Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024 (the Bill).

Policy objectives and the reasons for them

The objective of the Bill is to implement the third major tranche of legislative reforms arising from recommendations made by the Women's Safety and Justice Taskforce (the Taskforce) in its two reports, *Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland* (Report One) and *Hear her voice – Report Two – Women and girls' experiences across the criminal justice system* (Report Two).

In March 2021, the Queensland Government established the independent Taskforce to examine coercive control and review the need for a specific offence of commit domestic violence, and the experience of women across the criminal justice system.

Report One was released on 2 December 2021 and responds to the first part of the Taskforce's work examining coercive control and the need for a specific offence of 'commit domestic violence'. Report One makes 89 recommendations for broad systemic reforms to Queensland's domestic and family violence (DFV) and justice systems. The Queensland Government response to Report One, released on 10 May 2022, outlines the Government's commitment to support or support-in-principle all recommendations.

Report Two was released on 1 July 2022 and focuses on women's experiences in the criminal justice system as victim-survivors of sexual violence and as accused persons and offenders. Report Two includes 188 recommendations to improve women and girls' experiences of the criminal justice system. The Queensland Government response to Report Two, released on 21 November 2022, outlines the Government's commitment to support 103 recommendations in full, support 71 recommendations in principle, and note 14 recommendations.

The first tranche of legislative reform responding to recommendations made by the Taskforce was implemented by the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (First Taskforce Act), which fully commenced on 1 August 2023. The second tranche is being implemented through the *Criminal Law (Coercive Control and Affirmative Consent)*

and Other Legislation Amendment Act 2024 (Second Taskforce Act), passed by Parliament on 6 March 2024.

The Bill will implement the Government's response to Taskforce recommendations relating to sexual violence and women and girls as accused persons and offenders (Recommendations 42, 53, 54, 57, 60, 75, 79 and 149 of Report Two). Consistent with Taskforce recommendations, the Bill will also include a statutory review of amendments from both Taskforce reports, to occur as soon as practicable five years after the last amendment commences (Recommendation 84 of Report One and Recommendation 186 of Report Two).

Lastly, the Bill will clarify the law as it relates to the admissibility of recorded statements in particular committal proceedings relating to domestic violence offences.

The Bill implements the relevant recommendations through amendments to the *Attorney-General Act 1999* (AG Act), the *Corrective Services Act 2006* (CSA), the Criminal Code, the *Evidence Act 1977* (Evidence Act), the Evidence Regulation 2017 (Evidence Regulation) and the *Penalties and Sentences Act 1992* (PSA). The Bill also makes related consequential and transitional amendments.

Achievement of policy objectives

The Bill will achieve the policy objectives by implementing the reforms outlined below.

Amendment of the AG Act

Statutory review

The Taskforce recommended statutory review requirements for the legislative reforms included in Chapters 3.8 and 3.9 of Report One and in response to Report Two, with the review to consider whether the amendments are operating as intended and the impacts and outcomes achieved for women and girls.

The Bill amends the AG Act to require that a review is carried out into the operation and effectiveness of amendments made in response to the Taskforce by five specific pieces of legislation: the First Taskforce Act; the *Justice and Other Legislation Amendment Act 2023* (which included amendments to the *Criminal Law (Sexual Offences) Act 1978*); the Second Taskforce Act; the *Queensland Community Safety Act 2024* (Taskforce related amendments to the *Youth Justice Act 1992*) (if passed) and the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024* (if passed). This is intended to capture all relevant Taskforce-related amendments as at the time of introduction of the Bill and make clear the minimum scope of the review. The provision is not intended to prevent the review from considering any Taskforce-related amendments passed after the Bill.

The Bill provides that the Attorney-General must determine the terms of reference of the review and the review must start as soon as practicable five years after the commencement of the statutory review provision. The statutory review provision will commence on proclamation. The intention is that the provision will be commenced concurrently with the last of the Taskforce-related amendments to be included in the

review, so that the five years will start at that time. The Bill requires the Attorney-General to table a report of the review in Parliament as soon as practicable after the review is completed.

Consistent with the Taskforce recommendations, the Bill provides that the review must consider: the outcomes of the amendments; the effects of the amendments on victim-survivors and perpetrators of sexual violence and DFV; the outcomes for, and the effects of the amendments on, Aboriginal and Torres Strait Islander peoples; and whether the amendments are operating as intended.

Amendment of the CSA

Inadmissibility of admissions made during programs while prisoners are remanded

The Taskforce found that women in custody may be concerned that participation in a program while on remand may be perceived as an admission of guilt and detrimentally impact their defence. This could be the case regardless of the type of program offered, as prisoners may not always be aware whether or not a program will involve the discussion of the offending they are remanded for.

In line with the Taskforce's recommendation, the Bill inserts new section 344AB into the CSA to provide that an admission made by a prisoner as part of their participation in a program or service is not admissible against the prisoner in any legal proceedings about the alleged offence for which the prisoner is detained on remand (the inadmissibility provision).

The amendment aims to reduce perceived barriers to participation in programs and services for women who are remanded in custody. The amendment may also provide additional clarity for prisoners that are not sure whether a program includes discussion of their offending and encourage program participation.

The amendment applies to all prisoners who are detained on remand for an offence at the time of the admission. The amendment will apply to any program or service established or facilitated by the chief executive under section 266 of the CSA, unless it is an ineligible program or service.

The inadmissibility provision applies to an admission made by the prisoner as part of their participation in the program or service. This includes admissions in the course of, for the purpose of, or as a condition of participation. It is not intended for participation to extend to general conversations between prisoners at a corrective services facility or in transit to programs or services.

For the purposes of the provision, an admission includes anything said or done by the prisoner as part of their participation in a program or service that makes it evident the prisoner committed an offence and written material, such as homework and workbooks, or correspondence made for the purpose of the program or service. The inadmissibility provision also extends to evidence directly or indirectly derived from an admission made as part of the program participation.

Evidence of an admission or derivative evidence of the admission will be inadmissible in a criminal, civil or administrative proceeding that relates to the facts constituting the offence for which the prisoner was detained on remand at the time of the admission. Proceedings include prosecutions, sentencing, and appeals and proceedings related to the making of orders in civil or federal court proceedings, such as domestic and family violence orders or family court orders. The inadmissibility provision does not extend to parole matters.

In line with the intention of the amendment to promote the rehabilitation of the prisoner, the provision ensures that information is not inadmissible if the prisoner agrees to its admission, such as where the information may be considered to the prisoner's benefit.

The amendment provides a head of power to prescribe in regulation ineligible programs or services where the inadmissibility of evidence in proceedings will not be provided. If a program is prescribed in regulation as an ineligible program, the new section includes a requirement for a remanded prisoner to be notified, prior to participation, that it is an ineligible program or service.

Amendment of the Criminal Code

Position of authority offence

In Report Two, the Taskforce observed that Queensland was still considering its response to recommendations 27 to 29 of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) Criminal Justice Report. These Royal Commission recommendations included that states and territories should review any position of authority offences applying in circumstances where the victim is 16 or 17 years of age, and, if the offences require more than the existence of the relationship of authority (for example, that it be 'abused' or 'exercised'), amendments should be made so that the existence of the relationship is sufficient. All other Australian states and territories have criminalised this type of conduct.

The Taskforce recommended that the Criminal Code be amended where necessary to ensure that it addresses sexual exploitation of children and young people aged 12 to 17 years old by adults who occupy a position of authority over those children (Recommendation 42, Report 2).

In response, the Bill introduces the standalone offence, proposed section 210A, "*Sexual acts with a child aged 16 or 17 under one's care, supervision or authority*" (position of authority offence), to Chapter 22 of the Criminal Code. The Bill also introduces a second limb to the existing course of conduct offence of *"Repeated sexual conduct with a child"* in section 229B of the Criminal Code.

These amendments are intended to capture and deter members of the community who may use the influence, trust and power that is vested in them when a young person is under their care, supervision or authority. It is intended that these amendments will provide a protective function for young people over the age of consent, but under the age of 18 years.

Application

The new position of authority offence will apply to adult defendants only. Similarly, the expansion of section 229B will also only apply to adult defendants.

The position of authority offence, and the expansion to section 229B, will only apply to a complainant who is 16 or 17 years of age. This application flows from the words used in the offence, "a child of or above the age of 16", and the definition of "child" in the *Acts Interpretation Act 1954*, which means (if age rather than descendancy is in issue) "*an individual who is under 18*".

Proscribed acts and conduct

The new position of authority offence criminalises a range of acts, set out in section 210A(1) and (2), by an adult who has a child under their care, supervision or authority. These proscribed acts have been modelled on the physical elements of "*Rape*", "*Engaging in penile intercourse with a child under 16*" and "*Indecent Treatment of a child under 16*".

The expansion to section 229B of the Criminal Code criminalises any adult who maintains an unlawful sexual relationship with a child of or above the age of 16 years who is under their care, supervision or authority. Like the existing offence under section 229B, this relationship must involve more than one unlawful sexual act over any period. An unlawful sexual act means an act that constitutes or would constitute (if it were sufficiently particularised) an offence of a sexual nature. This will include an act that constitutes an offence under the new position of authority offence. It is intended that the word *"maintains"* will continue to carry its ordinary meaning, as it does under the existing offence provided by section 229B. Other features that operate within the existing section 229B offence will also apply to this new limb, including the evidentiary provisions in section 229B(4) of the Criminal Code.

Care, supervision or authority

It is an element of the new position of authority offence and the expansion to section 229B that the child was under the "*care, supervision or authority*" of the accused. These three terms are to be read disjunctively and it is intended that the prosecution need only prove that one of the three dynamics existed at the time of the charged act/s.

The Bill provides in proposed section 210A(3) that certain categories of person are deemed to have a child under their "*care, supervision or authority*". The list provided by section 210A(3) also operates and applies in relation to the expansion to section 229B of the Criminal Code. This is achieved by the insertion of new section 229B(11).

Section 210A(3) operates as an evidentiary provision that relieves the prosecution of the burden of proving that such persons had a child under their care, supervision or authority. This is a non-exhaustive list and does not preclude other categories of person being captured by the offences.

It is intended that the use of the term *'child is in custody'* in new section 210A(3)(f) will capture a child who may be under arrest, on remand or serving a sentence.

The categories of person nominated in proposed section 210A(3)(a)-(g) ought not to be read as closed categories for the purposes of the broader operation of the offence. For example, a teacher is deemed to have a child under their care, supervision or authority by virtue of section 210A(3)(d). This will not preclude a jury from being satisfied, depending on the facts of the particular case, that a teacher aide had a child under their care, supervision or authority.

In cases where an accused is not captured by the list in section 210A(3), it is a question of fact if circumstances existed such that the child was under the care, supervision or authority of the accused. The Bill contemplates other examples of people who may be captured by the offence, including sporting coaches, music teachers, employers, and religious or spiritual leaders. Importantly, however, these people are not deemed to have a child under their care, supervision or authority.

The relationship which gives rise to the child being under the care, supervision or authority of the accused may be a standing one or it may arise on an ad hoc basis. Further, the existence of "*care, supervision or authority*" need not be based in lawful conduct. As an example, an accused may have authority over a child in the context of executing a common unlawful purpose.

This element of the offence does not require consideration of whether there was an abuse of the accused person's position relative to the child. The relevant question is whether the relationship, which provides the foundation for the complainant being under the care, supervision or authority, subsisted at the time of the charged act. Further, the child's consent to the act is immaterial.

Defences

It is a defence to a charge under proposed sections 210A or 229B(1A) that the accused person believed on reasonable grounds that the child was at least 18 years of age. The defendant bears an evidential but not a legal burden in relation to this defence.

It is a defence to a charge under the position of authority offence or section 229B(1A) that the accused person is less than three years older than the child, and the acts or omissions that constitute the offence did not, in the circumstances, constitute sexual exploitation of the child. This defence is not available to those categories of accused person listed in proposed section 210A(3). This defence will have the effect of relieving some 19 and 20 year old people from criminal liability, provided that their actions did not in the circumstances constitute sexual exploitation of the child. This defence reflects stakeholder views that non-exploitative, consensual sexual relationships can exist between similarly aged, older adolescents. The defendant bears an evidential but not a legal burden in relation to this defence. It is intended that the question of whether sexual exploitation of the child has occurred will be assessed on an objective basis.

It is also a defence to a charge under the position of authority offence or section 229B(1A) that the accused person and the child were lawfully married. This recognises that, in certain circumstances, a person under 18 may be lawfully married in Queensland, in accordance with the *Marriage Act 1961* (Cth). The defendant bears an evidential burden but not a legal burden in relation to this defence.

It will remain open for an accused person to raise a defence under section 24 of the Criminal Code, that they honestly and reasonably believed the child was not under their care, supervision or authority. Such a defence is not intended to be available to accused persons captured by proposed section 210A(3). This is a recognition that such persons will have an ongoing position in which the child will be under their care, supervision or authority.

Penalty and disposition

An offence that is constituted by an act set out in proposed section 210A(1) has a maximum penalty of 14 years imprisonment. An offence that is constituted by an act set out in proposed section 210A(2) has a maximum penalty of 10 years imprisonment. The circumstance of aggravation, provided for by section 161Q of the PSA, may apply to a charge under section 210A. This circumstance of aggravation may only be charged on an indictment with the consent of a Crown Law Officer.

An offence under section 210A will be captured by section 552B(1)(a) of the Criminal Code and will be an offence that must be heard and decided summarily on a plea of guilty, unless the defendant elects for a jury trial. It is also subject to section 552D of the Criminal Code (When Magistrates Court must abstain from jurisdiction).

The new limb to section 229B of the Criminal Code has a maximum penalty of life imprisonment, like the existing offence. A person may only be prosecuted for this offence with the consent of a Crown Law Officer.

Consequential amendments

The new position of authority offence will be prescribed as:

- a serious violent offence within schedule 1 of the PSA;
- a prescribed offence within schedule 1C of the PSA;
- a sexual offence within schedule 1 of the CSA;
- a disqualifying offence, where an imprisonment order was or is imposed, or otherwise as a serious offence for the purposes of assessments under the blue card system; and
- a disqualifying offence, and an offence that may form the basis of investigative information for the purposes of the *Disability Services Act 2006*.

Transitional provisions

The new position of authority offence and the expansion to section 229B of the Criminal Code are subject to section 11 of the Criminal Code. The amendments therefore have an entirely prospective application.

Further, proposed section 767 removes any doubt and provides that evidence of unlawful sexual acts done before commencement cannot be admitted in evidence to establish the existence of an unlawful sexual relationship for the offence in section 229B(1A).

Amendment of the Evidence Act and Evidence Regulation

Alternative arrangements for special witnesses

Currently, under section 21A of the Evidence Act, where a special witness is to give or is giving evidence, the court may, of its own motion or on application by a party to a proceeding, order that the special witness give evidence by certain alternative arrangements. An alternative arrangement is an adaption of the normal procedures of the court. A special witness means:

- a child under 16 years; or
- a person who, in the court's opinion:
    - would, as a result of a mental, intellectual or physical impairment or a relevant matter, be likely to be disadvantaged as a witness; or
    - would be likely to suffer severe emotional trauma; or
    - would be likely to be so intimidated as to be disadvantaged as a witness;

  if required to give evidence in accordance with the usual rules and practice of the court; or
- a person who is to give evidence about the commission of a serious criminal offence committed by a criminal organisation or a participant in a criminal organisation; or
- a person:
    - against whom domestic violence has been or is alleged to have been committed by another person; and
    - who is to give evidence about the commission of an offence by the other person; or
- a person:
    - against whom a sexual offence has been, or is alleged to have been, committed by another person; and
    - who is to give evidence about the commission of an offence by the other person.

Existing section 21A(1B) makes it clear that a party to a proceeding or, in a criminal proceeding, the person charged, may be a special witness.

The meaning of special witness is not altered by the Bill.

The Taskforce recommended amending the Evidence Act so that a special witness is entitled to give evidence in a remote room or by alternative arrangements. The Taskforce considered that providing an entitlement to these measures would reduce the need for victim-survivors to justify having the measures, which would improve victim-survivors' experience of the court process and reduce re-traumatisation.

The Bill gives effect to the intent of the Taskforce recommendation by amending section 21A of the Evidence Act to introduce a presumption that, on the application of a party in a relevant proceeding (being a criminal proceeding relating wholly or partly to a sexual offence or a domestic violence offence), the court must make one of the following orders for alternative arrangements:

- that the person charged or other party to the proceeding be obscured from the view of the special witness while the special witness is giving evidence or is required to appear in court;
- that the special witness give evidence in a room other than the room in which the court is sitting, and from which all persons other than those specified by the court are excluded;
- that a person approved by the court be present in order to provide emotional support to the special witness, while the special witness is giving evidence or is required to appear in court for any other purpose; and/or
- that a videorecording of the evidence of the special witness or any portion of it be made under such conditions as are specified in the order and that the videorecorded evidence be viewed and heard in the proceeding instead of the direct testimony of the special witness.

The court will not be required to make the order or direction where satisfied that it would not be in the interests of justice to do so.

The court will also not be required to make the order or direction if, subject to new section 21A(9), appropriate equipment and facilities are unavailable to accommodate the order or direction. New section 21A(9) makes it clear that the court may make any other order it thinks fit to facilitate an order or direction under the new provisions. This could include, for example, an order to adjourn the proceedings or an order to hear the evidence in another courtroom or location.

The Bill also provides that the parties must give reasonable notice of their intention to apply for the alternative arrangements. This is a new notice requirement and will apply to those applications where the new presumption will apply (i.e. a criminal proceeding relating wholly or partly to a sexual offence or a domestic violence offence) as well as other applications relating to special witnesses.

The Bill inserts a transitional provision whereby new sections 21A(3) and (3A) will apply to a proceeding for an offence committed before commencement if an originating step for the proceeding is taken on or after the commencement. It is intended that an originating step will include:

- the arrest of the defendant in the proceeding; or
- the making of a complaint under the *Justices Act 1886* (Justices Act), section 42 in relation to the defendant in the proceeding; or
- the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000* (PPR Act), section 382.

Directions hearings

The Taskforce found that ground rules hearings (or directions hearings) in DFV and sexual offence proceedings may assist in ensuring that victim-survivors are only questioned in a manner that is appropriate and about content that is relevant and admissible.

The Bill inserts new section 21AAB into the Evidence Act under which, in a 'relevant proceeding' (a criminal proceeding relating wholly or partly to a sexual offence or a

domestic violence offence) the court may, on its own initiative or an application of a party, direct that:

- a directions hearing be held, about evidence to be given by a special witness; and
- further directions hearings be held at any later stage in the proceeding.

At a directions hearing, the court may:

- consider the communication needs of a special witness and the most effective way to communicate with the witness; and
- give any directions about the giving of evidence by the witness that it considers appropriate for the fair and efficient conduct of the proceeding.

The court's consideration of the fair and efficient conduct of the proceeding should extend beyond the accused's perspective and should also include the protection of witnesses and the interests of the community.[1]

The Bill provides that without limiting the types of directions that can be given, a direction may be given about: the manner or duration of questioning; the questions that may, or may not, be put; if there is more than one defendant, the allocation among the defendants of the topics about which the witness may be questioned; and the use of models, plans, body maps or similar aids to help witness communication.

The new provision is not intended to limit section 21A(2) or (3) (alternative arrangements for special witnesses), or section 590AA of the Criminal Code (pre-trial directions and rulings where the Crown has presented an indictment before a court), or section 83A of the Justices Act (direction hearings before a magistrate in proceedings for an offence).

The Bill inserts a transitional provision which provides that new section 21AAB only applies to a proceeding for an offence committed before the commencement if an originating step for the proceeding is taken on or after the commencement. It is intended that an originating step will include:

- the arrest of the defendant in the proceeding; or
- the making of a complaint under the Justices Act, section 42 in relation to the defendant in the proceeding; or
- the serving of a notice to appear on the defendant in the proceeding under the PPR Act, section 382.

Special witness evidence to be videorecorded

The Taskforce recommended legislative change to require that evidence of the victim-survivor or special witnesses in sexual offence proceedings be video and audio recorded and stored securely for use in any retrial. The Taskforce found that this would minimise the number of times a special witness in a sexual offence proceeding has to give

[1] *R v A (No 2)* [2002] 1 AC 45.

evidence and therefore reduce re-traumatisation. There is currently no such requirement in Queensland.

The Bill inserts new section 21AAC into the Evidence Act, which applies to the evidence of a special witness in a trial in a criminal proceeding relating wholly or partly to a sexual offence, other than the person charged.

Under the new requirements, the court must direct that a videorecording of the evidence of a special witness be made if a special witness is giving evidence and appropriate equipment and facilities are available for videorecording the special witness's evidence.

The videorecording, or a lawfully edited copy of the videorecording is, unless the court orders otherwise, admissible as if the evidence was given orally in the proceeding in accordance with the usual rules and practice of the court, in:

- any rehearing or retrial of, or appeal from, the proceeding in which the videorecording was made; or
- another proceeding for the relevant charge or another charge arising out of the same, or the same set of, circumstances; or
- a civil proceeding arising from the commission of the offence.

This reflects similar provisions in sections 21A(6) and 21AM of the Evidence Act. The new provision will rely on the existing definition of 'lawfully edited copy' in Schedule 3 of the Evidence Act.

The requirement for videorecording in section 21AAC will apply regardless of how the special witness gives evidence including whether evidence is given live in a courtroom or where another alternative arrangement is made. Section 21AAC(5) clarifies that this includes whether an order or direction for a videorecording to be made is also ordered under section 21A(2)(e).

New section 21AAD provides that if a videorecording is admitted in a subsequent proceeding, a party to that subsequent proceeding is not prevented from applying to the court for the special witness to give further evidence. However, the court must not order the special witness give further evidence unless satisfied that: if the special witness had given evidence in the ordinary way, the special witness could be recalled to give further evidence; and it would be in the interests of justice.

This might include, for example, where it is necessary in the circumstances for the witness to give further evidence to clarify any matters relating to their original evidence, or to canvass information or material that has become available since the original evidence was given.

The Bill amends section 21AZE in relation to the making of practice directions authorising the destruction of recordings held by or for a court. In the case of a videorecording made under new section 21AAC, the Bill provides that a practice direction may be made authorising the principal registrar to destroy the videorecording

if the defendant has been convicted, there is no possibility or further possibility of a retrial, and any appeal rights have been exhausted.

The Evidence Act contains many provisions relating to videorecorded evidence. Unless otherwise stated, it is intended that these provisions will apply to a videorecording made under new section 21AAC.

The Bill inserts a transitional provision which provides new section 21AAC(2) applies to a proceeding for an offence committed before the commencement if an originating step for the proceeding is taken on or after the commencement. It is intended that an originating step will include:

- the arrest of the defendant in the proceeding; or
- the making of a complaint under the Justices Act, section 42 in relation to the defendant in the proceeding; or
- the serving of a notice to appear on the defendant in the proceeding under the PPR Act, section 382.

Admissibility of recorded statements in particular committal proceedings

In 2022, a legislative framework was introduced into Part 6A, Division 2 of the Evidence Act to support a pilot enabling videorecorded statements taken by trained police officers to be used as an adult victim's (complainant's) evidence-in-chief in DFV related criminal proceedings. This was intended to offer potential benefits to DFV victims, including reducing the trauma for victims associated with re-telling their experiences in court, illustrating a victim's demeanour and experience close to the time of the event and reducing the capacity of the perpetrator to intimidate a victim.

However, stakeholder feedback on the pilot indicated the legislation is unclear about the admissibility of a recorded statement for the purposes of a committal hearing.

The amendments in clauses 26 and 27 of the Bill are intended to clarify the law as it relates to the admissibility of recorded statements in domestic violence proceedings that are committal proceedings, including registry committals. The Bill achieves this by amending section 103I (Admissibility of recorded statements in particular committal proceedings) of the Evidence Act and inserting a new section 103IA for the purpose of registry committals.

The Bill does not otherwise amend the legislative framework in Part 6A, Division 2 of the Evidence Act.

Existing section 103I(2) of the Evidence Act currently provides that a recorded statement is admissible in the proceeding as a complainant's evidence-in-chief only if:

(a) the recorded statement is admissible under section 103H (Admissibility of recorded statements generally) of the Evidence Act; and
(b) a magistrate has given a direction under the Justices Act, section 83A requiring the complainant to attend before the court as a witness to give oral evidence.

Section 103I(3) of the Evidence Act currently provides that a transcript of a recorded statement is admissible in the proceeding as the complainant's evidence-in-chief only if the recorded statement is admitted as a written statement under the Justices Act, section 110A.

Section 103I(4) of the Evidence Act relates to admitting the transcript as a written statement under section 110A of the Justices Act for the purpose of subsection (3).

To clarify the operation of the law, the Bill replaces existing sections 103I(2) and (3). New section 103I(2) provides that a transcript of a recorded statement is admissible in the proceeding as a complainant's evidence-in-chief only if:

(a) the recorded statement would be admissible under section 103H as if subsection (1)(d) of that section were omitted; and
(b) the transcript is admitted as a written statement under the Justices Act, section 110A.

New section 103I(2)(a) clarifies that a transcript of a recorded statement is only admissible to the extent that the recorded statement itself would be admissible under section 103H, excluding the requirement in section 103H(1)(d) that, at the proceeding, the complainant attests to the truthfulness of the contents of the recorded statement and is available for cross-examination and re-examination.

This will ensure that the transcript of a recorded statement will only be admissible where the recorded statement to which it relates complies with the requirements set out in section 103H, including in relation to the making of the statement, that it is a videorecording except in exceptional circumstances, and that disclosure obligations have been complied with.

Excluding the requirement in section 103H(1)(d) will mean that the complainant will not be required to physically attend the committal proceeding.

The Bill renumbers section 103I(4) as section 103I(3) and amends it so that it applies for the purposes of the new subsection (2). This has the effect that, for new subsection (2), the Justices Act, section 110A applies with all necessary changes and as though a reference in that section to a written statement included a reference to a statement contained in a document as defined under schedule 3, and as though section 110A(6C)(c) were omitted.

New section 103I(5) (renumbered by the Bill as section 103I(4)) provides that if the transcript is to be tendered as a written statement as provided for in section 103I, the complainant is for the purposes of the Justices Act, section 83A(5AA) taken to be the maker of the written statement and the recorded statement may be admitted under section 83A(5AA)(a) of the Justices Act in lieu of oral evidence. The intended effect of this is that, if the transcript of the recorded statement is admitted as a written statement under section 110A of the Justices Act, and the magistrate makes a direction under section 83A(5AA)(a) of the Justices Act for the maker of that written statement (the complainant) to attend before the court as a witness to give oral evidence, the recorded statement may be admitted in lieu of the complainant's oral evidence.

The Bill also clarifies in new section 103I(6) (renumbered by the Bill as section 103I(5)) that the court is not precluded from requiring the complainant to attest to the truthfulness of the contents of the transcript or recorded statement or be made available to give further oral evidence or for cross-examination and re-examination.

With respect to registry committals, the current definition of domestic violence proceeding in section 103C of the Evidence Act may prevent section 103I from applying to registry committals due to the words 'held before a court'.

To address this, the Bill inserts a new section 103IA (Admissibility of transcripts of recorded statements in particular registry committal proceedings) which applies to a registry committal under section 114 of the Justices Act if:

(a) the indictable offence to which the committal relates is not to be heard and decided summarily and is a domestic violence offence; and
(b) for the purpose of section 103C of the Evidence Act, definition *domestic violence proceeding*:
    i. committal proceedings are a type of proceeding prescribed for the purpose of paragraph (b); and
    ii. the clerk of the court is the clerk of a court at a place prescribed for the purpose of paragraph (c).

Where the new section applies, the Bill provides that a transcript of a recorded statement is admissible as a complainant's written statement if the recorded statement would be admissible under section 103H as if subsection (1)(d) of that section were omitted. As a registry committal is only conducted where all evidence of witnesses for the prosecution is intended to be given in written statements, the transcript of a recorded statement will be admissible for that purpose.

Expert evidence in proceedings for sexual offences

Evidence about the nature of sexual offences and factors that might affect the behaviour of victims

The Taskforce heard concerns from stakeholders that common misconceptions about sexual violence sometimes operate within the criminal justice system to the detriment of victim-survivors and that the impacts of trauma on victim-survivors are sometimes not well understood by the public and those in the justice system including police, the legal profession, and judicial officers.

The Taskforce found that expert evidence addressing these misconceptions would be effective in sexual offence cases and could reduce the risk of jurors using their own biases to reach conclusions that are not supported by the evidence.

The Taskforce recommended amending the Evidence Act to allow for the admission of expert evidence about the nature and effects of sexual violence in similar terms to the approach in Victoria, and to adopt particular sections of the Uniform Evidence Law (UEL).

The Bill inserts new section 103ZZGB into the Evidence Act to allow for the admission of expert evidence about the nature of sexual offences and the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that they have been the victim, of a sexual offence, including the reasons that may contribute to delay on the part of the victim to report the offence.

The purpose of this evidence is to assist juries to understand victim-survivor behaviour that may seem counterintuitive, for example a victim-survivor maintaining a relationship with the accused after an alleged sexual offence.

The evidence must be relevant and it cannot be led or used to reason that it is more or less likely that the complainant is telling the truth or that the offending occurred as alleged.

Common law rules

Consistent with the approach in Victoria and the Taskforce recommendation, the Bill provides that the common law credibility rule does not apply to expert evidence to which section 103ZZGB(1) relates, concerning the credibility of another witness if the evidence is wholly or substantially based on the expert's expert knowledge, the evidence could substantially affect the assessment of the credibility of the other witness, and the court gives leave to adduce the evidence.

For the purpose of allowing the expert evidence to be admitted, the Bill also abrogates common law rules which ordinarily prevent expert evidence being led when it relates to a fact in issue or an ultimate issue, or a matter of common knowledge.

Particular information to be given to expert

The Bill allows an expert engaged under the provisions to ask the prosecutor for the proceeding for copies of particular documents related to the proceeding, including an indictment or bench charge sheets, summaries or particulars of allegations, witness statements and exhibits. Where a document or information is disclosed to the expert under this provision, the Bill creates an offence if the expert, directly or indirectly, discloses or makes use of the document or information other than for the purpose of giving the expert evidence in the proceeding. The Bill creates an equivalent offence where the expert is given particular information for the purpose of providing relevant evidence about a defendant (related to affirmative consent provisions included in the Second Taskforce Act).

Transitional

An expert may be engaged to give evidence about the nature of sexual offences and factors that might affect the behaviour of victims in a proceeding if the originating step for the proceeding is taken on or after the commencement. It is intended that originating step will include:

- the arrest of the defendant in the proceeding; or
- the making of a complaint under the Justices Act, section 42 in relation to the defendant in the proceeding; or

- the serving of a notice to appear on the defendant in the proceeding under the PPR Act, section 382.

Expert evidence panel

To support the amendments, the Taskforce also recommended establishing an expert evidence panel for sexual offence proceedings that could be used by the prosecution, defence and the court (Recommendation 80 of Report Two).

The Bill expands the sexual offence expert evidence panel (the panel) in section 103ZZH of the Evidence Act (as inserted by the Second Taskforce Act) to enable a party, or the court in certain circumstances, to engage an expert from the panel for the purpose of providing evidence to which new section 103ZZGB relates in a criminal proceeding relating wholly or partly to a sexual offence.

The aim of expanding the panel is to ensure that expert evidence about the nature of sexual offences and factors that might affect the behaviour of victims is equally accessible to the prosecution, defence and the court.

The Bill also includes a new consideration, being the cultural competence and capability of the person, to which the chief executive may have regard when determining whether to appoint a person to the panel. Further, the Bill clarifies that an expert may be appointed to the panel to perform both functions, being to provide expert evidence under subdivision 1 (about a defendant) or subdivision 2 (about the nature of sexual offences and factors that might affect the behaviour of victims) if they meet the suitability criteria for both.

Additionally, the Bill amends sections 103ZZI (Removal of person from sexual offence expert evidence panel), 103ZZJ (Criminal history report) and 103ZZK (Confidentiality of criminal history information), as inserted by the Second Taskforce Act, so that the provisions apply to the expanded panel.

Similar to the first stage of the panel, this stage will initially operate as a pilot in the Brisbane and Townsville Supreme and District Courts. This stage of the panel will also initially operate in the Brisbane, Caboolture, Cleveland, Redcliffe and Townsville Magistrates Courts for committal proceedings. The Bill amends the Evidence Regulation to prescribe these locations. However, the provisions do not prevent a party to a relevant proceeding in a prescribed location from engaging an expert who is not on the panel. Further, for proceedings outside prescribed locations, a party is still able to engage an expert who is not on the panel to provide expert evidence.

Tendency evidence and coincidence evidence

The Taskforce considered the threshold for the admission of similar fact (or coincidence) and propensity (or tendency) evidence in sexual offence cases, and noted findings by the Royal Commission that Queensland has the most restrictive approach to the admissibility of this evidence in Australia.

A modified form of the common law applies in relation to the admissibility of similar fact and propensity evidence in Queensland. The relevant principle is set out in *Pfennig*

v The Queen (1995) 182 CLR 461. In *Pfennig*, the majority of the High Court held that a trial judge considering admissibility of the evidence must apply the same test as a jury must apply in dealing with circumstantial evidence and ask whether there is a rational view of the evidence that is consistent with the innocence of the accused. Their Honours concluded that *"only if there is no such view can one safely conclude that the probative force of the evidence outweighs its prejudicial effect"*.[2]

The Taskforce recommended that Queensland amend the law relating to similar fact (coincidence) and propensity (tendency) evidence, in relation to all offences of a sexual nature, by amending the Evidence Act to adopt provisions in the terms of sections 97, 97A, 98 and 101 of the *Evidence Act 1995* (NSW) ("the NSW Evidence Act"). The Taskforce noted the gendered terms of reference under which it was operating, limiting this recommendation to offences of a sexual nature. The Taskforce also considered that Queensland would benefit from existing jurisprudence in UEL jurisdictions when applying these provisions.

Clauses 39 to 43 of the Bill give effect to this Taskforce recommendation, by adopting the law as it operates in New South Wales (NSW) and other UEL jurisdictions (with minor changes to reflect modern drafting practice and necessary Queensland modifications). This approach is to ensure that the effect of the NSW framework is imported, including relevant case law.

The Bill introduces new Part 7A to the Evidence Act to provide a comprehensive statement of the law as it relates to the admissibility of tendency evidence and coincidence evidence. These amendments abrogate the rule in *Pfennig*. Part 7A will apply to all criminal proceedings and is not limited to offences of a sexual nature. This will ensure that a consistent approach is taken to tendency evidence and coincidence evidence in all criminal proceedings.

Consistent with terminology used in UEL jurisdictions, Part 7A uses the terms *"tendency evidence"* and *"coincidence evidence"*, instead of propensity and similar fact evidence. The terms *"tendency evidence"* and *"coincidence evidence"* are defined in new section 129AA.

Tendency evidence means:

> *evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, that is adduced to show that a person has or had a tendency, whether because of the person's character or otherwise, to act in a particular way or to have a particular state of mind.*

Coincidence evidence means:

> *evidence that 2 or more events occurred that is adduced to show that a person did a particular act or had a particular state of mind on the basis that, having regard to any similarities in the events or circumstances in which they occurred, or any similarities in both the events and the circumstances in which they occurred, it is improbable that the events occurred coincidentally.*

[2] *Pfennig v The Queen* (1995) 182 CLR 461, 482–3.

Coincidence evidence:

> *…includes evidence from multiple witnesses claiming to be victims of offences committed by a defendant, that is adduced to prove, on the basis of similarities in the claimed acts or the circumstances in which they occurred, that the defendant did an act in issue*.

These definitions are modelled on terms used in sections 97(1) and 98(1) of the NSW Evidence Act, which provide the rules for tendency evidence and coincidence evidence, respectively.

The term "probative value" in new section 129AA has also been modelled on the definition in Part 1 of the NSW Evidence Act.

New sections 129AB(2) and 129AD(2) provide a two-limbed test for the admissibility of tendency evidence and coincidence evidence, respectively. It is noted that a two-limbed test exists in NSW (and other UEL jurisdictions) with respect to these categories of evidence, by virtue of the combined impact of a range of provisions in Part 3.6 of the NSW Evidence Act. The Bill adopts similar language as used in UEL jurisdictions.

Sections 129AB(4) and 129AD(4) relate to any possibility that tendency evidence or coincidence evidence is the result of collusion, suggestion, concoction or contamination. These provisions replace existing section 132A of the Evidence Act, and also adopt some of the language utilised in section 94(5) of the NSW Evidence Act. It is intended to make clear that a possibility of collusion, suggestion, concoction or contamination should not be taken into account in determining probative value, or more generally, the admissibility of tendency evidence or coincidence evidence.

New section 129AC provides a rebuttable presumption that will operate in criminal proceedings in which the commission by the defendant of an act that constitutes, or may constitute, a child sexual offence is a fact in issue. The Bill defines the term *"child sexual offence"* in Schedule 3 (Dictionary) of the Evidence Act. The presumption applies in relation to tendency evidence but does not operate in relation to coincidence evidence. The corresponding framework is found in section 97A of the NSW Evidence Act.

It is presumed that the following tendency evidence will have significant probative value:

- tendency evidence about the sexual interest the defendant has or had in children, even if the defendant has not acted on the interest; and
- tendency evidence about the defendant acting on a sexual interest the defendant has or had in children.

This presumption applies regardless of whether the sexual interest or act to which the tendency evidence relates was directed at a complainant in the proceeding, any other child, or children generally. The same position is taken in section 97A(3) of the NSW Evidence Act.

This presumption may be rebutted and a court may determine that the tendency evidence does not have significant probative value if it is satisfied that there are sufficient grounds to do so. New section 129AC also provides that certain matters (for example, the personal characteristics of the subject of the tendency evidence) are not to be taken into account in determining whether there are *"sufficient grounds"*, unless the court considers that there are exceptional circumstances in relation to those matters to warrant taking them into account. The terms *"sufficient grounds"* and *"exceptional circumstances"* are undefined. It is intended that this provision would operate in the same way as section 97A(5) of the NSW Evidence Act.

New section 129AC(5) defines the term "child" for the purposes of applying section 129AC to mean a child under the age of 16, or a child aged 16 or 17 who is under the care, supervision, or authority of the defendant. The second aspect of this definition, pertaining to care, supervision, or authority, is intended to capture circumstances where an accused has engaged in prior conduct constituting an offence under the new position of authority offence.

New section 129AE sets out the notice requirements for a party seeking to adduce tendency evidence or coincidence evidence. The approach in section 129AE is similar to the approach to notice requirements in the Evidence Regulation 2020 (NSW). It is intended that the new provision will require the relevant party to provide the prescribed information to the extent that it can be known or reasonably ascertained.

In addition, new section 129AE provides that if a party does not comply with the notice requirements, the party must seek leave of the Court to adduce the evidence, and the Court may grant leave to waive the notice requirements if it is in the interests of justice to do so.

New section 129AF clarifies the standard of proof applicable to tendency evidence and coincidence evidence. A similar provision, albeit related to jury directions, is in section 161A of the *Criminal Procedure Act 1986* (NSW). Section 129AF provides that tendency evidence or coincidence evidence does not need to be proved beyond reasonable doubt to the extent that it is adduced as tendency evidence and coincidence evidence.

There are two exceptions to this, however. These exceptions exist if:

- the court is satisfied that there is a significant possibility that a jury will rely on the tendency evidence or coincidence evidence as being essential to its reasoning in reaching a finding of guilt; or
- the evidence is adduced as both tendency evidence or coincidence evidence, and as proof of an element or essential fact of a charge.

In relation to the first exception, its inclusion seeks to clarify that the amendments are not intended to abrogate the common law rule in *Shepherd v The Queen* (1990) 170 CLR 573, and ensure that in appropriate cases a court can still give a *Shepherd* direction stating that evidence must be proved beyond reasonable doubt if it is an indispensable link in a chain of reasoning towards an inference of guilt.[3] However, it is noted that

[3] *Shepherd v The Queen* (1990) 170 CLR 573, 579.

ordinarily proof of the accused's tendency to act in a particular way will not be an indispensable intermediate step in reasoning to guilt.[4]

In relation to the second exception, evidence need only be proved beyond reasonable doubt to the extent that it is adduced as proof of the element or essential fact.

These amendments are not the first modification to common law principles (particularly relating to the rule in *Pfennig*) that have been achieved by amendments to the Evidence Act. A notable modification occurred in 1997 with the introduction of the former section 132B of the Evidence Act (this provision was recently amended and is now located at section 103CB of the Evidence Act).

Section 103CB provides that *"relevant evidence of domestic violence is admissible as evidence in a criminal proceeding"*. Evidence of domestic violence includes, *"but is not limited to, the history of the domestic relationship between a person and an intimate partner or family member of the person"*.[5]

There is potential for interaction between new Part 7A and existing section 103CB of the Evidence Act, noting the potentially wide application of section 103CB.[6]

Tendency evidence and coincidence evidence sought to be adduced in a criminal trial involving allegations of domestic violence may be *"relevant evidence"* and thereby may also be captured by section 103CB of the Evidence Act. Evidence which provides relevant context to a violent domestic relationship may also reveal a tendency on behalf of an accused. Such circumstances have been considered by the Queensland Court of Appeal and the High Court in respective decisions in the case of *Roach.*[7]

Given tendency evidence and coincidence evidence might be captured by both section 103CB and new Part 7A of the Evidence Act, it will be necessary to carefully consider how such evidence is intended to be used by a jury.

For example, where the evidence is relevant evidence of domestic violence that also happens to show a tendency but is not led for the purpose of tendency evidence, section 103CB will apply.

By comparison, where the evidence is led as circumstantial evidence in proof of the facts charged and therefore amounts to tendency evidence, it will be necessary to apply the two-limbed test for admissibility in new Part 7A of the Evidence Act.[8]

In addition, judges can provide jury directions to ensure the jury does not use the evidence for an impermissible purpose. In any case, the importance of properly characterising the purpose for which evidence is led will remain critical to ensure that the correct test for admissibility is applied and that appropriate jury directions are given.

[4] *R v Bauer* (2018) 266 CLR 56, [80], citing *Shepherd v The Queen* (1990) 170 CLR 573, 584–5.
[5] Section 103CA(1)(a), Evidence Act.
[6] *Roach v The Queen* (2011) 242 CLR 610, [30]–[31].
[7] *R v Roach* [2009] QCA 360; *Roach v The Queen* (2011) 242 CLR 610.
[8] *Roach v The Queen* (2011) 242 CLR 610, [40]–[42].

Amendment of the PSA

Non-contact orders

In Queensland, a non-contact order can be made by a court if an offender is convicted on indictment or summarily of a personal offence (defined as an indictable offence committed against the person of someone). The issuing of a non-contact order to offenders convicted of sexual violence is one way a sentencing court can provide victim-survivors of sexual violence with a measure of ongoing protection from threats of violence.

The Taskforce recommended that the PSA be amended to extend the duration of non-contact orders from two years to five years. The Taskforce recognised that victim-survivors of sexual violence sometimes need the same protection as victim-survivors of DFV and that consistency in the duration of protection orders would send a message to the community that both forms of offending are treated seriously by the courts.

To implement this recommendation, the Bill amends sections 43C(2)(a) and (b) of the PSA to extend the maximum duration of non-contact orders from two years to five years. The section is otherwise unchanged by the Bill.

The Bill also amends section 43F(1) of the PSA so that the maximum penalty for a breach of a non-contact order is 120 penalty units or 3 years imprisonment. This is consistent with the maximum penalties for contraventions of restraining orders for unlawful stalking, intimidation, harassment or abuse (section 359F(10) of the Criminal Code) and domestic violence orders (section 177(2)(b) of the *Domestic and Family Violence Protection Act 2012* (DFVP Act)).

Alternative ways of achieving policy objectives

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

Estimated cost for government implementation

The Bill is likely to increase demand for courts, police, the legal profession and funded domestic, family and sexual violence service providers due to the increase in the number of matters being reported or coming before the courts, as well as an increase in the complexity of matters being heard. Government has allocated substantial funding of $588 million to implement the Government response to the Taskforce reports. Government will continue to monitor demand and the impacts of the legislative amendments on the system. Any cost impacts will be dealt with as part of normal budget processes.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LSA). Potential infringements of FLPs are addressed below.

Inadmissibility of admissions made during programs while prisoners are remanded – Clauses 5 and 6 of the Bill

Sections 4(2)(a) and 4(2)(b) of the LSA require legislation to have sufficient regard to the rights and liberties of individuals and the institution of parliament.

The amendments to provide for the inadmissibility of admissions made by a remanded prisoner during a program, are generally consistent with fundamental legislative principles. Potential inconsistencies with fundamental legislative principles under the LSA are considered justifiable.

A potential inconsistency with respect to the conferral of immunity from proceeding or prosecution (section 4(3)(h) of the LSA) may arise as the amendment provides for the inadmissibility of evidence against the prisoner, namely admissions made through participating in a program on remand. As a justification, the amendment will act as an incentive for a prisoner who may wish to participate in a program while in custody on remand to further their rehabilitation and promote community safety. Safeguards are also included to ensure that the inadmissibility of evidence is limited to proceedings about the offence for which the prisoner is remanded.

The amendments provide a head of power to prescribe by regulation programs and services that are not considered appropriate for prisoners to participate in while detained on remand. This delegation of legislative power may be considered inconsistent with the institution of Parliament (section 4(2)(b) of the LSA). This is considered justified, as creating a regulation-making power for these provisions provides flexibility to be able to prescribe new programs and services as they are developed in the future and ensures an appropriate level of parliamentary scrutiny is maintained given immunity and inadmissibility of evidence will be available for certain programs and services.

Position of authority offence – Clauses 7 to 11 of the Bill

Sections 4(2)(a) and 4(3)(g) of the LSA require legislation to have sufficient regard to the rights and liberties of individuals.

The new position of authority offence and the expansion to section 229B of the Criminal Code may infringe upon a person's freedom of expression by limiting the way they express themselves towards another, particularly to a child whom they have under their care, supervision or authority.

Freedom of movement and the right to liberty and security may be infringed in circumstances where a person is arrested, detained, convicted and/or sentenced in relation to the new offence. Any deprivation of liberty that arises from being charged and convicted of the offence would not be arbitrary, however, and would be in accordance with procedures established by law.

These potential infringements to the rights and liberties of an individual must be balanced against the purpose of the creation of the offence, which is to deter people from engaging in inappropriate sexual interactions with young people and therefore to increase the safety of young people. In light of this purpose, it is considered that there are adequate reasons justifying the potential infringement of these rights.

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, consequences are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offences.

The maximum penalties for the position of authority offence were determined having regard to other maximum penalties for sexual offending (where consent is irrelevant) in Queensland. The maximum penalty for an offence constituted by an act set out in section 210A(1) is 14 years imprisonment. The existing offence of "*Engaging in penile intercourse with a child under 16*" is broadly comparable, in terms of seriousness, to the physical elements captured by section 210A(1). This offence carries a maximum penalty of 14 years imprisonment if the complainant is above 12 years of age, or life imprisonment if the child is under the defendant's care.

The maximum penalty for an offence constituted by an act set out in section 210A(2) is 10 years imprisonment. The offence of "*Indecent treatment of a child aged 12-15 years*" is directly comparable to the physical elements of the offence captured by section 210A(2). The "*Indecent treatment*" offence carries a maximum penalty of 14 years imprisonment, or 20 years imprisonment if the offence is aggravated by the child being under the offender's care.

The existing criminal offences may be distinguished as more serious than the proposed offence, as they apply to younger children who are under the age of consent. This can however, be balanced against the aggravating feature of the power imbalance that will exist in cases captured by the proposed new position of authority offence.

The new limb to section 229B of the Criminal Code carries a maximum penalty of life imprisonment. This is consistent with the existing offence contained in section 229B.

These penalties are considered proportionate to the respective offences and the seriousness of the conduct, taking into account comparable existing provisions.

It is considered that the introduction of this new offence, and the expansion to section 229B of the Criminal Code, is consistent with fundamental legislative principles.

Special witness alternative arrangements, requirement to videorecord, and directions hearings – Clauses 12 to 25 of the Bill

Sections 4(2)(a) and 4(3)(g) of the LSA require legislation to have sufficient regard to the rights and liberties of individuals. Section 4(3)(b) specifies that this includes being consistent with natural justice. Procedural fairness involves a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.

The Bill potentially breaches the principle of procedural fairness by amending the ways in which certain witnesses may give evidence. However, the amendments are intended to support special witnesses to give their best evidence and reduce the trauma associated with giving evidence in court. The approach taken in the legislation is considered appropriate having regard to the safeguards included in the Evidence Act and the proposed benefits for special witnesses provided by the Bill. In particular, for special

witness alternative arrangements, the court is not required to grant the application if it is not in the interests of justice. Similarly, where a videorecording is admitted in a rehearing, retrial, appeal or civil proceeding, the court must not order the special witness to give further evidence or reappear unless it is in the interests of justice to do so. For directions hearings, the court may make any direction considered appropriate for the fair and efficient conduct of the proceeding.

It is considered that the amendments will also support natural justice by creating more options to allow special witnesses to give their best evidence in court. Any potential departure is limited as the proposed amendments will not alter an accused person's right to be heard or to answer allegations made against them. Therefore, any departures from FLPs are considered to be appropriate and justified in the circumstances.

Admissibility of recorded statements in particular committal proceedings – Clauses 26 and 27 of the Bill

To have sufficient regard to the rights and liberties of individuals, legislation should be consistent with the principles of natural justice, including procedural fairness.

Allowing for the admission of a recorded statement (or transcript) as a complainant's evidence-in-chief in DFV committal proceedings may alter the normal rules of evidence by removing the hearsay rule to allow out of court statements to be used as evidence of the existence of a fact contained in them.

While this represents a departure from the ordinary rules of evidence, the Bill includes safeguards to protect an accused person's right to a fair trial. This includes that a direction from a magistrate will be required to admit the recorded statement as the complainant's evidence-in-chief without the complainant being required to attend the proceeding, and that the Bill does not prevent the magistrate from requiring the complainant to attest to the truthfulness of the recorded statement (or transcript) or to be made available to give further oral evidence or for cross examination and re-examination, if necessary. Further, if there is a dispute in relation to the admissibility of any content, parties are not prevented from making submissions to the court to ensure that the transcript only includes admissible content.

Having regard to the safeguards in the Bill, and the potential benefits for DFV victims, this FLP departure is considered justified.

Expert evidence in proceedings for sexual offences – Clauses 28 to 38 and 44 to 45 of the Bill

The LSA requires legislation to have sufficient regard to the rights and liberties of individuals, including that legislation be consistent with the principles of natural justice.

The amendments which abrogate certain common law rules to allow the admission of expert evidence in sexual offence proceedings may be considered to depart from this principle by relaxing the normal rules of evidence. However, it is noted that reports by experts are commonly admitted as an evidential facilitation and the expert providing evidence will be able to be cross-examined. This will provide a reasonable and practical

opportunity to challenge the evidence in accordance with the principles of procedural fairness.

Further, any potential departures are justified having regard to the purpose of expert evidence which enables a court or jury to properly understand the issues at trial. The power of the court to exclude any evidence if it is satisfied that it would be unfair to the person charged to admit that evidence is also maintained and will safeguard a defendant's right to a fair hearing.

Ensuring that legislation has sufficient regard to the rights and liberties of individuals also requires that consequences imposed by legislation are proportionate and relevant.

The Bill creates new offences where an expert, directly or indirectly, discloses or makes use of particular information given to them other than for the purpose of giving the expert evidence in the proceeding. The maximum penalty for breach of these provisions is 100 penalty units or 2 years imprisonment.

Where an expert is engaged under the provisions in the Bill, the expert may ask the prosecutor for particular documents to assist them in preparing their evidence. The offences are included in the Bill to protect the rights of the persons about whom the information relates and to provide an important safeguard against unlawful use or disclosure of the information, noting that it may include highly sensitive personal information.

Similar offences are included across the Queensland statute book to provide similar protections for the unauthorised disclosure of confidential information, such as sections 282G and 288 of the *Youth Justice Act 1992* and section 189E of the *Child Protection Act 1999.*

The penalties are set at a level to provide the appropriate deterrence and are consistent with similar offences in Queensland legislation. On this basis, the inclusion of the offences and penalties in the Bill are considered appropriate and reasonable.

Tendency evidence and coincidence evidence – Clauses 39 to 43 of the Bill

Sections 4(2)(a) and 4(3)(g) of the LSA require legislation to have sufficient regard to the rights and liberties of individuals. Section 4(3)(b) specifies that this includes being consistent with natural justice.

It is noted that legislation may not have sufficient regard to the rights and liberties of individuals if it alters the normal rules of evidence for legal proceedings.

The admission of tendency evidence and coincidence evidence in certain criminal proceedings is relevant to whether legislation interferes with the right to a fair hearing which includes the right to have a decision based on logically probative evidence (*Salemi v Mackeller* (No 2) (1977) 137 CLR 396; 14 ALR 1). This is relevant as the admission of tendency evidence or coincidence evidence may allow more evidence to be admitted of previous criminal or alleged criminal offending as circumstantial evidence of current alleged offending. It is arguable that evidence that a defendant has behaved similarly in the past which is not presently admissible under the common law

but which may be admissible under the proposed amendments might be seen to not be logically probative of the present charge.

However, the proposed amendments are made in response to recommendations from the Royal Commission and the Taskforce which provided evidence that challenged the view that juries will use this evidence to engage in unfair reasoning. Further, there will be a reasonable and practical opportunity for the defendant to challenge the evidence in accordance with the principles of procedural fairness.

Any potential breach of fundamental legislative principles is justified having regard to the safeguards included in the Evidence Act, including that a court may exclude any evidence if it is satisfied that it would be unfair to the person charged to admit that evidence. Further, this evidence has the potential to assist a court or jury to properly understand the issues at trial.

Non-contact orders – Clauses 46 to 48 of the Bill

The LSA requires legislation to have sufficient regard to the rights and liberties of individuals. The proportionality of a penalty to an offence is a relevant consideration when determining whether legislation has sufficient regard to the rights and liberties of individuals.

The Bill amends section 43F(1) of the PSA so that the maximum penalty for a breach of a non-contact order is 120 penalty units or 3 years imprisonment. This is consistent with the maximum penalties for contraventions of restraining orders for unlawful stalking, intimidation, harassment or abuse (section 359F(10) of the Criminal Code) and domestic violence orders (section 177(2)(b) of the DFVP Act). The penalty is considered proportionate to the offence and seriousness of the conduct, taking into account these comparable existing provisions.

Consultation

The Taskforce undertook extensive consultation in preparing both its reports. For Report One, the Taskforce received over 700 submissions from stakeholders including individuals sharing their lived experience, conducted stakeholder forums throughout Queensland and held over 125 individual meetings with stakeholders including the judiciary, legislators, police, the legal profession, policy makers, academics and service providers.

For Report Two, the Taskforce received 19 submissions from women who were offenders and 250 submissions from victim-survivors of sexual assault. Submissions came from all over Queensland, including from people who identified as First Nations, culturally and linguistically diverse, people with disability and people from the LGBTIQA+ community. The Taskforce also held 79 consultations and engagements across Queensland with stakeholders including the judiciary, legislators, police, policy makers, academics and service providers.

Targeted consultation was also undertaken by the Department of Justice and Attorney-General (DJAG) on a confidential basis with the judiciary, relevant statutory bodies, and key legal, DFV and sexual violence stakeholders on a consultation draft Bill.

Feedback received during this consultation process was taken into account in finalising the Bill for the purposes of introduction.

Consistency with legislation of other jurisdictions

The amendments in the Bill are specific to the legislative framework of the State of Queensland and are not consistent with or complementary to legislation of the Commonwealth or another state, except as identified below.

Statutory review

While the statutory requirement for a review of amendments made in response to recommendations made by the Taskforce is specific to the State of Queensland, NSW has also legislated requirements for reviews of some of its reforms which are similar to some of those recommended by the Taskforce.

Position of authority offence

All other states and territories have introduced specific offences targeted at sexual interactions between 16 and 17 year old children, and adults in a position of authority. South Australia (SA) and the Australian Capital Territory (ACT) provide an offence where a person in a position of authority (or special care) *"maintains"* or *"engages in"* a sexual relationship. Other jurisdictions do not provide a *"course of conduct"* offence.

Jurisdictions have taken different approaches to the structure of the offence.

Some interstate examples of this offence apply generally to all people, including juvenile offenders. The approach in the Bill is akin to Tasmania, where the cognate offence is limited in application to adults.

The language used to describe the *"position of authority"* element varies. Victoria and Western Australia (WA) use the comparable term, *"care, supervision or authority"*. Other jurisdictions use terms such as *"special care*" or *"position of authority"*.

Interstate jurisdictions take varying approaches as to whether certain categories of person are taken to be in a position of authority for relevant offences. Victoria, Tasmania and the ACT have inclusive lists, whereas NSW, SA and the Northern Territory (NT) use exhaustive lists. WA does not prescribe any positions of authority. Those jurisdictions that do prescribe *"positions of authority"* generally provide that the term includes parents, a spouse to a parent, teachers, health practitioners, and those who work in correctional institutions.

Interstate jurisdictions take varying approaches to the acts and conduct set out in the analogous offences. All jurisdictions prohibit sexual intercourse between a child (over the age of consent) and a person in a position of authority.

Other jurisdictions provide lawful marriage as a defence. A *"similar age"* defence operates in NSW.

Special witness measures

The provisions regarding alternative arrangements for special witnesses are broadly modelled on provisions in the *Criminal Procedure Act 1986* (NSW).

Requirement to videorecord

The provisions regarding the requirement to videorecord evidence given by special witnesses in certain proceedings are broadly modelled on the provisions in the *Criminal Procedure Act 1986* (NSW). The approach is also similar to provisions in the *Evidence (Children and Special Witnesses) Act 2001 (Tasmania)*.

Directions hearings

Introducing directions hearings for proceedings related to DFV and sexual offences will align Queensland with Victoria where the court may hold a ground rules hearing for particular proceedings, including a criminal proceeding that relates to a charge for a sexual offence or a family violence offence. In Victoria, the ground rules hearing allows the court to consider the communication, support or other needs of certain witnesses and how the proceeding is to be conducted to fairly and effectively meet those needs.

Admissibility of recorded statements in particular committal proceedings

Broadly, the legislative framework in Part 6A, Division 2 of the Evidence Act has been informed by the legislative model in Victoria. The provisions in the Bill align with the laws in Victoria to the extent that they allow a recorded statement to be admitted as a complainant's evidence-in-chief in a committal proceeding relating to a charge for a domestic violence offence.

Expert evidence in proceedings for sexual offences

The provisions which allow the admission of expert evidence in sexual offence proceedings will more closely align Queensland with the position in Victoria. SA has also legislated to allow the court to receive expert evidence about any matter referred to in its directions relating to consent.

Tendency evidence and coincidence evidence

The provisions have been modelled on Part 3.6 of the NSW Evidence Act, with necessary modifications for the Queensland context and in response to particular stakeholder feedback. NSW is a UEL jurisdiction, and therefore evidence law in that jurisdiction is generally aligned with other UEL jurisdictions (Victoria, NT, ACT and Tasmania). In particular, the two-limb test that governs the admissibility of tendency evidence and coincidence evidence operates in all UEL jurisdictions. This two-limb test is provided for in the Bill.

The Taskforce recommended that the NSW approach to the admissibility of tendency evidence and coincidence evidence be adopted, noting that NSW had introduced a rebuttable presumption that tendency evidence about a defendant's sexual interest in children will have significant probative value. This presumption only operates in cases

where the commission of a child sexual offence is a fact in issue. The ACT, NT and Tasmania have also introduced this rebuttable presumption. Such a rebuttable presumption is provided for in the Bill.

The provisions relating to standard of proof have been modelled on section 161A of the *Criminal Procedure Act 1986* (NSW).

Non-contact orders

There is no national consistency for the length of non-contact orders or other similar orders in Australia. No jurisdiction has a maximum duration, except for Queensland. Some jurisdictions (NSW and WA) have default periods of between one year and two years. In the ACT, a personal protection order cannot be made for over 12 months unless there are special or exceptional circumstances. Indefinite orders may be made in SA, Victoria and NSW.

Most jurisdictions have a maximum penalty for the contravention of a non-contact order or other similar orders of two years imprisonment (Victoria, NSW, WA and NT). In the ACT the maximum penalty for contravening a personal protection order is five years imprisonment, and it is up to 10 years imprisonment in SA (Intervention Order), depending on the circumstances.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the Act may be cited as the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024*.

Clause 2 provides that part 2, part 4, part 5 (other than division 3) and parts 6 to 8 commence on a day to be fixed by proclamation.

Part 2 Amendment of Attorney-General Act 1999

Clause 3 provides that Part 2 amends the *Attorney-General Act 1999*.

Clause 4 inserts new section 14 (Review of amendments made in response to recommendations of the Women's Safety and Justice Taskforce).

New subsection (1) provides that the Attorney-General must ensure a review is carried out into the operation and effectiveness of the legislative amendments made in response to the recommendations of the Women's Safety and Justice Taskforce (2021) by:

- the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023*; and
- the *Justice and Other Legislation Amendment Act 2023* to the *Criminal Law (Sexual Offences) Act 1978*; and
- the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*; and
- the *Queensland Community Safety Act 2024* to the *Youth Justice Act 1992;* and
- the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024*.

New subsection (2) provides that the Attorney-General must determine the terms of reference of the review.

New subsection (3) provides that the review must start as soon as practicable 5 years after the commencement and consider:

- the outcomes of the amendments; and
- the effects of the amendments on victims and perpetrators of sexual violence and domestic and family violence; and
- the outcomes for, and the effects of the amendments on, Aboriginal and Torres Strait Islander peoples; and
- whether the amendments are operating as intended.

New subsection (4) provides that the Attorney-General must table a report of the review in the Legislative Assembly as soon as practicable after the review is completed.

Part 3 Amendment of Corrective Services Act 2006

Clause 5 provides that Part 3 amends the *Corrective Services Act 2006*.

Clause 6 inserts new sections 344AA and 344AB after section 344.

New section 344AA (Notification before participation in a program or service) sets out provisions relating to notifying prisoners before participation in a program or service.

New subsection (1) provides that the section applies if a prisoner is being detained on remand for an offence.

New subsection (2) provides that before the prisoner participates in any program or service established or facilitated under section 266, the chief executive must ensure the prisoner is told if the program or service is an ineligible program or service under new section 344AB.

New section 344AB (Participation in a program or service not to be used in evidence) sets out provisions relating to participation in a program or service.

New subsection (1) provides that the section applies if:
- a prisoner is being detained on remand for an offence; and
- the prisoner participates in a section 266 program or service.

New subsection (2) provides that the following are not admissible in evidence against the prisoner in any civil, criminal or administrative proceeding for the facts constituting the alleged offence for which the prisoner detained on remand:
- an admission made by the prisoner in the course of, for the purpose of, or as a condition of, participating in a section 266 program or service;
- evidence directly or indirectly derived from an admission mentioned in paragraph (a).

New subsection (3) provides that subsection (2) does not apply to a proceeding for an offence committed or allegedly committed by the prisoner while participating in a section 266 program or service.

New subsection (4) provides that the reference in subsection (2)(a) to an admission made by the prisoner includes:
- any written material made by the prisoner; and
- anything said or done by the prisoner that makes it evident the prisoner committed an offence.

Examples of written material for this subsection include homework, workbooks, relapse prevention plans and offence mapping.

New subsection (5) provides that evidence that would otherwise be inadmissible in a proceeding because of subsection (2) is admissible if the prisoner agrees to its admission.

New subsection (6) provides that despite subsection (2), nothing in this section affects the information that may be adduced before, or considered by, the Parole Board.
New subsection (7) provides a definition for a *section 266 program or service* for the purposes of the section to mean a program or service that—

- is established or facilitated under section 266; and
- is not an ineligible program or service.

New subsection (8) provides that for the purpose of subsection (7) of the definition *section 266 program or service*, paragraph (b), a regulation may prescribe an ineligible program or service.

Part 4 Amendment of Criminal Code

Clause 7 provides that Part 4 amends the Criminal Code.

Clause 8 inserts new section 210A (Sexual acts with a child aged 16 or 17 under one's care, supervision or authority).

New subsection (1) makes it a crime if an adult has a child of or above the age of 16 under their care, supervision or authority, and:

- engages in penile intercourse with the child; or
- penetrates the vulva, vagina or anus of the child to any extent with a thing or a part of the person's body that is not a penis; or
- penetrates the mouth of the child to any extent with the person's penis.

New subsection (1) imposes a maximum penalty of 14 years imprisonment.

New subsection (2) makes it a crime if an adult has a child of or above the age of 16 under their care, supervision or authority, and:

- indecently deals with the child; or
- procures the child to commit an indecent act; or
- permits themselves to be indecently dealt with by the child; or
- wilfully exposes the child to an indecent act by the adult or any other person; or
- without legitimate reason, wilfully exposes the child to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or
- without legitimate reason, takes any indecent photograph or, by means of any device, records any indecent visual image of the child.

New subsection (2) imposes a maximum penalty of 10 years imprisonment.

New subsection (2) provides examples of persons who might have a child under their care, supervision or authority as follows:

- an employer, or other person with the authority to determine significant aspects of the child's employment (whether the work is paid, unpaid, or voluntary).
- a tutor, sports coach or music teacher.
- a religious or spiritual leader.
- a police officer who has dealt with a child in the exercise or performance of their duties or functions.

New subsection (3) provides a non-exhaustive list of persons who are taken to have a child under their care, supervision or authority as follows:

- the child's parent, grandparent, step-parent, or guardian;

- the spouse of the child's parent, grandparent or guardian;
- an approved carer of the child or the spouse of an approved carer of the child;
- a teacher, principal or deputy principal at a school at which the child is a student;
- a health practitioner if the child is their patient;
- a person employed or providing services at a place where the child is in custody;
- a person employed or providing services at a child accommodation service where the child lives.

New subsection (4) provides defences to the offence:

- that the accused person believed, on reasonable grounds, that the child was at least 18 years; or
- that all of the following apply - the accused person is a person other than a person referred to in new section 210A(3); the accused person is less than 3 years older than the child; and the act or omission that constitutes the offence did not in the circumstances constitute sexual exploitation of the child; or
- that the accused person and the child are lawfully married.

New subsection (5) provides that, to remove any doubt, it is not necessary for the prosecution to prove:

- abuse of a position of authority; or
- exercise of a position of authority; or
- the acts constituting the offence were done without consent.

New subsection (6) provides that section 161Q of the *Penalties and Sentences Act 1992* states a circumstance of aggravation for an offence against this section.

New subsection (7) provides that an indictment charging an offence against this section with the circumstance of aggravation stated in section 161Q of the *Penalties and Sentences Act 1992* may not be presented without the consent of a Crown Law Officer.

New subsection (8) provides relevant definitions of *approved carer* and *child accommodation service* for the purposes of the section.

Approved carer is defined to mean an approved foster carer, approved kinship carer, or provisionally approved carer for the purpose of the *Child Protection Act 1999*.

Child accommodation service is defined to mean a service for which the main purpose is to provide accommodation for children, but does not include:

- the care of children by an approved carer under the *Child Protection Act 1999* acting in that capacity; or
- the provision of accommodation to children under residential tenancy agreements under the *Residential Tenancies and Rooming Accommodation Act 2008*.

New subsection (8) also provides that, for the purposes of subsection (1)(b), *penetration* does not include penetration carried out for a proper medical, hygienic or law enforcement purpose.

Clause 9 amends section 229B (Repeated sexual conduct with a child).

Subclause (1) inserts new subsection (1A) to section 229B (Repeated sexual conduct with a child).

New subsection (1A) provides that any adult who has a child of or above the age of 16 under their care, supervision or authority and maintains an unlawful sexual relationship with the child commits a crime.

New subsection (1A) imposes a maximum penalty of life imprisonment.

Subclause (2) inserts the words 'to a charge of an offence against subsection (1)' after the word 'defence' in section 229B(5) which limits the application of the defence that the adult believed on reasonable grounds the child was least the age of 16 years, to repeated sexual conduct with a child under the age of 16 years.

Subclause (3) inserts new subsection (5A) to section 229B (Repeated sexual conduct with a child).

New subsection (5A) provides three defences to a charge of an offence against subsection (1A):

- the adult believed on reasonable grounds that the child was at least 18 years of age; or
- all of the following apply: the adult is not a person referred to in section 210A(3), the adult was less than 3 years older than the child, and the acts or omissions that constitute the offence did not, in the circumstances, constitute sexual exploitation of the child; or
- the adult and the child were lawfully married.

Subclause (4) omits the existing definition of *offence of a sexual nature* in section 229B(10) and replaces it with a definition that includes the new offence of sexual conduct with a child aged 16 or 17 under one's care, supervision or authority.

Subclause (5) inserts new subsection (11) which confirms that, to remove any doubt, persons listed in section 210A(3) are taken to have a child under their care, supervision or authority for the purposes of the offence in subsection (1A).

Subclause (6) inserts a note to section 229B (Repeated sexual conduct with a child) which refers readers to section 767, in relation to the application of subsection (1A), the relevant transitional section in the Act.

Clause 10 amends section 578 (Charge of offence of sexual nature).

Subclause (1) inserts '201A' after 'section 210(1)' in section 578(1) and (4). This amendment provides that a person may be convicted of the new offence in section 210A (Sexual acts with a child aged 16 or 17 under one's care, supervision or authority) as a natural alternative when the person is charged on indictment with an offence of rape, incest or an attempt to commit incest.

Subclause (2) inserts '201A' after 'section 210(1)' in section 578(3). This amendment provides that a person may be convicted of the new offence in section 210A (Sexual

acts with a child aged 16 or 17 under one's care, supervision or authority) as a natural alternative when the person is charged on indictment with an offence of unlawfully and indecently assaulting another.

Clause 11 inserts new Chapter 112 (Transitional provision for the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024) and new section 767 (Repeated sexual conduct with a child of or above 16 by a person who has the child under their care, supervision or authority) in Part 9 (Transitional and validation provisions).

New section 767 provides that, to remove any doubt, on a charge of an offence against section 229B(1A), evidence of an unlawful sexual act or acts done before the commencement of section 229B(1A) may not be admitted in evidence when determining whether unlawful sexual acts done after the commencement establish the existence of an unlawful sexual relationship.

Part 5 Amendment of Evidence Act 1977

Division 1 Preliminary

Clause 12 provides that Part 5 amends the *Evidence Act 1977*.

Clause 13 inserts new Division 17 (Transitional provisions for the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024 in Part 9 (Transitional and declaratory provisions) of the Act.

Division 2 Special witnesses

Subdivision 1 Preliminary

Clause 14 renumbers existing section 21 as section 20A.

Clause 15 inserts new sections 20B and 21 in Division 4 (Evidence of special witnesses) of Part 2 (Witnesses), before section 21A.

New section 20B (Definition for division) sets out the relevant definitions for Division 4 and replicates definitions included in existing section 21A(1) of the *Evidence Act 1977*. New section 20B also includes a definition for *relevant proceeding* to mean a criminal proceeding relating wholly or partly to a sexual offence; or a domestic violence offence.

New section 21 (Meaning of special witness) replicates the definition of *special witness* included in existing section 21A(1) and (1B) of the *Evidence Act 1977*.

Clause 16 omits section 21A(1) and (1B).

Clause 17 amends Schedule 3 (Dictionary).

Subclause (1) inserts definitions for *criminal organisation*, *participant*, *relevant matter* and *serious criminal offence* for part 2, division 4, cross-referencing to the definitions in section 20B.

Subclause (2) omits the existing definition of *party* and inserts a new definition for part 2, division 4 (cross-referencing to section 20B) and part 2, division 5 (cross-referencing to section 21C).

Subclause (3) inserts subsection (aa) to the definition of *relevant proceeding*, which provides that for part 2, division 4, see section 20B.

Subclause (4) amends the definition of *special witness* by omitting the reference to 'section 21A' and inserting 'section 21'.

Subdivision 2 Alternative arrangements for special witnesses

Clause 18 amends section 21A (Evidence of special witnesses).

Subclause (1) inserts new subsection (1) which provides that section 21A applies if a special witness is to give or is giving evidence in any proceeding.

Subclause (2) omits the words 'Where a special witness it to give or is giving evidence in any proceeding, the court' from section 21A(2) and inserts 'The court'.

Subclause (3) amends the existing wording of section 21A(2)(a) to renumber this section.

New subsection 21A(2)(a) provides that in the case of a criminal proceeding, that the person charged or other party to the proceeding:

- be excluded from the room in which the court is sitting while the special witness is giving evidence or is required to appear in court for any other purpose; or
- be obscured from the view of the special witness while the special witness is giving evidence or is required to appear in court for any other purpose.

Subclause (4) inserts new subsection (3) and (3A).

New subsection (3) provides that in the case of a relevant proceeding, the court must, on the application of a party to the proceedings, make or give an order or direction under subsection (2)(a)(ii), (c), (d) or (e) unless the court is satisfied it would not be in the interests of justice to do so or, subject to subsection (9), appropriate equipment and facilities are unavailable to accommodate an order or direction under those paragraphs.

New subsection (3A) provides that a party to a proceeding must give reasonable notice to each other party of their intention to apply for an order or direction under subsection (2) or (3).

Subclause (5) amends section 21A(4) and inserts the words 'including a relevant proceeding' after the words 'criminal proceeding'.

Subclause (6) inserts new subsection (9) which provides that, to remove any doubt, the court may make any other order it thinks fit to facilitate an order or direction under subsection (2)(a)(ii), (c), (d), or (e) made pursuant to an application under subsection (3).

Clause 19 inserts new section 173 (Alternative arrangements for, and evidence of, special witnesses) in Division 17 (Transitional provisions for the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024) of Part 9 (Transitional and declaratory provisions).

New section 173 provides that section 21A(3) and (3A) apply to a proceeding for an offence committed before the commencement if an originating step for the proceeding is taken on or after the commencement.

Subdivision 3 Directions hearings

Clause 20 inserts new section 21AAB (Directions hearings) in Division 4 (Evidence of special witnesses) of Part 2 (Witnesses).

New subsection (1) provides that the section applies to a relevant proceeding.

New subsection (2) provides that the court may, on its own initiative or on the application of a party to the proceeding, direct that:

- a directions hearing be held, about evidence to be given by a special witness; and
- further directions hearings be held at any later stage in the proceeding.

New subsection (3) provides that at a directions hearing, the court may:

- consider the communication needs of a special witness in a relevant proceeding and the most effective way to communicate with the witness; and
- give any directions about the giving of evidence by the witness that the court considers appropriate for the fair and efficient conduct of the proceeding.

New subsection (4) provides a non-exhaustive list of matters about which a court may give a direction at a directions hearing.

New subsection (5) provides that subsections (3) and (4) do not limit:

- section 21A(2) or (3);
- the Criminal Code, section 590AA; or
- the *Justices Act 1886*, section 83A.

New subsection (6) provides that this section does not apply to the extent division 4C, subdivision 3 (Directions hearings where an intermediary has been appointed) applies.

Clause 21 inserts new section 174 (Alternative arrangements for, and evidence of, special witnesses) in Division 17 (Transitional provisions for the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024) of Part 9 (Transitional and declaratory provisions).

New section 174 provides that section 21AAB applies to a proceeding for an offence committed before the commencement if an originating step for the proceeding is taken on or after the commencement.

Subdivision 4 Special witness evidence to be videorecorded

Clause 22 inserts new sections 21AAC and 21AAD in Division 4 (Evidence of special witnesses) of Part 2 (Witnesses).

New section 21AAC (Special witness evidence to be videorecorded) sets out provisions relating to the videorecording of special witness evidence.

New subsection (1) provides that the section applies to the evidence of a special witness in a trial in a criminal proceeding relating wholly or partly to a sexual offence, other than the person charged.

New subsection (2) provides that the court must direct that a videorecording of the evidence of a special witness be made if:

- a special witness is giving evidence; and
- appropriate equipment and facilities are available for videorecording the special witness's evidence.

New subsection (3) provides that a videorecording made under this section, or a lawfully edited copy of the videorecording, is admissible in any of the following as if the evidence were given orally in the proceeding in accordance with the usual rules and practice of the court, unless the relevant court otherwise orders:

- any rehearing or retrial of, or appeal from, the proceeding in which the videorecording was made;
- another proceeding for the relevant charge or another charge arising out of the same, or the same set of, circumstances;
- a civil proceeding arising from the commission of the offence.

New subsection (4) provides that the reference to a 'videorecording' in subsection (3) includes a digital copy of the videorecording on a separate data storage medium if the copy has been made by:

- the principal registrar of a court; or
- a person authorised by the principal registrar of a court to copy the videorecording onto the separate data storage medium.

New subsection (5) provides that subsection (2) applies regardless of whether an order or direction is also made under section 21A(2)(e).

New section 21AAD (Recall of a special witness) sets out provisions relating to the recalling of a special witness to attend a proceeding to give further evidence.

New subsection (1) provides that this section applies if the videorecording of the evidence of a special witness is admitted in a proceeding under section 21AAC(3).

New subsection (2) provides that the admission of the videorecording does not prevent a party to the proceeding applying to the court for the special witness to attend the proceeding to give further evidence.

New subsection (3) provides that a court must not make an order for the special witness to give further evidence or reappear unless the court is satisfied that:

- if the special witness had given the evidence in the ordinary way, the special witness could be recalled to give further evidence; and
- it would be in the interests of justice to make the order.

Clause 23 omits the definition of *recording* from section 21AY (Definitions for div 4B) and inserts a new definition for *recording* to mean:

- a videorecording of a special witness's evidence made under section 21A; or
- a videorecording of an affected child's evidence made under division 4A, subdivision 3 or 4; or
- a videorecording of a special witness's evidence made under section 21AAC; or
- a copy of a videorecording mentioned in paragraph (a), (b) or (c); or
- the usable soundtrack of a videorecording mentioned in paragraph (a), (b), (c) or (d).

Clause 24 inserts new subsection (4)(b)(iii) into section 21AZE (Making of practice directions authorising destruction) which provides that in the case of a videorecording made under section 21AAC, if the defendant has been convicted, there is no possibility or further possibility of a retrial and any appeal rights have been exhausted.

Clause 25 inserts new section 175 (Alternative arrangements for, and evidence of, special witnesses) in Part 9 (Transitional and declaratory provisions). New section 175 provides that section 21AAC(2) applies to a proceeding for an offence committed before the commencement if an originating step for the proceeding is taken on or after the commencement.

Division 3 Evidence related to domestic relationships and domestic violence

Clause 26 amends section 103I (Admissibility of recorded statements in particular committal proceedings).

Subclause (1) omits existing sections 103I(2) and (3) and inserts new subsection (2) into section 103I (Admissibility of recorded statements in particular committal proceedings).

New subsection (2) provides that a transcript of a recorded statement is admissible in the proceeding as a complainant's evidence-in-chief only if:

- the recorded statement would be admissible under section 103H as if subsection (1)(d) of that section were omitted; and
- the transcript is admitted as a written statement under the *Justices Act 1886*, section 110A.

Subclause (2) omits 'subsection (3)' in section 103I(4) and replaces it with 'subsection (2)'.

Subclause (3) inserts new subsections (5) and (6) into section 103I (Admissibility of recorded statements in particular committal proceedings).

New subsection (5) provides that if the transcript is to be tendered as a written statement as provided for in this section:

- the complainant is, for the purposes of the *Justices Act 1886*, section 83A(5AA), to be taken to be the maker of the written statement; and
- the recorded statement may be admitted under the *Justices Act 1886,* section 83A(5AA)(a) in lieu of oral evidence.

New subsection (6) provides that this section does not preclude the court from requiring a complainant to:

- attest to the truthfulness of the contents of the transcript or recorded statement; or
- be made available to give further oral evidence or for cross-examination and re-examination.

Subclause (4) renumbers sections 103I(4) to (6) as sections 103I(3) to (5).

Clause 27 inserts new section 103IA (Admissibility of transcripts of recorded statements in particular registry committal proceedings).

New subsection (1) provides that this section applies to a registry committal under section 114 of the *Justices Act 1886* if:

- the indictable offence to which subsection (1)(a) of that section relates is a domestic violence offence; and
- for the purpose of section 103C of this Act definition *domestic violence proceeding*:
  - (i) committal proceedings are a type of proceeding prescribed for the purpose of paragraph (b) of that definition; and
  - (ii) the clerk of the court is the clerk of a court at a place prescribed for the purpose of paragraph (c) of that definition.

New subsection (2) provides that a transcript of a recorded statement is admissible as a complainant's written statement if the recorded statement would be admissible under section 103H as if subsection (1)(d) of that section were omitted.

Division 4 Expert evidence in proceedings for sexual offences

Clause 28 replaces the heading of Part 6B, division 4, subdivision 1 with the heading 'Evidence about a defendant'.

Clause 29 amends section 103ZZC (Definitions for division).

Subclause (1) replaces the word 'division' with 'subdivision' in section 103ZZC (Definitions for division).

Subclause (2) replaces '103ZZH(5)' with '103ZZH' in the definition of *sexual offence expert evidence panel* in section 103ZZC (Definitions for division).

Clause 30 omits the heading contained in Part 6B, division 4, subdivision 2.

Clause 31 omits subsection (4)(c) in section 103ZZF (Engagement of person included on sexual offence expert evidence panel) and replaces it with new paragraph (c) which provides 'is a potential witness in the proceeding (to a matter in issue other than the provision of expert evidence under this division)'.

Clause 32 replaces subsection (4) in section 103ZZG (Particular information to be given to person engaged).

New subsection (4) provides that a person to whom a document or information is disclosed under subsection (2) must not, directly or indirectly, disclose or make use of the document or information other than for the purpose of giving expert evidence under subdivision 1 in the relevant proceeding.

New subsection (4) imposes a maximum penalty of 100 penalty units or 2 years imprisonment.

Clause 33 inserts new Part 6B, division 4, subdivision 2 (Evidence about the nature of sexual offences and factors that might affect the behaviour of victims) and inserts new sections:

- 103ZZGA (Definitions for subdivision);
- 103ZZGB (Evidence about the nature of sexual offences and factors that might impact the behaviour of victims);
- 103ZZGC (Credibility rule abrogated);
- 103ZZGD (Ultimate issue and common knowledge rules abrogated);
- 103ZZGE (Engagement of person to give expert advice); and
- 103ZZGF (Particular information to be given to person engaged).

New section 103ZZGA sets out the definitions for the subdivision, including definitions of *excluded person*, *relevant proceeding* and *sexual offence expert evidence panel*.

New section 103ZZGB sets out provisions relating to evidence about the nature of sexual offences and factors that might affect the behaviour of victims.

New subsection (1) provides that the following evidence is admissible in a criminal proceeding relating wholly or partly to a sexual offence, and may be given by an expert:

- evidence about the nature of sexual offences; and
- evidence about the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that they have been the victim, of a sexual offence, including the reasons that may contribute to a delay on the part of the victim to report the offence.

New subsection (2) provides that, for the section, an expert on the subject of sexual offences includes a person who can demonstrate specialised knowledge, gained by

training, study or experience, of a matter that may constitute evidence about a sexual offence.

New section 103ZZGC provides that the credibility rule does not apply to evidence to which section 103ZZGB(1) relates concerning the credibility of another witness if:

- the evidence is wholly or substantially based on the expert's expert knowledge; and
- the evidence could substantially affect the assessment of the credibility of the other witness; and
- the court gives leave to adduce the evidence.

New section 103ZZGD provides that evidence of an expert's opinion given under section 103ZZGB is not inadmissible only because the opinion is about a fact in issue or an ultimate issue, or a matter of common knowledge.

New section 103ZZGE sets out provisions relating to the engagement of a person to give expert advice.

New subsection (1) provides that a party to a criminal proceeding relating wholly or partly to a sexual offence may engage a person, other than an excluded person, to give evidence to which section 103ZZGB(1) relates, whether or not the person is included on the sexual offence expert evidence panel.

New subsection (2) provides that a court in a relevant proceeding may engage a person from the sexual offence expert evidence panel, other than an excluded person, to give evidence to which section 103ZZGB(1) relates in the proceeding if no party has engaged an expert to give such evidence and the court considers there is a good reason to call an expert.

New section 103ZZGF sets out provisions relating to particular information to be given to a person engaged to give evidence.

New subsection (1) provides that the section applies if a person is to give evidence which section 103ZZGB(1) relates.

New subsection (2) provides that the person may ask the prosecutor for the proceeding to give the person copies of the following documents relating to the offence that is subject of the proceeding:

- an indictment or bench charge sheets;
- summaries or particulars of allegations;
- witness statements, including Evidence Act section 93A device statements;
- exhibits or photographs of exhibits;
- transcripts of proceedings;
- any other document or thing in the prosecutor's possession or to which the prosecutor has access that may be relevant to evidence to which section 103ZZGB(1) relates.

New subsection (3) provides that subsection (2) does not apply to information contained in a document:

- that is sensitive evidence under the Criminal Code, section 590AF; or
- that the prosecution would be prevented under another Act or law from disclosing during a proceeding for the offence; or
- consisting of contact details for witnesses to the alleged commission of the offence.

New subsection (4) provides that a person to whom a document or information is disclosed under subsection (2) must not, directly or indirectly, disclose or make use of the document or information other than for the purpose of giving evidence to which section 103ZZGB(1) relates in the proceeding.

New subsection (4) imposes a maximum penalty of 100 penalty units or 2 years imprisonment.

Clause 34 amends section 103ZZH (Chief executive to establish sexual offence expert evidence panel).

Subclause (1) omits the words 'relevant evidence about a defendant in a relevant proceeding' from section 103ZZH(1) and (3) and inserts the words 'expert evidence under this division'.

Subclause (2) inserts the words 'for the purpose of subdivision 1' after 'suitable' in section 103ZZH(2).

Subclause (3) inserts new subsection (2A) which provides that a person is not suitable for the purposes of subdivision 2 to give expert evidence in a relevant proceeding, unless the person can demonstrate specialised knowledge, gained by training, study or experience, in a field of knowledge relevant to assessing:

- the nature of sexual offences; or
- the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that they have been, the victim of a sexual offence.

Subclause (4) inserts new subsection (4) which provides that in determining whether to appoint a person to the sexual offence expert evidence panel, the chief executive may have regard to the cultural competence and capability of the person, including whether the person can demonstrate knowledge and understanding of a particular cultural group.

Subclause (4) also omits the existing wording of section 103ZZH(4) and inserts new subsection (4A) which provides that the matters set out in subsections (2), (3), (4) and (5) do not limit the matters the chief executive may have regard to in considering the suitability of a person to give expert evidence under this division.

Subclause (5) inserts new subsection (6).

New subsection (6) provides that a person can be appointed to the sexual offence expert evidence panel to perform both functions if they meet the suitability criteria for both.

Subclause (6) renumbers 103ZZH(2A) to (6) as 103ZZH(3) to (8).

Clause 35 omits the words 'relevant evidence about a defendant in a relevant proceeding' from subsection (1) of section 103ZZI (Removal of person from sexual offence expert evidence panel) and inserts instead, 'expert evidence under this division'.

Clause 36 omits the words 'relevant evidence about a defendant in a relevant proceeding' from subsection (1) of section 103ZZJ (Criminal history report) and inserts 'expert evidence under this division'.

Clause 37 inserts new section 176 (Expert evidence about the nature of sexual offences and factors that might affect the behaviour of victims) in Division 17 (Transitional provisions for the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024) of Part 9 (Transitional and declaratory provisions).

New section 176 provides that an expert may be engaged to give evidence to which section 103ZZGB(1) relates in a proceeding for an offence committed before the commencement if an originating step for the proceeding is taken on or after the commencement.

Clause 38 amends Schedule 3 (Dictionary).

Subclause (1) inserts definitions for *Evidence Act section 93A device statement* and *excluded person*.

Subclause (2) omits paragraph (d) of the existing definition of *relevant proceeding* and inserts:

- for part 6B, division 4, subdivision 1 – see section 103ZZD; or
- for part 6B, division 4, subdivision 2 – see section 103ZZGA.

Subclause (3) omits '103ZZH(5)' from the definition of *sexual offence expert evidence panel* in Schedule 3 and replaces it with '103ZZH'.

Division 5 Tendency evidence and coincidence evidence

Clause 39 omits subsection (3) of section 21AZJ (Meaning of *relevant proceeding*).

Clause 40 inserts new Part 7A (Admissibility of tendency evidence and coincidence evidence) and new sections:

- 129AA (Definitions for part);
- 129AB (Admissibility of tendency evidence generally);
- 129AC (Admissibility of tendency evidence in proceedings involving child sexual offences);
- 129AD (Admissibility of coincidence evidence generally);
- 129AE (Notice to be given); and
- 129AF (Standard of proof for tendency evidence or coincidence evidence).

New section 129AA provides the definitions for the terms *coincidence evidence*, *probative value* and *tendency evidence*.

New section 129AB sets out the provisions regarding the admissibility of tendency evidence.

New subsection (1) provides that the section applies to criminal proceedings.

New subsection (2) provides that tendency evidence is not admissible unless:

- the court thinks that the evidence, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, will have significant probative value; and
- if the evidence is adduced by the prosecution about a defendant - the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.

New subsection (3) provides that subsection (2) does not apply to tendency evidence adduced to explain or contradict tendency evidence adduced by another party.

New subsection (4) provides that if there is a possibility that tendency evidence is the result of collusion, suggestion, concoction or contamination, the weight to be given to that evidence is a question for the jury and not a question to be taken into account in determining either the probative value or the admissibility of the evidence.

New section 129AC sets out a rebuttable presumption relating to the admission of tendency evidence in proceedings involving child sexual offences.

New subsection (1) provides that the section applies in a criminal proceeding in which the commission by the defendant of an act that constitutes, or may constitute, a child sexual offence is a fact in issue.

New subsection (2) provides that for section 129AB, it is presumed that the following tendency evidence about the defendant will have significant probative value regardless of whether the sexual interest or act to which the tendency evidence relates was directed at a complainant in the proceeding, any other child or children generally:

- tendency evidence about the sexual interest the defendant has or had in children even if the defendant has not acted on the interest; and
- tendency evidence about the defendant acting on a sexual interest the defendant has or had in children.

New subsection (3) provides that the court may determine that the tendency evidence does not have significant probative value if it is satisfied that there are sufficient grounds to do so.

New subsection (4) sets out the matters that are not to be taken into account in determining whether there are sufficient grounds for the purposes of subsection (3), unless the court considers that there are exceptional circumstances in relation to those matters, to warrant taking them into account:

- the sexual interest or act to which the tendency evidence relates (the tendency sexual interest or act) is different from the sexual interest or act alleged in the proceeding (the alleged sexual interest or act);

- the circumstances in which the tendency sexual interest or act occurred are different from circumstances in which the alleged sexual interest or act occurred;
- the personal characteristics of the subject of the tendency sexual interest or act, for example, the subject's age, sex or gender, are different to those of the subject of the alleged sexual interest or act;
- the relationship between the defendant and the subject of the tendency sexual interest or act is different from the relationship between the defendant and the subject of the alleged sexual interest or act;
- the period of time between the occurrence of the tendency sexual interest or act and the occurrence of the alleged sexual interest or act;
- the tendency sexual interest or act and alleged sexual interest or act do not share distinctive or unusual features;
- the level of generality of the tendency to which the tendency evidence relates.

New subsection (5) provides the definition of *child* for the purposes of section 129AC(2).

New section 129AD sets out the provisions regarding to the admissibility of coincidence evidence.

New subsection (1) provides that the section applies to criminal proceedings.

New subsection (2) provides that coincidence evidence is not admissible unless—

- the court thinks that the evidence, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, will have significant probative value; and
- if the evidence is adduced by the prosecution about a defendant, the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.

New subsection (3) provides that subsection (2) does not apply to coincidence evidence adduced to explain or contradict coincidence evidence adduced by another party.

New subsection (4) provides that if there is a possibility that coincidence evidence is the result of collusion, suggestion, concoction or contamination, the weight to be given to that evidence is a question for the jury and not a question to be taken into account in determining either the probative value or the admissibility of the evidence.

New section 129AE (Notice to be given) sets out the requirement to give notice where tendency evidence or coincidence evidence is sought to be adduced.

New subsection (1) provides that a party seeking to adduce tendency evidence or coincidence evidence under Part 7A must give notice in writing to each other party of their intention to adduce the evidence no less than 5 weeks before the date fixed for the start of the trial of the proceeding.

New subsection (2) prescribes the matters that must be included in a notice given under subsection (1).

New subsection (3) provides that if notice is not provided as required in subsection (1), a party may not adduce tendency evidence or coincidence evidence without leave of the court.

New subsection (4) provides that the court may grant leave under subsection (3) if it is satisfied that it would be in the interests of justice to do so.

New section 129AF sets out provisions on the standard of proof for tendency evidence or coincidence evidence.

New subsection (1) provides that tendency evidence or coincidence evidence need not be proved beyond reasonable doubt to the extent that it is adduced as tendency evidence or coincidence evidence unless:

- the court is satisfied that there is a significant possibility that the jury will rely on the evidence as being essential to its reasoning in reaching a finding of guilt; or
- the evidence is adduced as both tendency evidence or coincidence evidence and as proof of an element or essential fact of a charge.

New subsection (2) provides that if tendency evidence or coincidence evidence is adduced as both tendency evidence or coincidence evidence and as proof of an element or an essential fact of a charge, the evidence need only be proved beyond reasonable doubt to the extent that it is adduced as proof of the element or essential fact.

Clause 41 omits section 132A (Admissibility of similar fact evidence).

Clause 42 inserts new section 177 (Tendency evidence and coincidence evidence) in Division 17 (Transitional provisions for the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024) of Part 9 (Transitional and declaratory provisions). New section 177 provides that Part 7A applies to a proceeding for an offence committed before the commencement if an originating step for the proceeding is taken on or after the commencement.

Clause 43 amends Schedule 3 (Dictionary) to insert a definition for the following terms: *child sexual offence, coincidence evidence, probative value and tendency evidence*.

Part 6 Amendment of Evidence Regulation 2017

Clause 44 provides that Part 6 amends the *Evidence Regulation 2017*.

Clause 45 inserts new section 4C (Prescribed places for relevant proceeding). New section 4C prescribes the following places as relevant proceedings for the purposes of section 103ZZGA(b) of the *Evidence Act 1977*:

- Brisbane and Townsville, for the Supreme Court or the District Court; and
- Brisbane, Caboolture, Cleveland, Redcliffe and Townsville, for the Magistrates Courts.

Part 7 Amendment of Penalties and Sentences Act 1992

Clause 46 provides that Part 7 amends the *Penalties and Sentences Act 1992*.

Clause 47 amends section 43C (Requirements of non-contact order) to omit the words '2 years' from section 43C(2)(a) and (b) and insert '5 years'.

Clause 48 amends subsection (1) of section 43F (Contravention of non-contact order) to omit the existing maximum penalty and insert the new maximum penalty of 120 penalty units or 3 years imprisonment.

Part 8 Other amendments

Clause 49 provides that Schedule 1 amends the legislation it mentions.

Schedule 1 Other amendments

Part 1 Certain consequential amendments in relation to Part 4 (Criminal Code)

Corrective Services Act 2006

Clause 1 inserts a reference to the new offence contained in section 210A of the Criminal Code (Sexual acts with a child aged 16 or 17 under one's care, supervision or authority) in Schedule 1 (Sexual offences), underneath the subheading 'Criminal Code'.

Disability Services Act 2006

Clause 1 inserts '210A Sexual acts with a child aged 16 or 17 under one's care, supervision or authority' in Schedule 4 (Current disqualifying offences), item 4 (Criminal Code).

Clause 2 inserts '210A Sexual acts with a child aged 16 or 17 under one's care, supervision or authority' in Schedule 6 (Offences that may form basis of investigative information), item 4 (Criminal Code).

Penalties and Sentences Act 1992

Clause 1 inserts '7A section 210A (Sexual acts with a child aged 16 or 17 under one's care, supervision or authority)' in Schedule 1 (Serious violent offences), underneath the subheading 'Criminal Code'.

Clause 2 inserts 'section 210A (Sexual acts with a child aged 16 or 17 under one's care, supervision or authority)' as a bullet point in Schedule 1C (Prescribed offences), underneath the subheading 'Criminal Code'.

Working with Children (Risk Management and Screening) Act 2000

Clause 1 inserts '210A Sexual acts with a child aged 16 or 17 under one's care, supervision or authority' in Schedule 2 (Current serious offences), item 4 (Criminal Code).

Clause 2 inserts '210A Sexual acts with a child aged 16 or 17 under one's care, supervision or authority' in Schedule 4 (Current disqualifying offences), item 4 (Criminal Code).

Part 2 Additional consequential amendments in relation to Part 4 (Criminal Code)

Working with Children (Risk Management and Screening) Act 2000

Clause 1 inserts 'if the offence is not a disqualifying offence' in Schedule 2 (Current serious offences), item 4 (Criminal Code), column 3 (Qualification relating to the provision of the Act), in relation to section 210A.

Clause 2 inserts 'for which an imprisonment order was or is imposed' in Schedule 4 (Current disqualifying offences), item 4 (Criminal Code), column 3 (Qualification relating to the provision of the Act), in relation to section 210A.

Part 3 Consequential amendments in relation to Part 5, Division 2 (Special witnesses)

Children's Court Rules 2016

Clause 1 omits the words 'under section 21A of that Act' from the note in subsection (2) of section 102 (Court may issue directions about how children give evidence) and inserts the words 'for the purpose of that section'.

Justices Act 1886

Clause 1 omits the words 'section 21' from example 3 in subsection (4) of section 110C (Limitation on cross-examination) and inserts the words 'section 20A'.