

# Criminal Law Amendment Bill 2016

## Explanatory Notes

### Short title

The short title of the Bill is the Criminal Law Amendment Bill 2016.

### Policy objectives and the reasons for them

The objectives of the Criminal Law Amendment Bill 2016 are to:

- ensure that a person who commits murder cannot rely on an unwanted sexual advance as a basis for the partial defence of provocation which, if successfully raised, reduces murder to manslaughter; and
- make a number of miscellaneous criminal law-related amendments, arising from the lapsed Justice and Other Legislation Amendment Bill 2014 and from stakeholder consultation, to improve the operation and delivery of Queensland's criminal and related laws.

### **Exclusion of unwanted sexual advance as basis for defence of killing on provocation**

Section 304 (Killing on provocation) of the Criminal Code provides the partial defence of provocation which, if successfully raised, reduces the criminal responsibility of the accused from murder to manslaughter. The offence of murder carries mandatory life imprisonment, whereas the offence of manslaughter carries a maximum penalty of life imprisonment.

In April 2011, section 304 was amended to address its perceived bias and flaws following recommendations of the Queensland Law Reform Commission (QLRC) contained in its 2008 report, *A review of the excuse of accident and the defence of provocation*. While not specifically dealing with the issue of an unwanted sexual advance, the 2011 amendment to exclude 'words alone' applies to a sexual proposition, unaccompanied by physical contact. Further, the 2011 amendments reversed the onus of proof to a defendant. However, the partial defence of provocation continued to be criticised on the basis that it could be relied upon by a man who has killed in response to an unwanted homosexual advance from the deceased.

In November 2011, under the former Labor Government, an expert committee (the Committee) was tasked with reviewing section 304 regarding its application to an unwanted homosexual advance. The Committee was chaired by the Honourable John Jerrard, former judge of the Queensland Court of Appeal (the Chair). The Committee was equally divided about an amendment to section 304 on this matter; however ultimately the Chair recommended an amendment to exclude an unwanted sexual advance from the ambit of the partial defence, other than in circumstances of an exceptional character. The report records the Chair's part reasoning of "the goal of having a Criminal Code which does not condone or encourage violence against the Lesbian, Gay, Bisexual, Trans, Intersex (LGBTI) community" as being persuasive in supporting the amendment.

The Chair also recommended amending the existing provisos in section 304 of ‘circumstances of a most extreme and exceptional character’ to omit the requirement that the circumstances be of ‘a most extreme’ character; to remove potential ambiguity and given that such an amendment would not have the effect of lowering the threshold.

While the former Labor Government announced its intention to amend section 304 to give effect to the Chair’s recommendation, the ensuing change of government in 2012 meant the proposed amendments were not progressed.

## **Achievement of policy objectives**

### **Exclusion of unwanted sexual advance as basis for defence of killing on provocation**

The Bill amends section 304 (Killing on provocation) of the Criminal Code to exclude an unwanted sexual advance, other than in circumstances of an exceptional character, from the ambit of the partial defence.

### **Miscellaneous criminal law-related amendments**

The Bill makes the following criminal law-related amendments.

#### ***Bail Act 1980***

- to encourage police to exercise their discretion with regard to bail where a person cannot be taken promptly before a court; and
- to clarify the process on forfeiture of cash bail to ensure consistency in approach.

#### ***Criminal Code***

- to create an exception to section 89 (Public officers interested in contracts) for public officers who acquire or hold a private interest made on account of their employment, having first disclosed to, and obtained the authorisation of, the chief executive of the relevant department. The amendment will address ambiguity as to whether section 89, in its current form, prevents departments from authorising public service officers to provide services in their private capacity; such authorisation is often necessary in rural and remote areas; and
- to increase the penalty for the offence of misconduct with regard to corpses (in section 236(b) Criminal Code) from two years imprisonment to five years imprisonment.

#### ***Criminal Proceeds Confiscations Act 2002***

- to ensure all contraventions of restraining orders and forfeiture orders made under the *Criminal Proceeds Confiscations Act 2002* (CPCA) are prohibited and appropriately sanctioned;
- to allow voluntary provision of information by financial institutions to the Crime and Corruption Commission with respect to the Serious Drug Offender Confiscation Order Scheme;
- to clarify the original intention with respect to section 93ZZB (Making of serious drug offender confiscation order); and
- to amend the definition of ‘applicant’.

***Director of Public Prosecutions Act 1984***

- to enable the Director to delegate their functions and powers to an appropriately qualified person.

***Drugs Misuse Act 1986***

- to update the evidentiary provision providing for a drug analyst's certificate, to reflect current scientific and operational practices of analysis and remove any uncertainty about the admissibility of certificates issued under the section.

***Evidence Act 1977***

- to ensure that in proceedings other than committal hearings, unless a court otherwise orders, a party intending to rely on a properly disclosed DNA evidentiary certificate is only required to call the analyst who signed it if another party gives the requisite notice;
- to permit a court to order that the usable soundtrack of a videorecording (pre-recorded evidence) may be played at a proceeding in certain circumstances;
- to exclude the public from a courtroom while the pre-recorded evidence of an affected child witness or special witness is being played;
- to allow for the destruction of certain recordings held by courts in accordance with relevant practice directions; and
- to make technical amendments to provisions relating to the pre-recording of evidence to reflect contemporary court practices.

***Jury Act 1995***

- to modernise a court's ability to use technology in jury selection processes.

***Justices Act 1886***

- to insert an authority to allow a Magistrate to order the joinder of trials;
- to allow for admissions of fact in summary trials for simple offences or breaches of duty;
- to allow for registry committals for legally represented defendants who are remanded in custody; and
- to enable a defendant to enter a plea in bulk in a Magistrates Court (also involves amendment to the Criminal Code).

***Penalties and Sentences Act 1992***

- to add the offence in section 236(b) (Misconduct with regard to corpses) of the Criminal Code to the serious violent offences schedule;
- to allow the Police Commissioner to issue a pre-sentence custody certificate in certain circumstances; and
- to provide a mechanism to return offenders sentenced to a recognisance order who fail to properly enter into the recognisance back to the court, and allow for their re-sentencing in the Court's discretion.

***Recording of Evidence Act 1962***

- to permit the destruction of recordings of Magistrates Court proceedings that are authorised by the archivist.

The Bill also makes a number of minor and technical or consequential amendments.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives other than through legislative amendment.

## **Estimated cost for government implementation**

Any costs arising from these legislative amendments will be met from existing agency resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

*Clauses 9 and 70 – amendment to Criminal Code to increase the maximum penalty for the section 236(b) offence of misconduct with regard to corpses; and amendment to Penalties and Sentences Act 1992 to add the section 236(b) offence to the serious violent offences schedule*

The proposed amendment potentially impacts on the rights and liberties of individuals by imposing a higher maximum penalty for the offence and therefore exposes an offender to greater punishment than was authorised by the former law. The amendment is justified to appropriately reflect the seriousness of the offence and the community's abhorrence of such conduct. The amendment operates prospectively and will only apply to offenders who commit the offence on, or after, the date upon which the amendments commence.

*Clause 10 – amendment to Criminal Code to exclude an unwanted sexual advance from being able to establish a partial defence of provocation in the case of murder*

The proposed amendment to section 304 (Killing on provocation) of the Criminal Code to restrict the scope of the partial defence of provocation from applying, other than in circumstances of an exceptional character, if the sudden provocation is based on an unwanted sexual advance to the person has the potential to significantly affect the rights and liberties of individuals. This is particularly so given the defence operates to reduce what would otherwise be murder to manslaughter; and the penalty for murder is mandatory life imprisonment.

The proposed amendment reflects changes in community expectations that such conduct should not be able to establish a partial defence of provocation to murder, i.e. where the defendant has killed with murderous intent. However, the proposed amendment also includes the operation of the proviso "other than in circumstances of an exceptional character" to guard against unjust outcomes as it is impossible to predict the factually dynamic circumstances that may arise in homicide cases.

*Clause 14 – 16; 18 – 20 - amendments to Criminal Proceeds Confiscation Act 2002 (CPCA) for breach of restraining orders and prohibited dealings with property that is subject of a forfeiture order*

It may be argued that the amendments to these sections will provide for a partial retrospective effect in that the amendments will apply to all restraining orders and forfeiture orders issued under the CPCA whether those orders were issued before or after the commencement of the provisions. However, the amendments will only apply to breaches or prohibited dealings that occur after the commencement of the amendments.

The removal of the element of intention (except for attempted offences) in the offence provisions expands the scope of criminal liability.

The amendments are justified to reinforce the authority of orders of the Supreme Court of Queensland issued under the CPCA and ensure that assets that are liable to confiscation or forfeiture to the State are not dissipated. If assets are dissipated in breach of Supreme Court orders, it impedes the CPCA from achieving its main objective of removing the financial gain and increasing the financial loss associated with illegal activity.

The expansion of the scope of the provisions voiding dealings with property increases the elements a potential innocent party must address in order to successfully legitimise the dealing. However, the expansion is justified as it is consistent with the CPCA's objects, including that in section 4(2)(g) aimed at protecting property honestly acquired for sufficient consideration by persons innocent of illegal activity from forfeiture and other orders affecting property.

The proposed amendments also increase the maximum penalty for offences under these provisions. These increases are justified on the basis that they are more consistent with penalties in other Australian jurisdictions and existing penalties for financial institutions not complying with notices in the CPCA. Penalties for these types of offences must be significant enough to encourage positive compliance with orders issued under the CPCA.

#### Clause 21 - amendments to CPCA to facilitate the serious drug offender confiscation order scheme

The proposed amendment to section 249(3) of the CPCA allows financial institutions to voluntarily provide information to the Crime and Corruption Commission (CCC) that relates to a matter for which an order may be made under chapter 2A (Serious drug offender confiscation order scheme). This arguably represents an extension of the current CPCA breach of an individual's right to privacy with respect to their financial records.

However, financial institutions can already provide information related to 'serious crime related activity'. The serious drug offender confiscation order scheme applies to a drug trafficking conviction or a third conviction for other prescribed drug offences such as supplying or producing a dangerous drug (qualifying offences). Although the qualifying offences fall within the definition of 'serious crime related activity', the CCC has sought this amendment because section 249 does not currently contemplate chapter 2A.

The amendment will encourage financial institutions to lawfully provide information to the CCC with respect to the serious drug offender confiscation order scheme which will aid in furthering the main object of the CPCA which is to remove the financial gain and increase the financial loss associated with illegal activity. The amendment will aid in achieving the important object set out at section 4(2)(e) of the CPCA being, 'to forfeit to the State property of, or associated with, persons who commit qualifying offences, and against whom serious

drug offender confiscation orders are made, in recognition of the impact of qualifying offences on the community and the justice system’.

Clauses 27 - 28 – amendments to *Drugs Misuse Act 1986* to clarify the issuing of drug analyst’s certificates

The amendment to section 128 (Analyst’s certificate) will allow a drug analyst to certify an examination conducted by another person or which involved an automated process. The amendment to allow the analyst to certify what may be hearsay is required to accommodate current scientific and operational practices of analysis which may involve automated processes or some elements of examinations being conducted by an assistant rather than an analyst. The amendment does not prevent a party from challenging the information contained in the certificate.

A transitional provision is included to deem that a drug analyst’s certificate signed before the commencement of the amendments to section 128 is as valid and effective as if it had been signed after. This curative provision removes any doubt as to the validity of certificates on which past prosecutions have been based. The provision does not affect the decision making in those cases and is technical in nature.

Clauses 31 and 34 - amendments to *Evidence Act 1977* to exclude the public while a videorecording or a usable soundtrack is being presented to the court

The proposed amendment extends the ability of the court to order the exclusion of the public to the situation where pre-recorded evidence of an affected child or special witness is being played at the trial. The proposal has the potential to affect the rights and liberties of the individual with respect to the expectation of open justice; the principle that the administration of justice should occur in public.

It is in the interests of justice that children are not discouraged from being witnesses in order to ensure they will continue to report abuse and offenders are detected and punished.

Existing special measures contained in the *Evidence Act 1977* include the ability to exclude the public from the court while an affected child or special witness is giving evidence. For example under current section 21AU, the court is required to exclude non-essential persons from the courtroom in which an affected child is giving evidence about an offence of a sexual nature. For other matters (i.e. certain offences of violence), the court must exclude non-essential persons, unless satisfied that the interests of justice require the evidence to be heard in open court.

There are inherent sensitivities connected with the evidence which do not dissipate because of pre-recording. The ability to exclude the public in this circumstance affords another level of protection to the vulnerable witness. In doing so the proposal is consistent with the rationale underpinning the existing exception to the open justice principle and is justified on the same basis.

Clause 42 – amendments to *Evidence Act 1977* (DNA evidentiary certificate)

The amendment to section 95A of the *Evidence Act 1977* removes the current obligation on a party intending to rely on a DNA evidentiary certificate to call the analyst to give evidence.

However, the other party to the proceeding maintains the right to require that the analyst attend the hearing.

While section 95A obviates the need to call persons involved in the continuity testing process that produces a DNA profile, it still requires that a DNA analyst give evidence of the comparison of DNA profiles. It is this evidence that may link an offender to a crime.

The amendment in the Bill seeks to address those cases which rely on DNA evidence but where evidence is not required from the DNA analyst. In these circumstances, the current mandatory requirement in section 95A(3)(b) raises resourcing issues for the Department of Health.

There are a number of safeguards included, such as the provision in section 95A allowing the court to give leave for any person to require the party seeking to rely on the certificate to call any person involved in the receipt, storage or testing of the thing.

The amendment introduces further safeguards, giving a court discretion to at any time, on application by a party, make an order shortening or extending a period mentioned in the section. Further, the court may waive the requirement for a party other than the relying party to give notice that it requires the DNA analyst to give evidence. If such an order is made, the relying party must call the DNA analyst to give evidence at the hearing.

Clause 66 – amendments to the Penalties and Sentences Act 1992 to provide a mechanism to return an offender sentenced to a recognisance order back to the court if the offender fails to properly enter into the order

The proposed amendments will have retrospective application. The retrospective application is justified as the amendments provide a procedural mechanism to address a legislative gap to return an offender, who is unlawfully at large, back to the court to enter into a recognisance as was originally ordered by the court or to be resentenced.

## Consultation

Legal stakeholders including Aboriginal and Torres Strait Islander Legal Service (ATSILS), Bar Association of Queensland (BAQ), Director of Public Prosecutions (Qld) (DPP), Public Defender of Legal Aid Queensland (LAQ), Lesbian Gay Bisexual Trans Intersex Legal Service Inc., and the Queensland Law Society (QLS) were consulted on draft amendments to section 304 of the Criminal Code. The amendment to section 304 takes account of stakeholder feedback received.

A consultation draft of miscellaneous general criminal law-related reforms to the Bail Act (section 7), Criminal Code, CPCA, Drugs Misuse Act, Evidence Act, Jury Act, Justices Act, Penalties and Sentences Act (Schedule 1), Recording of Evidence Act and Telecommunications Interception Act was provided to: the President of the Court of Appeal, the Chief Justice of Queensland, the Chief Judge of the District Court, the Chief Magistrate, LAQ, the DPP, QLS, BAQ, the Crime and Corruption Commission and ATSILS. Additionally a stand-alone consultation draft of the proposed amendments to the CPCA was sent to the Australian Bankers' Association and the Customer Owned Banking Association. Feedback raised by stakeholders assisted in informing the development of the amendments.

Consultation on the amendment to the Bail Act (section 14) to clarify the process on forfeiture of cash bail occurred with the Chief Magistrate.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

# Notes on provisions

## Part 1 Preliminary

*Clause 1* states that, when enacted, the Bill will be cited as the Criminal Law Amendment Act 2016.

## Part 2 Amendment of Bail Act 1980

*Clause 2* provides that this part amends the *Bail Act 1980*.

*Clause 3* amends section 7 (Power of police officer to grant bail) to clarify the power of a police officer to grant bail.

Subclause (1) amends section 7(1)(a) as a consequence of new section 33AC of the *Penalties and Sentences Act 1992* inserted by the Bill. The amendment to section 7(1)(a) clarifies that the power to grant bail applies to a person arrested in accordance with a warrant issued pursuant to new section 33AC of the *Penalties and Sentences Act 1992*.

Subclause (2) amends section 7(1)(c) to clarify that the section applies when a prescribed police officer is satisfied it is not practicable to bring a person before a court promptly. The amended wording means that a prescribed police officer will apply the same criteria under both the *Bail Act* and the *Police Powers and Responsibilities Act 2000* upon receiving custody of a person.

Subclause (3) replaces section 7(2) to provide that if the criteria under subsection 7(1) is met, a prescribed police officer must investigate whether or not the person is eligible to be granted bail under the Act. A note is inserted to direct the prescribed police officer's attention to relevant legislative provisions under the Act. Under new section 7(2A) if the prescribed police officer is satisfied the person is eligible to be granted bail under the Act, the officer must either grant the person bail or issue and serve on the person a notice to appear and release the person from custody.

Subclause (4) amends subsection (5) consequential to renumbering in subclause (5), and subclause (5) renumbers sections 7(3) to (10).

*Clause 4* amends section 14 (Release of persons apprehended on making deposit of money as security for appearance) by inserting a note after subsection (5) consequential to the insertion of new section 150A (Justices may order that complaint is ended) into the *Justices Act 1886* by the Bill.

*Clause 5* amends section 28A (Other warrants for apprehension of defendant). Subclause (1) amends section 28A(1)(c) consequential to amendments to section 7. Subclause (2) omits reference to section 14 from section 28A(1)(d). Pursuant to the amendment a court may no longer issue a warrant of apprehension for a person who is granted police cash bail under section 14 and fails to appear in court.

*Clause 6* amends section 34BA (Varying bail on registry committal) to clarify that the section relates only to defendants granted bail prior to a registry committal.

### **Part 3 Amendment of the Criminal Code**

*Clause 7* provides that this part amends the Criminal Code.

*Clause 8* amends section 89 (Public officers interested in contracts) by creating an exception to the offence provision where a person discloses the nature of the interest to the chief executive of the relevant department, who authorises, in writing, the person to acquire or hold the interest before the person does so. Proof of these matters, on the balance of probabilities, lies on the person. The chief executive may delegate the authorisation function to an appropriately qualified person.

*Clause 9* amends section 236 (Misconduct with regard to corpses) by omitting the existing section and inserting a recast version of the provision. The newly-cast section 236 updates the language in section 236(a) (renumbered as 236(1)) and increases the maximum penalty for offending under section 236(b) (renumbered as 236(2)) from two years to five years imprisonment. Offending under section 236(2) is redefined as a crime.

*Clause 10* amends section 304 (Killing on provocation). The amendments to section 304 have been drafted in the clear context that the partial defence of provocation is only relevant where it is proven that the defendant killed with a murderous intent (that is, killed, intending to kill or cause grievous bodily harm).

Subclause (1) omits the words ‘a most extreme and’ from where they currently appear in section 304. The requirement in the proviso in sections 304(2) and (3) to prove the circumstances are of an exceptional character is retained. The amendment to subsection (6) is a consequential amendment.

Subclause (2) inserts new subsections (3A), (6A) and (9).

New subsection (3A) provides that the partial defence of provocation cannot be based on an unwanted sexual advance to the person, other than in circumstances of an exceptional character. Although the amendment is framed in gender neutral language, it is the policy intention that the amendment applies so as to exclude an unwanted homosexual advance, in the absence of circumstances that may be considered of an exceptional character, from being able to establish a partial defence of provocation in the case of murder.

The amendment provides that the partial defence is excluded if the sudden provocation is based on an unwanted sexual advance, other than in circumstances of an exceptional character. As to what circumstances fall within the exception is a matter for the trial judge with an assessment conducted on a case-by-case basis.

Without limiting the circumstances of an exceptional character to which consideration may be had, new subsection (6A) makes it clear that regard may be had to any history of sexual conduct, or of violence, between the person and the person who is unlawfully killed that is relevant in all the circumstances. Again, given the amendment is framed in gender neutral terms this subsection may be of particular relevance to women, particularly in the context of

a history of sexual conduct or of violence with a partner, aware that the unwanted sexual advance is usually the precursor to further abuse.

The phrase ‘unwanted sexual advance’ is defined in new subsection (9) for the purposes of section 304 as meaning a sexual advance that is unwanted by the person; and if the sexual advance involves touching – involves only minor touching. It is not intended to preclude the operation of the defence where the conduct in question is more extensive than an unwanted sexual advance.

The term ‘sexual advance’ is not defined and carries its ordinary meaning. As such it is intended to capture conduct of a sexual nature towards the person, including for example conduct made up of no words or touching (such as a gesture or like conduct). It would also include conduct undertaken for the purposes of sexual gratification. The amendment provides some context as to what may be ‘minor touching’ by including examples. The non-exhaustive examples make it clear that the consideration as to whether the conduct listed is minor touching depends on all the relevant circumstances.

In determining whether touching is minor touching it is proper to examine and consider all the relevant circumstances including for example not only matters of force or pressure used, position where the person was touched, duration, mechanism of touching, whether accompanied by words of aggressive future intent; but broader matters such as any relevant history between the parties and the geographical place and time where the touching occurred. For example the brushing of a person in a sexual way that occurs in a well-lit and fully occupied entertainment venue may be considered as a particular level of touching whilst the same act that occurs in a darkly lit, half empty carpark late at night may be considered as a different level of touching.

The amendment is clear that for the purposes of this section ‘minor touching’ may amount to a sexual assault under section 352(1)(a) of the Criminal Code; that is, an unlawful and indecent assault. This is because the spectrum of conduct that falls within the offence of sexual assault is very broad. Therefore, depending on all the relevant circumstances of the case, a touch that amounts to a sexual assault may still be considered ‘minor touching’ by a jury such to exclude the defendant from relying on the partial defence of provocation. To avoid the interpretation that minor touching is restricted solely to an offence against section 352(1)(a) the words “or another provision of this Code or another Act” are included.

Subclause (3) is a minor amendment to renumber subsections.

*Clause 11* amends section 552I (Procedure under section 552B) to provide for a legally represented defendant, who consents to the process, to enter a plea in the Magistrates Court to any number of charges at the same time without the substance of each charge being read separately to them. This process can occur if the court is satisfied that the defendant has obtained legal advice in relation to each of the charges before the court and is aware of the substance of each of the charges before the court. It is intended that the court could be satisfied after hearing submissions from a legal representative.

*Clause 12* inserts new section 739 (Application of amendment Act) which deals with the transitional application of the amendment to section 304 of the Criminal Code and is self-explanatory.

## **Part 4 Amendment of the *Criminal Proceeds Confiscation Act 2002***

*Clause 13* provides that this part amends the *Criminal Proceeds Confiscation Act 2002*.

*Clause 14* amends section 52 (Contravention of restraining order) by omitting the existing section and inserting a newly cast section.

New subsection (1) provides that a person who does or attempts to do an act or makes an omission in relation to restrained property in contravention of a restraining order commits a crime. The new offence differs from the current offence in section 52 which requires proof of an intention to defeat the operation of the restraining order. The new offence does not require proof of intent, except in the case of attempted acts. The subsection also provides for the maximum penalties that apply to this offence. The definition of 'attempt' in section 4 of the Criminal Code will apply.

New subsection (2) repeats existing subsection (2). It provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was restrained under a restraining order and no reason to suspect it was.

New subsection (3) adds a further exclusion to the defence in subsection (2). It provides that the defence in subsection (2) will not be available to the extent that the restrained property is either a motor vehicle, boat or outboard motor the subject of a restraining order registered under the *Personal Property Securities Act 2009* (Cwth) (as stated in current subsection (4)), or land over which a caveat in relation to the restraining order is registered under the *Land Title Act 1994* (added by this subsection).

New subsection (4) is a new provision which clarifies that the existence of the offence in subsection (1) does not prevent a person who does or attempts to do an act or makes an omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the Criminal Proceeds Confiscation Act or any other Act.

New subsection (5) expands the criteria which an innocent party must satisfy to avoid a dealing with property in contravention of subsection (1) being void. It provides that dealings with property in contravention of a restraining order are void unless all of the conditions in subsection (5) are satisfied.

New subsection (6) is a new provision which makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to their acts or omissions relating to the restraining order.

*Clause 15* amends section 60 (Dealing with forfeited property prohibited) by omitting the existing section and inserting a newly cast section.

New subsection (1) provides that a person commits a crime if that person does or attempts to do an act or make an omission in relation to property that is the subject of a forfeiture order and that act, attempted act or omission directly or indirectly defeats the operation of the forfeiture order. The new offence differs from the current offence in section 60 which requires proof of an intention to defeat the operation of the forfeiture order. The new offence does not require proof of intent except in the case of attempted acts. The subsection also provides for the maximum penalties that apply to this offence. The definition of 'attempt' in section 4 of the Criminal Code will apply.

New subsection (2) repeats existing subsection (2). It provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was the subject of a forfeiture order and no reason to suspect it was.

New subsection (3) is a new provision. It provides that the defence in subsection (2) will not be available to the extent that the property is either a motor vehicle, boat or outboard motor the subject of a forfeiture order registered under the *Personal Property Securities Act 2009* (Cwth), or land over which a caveat in relation to the forfeiture order is registered under the *Land Title Act 1994*.

New subsection (4) is a new provision which clarifies that the existence of the offence in subsection (1) does not prevent a person who does or attempts to do an act or omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the Criminal Proceeds Confiscation Act or any other Act.

New subsection (5) expands the criteria which an innocent party must satisfy to avoid a dealing with property in contravention of subsection (1) being void. It provides that dealings with property in contravention of a forfeiture order are void unless all of the conditions in subsection (5) are satisfied.

New subsection (6) is a new provision which makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the forfeiture order.

*Clause 16* amends section 93ZT (Contravention of restraining order) by omitting the existing section and inserting a newly cast section.

New subsection (1) provides that a person who does or attempts to do an act or makes an omission in relation to restrained property in contravention of a restraining order commits a crime. The new offence differs from the current offence in section 93ZT which requires proof of an intention to defeat the operation of the restraining order. The new offence does not require proof of intent except in the case of attempted acts. The subsection also provides for the maximum penalties that apply to this offence. The definition of ‘attempt’ in section 4 of the Criminal Code will apply.

New subsection (2) repeats existing subsection (2). It provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was restrained under a restraining order and no reason to suspect it was.

New subsection (3) adds a further exclusion to the defence in subsection (2). It provides that the defence in subsection (2) will not be available to the extent that the restrained property is either a motor vehicle, boat or outboard motor the subject of a restraining order registered under the *Personal Property Securities Act 2009* (Cwth) (as stated in current subsection (4)), or land over which a caveat in relation to the restraining order is registered under the *Land Title Act 1994* (added by this subsection).

New subsection (4) is a new provision which clarifies that the existence of the offence in subsection (1) does not prevent a person who does or attempts to do an act or makes an omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the Criminal Proceeds Confiscation Act or any other Act.

New subsection (5) expands the criteria which an innocent party must satisfy to avoid a dealing with property in contravention of subsection (1) being void. It provides that dealings with property in contravention of a restraining order are void unless all of the conditions in subsection (5) are satisfied.

New subsection (6) is a new provision which makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the restraining order.

*Clause 17* amends section 93ZZB (Making of serious drug offender confiscation order).

Subclause (1) amends subsection (3) to insert an example to help clarify the original intended interpretation of that subsection.

Subclause (2) inserts a new subsection (3A) which clarifies that subsection (3) does not limit the value of property that may be forfeited to the State under a serious drug offender confiscation order. Subclauses (3) and (4) provide for the renumbering of section 93ZZB.

*Clause 18* amends section 93ZZH (Dealing with forfeited property prohibited) by omitting the existing section and inserting a newly cast section with a new offence name (Dealing with property forfeited under serious drug offender confiscation order prohibited).

New subsection (1) provides that a person commits a crime if that person does or attempts to do an act or make an omission in relation to property forfeited under a serious drug offender confiscation order if that act, attempted act or omission directly or indirectly defeats the operation of the serious drug offender confiscation order. The new offence differs from the current offence in section 93ZZH which requires proof of an intention to defeat the operation of the serious drug offender confiscation order. The new offence does not require proof of intent except in the case of attempted acts. The subsection also provides for the maximum penalties that apply to this offence. The definition of ‘attempt’ in section 4 of the Criminal Code will apply.

New subsection (2) largely repeats existing subsection (2). It provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was forfeited under a serious drug offender confiscation order (the current subsection uses the words “the property was the subject of a serious drug offender confiscation order”) and no reason to suspect it was.

New subsection (3) is a new provision. It provides that the defence in subsection (2) will not be available to the extent that the forfeited property is either a motor vehicle, boat or outboard motor the subject of a serious drug offender confiscation order registered under the *Personal Property Securities Act 2009* (Cwth), or land over which a caveat in relation to the serious drug offender confiscation order is registered under the *Land Title Act 1994*.

New subsection (4) is a new provision which clarifies that the existence of the offence in subsection (1) does not prevent a person who does or attempts to do an act or makes an omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the Criminal Proceeds Confiscation Act or any other Act.

New subsection (5) expands the criteria which an innocent party must satisfy to avoid a dealing with property in contravention of subsection (1) being void. It provides that dealings with property in contravention of a serious drug offender confiscation order are void unless all of the conditions in subsection (5) are satisfied.

New subsection (6) is a new provision which makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the serious drug offender confiscation order.

*Clause 19* amends section 143 (Contravention of restraining order) by omitting the existing section and inserting a newly cast section.

New subsection (1) provides that a person who does or attempts to do an act or makes an omission in relation to restrained property in contravention of a restraining order commits a crime. The new offence differs from the current offence in section 143 which requires proof of an intention to defeat the operation of the restraining order. The new offence does not require proof of intent except in the case of attempted acts. The subsection also provides for the maximum penalties that apply to this offence. The definition of ‘attempt’ in section 4 of the Criminal Code will apply.

New subsection (2) repeats existing subsection (2). It provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was restrained under a restraining order and no reason to suspect it was.

New subsection (3) adds a further exclusion to the defence in subsection (2). It provides that the defence in subsection (2) will not be available to the extent that the restrained property is either a motor vehicle, boat or outboard motor the subject of a restraining order registered under the *Personal Property Securities Act 2009* (Cwth) (as stated in current subsection (4)), or land over which a caveat in relation to the restraining order is registered under the *Land Title Act 1994* (added by this subsection).

New subsection (4) is a new provision which clarifies that the existence of the offence in subsection (1) does not prevent a person who does or attempts to do an act or makes an omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the Criminal Proceeds Confiscation Act or any other Act.

New subsection (5) expands the criteria which an innocent party must satisfy to avoid a dealing with property in contravention of subsection (1) being void. It provides that dealings with property in contravention of a restraining order are void unless all of the conditions in subsection (5) are satisfied.

New subsection (6) is a new provision which makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the restraining order.

*Clause 20* amends section 171 (Dealing with forfeited property prohibited) by omitting the existing section and inserting a newly cast section.

New subsection (1) provides that a person commits a crime if that person does an act or makes an omission in relation to property that is the subject of a forfeiture order and that act, attempted act or omission directly or indirectly defeats the operation of the forfeiture order. The new offence differs from the current offence in section 171 which requires proof of an intention to defeat the operation of the forfeiture order. The new offence does not require proof of intent except in the case of attempted acts. The subsection also provides for the maximum penalties that apply to this offence. The definition of ‘attempt’ in section 4 of the Criminal Code will apply.

New subsection (2) repeats existing subsection (2). It provides that it is a defence to a charge of an offence against subsection (1) if a person can prove that they had no notice that the property was the subject of a forfeiture order and no reason to suspect that it was.

New subsection (3) is a new provision. It provides that the defence in subsection (2) will not be available to the extent that the property is either a motor vehicle, boat or outboard motor the subject of a forfeiture order registered under the *Personal Property Securities Act 2009* (Cwth), or land over which a caveat in relation to the forfeiture order is registered under the *Land Title Act 1994*.

New subsection (4) is a new provision which clarifies that the existence of the offence in subsection (1) does not prevent a person who does or attempts to do an act or makes an omission mentioned in subsection (1) from being prosecuted and punished for contempt of court, or another offence under the Criminal Proceeds Confiscation Act or any other Act.

New subsection (5) expands the criteria which an innocent party must satisfy to avoid a dealing with property in contravention of subsection (1) being void. It provides that dealings with property in contravention of a forfeiture order are void unless all of the conditions in subsection (5) are satisfied.

New subsection (6) is a new provision which makes it clear that subsection (5) applies whether or not any person is convicted of an offence in relation to the forfeiture order.

*Clause 21* amends section 249 (Communication of information by financial institutions to particular officers). The section is amended to provide that a financial institution may communicate information to a commission officer if the information relates to matters for which an order may be made under chapters 2 or 2A of the Criminal Proceeds Confiscation Act.

*Clause 22* inserts a new chapter 12, part 6 regarding transitional provisions. This new part contains new sections 296 (definition for part), 297 (Restraining orders made before commencement), 298 (Forfeiture orders made before commencement) and 299 (Serious drug offender confiscation orders made before commencement). These provisions relate to the amendments to sections 52, 60, 93ZT, 93ZZH, 143 and 171. These transitional provisions provide that the amendments apply to property restrained or forfeited pursuant to restraining orders, forfeiture orders and serious drug offender confiscation orders whether those orders were made before or after the commencement of this Act.

*Clause 23* amends schedule 6 (Dictionary) to amend the definition of *applicant* by replacing an incorrect reference to ‘chapter 4’ with the correct reference, ‘chapter 3’.

## **Part 5 Amendment of *Director of Public Prosecutions Act 1984***

*Clause 24* provides that this Part amends the *Director of Public Prosecutions Act 1984*.

*Clause 25* inserts new section 23A to create a power of delegation of the director’s functions and powers.

## **Part 6 Amendment of the *Drugs Misuse Act 1986***

*Clause 26* provides that this part amends the *Drugs Misuse Act 1986*.

*Clause 27* amends section 128 (Analyst's certificate) to remove reference to an analysis or examination being made by the analyst and to provide that an analyst's certificate can be evidence of the laboratory at which a thing was analysed or examined and that the analyst examined the laboratory's records about the analysis or examination of the thing including that done by someone other than the analyst.

*Clause 28* inserts new section 146 (Validation of analysts' certificates signed before commencement), to provide that any certificate signed by an analyst pursuant to section 128 prior to commencement is and always has been as valid and effective as if it had been signed after commencement.

## **Part 7 Amendment of the *Evidence Act 1977***

*Clause 29* provides that this part amends the *Evidence Act 1977*. Amendments to the Evidence Act are also contained in schedule 1.

*Clause 30* amends section 21A (Evidence of special witnesses) to replace 'video-taped recording' with 'videorecording' and 'video-taped evidence' with 'videorecorded evidence' where appropriate. This terminology change is made to modernise provisions and reflect current practices of the court. While VHS tapes were originally used, this is no longer the practice and recordings are now made on other mediums. The existing definition of 'video-tape recording' in the Dictionary (Schedule 3) already acknowledges the recording on any medium from which a moving image may be produced by any means; and this definition is not substantially altered. This minor amendment is simply about omitting the use of the word 'tape'. The rationale for this amendment to section 21A applies to all amendments made relating to omitting the word 'tape'.

Subclause 4 inserts new subsection (6A). New subsection (6A) reflects the digital recording technology and processes currently being utilised by the courts in this area. The technical amendment removes any ambiguity as to the meaning of videorecording under section 21A, so it is clear that it includes current court processes and section 21A(6) which deals with admissibility applies accordingly. An amendment for similar purposes is made to sections 21AM and 21AQ.

*Clause 31* inserts new section 21AAA (Exclusion of particular persons while videorecording or usable soundtrack being presented) which enables the court to order the exclusion of particular persons while the evidence of a special witness contained in a videorecording made under section 21A, or a usable soundtrack, is being played at the proceeding. This amendment is essentially an extension of the existing ability in section 21A to exclude persons when the special witness is giving 'real time' evidence. New subsection (3) makes it clear that if such evidence is being played at a criminal proceeding, the court cannot exclude the person charged. The notes included are self-explanatory. A similar amendment is made to section 21AU in relation to an affected child witness.

*Clause 32* amends section 21AM (Use of prerecorded evidence) to omit 'tape' where it appears and inserts new subsection (3) to clarify that if a videorecording made under the

subdivision is a digital recording, then a reference in subsection (1) to a videorecording includes a reference to a videorecording made on a separate data storage medium (including for example a DVD) that is made either by the principal registrar of a court, or an authorised person. Current section 21AM sets out the admissibility of a videorecording made under subdivision 3. New subsection (3) reflects the digital recording technology and processes currently being utilised by the courts in this area. The technical amendment removes any ambiguity as to the meaning of videorecording made under this subdivision in section 21AM, so it is clear that it includes current court processes and section 21AM applies accordingly. An amendment for similar purposes is made to sections 21A and 21AQ.

*Clause 33* amends section 21AQ (Audio visual links or screening arrangements must be used) to omit ‘tape’ where it appears and insert new subsection (7) to clarify that if a videorecording made under the subdivision is a digital recording then a reference in subsection (6) to a videorecording includes a reference to a videorecording made on a separate data storage medium (including for example a DVD) that is made either by the principal registrar of a court, or an authorised person. Section 21AQ provides for the mandatory use of an audio visual link, if available, or a screen when an affected child is giving evidence. Where an audio visual link is used, and recording facilities are available, then the evidence must also be recorded. The recording is then admissible in certain proceedings pursuant to subsection (6). New subsection (7) reflects the digital recording technology and processes currently being utilised by the courts in this area. The technical amendment removes any ambiguity as to the meaning of videorecording made under section 21AQ, so it is clear that it includes current court processes and section 21AQ(6) applies accordingly. An amendment for similar purposes is made to sections 21A and 21AM.

*Clause 34* recasts subsections (1)–(3) of current section 21AU (Exclusion of public). Amended section 21AU retains the court’s existing power to exclude the public where the affected child is giving evidence in ‘real-time’ including for example for the purposes of a pre-recording under section 21AK, and extends that power to the situation where the evidence of the affected child contained in a videorecording or a usable soundtrack is played at a relevant proceeding. But for its extended operation, the newly cast provision operates in exactly the same manner as existing section 21AU, which was originally inserted for consistency with section 5 of the *Criminal Law (Sexual Offences) Act 1978*.

Section 21AU (Exclusion of public) as amended stipulates the court must exclude all non-essential persons from the room in which it is sitting while the affected child is giving evidence about an offence of a sexual nature at a pre-recorded preliminary hearing, or by audio visual link, or where such evidence is played by means of a videorecording or usable soundtrack. For relevant offences of violence, the court must exclude non-essential persons in these same circumstances unless satisfied that the interests of justice require the evidence to be heard in open court. No amendment has been made to existing subsection (4) which provides who is considered an essential person under the section. An ‘essential person’ includes parties and their representatives, court staff, and a support person for the affected child.

*Clause 35* amends section 21AW (Instructions to be given to jury) as a consequence of the amendment to section 21AU. The amendment ensures the instruction given to the jury outlined in section 21AW (2) will also apply in the extended circumstances where a person is excluded under section 21AU where a videorecording or a usable soundtrack containing the evidence of an affected child is played.

*Clause 36* inserts into Part 2 a new division 4AA (Use of soundtracks from particular videorecordings) comprising sections 21AXA to 21AXD. New division 4AA permits a court to order that a usable soundtrack of a videorecording may be played at a proceeding in certain circumstances. There may be instances where a moving image cannot be produced from a videorecording. Currently there is no ability to use the soundtrack from a videorecording, meaning in the event of this happening the witness must be recalled.

New section 21AXA (Definition for division) contains the definition of *relevant witness* for the new division. The new division applies to a videorecording of a special witness or of an affected child.

New section 21AXB (Meaning of usable soundtrack) defines *usable soundtrack* for the new division. A videorecording has a usable soundtrack if sound can be produced from the accompanying soundtrack of the videorecording, even though moving images cannot be produced from the videorecording.

New section 21AXC (Court may make order for presentation of usable soundtrack) allows the court to order the usable soundtrack of the videorecording, or of the lawfully edited copy of the videorecording, to be played to the court if satisfied of the circumstances outlined in subsection (1) and only if it would be in the interests of justice.

New section 21AXD (Use of usable soundtrack) provides for the admissibility of a usable soundtrack. A usable soundtrack's admissibility is the same as applies for the videorecording, or lawfully edited copy of the videorecording to which it relates.

*Clause 37* inserts a new heading for part 2, division 4B (Dealing with, and destruction of, recordings) and new subdivision 1 heading to reflect inclusion of new subdivision 3.

*Clause 38* amends section 21AY (Definitions for div 4B) to insert several new definitions for division 4B. In this division a *recording* means: a videorecording of a special witness's evidence under section 21A; or a videorecording of an affected child's evidence made under division 4A, subdivision 3 or 4; or a copy of these recordings mentioned; or the usable soundtrack of these videorecordings.

*Clause 39* inserts into Part 2, Division 4B a new subdivision 2 heading (Dealings with recordings) to reflect the inclusion of new subdivision 3.

*Clause 40* amends section 21AZB (Unauthorised possession of, or dealing with, recording) to provide that the principal registrar of a court destroying a recording as authorised under a section 21AZE practice direction or section 21AZG does not commit an offence under section 21AZB(1). The delegate of a principal registrar (under new section 21AZH) is similarly covered by virtue of section 27A(3C) of the *Acts Interpretation Act 1954*.

*Clause 41* inserts into Part 2, Division 4B, new subdivision 3 (Destruction of recordings) comprising sections 21AZD to 21AZH.

New section 21AZD (Relationship with other Acts) sets out the subdivision's relationship with other Acts and makes clear the subdivision applies despite the provisions of any other Act to the contrary.

New section 21AZE (Making of practice directions authorising destruction) permits the Chief Justice, Chief Judge and Chief Magistrate to each issue a practice direction authorising the principal registrar of their court to destroy a recording held by or for the court. Any such practice direction must state the minimum retention period during which a recording, or class of recordings, may not be destroyed. The practice direction made may authorise the principal registrar of the court to destroy a recording only after the minimum retention period has ended; and if an order is made under new section 21AZF the authorised destruction day has passed. A definition of *principal registrar* is included in the Dictionary.

New section 21AZF (Court may make order about destruction) enables the presiding judicial officer to make an order that a recording must not be destroyed before the authorised destruction day. Any authorised destruction day ordered must be after the end of any applicable minimum retention period. This provision enables the presiding judicial officer to order the retention of the recording beyond the minimum retention period. It may be there are particular circumstances surrounding the matter, known to the judicial officer, which require longer retention of the recording.

New section 21AZG (Destruction of particular digital recordings) enables the principal registrar of the court to destroy a digital recording if the recording is copied onto a separate storage medium (including for example a DVD). The section makes clear this is permissible even if a practice direction made under section 21AZE does not authorise its destruction and despite any order made under section 21AZF in relation to the recording. This section reflects the digital recording technology and processes currently being utilised by the courts in this area.

New section 21AZH (Delegation by principal registrar) permits the principal registrar of a court to delegate their function under a practice direction made under new section 21AZE or under new section 21AZG to an appropriately qualified public service employee. *Appropriately qualified* is defined in the *Acts Interpretation Act 1954*.

*Clause 42* amends section 95A (DNA evidentiary certificate). The section 95A certificate is used to address internal laboratory continuity and thereby obviate the need to call all persons involved in the continuity and testing processes that produce a DNA profile, given that these persons are unlikely to give contentious evidence. A certificate cannot cover crucial evidentiary issues such as the comparison of profiles.

Subclause (1) inserts a new subsection to clarify that certain provisions do not apply to committal hearings. The calling of witnesses at committal hearings is governed by the provisions in the *Justices Act 1886*.

Subclause (2) amends section 95A to provide that the DNA analyst who signed the certificate need only attend a hearing if required by written notice at least five business days before the hearing day. To complement this provision, subclause (3) amends existing subsection (5), renumbered as subsection (7), to increase the timeframe for notice of the matter to be challenged from three to five business days.

Subclause (4) introduces two forms of court discretion. Firstly, the court may at any time, on application by a party, shorten or extend a period mentioned in section 95A. Secondly, and without limiting that general discretion, the court can waive outright the notice requirement in subclause (2) regarding the DNA analyst who signed the certificate. Where such an order is made, the relying party must call the DNA analyst to give evidence at the hearing.

*Clause 43* inserts a new division 8 into part 9 comprising new sections 149, 150, 151 and 152.

New section 149 (Definition for division) provides the definition of amendment Act for the division as the *Criminal Law Amendment Act 2016*.

New section 150 (Admissibility of particular copies of videorecordings made before commencement) provides that sections 21A, 21AM and 21AQ as amended by this amendment Act apply, and are taken always to have applied, to a copy of a videorecording on a separate data storage medium that was made before commencement. This amendment is a consequence of the technical amendments made by this amendment Act to sections 21A, 21AM and 21AQ to reflect current court practices.

New section 151 (Destruction of recordings made before commencement) relates to the insertion of new subdivision 3 (Destruction of recordings) in division 4B to make clear that new subdivision 3 applies to recordings made before or after commencement.

New section 152 (Application of DNA evidentiary certificate provision to proceedings started before commencement) clarifies that section 95A as amended by the Bill applies to a proceeding that is on foot at the time of commencement.

*Clause 44* amends schedule 3 (Dictionary) to insert and update various terms as a result of amendments contained in this part.

## **Part 8 Amendment of the *Jury Act 1995***

*Clause 45* provides that this part amends the *Jury Act 1995*.

*Clause 46* amends section 18 (Notice to prospective jurors) to enable a notice to a prospective juror to also be given electronically, for example by email. A new subsection (2) is inserted to accommodate electronic processes for prospective jurors in accessing, completing and returning relevant documents. Minor consequential renumbering to section 18 is also made.

*Clause 47* amends section 27 (Summons for jury service) to permit a summons for jury service to be also be given electronically, for example by email. Minor consequential renumbering to section 27 is also made.

*Clause 48* amends section 30 (Reproduction of list of persons summoned for jury service) by removing the term *clerk* from subsection (2) as it is no longer required.

*Clause 49* amends section 37 (Materials to be given by sheriff) to enable jury cards to also be given to the judge's associate by electronic means. If not given by electronic means, the amendment preserves the existing requirements that the jury cards must be given in identical

size and shape. Other minor amendments are made to remove the term *clerk* from subsection (1) as it is no longer required; to provide the juror's number is included in the card (so as to correspond with requirements in existing section 41); and renumber the section.

*Clause 50* amends section 41 (Procedure for jury selection) to accommodate jury selection to also occur by electronic processes. Subsection (1)(a) is recast to provide that jury selection must be made, as directed by the judge, by random selection of jury cards, including for example by a computer programmed to make a random selection. A minor amendment is also made to remove the term *clerk* as it is no longer required.

*Clause 51* amends schedule 3 (Dictionary) to insert the term *jury card* and provide for the correct location of the definition of *prospective juror questionnaire*.

## **Part 9 Amendment of the *Justices Act 1886***

*Clause 52* provides that this part amends the *Justices Act 1886*.

*Clause 53* inserts new section 43A (Court may order particular complaints to be heard together) to provide a head of power to the court to order the joinder of complaints against the same defendant or the joinder of complaints against multiple defendants.

*Clause 54* amends section 83A (Direction hearing) to include the example of the joinder of complaints pursuant to section 43A.

*Clause 55* inserts new section 88B (Continuation of remand on registry committal) into Part 4, division 11 to provide for the continuation of a remand order. This new provision applies where there is a registry committal referred to the clerk of the court. The effect of this provision is that a defendant's remand order in the Magistrates Court is continued subject to change in date and receiving court before which the defendant is required to appear and any change necessary to reflect the charges on which the defendant is committed.

*Clause 56* amends section 114 (Registry committal by clerk of court) to extend registry committals by the clerk of the court to defendants held on remand in custody.

*Clause 57* amends section 115 (Process of clerk of the court for registry committal) to omit the existing note in subsection (10) and replace it with notes that reflect the insertion of new section 88B, noting the automatic continuation of the defendant's remand or bail order, whichever the case may be, under the registry committal process.

*Clause 58* amends section 142 (Proceedings in absence of defendant) to insert a note in subsection (1) that reflects the insertion of new section 150A (Justices may order that complaint is ended).

*Clause 59* amends section 144 (Both parties appearing) to insert a new note that reflects the insertion of new section 150A (Justices may order that complaint is ended).

*Clause 60* amends section 145 (Defendant to be asked to plead) to insert new subsections (2) and (3) to provide for a legally represented defendant, who consents to the process, to enter a plea in the Magistrates Court to any number of complaints at the same time without the substance of each complaint being read separately to them. This process can occur if the court is satisfied that the defendant has obtained legal advice in relation to each of the complaints before the court and is aware of the substance of each of the complaints before the court. It is intended that the court could be satisfied after hearing submissions from a legal representative.

*Clause 61* inserts a new section 148A (Admissions of fact) into Part 6, division 3 which will allow for admissions of fact in summary trials for simple offences and breaches of duty.

*Clause 62* amends Part 6 to insert a new Division 4A (Ending of complaint if police cash bail granted). New Division 4A inserts new section 150A (Justices may order that complaint is ended). The new section applies to a complaint where police cash bail was granted under section 14 of the Bail Act and provides justices with a new legislative option to end a complaint and take no further action. This new provision recognises that police cash bail is predominantly issued in relation to minor offending that may not warrant criminal sanction.

New section 150A has been designed specifically to provide justices with a prompt, efficient and consistent way to deal with the complaint for all defendants granted police cash bail irrespective of whether or not the defendant appears in court. By ending a complaint it means the complaint will not appear on a criminal history because there has not been any finding of guilt. The new provision does not affect the court's discretion to hear the complaint, where the particulars of the complaint warrant a hearing and punishment.

*Clause 63* inserts a new Division 8 into part 11 providing new sections 282 (Orders for particular complaints made before commencement heard together) and 283 (Admissions of fact in hearings of complaints made before commencement). This is a transitional provision to clarify that new sections 43A and 148A applies whether the complaint was made before or after its commencement.

## **Part 10 Amendment of the *Penalties and Sentences Act 1992***

*Clause 64* provides that this part amends the *Penalties and Sentences Act 1992*.

*Clause 65* amends section 4 (Definitions) to include the definition of *original order* applicable to new division 3AA in the *Penalties and Sentences Act*.

*Clause 66* inserts a new part 3, division 3AA (Offenders failing to enter into recognisances before leaving court), to provide a process to return offenders to the court when the court has made an order that the offender be released if the offender enters into a recognisance and the offender left the court precinct without properly entering into the recognisance order.

New section 33AA (Application of division) outlines the application of the division.

New section 33AB (Proper officer of court may give offender notice) provides that the proper officer of the court may issue a written notice to the offender requiring the offender to return to a stated court registry by a stated date to enter into the recognisance and that failure to comply with the notice may result in a warrant to arrest being issued against the offender.

New section 33AC (Court may issue warrant) provides the court with the authority to issue a warrant to arrest the offender for failing to comply with a notice issued under new section 33AB.

New section 33AD (Orders for offenders appearing before court) outlines the process when the offender is returned to the court to allow the court to either affirm the original order or revoke the original order and resentence the offender for the offence with which the offender was originally charged. The court also has the discretion to record a conviction against the offender if no conviction was originally recorded.

New section 33AE (Orders for particular offender failing to appear before court) provides the scope of the court's ability to resentence the offender in their absence. The restrictions on the sentence that may be imposed in the offender's absence are guided by the existing requirements in section 142A(6) (Permissible procedure in absence of defendant in certain cases) of the *Justices Act 1886*.

New section 33AF (Evidentiary provision) provides the evidentiary provision to satisfy the court that a notice to attend a court registry to enter into the recognisance was properly given to the offender and the offender has failed to comply with the notice and a warrant to arrest should be issued in accordance with new section 33AC.

*Clause 67* amends section 43N (Commissioner may give a copy of banning order to particular persons) and the heading to this section to clarify that it refers to the commissioner of the police service and is consistent with the terminology used in other sections of the Act.

*Clause 68* amends section 159A (Time held in presentence custody to be deducted) to insert the commissioner of the police service as a person who can issue a presentence custody certificate.

*Clause 69* inserts new part 14, division 17 to provide a transitional provision to clarify that the new part 3, division 3AA applies to an original order whether or not the order was made before or after the commencement.

*Clause 70* amends schedule 1 (Serious violent offences) to add section 236(b) (renumbered as section 236(2)) to the serious violent offences schedule.

## **Part 11 Amendment of the *Recording of Evidence Act 1962***

*Clause 71* provides that this part amends the *Recording of Evidence Act 1962*.

*Clause 72* amends section 11A (Retention and destruction of records). Subclause (1) amends subsection (6)(a) by adding the disjunctive 'or' after the word 'made' thus more clearly indicating that (subject to the other subsections in section 11A set out in in section 11A(6)) a record on a master recording may be destroyed any time after a transcription has been made or in the circumstances set out in section 11A(6)(b).

Subclause (2) amends subsection (6)(b)(ii) to provide that (subject to the other subsections in section 11A set out in section 11A(6)) a record of a legal proceeding in the Magistrates Court can be disposed of before a transcription has been made if the record can be disposed of under an authority given by the archivist under section 26 of the *Public Records Act 2002*. Section 26 provides that the archivist may authorise the disposal of particular public records or classes of public records if the registrar or other officer of the court responsible for official court records has applied for, or consented to, the disposal of the records.

Subclause (3) amends subsection (8) to insert a definition of *archivist* being the State Archivist as established under section 21(1) of the Public Records Act.

## **Part 12 Amendment of the *Telecommunications Interception Act 2009***

*Clause 73* provides that this part amends the *Telecommunication Interception Act 2009*.

*Clause 74* amends section 14 (Eligible authority to keep documents connected with issue of warrants). Subclause (1) inserts a new subsection (ga) that provides that an eligible authority must keep in their records each appointment of an authorising officer made under section 66(4) of the *Telecommunications (Interception and Access) Act 1979* (Cwth).

Subclause (2) amends subsection (h) to provide that an eligible authority must keep in their records each authorisation by an authorising officer under section 66(2) of the *Telecommunications (Interception and Access) Act* (Cwth).

Subclause (3) provides for consequential renumbering of section 14.

## **Part 13 Amendment of other Acts**

*Clause 75* provides that schedule 1 amends the Acts it mentions.

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