence referred to clerk of the court under Justices Act*).

These new provisions apply where there is a registry committal or the management of a charge proceeding by way of ex-officio indictment is referred to the clerk of the court under the amendments to the *Justices Act 1886* in the Bill. The effect of these provisions is that defendant's bail obligations in the Magistrates Court are continued (i.e. the bail is "rolled

over") subject to the change in date and the court before which the defendant is required to appear, and any change necessary to reflect the charges on which the defendant is committed. The amendments to the *Justices Act 1886* in the Bill require that a defendant is legally represented in these types of cases.

Part 3 Amendment of Body Corporate and Community Management Act 1997

Clause 8 provides that Part 3 of the Bill amends the *Body Corporate and Community Management Act 1997*.

Clause 9 amends section 229 (*Exclusivity of dispute resolution provisions*) to provide that subsection (3) is subject to a new section 229A of the Act.

Clause 10 inserts a new section 229A (*Disputes about particular debts*) into the Act. This section clarifies that adjudicators do not have jurisdiction for debt disputes, and clarifies the jurisdiction for dealing with debt disputes.

Clause 11 amends section 241 (*Rejecting application*) to insert two further bases on which the commissioner may reject an application.

Clause 12 amends section 252H (*Referral back to commissioner*) to insert two further examples of a reason for a department conciliator to consider there is no further action he or she can take in a department conciliation session.

Clause 13 amends section 270 (*Dismissal of applications*) to insert two further bases on which an adjudicator may make an order dismissing an application.

Clause 14 amends Schedule 6 (*Dictionary*) to include references to the terms "debt dispute" and "related dispute".

Part 4 Amendment of Criminal Code

Clause 15 provides that Part 4 amends the Criminal Code.

Clause 16 amends section 1 (*Definitions*) consequential to the amendments made in this Part for directions about disclosure.

Clause 17 replaces section 552A and 552B that currently deal with summary disposition of indictable offences. It also inserts a new section 552BA and 552BB.

Section 552A (*Charges of indictable offences that must be heard and decided summarily on prosecution election*) continues to set out the charges for indictable offences against the Code that must be dealt with summarily if the prosecution so elects. This new section replicates the current section 552A to a large extent subject to the operation of the new section 552BA (*Charges of indictable offences that must be heard and determined summarily*).

Section 552B (*Charges of indictable offences that must be heard and decided summarily unless defendant elects for jury trial*) continues to set out the charges of indictable offences that must be dealt with summarily if the defendant so elects. This section replicates the current section 552B to a large extent subject to the new section 552BA. The heading is also amended to more correctly reflect the substantive provisions in this section.

Sections 552A and 552B will apply to counselling or procuring the commission of any of the other specific offences to which these sections apply. They will also apply to an offence of attempting to commit and becoming an accessory after the fact for the relevant offences provided the attempt or accessory offence is not already covered by section 552BA because the maximum penalty is 3 years or less. For example, an offence involving an assault referred to in section 552A(1)(b) must have a maximum penalty above 3 years and not more than 5 years. Section 536(3) (*Punishment of attempts to commit indictable offences*) of the Criminal Code provides that, in the absence of any other punishment, the maximum penalty a person is liable to for the attempt to commit an indictable offence is half of the maximum penalty for the relevant indictable offence. Similarly section 545(3) (*Punishment of accessories after the fact to offences*) provides that a person who becomes an accessory after the fact to any other indictable offence or a simple offence is liable, if no other punishment is provided, to a punishment equal to one-half of the greatest

punishment to which an offender convicted of the offence is liable. This means that the maximum penalty for the attempt to commit an assault offence caught by section 552A(1)(b) or becoming an accessory after the fact to the offence, would be less than 3 years imprisonment and thereby caught by the new section 552BA. As reflected in 552A(1)(d) and (e), attempts and becoming an accessory after the fact for those offences specified in section 552A(1)(a), which all have a maximum penalty of 7 years, will be caught by section 552BA because the maximum penalty is greater than 3 years imprisonment.

Section 552BA (*Charges of indictable offences that must be heard and determined summarily*) creates a new category of indictable offences which must be heard and determined summarily without the need for any election to be exercised. This new section applies to charges for a "relevant offence". A "relevant offence" is defined in the new section to mean:

(a) all offences for which a defendant is liable to a maximum penalty of 3 years or less; and

(b) offences in Part 6 (*Offences relating to property*) unless the offence is:

  (i) already covered by paragraph (a); or

  (ii) an offence against chapter 42A (*Secret commissions*); or

  (iii) an excluded offence under the new section 552BB.

Paragraph (a) of the definition of relevant offence applies to any offence if the maximum penalty is 3 years or less. This includes, for example, an offence of attempting to commit an indictable offence under section 536 if, under subsection (3), the offender is liable to 3 years imprisonment or less (despite the maximum penalty for the other substantive indictable offence being more than 3 years imprisonment).

Also, while various maximum penalties may apply to a particular offence, 552BA(4)(a) covers all charges for offences where the offender is liable to a maximum penalty of three years imprisonment or less (irrespective of whether this is because a circumstance of aggravation applies). Section 564(2) of the Criminal Code provides that a circumstance of aggravation must be charged in the indictment. If the circumstance of aggravation is not charged, the offender cannot be liable to the increased maximum penalty. Under section 574 (*Summary conviction*), chapter 60 (*Indictments)*, which includes section 564, applies to a complaint with a view to summary conviction. For example, under section 328A (*Dangerous operation of a vehicle*) the maximum penalty for an offence constituted by an act or

omission described in section 328A(1) includes imprisonment for 3 years. This offence therefore falls under section 552BA(4)(a). However, if the offence involves a circumstance of aggravation described in section 328A(2) the offender is liable to a maximum penalty of 5 years imprisonment and the offence falls under section 552B(1)(e).

New section 552BB (*Meaning of excluded offence charge for chapter 58A*) defines the term "excluded offence" for the purposes of section 552BA. If an offence is included in this definition then it must be determined on indictment in accordance with section 3 of the Criminal Code. Offences in chapter 42A are covered by section 552B(1)(i).

This new section 552BB specifies offences that are excluded by reference to a table. Some offences will only be excluded if certain conditions are met. These conditions are specified in column 3 of the table. A condition may include a circumstance of aggravation or another relevant factor in relation to a charge against the offender. For example, column 1 of the table lists chapter 38 other than sections 413 and 414 and there are no circumstances listed in column 3 of the table for this item. This means that charges for all offences in chapter 38 (except charges against sections 413 and 414), including robbery and extortion, are excluded from the operation of the new section 552BA and must be dealt with on indictment. Sections 413 (*Assault with intent to steal*) and 414 (*Demanding property with menaces with intent to steal*) both have a maximum penalty of 3 years imprisonment and therefore fall within the definition of relevant offence under section 552BA(4)(a).

Some other examples of the operation of the table in the new section 552BB are:

- For the offence of stealing under section 398 the relevant circumstances include:

  (a) if the total value of anything stolen is equal to or more than the prescribed value (i.e. $30,000); and

  (b) the offender does not plead guilty.

This means that if the offender was charged with stealing an item valued at $50,000 it must be dealt with on indictment (and not summarily under the new section 552BA) unless the offender pleads guilty to the offence. Also, even if the offender pleads guilty, the charge must be dealt with on indictment if the offender is liable to punishment in the special case listed in item 14 (*Stealing firearm for use in another indictable offence*) and a

charge for the indictable offence mentioned in that item is required to be heard and decided on indictment, such as armed robbery.

- For a charge of wilful damage under section 469 the value of property involved is not relevant (consistent with recommendation 34 of Mr Moynihan's report). This means that there is no reference in the table to the prescribed value and if the offender is charged with wilful damage valued at $50,000 it must be dealt with summarily under section 552BA (subject to section 552D) unless it falls within one of the other relevant circumstances listed in the table. For example, a charge for an offence against section 469 is excluded from the operation of section 552BA if the offender is liable to punishment under item 1 (*Destroying or damaging premises by explosion*) of the special cases in section 469.

Sections 552A, 552B and the new section 552BA are subject to the operation of section 552D of the Criminal Code as amended by the following clause.

Clause 18 amends section 552D (*When a Magistrates Court must abstain from jurisdiction*) to include a new subsection (2) which provides that a Magistrates Court must abstain from dealing with a charge summarily under the new section 552BA, on application by the defendant, if satisfied that there are exceptional circumstances for doing so. This clause will also amend the existing subsection (1) to include a reference to the new section 552BA and renumber existing subsections given the insertion of the new subsection (2). The existing subsection (1) provides that a Magistrates Court must abstain from dealing summarily with a charge if satisfied, at any stage, and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction. If the court abstains from jurisdiction under this section, the proceeding for the charge must be conducted as a committal proceeding.

Clause 19 amends section 552E (*Charge may be heard or decided where defendant arrested or served*) to include a reference to the new section 552BA.

Clause 20 amends section 552F (*Time for prosecution*) to include a reference to the new section 552BA.

Clause 21 amends section 552G (*Value or property affecting jurisdiction to be decided by Magistrates Court*) to replace the reference to section 552B with a reference to the new section 552BB.

Clause 22 amends section 552H (*Maximum penalty for indictable offences dealt with summarily*) to include a reference to the new section 552BA.

Clause 23 amends section 552J (*Appeals against a decision to decide charge summarily*) to include a reference to the new section 552BA.

Clause 24 amends paragraph (2)(ba) in section 590AA (*Pre-trial directions and rulings*) (2)(ba) to include a reference to chapter division 4. Chapter division 4 sets out the disclosure obligations of an accused person. Under section 590B (*Advance notice of expert evidence*) in chapter division 4 there is provision for the directions judge under section 590AA to fix times for compliance with the requirements in that section. Similarly the directions judge may fix the times for compliance with the requirements in section 590C (*Advance notice of representation if person who made it is unavailable*).

Clause 25 inserts a new section 590AAA. New section 590AAA (*Non compliance with direction about disclosure*) provides that, if a person fails to comply with a direction about disclosure given to them under section 590AA(2)(ba), the court may require that the directed person file an affidavit or give evidence in court explaining the failure to comply. If the court is not satisfied that the affidavit or evidence satisfactorily explains and justifies the non-compliance with the court's direction, the court may adjourn proceedings to allow enough time for the person in breach to obey the requirement and the affected person or party to consider the evidence disclosed. The court may also make an order that the directed person pay incidental costs of an amount that the court considers just and reasonable where the adjournment has resulted from unjustified, unreasonable or deliberate non-compliance.

New section 590AAA also provides a directed person is not excused from filing an affidavit or giving evidence under this section on the ground that the answer may tend to incriminate the person. However, subsection (7) provides that the affidavit or evidence about non-compliance cannot be used in any criminal or contempt proceeding subject to some limited exceptions, including for the purpose of making an order under this new section. This subsection will not prevent the use of any evidence that may be subsequently disclosed in compliance with the direction. These provisions removing the privilege against self-incrimination are limited to

failing to comply with the direction about disclosure and are not intended to affect compellability or other aspects of privilege more broadly. For example, while this section may have some limited application to an accused given the disclosure obligations under chapter division 4 in chapter 62, it is not intended to override the operation of section 8(1) of the *Evidence Act 1977* which provides that a person who is charged with a criminal offence is not compellable to give evidence on behalf of the defence.

Clause 26 amends section 590AC (*Chapter division does not have particular consequences*) to make some technical grammatical drafting changes.

Clause 27 amends section 590AD (*Definitions for ch div 3*). The definition of "prescribed summary trial" is replaced with a new definition which includes a reference to summary trials for indictable offences under the *Drugs Misuse Act 1986* and Criminal Code. The new definition also continues to cover a trial for an offence prescribed under a regulation for the purposes of this definition.

Clause 28 amends section 590AH (*Disclosure that must always be made*) to give subsection (2) a more straightforward structure principally through the removal of superfluous introductory paragraphing. To achieve this restructure, subsection (2) is replaced in its entirety, rather than making a series of piecemeal amendments. The requirements of this section in substance remain otherwise unchanged.

Clause 29 amends section 590AI (*When mandatory disclosure must be made*) to clarify the specific date by which mandatory disclosure requirements in committal proceedings and prescribed summary trials must be complied with. A note is also inserted which provides that, despite the timeframes in section 590AH, under an administrative arrangement made pursuant to the new section 706A, the prosecution may agree to earlier disclosure of some or all of the material in section 590AH before the specified date. Section 590AI is also amended to insert a new subsection (5). This new subsection provides that for a committal proceeding the court may set a date for the commencement of hearing of evidence despite the provisions in the *Justices Act 1886* which restrict the attendance of witnesses at a committal to give oral evidence and be cross-examined. However, the hearing of evidence cannot commence and no witnesses will be required to attend the hearing unless a direction has been issued by a magistrate under section 83A of the *Justices Act 1886* as amended by the Bill.

Clause 30 amends section 590AK (*When requested disclosure must be made*) to make a technical grammatical change.

Clause 31 amends section 590AN (*Limitation on disclosure of things accused person already has*) to make a technical grammatical change.

Clause 32 amends section 590AO (*Limit on disclosure of sensitive evidence*) to clarify that, if the court makes a direction under subsection (5) for the prosecution to give a copy of a thing to an accused, then the court may also make a direction that the copy must be returned to the prosecution.

Clause 33 amends section 590AS (*Viewing particular evidence*) consequential to the amendment of section 590AH(2) above in clause 28.

Clause 34 amends the heading to section 590AV (*Disclosure directions*) to distinguish the directions provided for under this section from the new disclosure obligation directions under the new Chapter division 4A inserted by the Bill by providing that it relates to directions under particular provisions. Directions under section 590AV relate to the disclosure of things otherwise limited under chapter subdivision D.

Clause 35 inserts a new chapter division 4A (*Disclosure obligation directions*) into chapter 62 of the Criminal Code.

New section 590D (*Purpose and scope of ch div 4A*) in chapter division 4A provides that the purpose of this new chapter division is to make specific provision for the issuing of directions about compliance with the disclosure obligations in Chapter divisions 3 and 4 of the Criminal Code. This new chapter division does not affect any other powers of the court or a party in relation to a failure to comply with a disclosure obligation. It also is not intended to affect any power of the Chief Justice or Chief Judge to issue general practice directions.

New section 590E (*Definitions for ch div 4A*) inserts a number of definitions relating to terms used in the new chapter division 4A.

New section 590F (*Subject matter for disclosure obligation direction*) outlines the types of directions that may be made to ensure compliance with a disclosure obligation. This includes, for example, whether or not specific material or information is subject to a disclosure obligation and allowing the court to examine the arresting officer to decide whether the prosecution has a disclosure obligation in relation to a particular thing. A court may make a disclosure obligation direction subject to any conditions

it considers appropriate. New section 590F does not limit the directions that may be given pursuant to section 590AA(2)(ba).

New section 590F also provides that a person is not excused from answering a question or filing an affidavit under this section on the ground that it may tend to incriminate the person. However, any evidence given will not be able to be used in evidence in any subsequent criminal proceeding except a perjury proceeding. A perjury proceeding is defined as a proceeding in which the falsity or misleading nature of the evidence is relevant.

New section 590G (*Application for disclosure obligation direction*) provides for the procedural provisions applying to an application by a party for a disclosure obligation direction to be specified in the *Criminal Practice Rules 1999*. These procedures are, however, not intended to prevent parties from communicating informally to try and resolve issues about disclosure.

Clause 36 amends the definition of "summary offence" in section 651 (*Court may decide summary offences if person is charged on indictment*) of the Criminal Code. This amendment is consequential to the clause in the Bill which replaces section 552A and inserts the new 552BA into Chapter 58A of the Criminal Code.

Clause 37 inserts a new section 706A (*Development of administrative arrangements*). This new section is intended to encourage and give statutory recognition to collaborative arrangements that may be developed by agencies, the courts and other key stakeholders for compatible business and operating processes to facilitate the efficient and timely resolution of criminal proceedings consistent with the objectives of the Bill.

Clause 38 inserts a new Chapter 87 (*Transitional provisions for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*).

New section 724 (*Definitions for ch 87*) inserts definitions for terms used in the new Chapter 87.

New section 725 (*New disclosure provisions apply only to prosecutions commenced after commencement*) provides that the amendments in the Bill relating to disclosure only apply to a proceeding started for an offence if an originating step for the proceeding is taken after commencement of this section. An originating step is taken when the defendant is arrested, summonsed or served with a notice to appear.

New section 726 (*New summary disposition provisions apply only to prosecutions commenced after commencement*) provides that the amendments to Chapter 58A in the Bill only apply if an originating step for the proceeding is taken after commencement. This section also provides that the law relating to summary disposition of a repealed offence is, to the greatest extent possible, the same as that applying to the offence which applies to the person at the time they are charged with the offence (as referred to in section 11 of the Criminal Code).

Part 5 Amendment of Criminal Practice Rules 1999

Clause 39 provides that Part 5 amends the *Criminal Practice Rules 1999*.

Clause 40 amends rule 5 (*Application of rules to Magistrates Courts*) to provide that chapter 14, to the extent provided for in rule 59(3), applies to the Magistrates Courts. It also provides that the new chapter 9A (*Disclosure obligation directions*) to be inserted by this part of the Bill applies to the Magistrates Courts.

Clause 41 amends the heading to chapter 9 (*Pre-trial directions and rulings*) to clarify that it applies to pre-trial directions and rulings generally given the insertion of the new chapter 9A (*Disclosure obligation directions*) by the Bill.

Clause 42 inserts new chapter 9A (*Disclosure obligation directions*) into the Rules. This new chapter contains the procedures relating to applications by a party for a disclosure obligation direction for the purposes of the new section 590AA of the Criminal Code and 83A of the *Justices Act 1886*.

New rule 43A (*Purpose and scope of ch 9A*) sets out the purpose and scope of the new chapter 9A.

New rule 43B (*Definitions for ch 9A*) contains the definitions for a number of terms used in the new Chapter 9A.

New rule 43C (*Procedure applying before filing of application for disclosure obligation direction*) sets out the procedure applying before a party can file an application for a disclosure obligation direction. This procedure is aimed at facilitating the early resolution of issues between

parties without the need for intervention by the court and the narrowing the issues requiring determination.

New rule 43D (*Filing of application for disclosure obligation direction*) sets out the material that must be filed with the application for a disclosure obligation direction.

New rule 43E (*Disposal of application for disclosure obligation direction*) allows the court to dispose of an application for a disclosure obligation direction without having the parties attend before the court and make oral submissions at a hearing unless one of the parties has indicated that it wishes this to occur.

Clause 43 amends rule 59 (*Application of ch 14*) to provide that rule 62 applies to the Magistrates Courts. Rule 62 relates to the use of verdict and judgment records.

Clause 44 amends rule 62 (*Verdict and judgment record*) to include a reference to orders made in the Magistrates Courts. An amendment is also made to clarify that not every record must be given to the chief executive (corrective services) if this is not relevant or that agency has no interest in the matter. Further, this clause amends rule 62 to ensure that the proper officer has power to amend a verdict and judgment record in appropriate circumstances (for example if it does not correctly reflect the order made by the court). If the record is amended a replacement copy must be provided to the chief executive (corrective services).

Clause 45 inserts a new chapter 17 (*Transitional provisions*). New rule 123 in Chapter 17 will allow verdict and judgment records to be issued for orders made in the Magistrates Courts in existing proceedings from the time of commencement of the amendments. New section 123 also clarifies that chapter 9A (*Disclosure obligation directions*) applies to proceedings in the same way as the amendments to disclosure in the Criminal Code and *Justices Act 1886*.

Clause 46 amends schedule 6 (*Dictionary*) to insert references to the terms used in the new chapter 9A. A number of existing definitions are also amended consequential to the amendments in the new chapter 9A and the obsolete definition of “chief executive (corrective services)” is removed.

Part 6 Amendment of District Court of Queensland Act 1967

Clause 47 provides that Part 6 amends the *District Court of Queensland Act 1967*.

Clause 48 amends section 61 (*Criminal jurisdiction if maximum penalty more than 14 years*) to increase the general criminal jurisdiction of the District Court to offences with a maximum penalty of 20 years or less. This clause also amends section 61(2), which contains a number of exceptions to the general jurisdiction, to remove unnecessary references to offences in the Criminal Code given the increased general jurisdiction. A reference to section 409 (*Definition of robbery*) of the Criminal Code is also removed given no offence is created under this section. The heading to section 61 is also amended to reflect the change in general jurisdiction.

Clause 49 amends section 68 (*Civil jurisdiction*) to increase the monetary limit for the civil jurisdiction of the District Court from $250,000 to $750,000. This clause also amends section 68(3)(b) to ensure that the test outlined in that section for determining whether or not the District Court has jurisdiction under subsection (1) in relation to property which is land is applied consistently to all property.

Clause 50 amends section 69 (*Powers of the District Court*) to clarify that the reference to all powers and authorities of the Supreme Court includes those conferred under an Act on the Supreme Court. This amendment does not extend the powers of the District Court because the jurisdictional limits in section 68 still apply.

Clause 51 amends section 75 (*When a jury may be summoned*) to replace the references in that section to $10,000 with a reference to the Magistrates Court jurisdictional limit to ensure that it aligns with that jurisdiction.

Clause 52 amends section 77 (*Removal of proceedings from the Supreme Court to District Court*) to insert a new subsection (7). This new subsection provides that, despite subsection (1)(b), existing proceedings pending in the Supreme Court at the time of commencement of the Bill cannot be remitted on the basis of the change to the District Court's civil jurisdiction in the Bill.

Clause 53 amends section 78 (*Removal of proceedings from the District Court to a Magistrates Court*) insert a new subsection (7). This new

subsection provides that, despite subsection (1)(b), existing proceedings pending in the District Court at the time of commencement cannot be remitted on the basis of the change to the Magistrates Court civil jurisdiction pursuant to the amendments in Part 12 of the Bill.

Clause 54 amends section 118 (*Appeal to the Court of Appeal in certain cases*) to include a reference to interlocutory decisions. Consistent with appeals from decisions of the Supreme Court and Magistrates Courts, this amendment will remove the requirement for leave to be obtained for appeals of interlocutory judgements of the District Court if the judgment:

(a) is for an amount equal to or more than the Magistrates Court jurisdictional limit; or

(b) relates to a claim for, or relating to, property that has a value equal to or more than the Magistrates Courts jurisdictional limit.

Clause 55 inserts a new section 145 (*Transitional provision for the Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010 – civil jurisdiction*) and new section 146 (*Transitional provision for the Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010 – criminal jurisdiction*).

New section 145 is a transitional provision which provides that the amendments to the District Court's civil jurisdiction in the Bill only apply to actions, matters or proceedings started after commencement.

New section 146 is a transitional provision which provides that the amendments in the Bill to the criminal jurisdiction of the District Court only apply to prosecutions started after commencement of the amendments.

Part 7 Amendment of Drug Court Act 2000

Clause 56 provides that Part 7 amends the *Drug Court Act 2000*.

Clause 57 amends section 8 (*What is a relevant offence*). This amendment is consequential to the amendments made in the Bill to the provisions for summary disposition of indictable offences under the Criminal Code and *Drugs Misuse Act 1986*.

Clause 58 amends the note under subsection (4) in section 36 (*Final sentence to be decided on completion or termination of rehabilitation program*) of the Act to insert a reference to the new section 552BA (*Charges of indictable offences that must be heard and decided summarily*) of the Criminal Code.

Clause 59 makes a number of consequential amendments to section 37 (*Immunity from prosecution*) arising from the amendments in the Bill relating to the summary disposition of indictable offences under the Criminal Code and *Drugs Misuse Act 1986*.

Clause 60 inserts a new division 3 (*Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*) into Part 7 of the Act. This section provides that the amendments to the Act in the Bill only apply to prosecutions started after commencement consistent with the amendments in the Bill relating to summary disposition of indictable offences against the Criminal Code and *Drugs Misuse Act 1986*.

Part 8 Amendment of Drugs Misuse Act 1986

Clause 61 provides that Part 8 amends the *Drugs Misuse Act 1986*.

Clause 62 inserts a new section 14 (*Other offences that may be dealt with summarily if no commercial purpose alleged*). This new section allows charges for an offence against section 9 to be dealt with summarily at the election of the prosecution where the offender is liable to imprisonment to more than 15 years imprisonment provided no commercial purpose is alleged by the prosecution. This section also provides that a person convicted in summary proceedings under this new section is liable to no more than 3 years imprisonment.

Clause 63 amends section 127 (*No costs to be awarded*). This amendment is consequential to the amendments in the Bill to the Criminal Code and the *Justices Act 1886* which allow limited cost orders for failing to comply with a direction issued by the court about disclosure.

Clause 64 inserts a new division 7 (*Provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*) in Part 7.

New section 142 in division 7 provides that the election for summary disposition in the new section 14 only applies where an original step for a proceeding is started after commencement. An originating step is taken when the defendant is arrested, summonsed or served with a notice to appear.

Part 9 Amendment of Evidence Act 1977

Clause 65 provides that Part 9 amends the *Evidence Act 1977*.

Clause 66 amends section 21AF (*Evidence-in-chief*) of the Act. These amendments are consequential to amendments made in the Bill to the provisions for committal in the *Justices Act 1886*.

Part 10 Amendment of Financial Accountability Act 2009

Clause 67 provides that Part 10 amends the *Financial Accountability Act 2009*.

Clause 68 amends section 97 (*Treasurer's unclaimed moneys fund*) to ensure that the Treasurer can pay a person entitled to unclaimed money that was transferred to the consolidated fund from the Treasurers Unclaimed Moneys Fund.

Part 11 Amendment of Justices Act 1886

Clause 69 provides that Part 11 amends the *Justices Act 1886*.

Clause 70 amends section 4 (*Definitions*) to insert a new definition of "registry committal". This is a new term used in new division 7A which is inserted into Part 5 of the Act by the Bill. Definitions are also inserted for

new terms used in the amendments made to Part 4 of the Act to insert the new division 10B (*Disclosure obligation directions*) and to update an outdated reference to "stipendiary magistrate" in the definition of "justices or justice".

Clause 71 amends section 22C (*Appointment of clerks of the court*) to remove the outdated and unnecessary requirement for the notice appointing a clerk of the court or an assistant clerk of the court to be published in the gazette.

Clause 72 inserts a new section 22D (*Principal clerk of courts*). This new section allows the Governor in Council to appoint a principal clerk of the Magistrates Courts for all of Queensland. This amendment reflects current governance arrangements in the Magistrates Courts and is consistent with the District and Supreme Courts. The principal clerk of courts may exercise all of the same functions and powers as a clerk of the court appointed to a place under section 22C of the Act and may give directions to clerks of the court and assistant clerks of the court appointed under that section about discharging their functions.

Clause 73 inserts a new section 23EB and 23EC into the Act.

New section 23EB (*Management by clerk of the court of charge pending finalisation of proceeding under ex officio indictment*) allows a Magistrates Court to transfer review of a charge for an indictable offence to the Magistrates Court registry where the parties agree that the matter is to proceed by way of ex-officio indictment in the District or Supreme Court. However, a charge may only be referred under this new section if the defendant is legally represented and is not in custody (or in breach of bail). Similar to section 652 of the Criminal Code which provides for transmission of summary offences to the District and Supreme Court, new section 23EB also provides that once the ex-officio indictment has been finally disposed of, the registrar of the relevant court must, within one calendar month, notify the result of the decision to the clerk of the relevant Magistrates Courts and no further appearance is required in that court by any party to the proceeding. There is also provision for the clerk to refer the charge back to the court to ensure that the hearing of the charge is not unnecessarily delayed and if requested by a party.

New section 23EC (*Magistrate for other district or division authorised to grant bail may also adjourn a hearing for offence*) allows a magistrate outside the relevant district or division who is authorised to hear a bail

application pursuant to the new section 15B of the *Bail Act 1980* inserted by the Bill to also adjourn the proceeding.

Clause 74 amends section 30 (*Stipendiary magistrates*) and the heading to this section to replace the outdated term of "stipendiary magistrate" with a reference to "magistrate".

Clause 75 amends section 41 (*Prosecution disclosure*) of the Act to clarify that the prosecution disclosure provisions set out in the Criminal Code, chapter 62, chapter division 3 apply to a relevant proceeding as defined in section 590AD.

Clause 76 amends section 52 (*Limitation of proceedings*) to clarify that the 1 year limitation period in that section for making a complaint for an offence does not apply to indictable offences where another provision specifically provides that no time limit applies.

Clause 76 also amends section 52 to extend the time limit for making a complaint for a simple or regulatory offence to two years where the proceeding originally started as an indictable offence but it has been or will be discontinued. This new subsection would apply, for example, in a case where the original charge against a defendant was prosecuted under section 75 of the Criminal Code (*Threatening violence*) however following referral to the Office of the Director of Public Prosecutions it is recommended that a charge under section 6 (*Public Nuisance*) of the *Summary Offences Act 2005* is more appropriate.

Clause 77 amends section 56 (*Service of summonses*) to replace the outdated term of "stipendiary magistrate" with a reference to "magistrate".

Clause 78 amends section 83A (*Direction hearing*) to remove the unnecessary reference to a "thing" in paragraph (5)(aa).

This clause also amends subsection (5) to insert a new subsection (5AA). This new subsection provides that a magistrate may give a direction under this section requiring the prosecution to call the maker of a written statement to attend before the court as a witness to give oral evidence or be made available for cross-examination subject to the requirements in the new section 110B (*Special provisions applying to a direction under s 83A(5AA)*) inserted by the Bill. This new subsection does not apply to a written statement given by an affected child witness under the *Evidence Act 1977*.

Further, clause 78 inserts a new subsection (9) into section 83A. This subsection provides that a directions hearing for the issuing of a direction

under the new subsection (5AA) or a disclosure obligation direction may be held on the day set for the hearing of evidence in the proceeding. While the provisions in the Bill restrict committal hearings this new subsection recognises that a magistrate may still list a matter for committal hearing so that the time limit for disclosure under section 590AI of the Criminal Code applies. If this occurs the committal hearing will not proceed unless the defence wishes to call evidence, the prosecution wishes to call a witness or witnesses, the prosecution consents to call a witness or witnesses to attend to give oral evidence or a magistrate has issued a direction requiring the prosecution witness or witnesses to attend to give oral evidence.

Clause 79 inserts a new section 83B (*Non compliance with direction about disclosure*) and division 10B (*Disclosure obligation directions*) into Part 4 of the Act.

New section 83B provides that, if a person fails to comply with a direction about disclosure given under section 83A(5)(aa) of the Act, the court may require that the person file an affidavit or give evidence in court explaining the failure to comply. If the court is not satisfied that the affidavit or evidence satisfactorily explains and justifies the non-compliance, the court may adjourn proceedings to allow enough time, if necessary, for the person to obey the requirement and the defendant to consider evidence disclosed. If proceedings are adjourned, the court may also make an order that the person pay incidental costs where the adjournment has resulted from unjustified, unreasonable or deliberate non-compliance and the costs applied for are just and reasonable.

New section 83B also provides that a person is not excused from filing an affidavit or giving evidence under this section on the ground that the evidence may tend to incriminate them. However, the affidavit or evidence about non-compliance will not be able to be used in any criminal or contempt proceeding subject to some limited exceptions relating to the falsity of evidence or for the purpose of making an order under this new section.

This new section 83B will not apply to a defendant given the limited disclosure obligations under chapter division 4 in chapter 62 of the Criminal Code do not apply to proceedings in the Magistrates Courts.

Section 83C (*Purpose and scope of div 10B*) in the new division 10B (*Disclosure obligation directions*) provides that the purpose of this new division is to make specific provision for the issuing of directions for compliance with disclosure obligations under chapter division 3 in chapter

62 of the Criminal Code. This new division does not affect any other powers of the court or any action that may be taken relating to failure to comply with a disclosure obligation. It also is not intended to affect any power of the Chief Magistrate to issue general practice directions about disclosure. For example, a practice direction which gives affect to administrative arrangements made pursuant to section 706A (*Development of administrative arrangements*) of the Criminal Code which may include provision for staged disclosure by the prosecution.

New section 83D (*Definitions for div 10B*) inserts a number of definitions for terms (including "disclosure obligation direction" and "disclosure obligation") used in the new division.

New section 83E (*Subject matter for disclosure obligation direction*) outlines the types of directions that may be made about compliance with a disclosure obligation. This includes, for example, whether or not specific material or information is subject to a disclosure obligation.

New section 83F (*Application for disclosure obligation direction*) provides for the procedural provisions relating to an application by a party for a disclosure obligation direction to be specified in the *Criminal Practice Rules 1999*. These procedures are, however, not intended to prevent parties from communicating informally to try and resolve issues about disclosure.

Clause 80 amends section 84 (*Remand of defendant*) to remove the requirement for justices to issue a warrant of commitment for an order made under that section. Section 88A inserted by the following clause will allow the clerk of the court (as the proper officer of the court) to issue a verdict and judgment record for the order. Under rule 62 of the *Criminal Practice Rules 1999* the record is a sufficient warrant for executing judgments noted on it.

Clause 81 inserts a new section 88A (*Use of verdict and judgment record*). This section provides that an order made by justices under section 84 and 88 of the Act may be issued by the clerk of the court in the form of a verdict and judgment record. The use of verdict and judgment records by Magistrates Courts in these circumstances will ensure consistency with the practice in the Supreme and District Courts.

Clause 82 amends section 102C (*Application for dismissal of frivolous or vexatious complaints*) to update the reference to "stipendiary magistrate" with a reference to "magistrate".

Clause 83 amends section 102D (*Appeal to Supreme Court from magistrate's decision*) to update the reference to "stipendiary magistrate" with a reference to "magistrate".

Clause 84 amends section 102E (*Further proceedings on dismissed or struck out complaint prohibited*) to update the reference to "stipendiary magistrate" with a reference to "magistrate".

Clause 85 inserts a new section 103B (*Magistrate supervisory role*) into the Act. This section gives the magistracy overall responsibility for the supervision of committal proceedings in the Magistrates Courts.

Clause 86 amends section 104 (*Proceedings upon an examination of witnesses in relation to an indictable offence*) to clarify that the reference to calling witnesses by the defence in paragraph (2)(b) relates to witnesses for the defence.

Clause 87 amends section 110A (*Use of tendered statements in lieu of oral testimony in committal proceedings*). The amendments to this section provide that justices must admit a written statement for a prosecution witness without requiring the witness to attend court unless a magistrate directs, pursuant to the new section 83A(5AA), that the prosecution call the witness to give oral evidence or be made available for cross-examination. However, pursuant to section 83A as amended by the Bill, a magistrate can only give such a direction if satisfied under the new section 110B that there are substantial reasons why, in the interests of justice, this is necessary. A direction under the new section 83A(5AA) may be given on a magistrates' own initiative or on application by the defence.

If the prosecution wishes to call a witness or witnesses for its case no direction is required under the new section 83A(5AA). Section 110A as amended by this clause does however not prevent the prosecution agreeing to make a witness available for cross-examination by the defendant on the witnesses' statement.

Where an application under the new section 83A(5AA) is unsuccessful or the defendant is in custody [which means that an administrative committal cannot occur under the new section 114 (to be inserted by clause 89 below]), the amended section 110A allows the defendant's legal representative to consent to the defendant being committed for trial or sentence without consideration of the evidentiary threshold if all evidence before the court consists of written statements.

There is also scope under the amended section for justices to admit written statements if the defendant is not legally represented provided the magistrate is satisfied that all of the following conditions are met:

- the defendant understands what the proceeding is about and the possible consequences;
- the defendant is aware that he or she is entitled to legal representation and can apply for legal aid; and
- the defendant is aware that he or she has a right to make an application under the new section 83A(5AA) for a direction requiring the witness to attend court and has been given an explanation about the requirements for making such an application.

Section 110A(10) is also amended by clause 87 to ensure that where all the evidence before the justices consists of written statements admitted under this section and the defendant is not legally represented, the justices, after hearing any submissions the prosecution and defendant make, must determine whether the evidentiary threshold for committal is met.

Section 110A will continue to allow the defendant to give evidence in the form of written statements subject to the various requirements in the section being met.

Clause 88 of the Bill inserts new sections 110B and 110C.

New section 110B (*Special provisions applying to a direction under section 83A(5AA)*) provides that a magistrate must not give a direction under the new section 83A(5AA) of the Act unless the magistrate is satisfied that there are substantial reasons why, in the interests of justice, the maker should attend to give oral evidence or be made available for cross-examination. This new section also provides that an application for a direction under section 83A(5AA) can only be made if certain conditions are met, including that the parties have communicated to see if agreement can be reached on the issue.

New section 110C (*Limitation on cross-examination*) provides that where a magistrate gives a direction under the new section 83A(5AA), cross-examination should be limited to the reasons for which consent was granted under section 110B unless there are substantial reasons why, in the interests of justice, the cross-examination should be allowed. Where a witness is cross-examined the prosecution will continue to be able to re-examine the witness. This new provision is not intended to affect any

other laws relating to the examination of witnesses, such as the provisions in the *Evidence Act 1977* dealing with cross-examination of protected witnesses.

Clause 89 inserts new division 7A (*Registry committals*) into Part 5 of the Act.

If no prosecution witnesses are to be called to give evidence or for cross-examination, new section 114 (*Registry committal by clerk of court*) in division 7A provides for a committal to be conducted by a clerk of the court provided certain conditions are met. These conditions include for example:

- the defendant is legally represented and is not in custody (or in breach of bail); and
- the defendant's lawyer gives notice to the clerk of the court in writing about various things including that the defendant does not intend to give evidence or call any witnesses.

New section 115 (*Process of clerk of court for registry committal*) contains the procedural provisions applying to registry committals. This section includes a specific provision which provides that the functions of a clerk of the court in a registry committal do not include considering or deciding the evidentiary test or any bail functions or powers. A registry committal is also to be conducted on the papers and accordingly there is no requirement for any party to appear before the clerk of the court. A registry committal is also to be conducted by the clerk on the basis of the indictable charge or charges submitted by the prosecution and agreed to by the defendant's lawyer. For this reason, the clerk of the court has the same powers and authority as a magistrate to withdraw and amend charges.

New section 116 (*Limited application for divs 5 to 7 for registry committals*) provides that provisions in divisions 5 to 7 apply to registry committals with the necessary changes and modifications.

New section 117 (*Application of registry committals to indictable offences under other Acts*) ensures that a reference in another Act to a committal proceeding or examination of witnesses about an indictable offence under the Act includes a registry committal.

Clause 90 inserts a new section 130 (*Division applies also to registry committals*) into division 8 in Part 5 of the Act. This new section provides that the division applies to the greatest extent practicable to registry committals.

Clause 91 amends section 142A (*Permissible procedure in absence of defendant in certain circumstances*) to update the reference to "stipendiary magistrate" with a reference to "magistrate".

Clause 92 inserts a new division 5 (*Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*) in Part 11 containing transitional provisions.

New section 276 (*Definitions for div 5*) contains a number of definitions relating to terms used in the new division 5.

New section 277 (*Particular amendments apply only to charges originated after commencement*) in division 5 provides that the amendments relating to the management of ex-officio matters, committals, disclosure and section 52 only apply to prosecutions started after commencement.

New section 278 (*Particular provisions apply to proceeding whenever commenced*) provides that the amendments to section 84 and the new sections 23EC and 88A apply to existing proceedings. These amendments in the Bill relate to the use of verdict and judgment records by the Magistrates Courts and bail applications under section 15A, as applied under the new section 15B, of the *Bail Act 1980*.

New section 279 (*Existing appointment as principal clerk of courts continues*) inserts a transitional provision to ensure that the person currently performing the role of the principal clerk of court continues after commencement of the amendments.

Part 12 Amendment of Magistrates Act 1991

Clause 93 provides that Part 12 amends the *Magistrates Act 1991*.

Clause 94 amends section 41 (*Functions of magistrates generally*) to make a grammatical change.

Clause 95 amends section 53J (*Practice direction*) to omit provisions relating to committals. Under this section the Chief Magistrate may give a practice direction for a judicial registrar to constitute, and exercise all the jurisdiction and powers of, a Magistrates Court in relation to certain matters. One of these matters includes a committal for trial or sentence

under section 110A(6) of the *Justices Act 1886* of a defendant who is on bail to appear at the committal. This provision is no longer necessary given the amendments to the *Justices Act 1886* in the Bill establishing registry committals.

Clause 96 inserts a new division 6 (*Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*) into Part 10 of the Act.

New section 64 (*Continuing operation of practice direction for judicial registrars*) in division 6 will allow judicial registrars to continue to hear and determine proceedings despite the amendments to section 53J in the Bill.

Part 13 Amendment of Magistrates Courts Act 1921

Clause 97 provides that Part 13 amends the *Magistrates Courts Act 1921*.

Clause 98 inserts a new definition of "prescribed limit" into section 2 of the Act. The prescribed limit means $150,000. This new definition is used for the civil jurisdiction of the Magistrates Courts.

Clause 99 inserts a new section 3A (*Principal clerk of courts is principal registrar*) into the Act. This section deems the principal clerk of courts appointed under new section 22D of the *Justices Act 1886* to also be the principal registrar of all Magistrates Courts in Queensland.

Clause 100 amends section 4 (*Jurisdiction of Magistrates Courts*) to remove the reference to the current jurisdictional limit of $50,000 and replace it with a reference to the new term "prescribed limit".

Clause 101 inserts a new section 4AA (*Proceeding commenced in central registry*). This new section is consequential to the amendments made to the *Uniform Civil Procedure Rules 1999* in the Bill which allow proceedings to be commenced in the central registries of the Magistrates Courts.

Clause 102 amends section 5 (*Abandonment of excess etc.*) to replace a reference to $50,000 with the new term "prescribed limit".

Clause 103 amends section 6 (*Splitting debt by giving bills etc.*) to replace a reference to $50,000 with the new term "prescribed limit".

Clause 104 amends section 45 (*Appeal*) to replace a reference to $5000 with a reference to the minor civil dispute limit. "Minor civil dispute limit" is defined as the prescribed limit applying to minor civil disputes under the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 105 inserts a new section 60 (*Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*). This section provides that the amendments in this part of the Bill only apply to actions or proceedings started after commencement.

Part 14 Amendment of Penalties and Sentences Act 1992

Clause 106 provides that Part 14 amends the *Penalties and Sentences Act 1992*.

Clause 107 amends section 152A (*Proper officer to give chief executive (corrective services) record of order of imprisonment*) of the Act to allow, consistent with the District and Supreme Courts, the proper officer of a Magistrates Court to issue a verdict and judgment record under the *Criminal Practice Rules 1999* where the court orders an offender serve all or part of a term of imprisonment.

Clause 108 inserts a new section 218 (*Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*). This new section allows verdict and judgment records to be issued for orders made by a Magistrates Court in proceedings pending at the time of commencement of the amendments to section 152A of the Act.

Part 15 Amendment of Police Service Administration Act 1990

Clause 109 provides that Part 15 amends the *Police Service Administration Act 1990*.

Clause 110 amends section 4.8 (*Commissioner's responsibility*) to clarify the Commissioner's prosecutorial powers in relation to case conferencing. This will ensure that these powers can be delegated under the Act to police prosecutors in appropriate circumstances.

Part 16 Amendment of Property Law Act 1974

Clause 111 provides that Part 16 amends the *Property Law Act 1974*.

Clause 112 amends section 147 (*Arrears of rent etc*.) of the Act to ensure consistency with the amendments in the Bill to the *Magistrates Courts Act 1921* which increase the monetary limit for the civil jurisdiction of the Magistrates Courts to $150,000.

Clause 113 amends section 259 (*Definitions for pt 19*) of the Act to update references in that section to the new monetary limits for the civil jurisdiction of the Magistrates Courts and District Court which are amended in the Bill.

Clause 114 inserts a new Part 22 (*Transitional Provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*) into the Act. New section 353 in Part 22 provides that the amendments to section 147 of the Act in the above clause do not apply to any proceeding started before commencement.

Part 17 Amendment of Public Trustee Act 1978

Clause 115 provides that Part 17 amends the *Public Trustee Act 1978*.

Clause 116 inserts a new section 25(2) (*Unclaimed moneys fund*) to require the public trustee to pay all amounts that have been in the unclaimed moneys fund for six years or more to the consolidated fund.

Clause 117 amends section 98 (*Definitions*) to ensure that the definition of *unclaimed moneys* includes unclaimed money held by the State.

Clause 118 inserts a new subsection (4) into section 99A (*Pubic trustee's register of unclaimed moneys*) to allow the Public Trustee to remove unclaimed money that has been in unclaimed moneys fund for more than twenty five years from the public register of unclaimed moneys.

Clause 119 makes a minor consequential amendment to section 102 (*Unclaimed moneys to be paid to public trustee*).

Clause 120 inserts a new section 102B (*Unclaimed moneys to be paid to public trustee – money held or received by the State*) to require unclaimed money held by the State to be paid to the public trustee.

Clause 121 makes a minor consequential amendment to section 115 (*Unclaimed moneys to be credited to fund*).

Clause 122 amends section 117A (*Treasurer to pay claimant*) to require the Treasurer to reimburse the public trustee from the consolidated fund for amounts paid to claimants that were previously transferred to the consolidated fund under section 25(2).

Part 18 Amendment of Queensland Civil and Administrative Tribunal Act 2009

Clause 123 provides that Part 18 amends the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 124 amends section 50 (*Decision by default for debt*) to clarify the costs that can be claimed in an application to QCAT for default judgement in a proceeding to recover a debt or liquidated demand of money up to the amount of $25,000 (known as a minor debt claim and part of QCAT's minor civil dispute jurisdiction).

The minor debt claim jurisdiction was with the Magistrates Court prior to its transfer to QCAT on 1 December 2009. The *Uniform Civil Procedure Rules 1999* provided that no legal costs were able to be claimed for a default judgement for a minor debt claim before the Magistrates Court. Service and search fees could be claimed.

Contrary to that practice, and to the intention to retain the low cost jurisdiction for minor debt claims before QCAT, section 50(2)(c) permits

legal costs to be claimed on a scale prescribed by the *Queensland Civil and Administrative Tribunal Rules 2009* (the rules) and omits service and search fees. This is also inconsistent with section 102(2) which specifically states that the only costs the tribunal may award for minor civil disputes are those stated in the rules. Rule 84 of the rules provides that for minor civil disputes that are minor debt claims, such costs are the filing fee, including any electronic filing fee; a service fee and travelling allowance; and a business name or company search fee.

To clarify the position, the clause omits subsections 50(2)(b), (c) and (d) and replaces them with new subsections (b) and (c). New section 50(2)(b) simply restates current section 50(2)(d) and permits interest to be claimed in all applications for default judgement. New section 50(2)(c)(i) states that for an application that is a minor civil dispute, the costs that may be awarded are those under section 102 (which states that the only costs the tribunal may award for minor civil disputes are those stated in the rules). As stated above, rule 84 of the rules provides that for minor civil disputes that are minor debt claims, such costs are the filing fee, including any electronic filing fee; a service fee and travelling allowance; and a business name or company search fee. New section 50(2)(c)(ii) states that for an application that is not for a minor civil dispute, legal costs may be awarded based on the scale set out in the rules. This scale is prescribed by rule 64 as the scale of costs applying in the Magistrates Courts under the *Uniform Civil Procedure Rules 1999*.

Clause 125 amends the heading to chapter 7 (*Transitional provisions*) consequential upon the amendment in the following clause.

Clause 126 inserts new chapter 8 (*Validating provisions for particular decisions by default*) which contains new section 280. Section 280 (*Declaration and validation concerning particular decisions by default*) provides that section 50, as amended by the Bill, is always taken to have applied to a non-legal costs decision by default relating to a minor civil dispute as if the amendment had commenced on 1 December 2009, that is, from the commencement of the *Queensland Civil and Administrative Tribunal Act 2009* and QCAT's operations. This puts beyond doubt the validity of default decisions for minor civil disputes since that time.

Part 19 Amendment of State Penalties Enforcement Act 1999

Clause 127 provides that Part 19 amends the *State Penalties Enforcement Act 1999*.

Clause 128 amends subsection (4) in section 106 (*General effect of suspension of driver licence*) to provide that, if the Registrar of SPER suspends a person's driver licence and the person does not hold a driver licence, the person is disqualified from holding or obtaining a driver licence until the person pays all debts owing to SPER, including debts for non-vehicle related offences.

Clause 129 amends section 150A (*Registrar may write off unpaid fine or other amount*) to provide that the registrar may reinstate a debt that has been written off if:

- the wrong debt was written off; or
- the Minister issued a guideline allowing the debt to be reinstated.

Clause 130 amends section 150B (*Guidelines*) to provide that the Minister may issue a guideline about reinstating written-off debts.

Clause 131 inserts a new division 6 (*Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*) into Part 10 of the Act. New section 182 (*Effect of provision disqualifying person from holding or obtaining a driver licence*) in division 6 is a transitional provision that relates to the amendments in this part of the Bill which clarifies that 106(4) as amended by the Bill applies to the suspension of a licence prior to the commencement of the amendments.

Part 20 Amendment of Supreme Court of Queensland Act 1991

Clause 132 provides that Part 20 amends the *Supreme Court of Queensland Act 1991*.

Clause 133 inserts a new section 139 (*Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*).

This section provides that the amendments to the *Criminal Practice Rules 1999* and the *Uniform Civil Procedure Rules 1999* in the Bill do not affect the power of the Governor in Council to make subordinate legislation amending the relevant provisions.

Part 21 Amendment of Uniform Civil Procedure Rules 1999

Clause 134 provides that Part 21 amends the *Uniform Civil Procedure Rules 1999.*

Clause 135 amends the heading to Chapter 2, Part 6, division 1. This amendment relates to the amendment of rule 34 in clause 138.

Clause 136 amends rule 33 (*Central registry of Supreme Court*) to allow proceedings in all courts to be started in a central registry. The heading to this rule is also amended to reflect this change. This amendment is consistent with the current provisions relating to the Supreme Court and will give litigants increased flexibility. Other existing rules will still apply to allow a defendant to object to the starting of a proceeding in a central registry or for the court to order a change of venue.

Clause 137 replaces the heading to division 2 in Chapter 2, part 6 to reflect (given the amendment to rule 34 in the following clause) that it applies where a person decides to start a proceeding in a registry other than in a central registry.

Clause 138 replaces rule 34 (*Application of div 2*) with a new provision which states that division 2 applies to the Supreme Court, District Court and Magistrates Courts if a person decides to start a proceeding in a registry other than a central registry of the court.

Clause 139 amends rule 283 (*Judgment by default – debt or liquidated demand*) to clarify that if the court is constituted by a registrar under this rule, the registrar is not required to consider the legitimacy or merits of the claim but only that the rules relating to the issuing of judgment have been complied with.

Clause 140 also amends rule 286 (*Judgment by default – recovery of possession of land*) to clarify that if the court is constituted by a registrar under this rule, the registrar is not required to consider the legitimacy or

merits of the claim but only that the rules relating to the issuing of judgment have been complied with.

Clause 141 inserts a new Part 4 (*Provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*) into the Act. New rule 999 in Part 4 provides that the amendments to the scale of costs for the Magistrates Courts in schedule 3 only apply to actions and proceedings started after commencement. This provision is consistent with the application of the amendments in the Bill which increase the monetary limit for the civil jurisdiction of the Magistrates Courts.

Clause 142 amends schedule 3 (*Scale of costs – Magistrates Courts*). Schedule 3 sets out the scale of costs for the Magistrates Courts. The scale is amended to insert a new scale for proceedings where the amount recovered by the litigant is over $50,000. This amendment is consistent with other amendments in the Bill increasing the monetary limit for the civil jurisdiction of Magistrates Courts. This new scale is the same scale that applies in the District Court (Schedule 2) and Supreme Court (Schedule 1) but at a rate of approximately 20% (subject to rounding rules) less than the amounts recoverable for items under the District Court scale. The scale currently in schedule 3 will continue to apply to proceedings where the amount recovered by the litigant is $50,000 or less.

Clause 143 amends the definition of "central registry" in schedule 4 (*Dictionary*). This amendment is consequential to the amendments above which will allow proceedings to be started in the central registries of the Magistrates Courts and District Court consistent with the Supreme Court.

Part 22 Amendment of Workers' Compensation and Rehabilitation Act 2003

Clause 144 provides that Part 22 amends the *Workers' Compensation and Rehabilitation Act 2003.*

Clause 145 amends section 546 (*Notice of review decision*) to delete the reference to an industrial magistrate. This amendment is consequential to the amendment in the following clause.

Clause 146 amends section 548A (*Meaning of appeal body*). Section 548A defines an "appeal body" for the purposes of division 1, part 3 in Chapter 13 of the Act. This division deals with appeals from decisions of Q-Comp, the statutory regulator for workers' compensation in Queensland. Since 2005, the Queensland Industrial Relations Commission (QIRC) has had dual jurisdiction to hear certain appeals. The amendment to section 548A in this clause will remove the dual jurisdiction of industrial magistrates for most types of appeals and replace it with a sole right of appeal to the QIRC. However, this amendment will not affect the exclusive jurisdiction of Industrial Magistrates for prescribed review decisions (under section 107E and a matter mentioned in section 540(1)(a)(i) to (vi)) and non-reviewable decisions.

Clause 147 amends section 550 (*Procedure for appeal*) to remove a provision which states that an appeal may be started only with one appeal body given and the amendment of section 548A in the above clause.

Clause 148 amends section 566 (*Decision about payment of compensation*) to remove an obsolete reference to "industrial magistrate" consequential to the amendment to section 548A.

Clause 149 inserts a new chapter 26 (*Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*) into the Act. New section 663 in chapter 26 provides that the amendments in this part of the Bill only apply to appeals started after commencement of the amendments.

Part 23 Amendment of Youth Justice Act 1992

Clause 150 provides that Part 23 amends the *Youth Justice Act 1992*.

Clause 151 amends section 8 (*Meaning of serious offence*). Currently, under the Act all offences defined as "serious offences" are dealt with on indictment. This amendment to section 8 will ensure that the summary jurisdiction of the Childrens Court is consistent with the types of offences that can be determined summarily in the Magistrates Courts under the Bill.

Clause 152 amends section 78 (*Procedural elections under this Act in relation to an indictable offence replace other elections*) of the Act to

clarify that the rules set out in the relevant part relating to the election by a child of procedure in relation to an indictable offence apply despite any right of election that may apply in another Act or any provision which requires that an indictable offence must be dealt with summarily (for example new section 552BA of the Criminal Code which is inserted by the Bill).

Clause 153 amends section 160 (*Copy of court order or decision to be given to child, parent etc*). This amendment allows a verdict and judgment record to be given under this section consistent with other amendments in the Bill which allow Magistrates Courts to issue verdict and judgment records consistent with the District and Supreme Courts.

Clause 154 amends section 176 (*Sentence orders – serious offences*). This amendment ensures that the amendments made to the definition of "serious offence" in section 8 of the Act in the Bill do not affect the courts' sentencing powers.

Clause 155 inserts a new division 8 (*Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*) into the Act. New section 352 in division 8 provides that the amendments in the Bill will only apply to prosecutions started after commencement of the amendments.