

# **Industrial Relations (Transparency And Accountability Of Industrial Organisations) And Other Acts Amendment Bill 2013**

## **Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Jarrod Bleijie MP Attorney-General and Minister for Justice**

### **Title of the Bill**

*Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013*

### **Objectives of the Amendments**

The policy intent and the objectives set out in the Bill's Explanatory Notes remain unchanged.

The objectives of the amendments to be moved during consideration in detail are:

For the amendments to the *Industrial Relations Act 1999*:

- give effect to the Government's response to the recommendations of the Legal Affairs and Community Safety Committee following its examination of the Bill and to other issues raised by stakeholders. These amendments relate to the disclosure of personal interests, remuneration and procurement expenditure; and the requirements for political expenditure ballots;
- in addition to the requirements for financial management policies for the issuance and use of credit cards by organisations, the proposed amendments will require employee organisations (unions) to:
  - make publicly available online the credit card statements of all organisation-issued cards for each reporting period the statements are issued;
  - Introduce a requirement that any personal credit card usage for an official purpose of the organisation, by an officer or an employee of the organisation, be made publicly available,
  - Introduce a requirement that the statements for any cab charge cards or vouchers or similar credit or charge payment facilities expended by the organisation be made publicly available online, and
  - The requirement to publish online will apply to statements issued for the period commencing 1 July 2012.
- clarifies that political party affiliation fees are to be publicly disclosed as part of the annual financial disclosure statement.

- clarifies the definition of an ‘organisational change’ provision at section 691C to make clear that it includes any requirements for consultation and joint decision making which occurs prior to the organisational change;
- address workload pressures in the Queensland Industrial Relations Commission (QIRC) and the Queensland Industrial Court by allowing for the appointment of the vice president and deputy presidents to the Industrial Court of Queensland (subject to a deputy president holding an appropriate legal qualification and having 5 years standing) and to appoint the president as a commissioner. Through these amendments, the workload of the Queensland Industrial Court and the Queensland Industrial Relations Commission can be spread across presidential members, thereby improving the efficiency of both tribunals;
- create a rule-making committee to clarify and enhance the responsibility for, and the consideration of, the rules of Queensland’s industrial relations tribunals; and
- a number of minor, technical or consequential amendments are proposed.

For the amendments to the *Drug Court Act 2000* and the *Penalties and Sentences Act 1992* and related consequential amendments to other Acts:

- these amendments are drawn from the Criminal Law Amendment (No.2) Bill 2012 with the addition of a small number of minor and technical changes that were identified as necessary after that Bill was introduced; and
- will enable the orderly cessation of Queensland's Drug Court by 30 June 2013 and include consequential transitional arrangements for offenders already subject to orders, such as an intensive drug rehabilitation order under the *Drug Court Act 2000*.

## **Achievement of policy objectives**

The policy objectives will be achieved by way of amendments to the Bill as described below in the notes on provisions.

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

The policy objectives can only be achieved through legislative amendment.

## **Estimated cost for government implementation**

The amendments to be moved during consideration in detail do not add to the previously estimated costs for government implementation.

## **Consistency with fundamental legislative principles**

The proposed amendments to the *Industrial Relations Act 1999* and consequential amendments are consistent with the objectives and intent of the original Bill.

The proposal for employee organisations to publish credit card and cab charge statements, including statements of personal credit cards used for official purposes, was not included in the original Bill. The Office of Parliamentary Council has indicated its concern that this as a possible breach of s4(2)(a) of the *Legislative Standards Act 1992*: whether legislation has sufficient regard to the rights and liberties of individuals. The amendment includes provisions to ensure information that is unrelated to the organisation's expenditure is not disclosed. This, when combined with consideration of federal privacy, industrial relations, consumer credit and financial services legislation, where no breach of such legislation has been found, is considered sufficient to balance the concerns of the Office of Parliamentary Council.

The amendments to the *Drug Court Act 2000* and the *Penalties and Sentences Act 1992* and related consequential amendments are consistent with fundamental legislative principles.

#### *Industrial Relations Act 1999*

The amendments to be moved in consideration in detail seek to address the concerns raised during the Legal Affairs and Community Safety Committee's (LACSC) inquiry into the Bill. The LACSC received submissions and heard from representatives of the Queensland Council of Unions (QCU), United Voice union, Queensland Teachers Union, Chamber of Commerce and Industry Queensland (CCIQ), Local Government Association of Queensland (LGAQ), Master Builders Queensland (MBQ), Electrical Contractors Association and others. The QCU, CCIQ, LGAQ and MBQ made further representations to the Attorney-General to raise their concerns with the Bill.

There has been no consultation on the proposed amendments requiring employee organisations to publish credit card and cab charge card statements.

The Public Service Commission and Queensland Health were consulted about clarification to the definition of 'organisational change' provision at section 691C.

The Public Service Commission, president of the Queensland Industrial Court and the vice president of the Queensland Industrial Relations Commission were consulted on the changes to Queensland's industrial relations tribunals.

#### *Drug Court Act 2000 and the Penalties and Sentences Act 1992*

A letter proposing the approach to the cessation of the Drug Court was sent to: the Chief Magistrate; Queensland Law Society; Bar Association of Queensland; Legal Aid Queensland; and Aboriginal and Torres Strait Islander Legal Service.

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

The provisions of the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013*, with respect to the regulation and governance of industrial organisations are broadly modelled on similar provisions in the *Fair Work (Registered Organisations) Amendment Act 2012* (FWRO

Act) (Cth). The amendments to be moved during consideration in detail maintain the government's policy intent as set out in the original Explanatory Notes while addressing issues raised by stakeholders.

The amendments to address workload pressures in the Queensland Industrial Relations Commission (QIRC) and the creation of the rules committee are broadly modelled similar arrangements in the Queensland Civil and Administrative Tribunal and the New South Wales Industrial Relations tribunal.

## Notes on provisions

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**Amendment 1** amends clause 2 (*Commencement*) to indicate the commencement of various parts of this Act.

This amendment is based on:

Part 1—Preliminary

Part 2—Amendment of Industrial Relations Act (proc)

Part 2A—Amendment of Anti-Discrimination Act (proc)

Part 2B—Amendment of Commissions of Inquiry Act (proc)

Part 2C—Amendment of Corrective Services Act (1/7/13)

Part 2D—Amendment of Criminal Code (1/7/13)

Part 2E—Amendment of Drug Court Act (assent)

Part 2F—Amendment of Judicial Remuneration Act (proc)

Part 2G—Amendment of Justices Act (1/7/13)

Part 2H—Amendment of Local Government Act (proc)

Part 2I—Amendment of Penalties and Sentences Act (1/7/13)

Part 3—Amendment of Public Service Act (1/7/13)

Part 3A—Amendment of Residential Tenancies and Rooming  
Accommodation Act (1/7/13)

Part 3B—Amendment of Trading (Allowable Hours) Act (proc)

Part 4—Amendment of Workers Comp (etc) Act (1/7/13)

**Amendment 2** inserts after clause 3 a consequential amendment - *clause 3A (Amendment of s 8 (Provisions and appointments and procedures))* to provide consistency of terms with the amending Act.

**Amendment 3** inserts after clause 4 consequential amendments to the following clauses as a result of the reconstitution of the court which now comprises presidential members. The presidential members are the president, vice-president and deputy presidents (court). The amendment also clarifies the President of the court is a commissioner.

Insert a new amending clause 4A (*Amendment of s 233 (Enforcing commission's orders)*) to revise the definition of 'full bench'.

Insert a new amending clause 4B (*Amendment of ch 8 pt 1, div 2, hdg (President)*) to amend this heading to '*Composition of the court*'.

Insert a new amending clause 4C (*Insertion of new ss 242C-242G*). These sections identify the members of the court and their appointment on a full-time or part time basis; prescribe the functions of the president and vice-president and the administration of the court.

Insert a new amending clause 4D (*Amendment of s 243 (President of the court)*) retitled *Appointment of the president*.

Insert a new amending clause 4E (*Amendment of s 246 (Acting president of the court)*) retitled '*Acting president*'. The amendment also states a deputy president (court) may act as a president if the president is a non-judicial appointee.

Insert a new amending clause 4F (*Insertion of new ss246A - 246E*). These amendments provide the appointment of the vice-president and terms of the appointment; the appointment of deputy presidents (court) and their terms of appointment. The amendment also sets out the removal of the vice-president or deputy president (court) from office.

Insert a new amending clause 4G (*Replacement of s247 (Constitution of court)*) setting out the constitution of the court.

Insert a new amending clause 4H (*Amendment of s 248 (Court's jurisdiction)*) to clarify the court's jurisdiction when the court is convened by the president.

Insert a new amending clause 4I (*Amendment of s 256 (Composition)*) setting out the composition of the industrial relations commission and making it explicit that these members are commissioners. The amendment also sets out the composition of the full bench of the commission.

Insert a new amending clause 4J (*Replacement of ss 257 and 258*) to provide that the presidential members of the court (president, vice-president and deputy-presidents (court)) occupy the same role in the commission without receiving additional remuneration.

Insert a new amending clause 4K (*Amendment of s 258A (Deputy presidents of the commission)*) to allow for the further appointments of other deputy presidents and makes a minor amendment to the term 'industrial commissioner' for consistency with the terms in the amending Act.

Insert a new amending clause 4L (*Amendment of s 259 (Commissioners)*). This amendment replaces the term 'commissioner' with 'industrial commissioner' for consistency.

Insert a new amending clause 4M (*Amendment of s 259A (Commissioner may be appointed ombudsman)*) to provide for 'particular commissioners' to be appointed ombudsman, but not the president.

Insert a new amending clause 4N (*Amendment of s 260 (When commissioner holds office)*). This amendment set out the terms for holding office of the deputy president or an industrial commissioner and makes a consequential amendment to the heading.

Insert a new amending clause 4O (*Replacement of s 261 (Acting vice-president, deputy president or other commissioner)*) setting out how temporary appointments may be made to the positions of deputy president or industrial commissioner.

Insert a new amending clause 4P (*Amendment of s 262 (Restrictions on appointment)*). This is a minor amendment clarifying the restrictions of appointments to the deputy president role or industrial commissioners.

Insert a new amending clause 4Q (*Amendment of s 263 (Removal of commissioners from office)*). This is a minor amendment replacing the term ‘commissioner’ for deputy president role or industrial commissioners.

Insert a new amending clause 4R (*Amendment of s 264 (Administrative responsibilities for the commission and registry)*) which replaces the term ‘commissioner for ‘industrial commissioner’ to maintain consistency.

Insert a new amending clause 4S (*Amendment of s 281 (Reference to full bench)*) to clarify that the vice president’s approval is required for a commissioner to refer a matter to the full bench, except when the commissioner is the president.

Insert a new amending clause 4T (*Amendment of s 299 (Functions and powers of registrar)*) which prescribes the directions that the registrar must follow when performing a function or exercising a power.

Insert a new amending clause 4U (*Amendment of s 306 (Appointment of Commonwealth official as commissioner)*) to make a minor and technical amendment to the term ‘commissioner’ for consistency with the amending Act.

Insert a new amending clause 4V (*Amendment of s 307 (Role of dual commissioner)*) to make a minor and technical amendment to the term ‘commissioner’ for the purpose of consistency.

Insert a new amending clause 4W (*Amendment of s 308 (Reference of matter to a Commonwealth official)*) to make a minor and technical amendment to the term ‘commissioner’ for consistency with the amending Act.

Insert a new amending clause 4X (*Amendment of s 309 (Conferences with industrial authorities)*) to clarify that in this instance, reference to the commissioner, does not include the president.

Insert a new amending clause 4Y (*Amendment of s 310 (Joint sessions with industrial authorities)*) to clarify that in this instance, reference to the commissioner, does not include the president.

Insert a new amending clause 4Z (*Amendment of s 318 (Service of process)*) to make a consequential amendment to reflect the changes to the composition of the court by including the vice president and deputy president (court) to determine the service of process. The other amendment is technical in nature.

**Amendment 4** inserts after clause 5 new amending clauses.

Insert a new amending clause 5A (*Amendment of s 323 (Adjournment by registrar)*) to make a minor amendment that allows the registrar to adjourn a matter if a member of the commission is unable to attend.

Insert a new amending clause 5B (*Amendment of s 326 (Interlocutory proceedings)*) to make a minor amendment by removing references to particular members of the court or commission as the members are now members of both bodies.

Insert a new amending clause 5C (*Amendment of s 337 (Protections and immunities)*) to make a minor amendment by removing references to particular members of the court or commission as the members are now members of both bodies.

Insert a new amending clause 5D (*Insertion of new s337A*) in Chapter 8, part 6, division 7, new section 337A *Rules committee*. This amendment provides for the establishment of a rules committee, its membership and functions.

Insert a new amending clause 5E (*Amendment of s338 (Rules)*) makes amendments to provides that rules may be made with the consent of the rules committee and removes the requirement for the President to consult about rules due to the structure of the rules committee.

Insert a new amending clause 5F (*Amendment of s 339 (Directions about practice)*) to makes a minor amendment by removing references to particular members of the court or commission as the members are now members of both bodies.

Insert a new amending clause 5G (*Amendment of s 340 (Appeal from court or full bench)*) to provide that appeals may only be made from the industrial court to the Queensland Court of Appeal for the existing reasons outlined in section 340.

Insert a new amending clause 5H (*Amendment of s 341 (Appeal from commission, magistrate or registrar)*) to remove the existing exclusion of the ability to appeal to the industrial court from a full bench of the commission the constitution of which included the president.

**Amendment 5** amends clause 11 (*Amendment of s372 (Right of entry – authorised industrial officer)*) to clarify who the industrial officer must notify on entry to a place when exercising a power under section 373.

**Amendment 6** amends clause 11 (*Amendment of s372 (Right of entry – authorised industrial officer)*) to include the occupier of the premises to the existing list of persons that may require an industrial officer to display the officer's authorisation.

**Amendment 7** amends clause 11 (*Amendment of s372 (Right of entry – authorised industrial officer)*) to clarify that an authorised industrial officer must not be refused entry to a place if the procedural elements of section 372 have been met.

**Amendment 8** amends clause 12 (*Insertion of new ss372A and 372B*). The amendment to section 372A requires the entry notice to state the powers the officer intends to exercise under section 373; for example, if inspecting records, the notice must state the records to be inspected.

**Amendment 9** is a technical amendment to clause 14 (*Insertion of new s390A*) which updates the definitions in section 390 *Definitions for Division 3* to provide consistency of terms used to sections 396A, 396B and 396C.

**Amendment 10** is a technical amendment to clause 16 (*Amendment of s396A (Recovery of health employment overpayments)*). The amendment provides a deduction can not be made in an amount that would result in the amount that is paid to



a health employee on any single occasion, disregarding any other deductions for any other purpose, being less than the amount prescribed under a regulation

**Amendments 11 - 14** are technical amendments to clause 16 (*Amendment of s396A (Recovery of health employment overpayments)*), clause 17 (*Amendment of s396B (Recovery of health employment transition loans)*) and clause 18 (*Insertion of new ss396C and 396D*). The amendments provide consistency to assist with ease of understanding to amending provisions.

**Amendment 15** amends clause 23 (*Amendment of s 529 (Officers with material personal interests)*) to include procurement activities and specifies how to disclose a material interest.

**Amendment 16** is a technical amendment to clause 23 (*Amendment of s529 (Officers with material personal interest)*) which relocates s529(3).

**Amendment 17** inserts a subsection to clause 23 (*Amendment of s 529 (Officers with material personal interests)*) defining ‘procurement activities’ and ‘services’.

**Amendment 18** inserts new amending clause after clause 23 - clause ‘23A Insertion of new ch 12, pt 9, div 4 and 5’. Division 4 (*Register of material personal interest disclosures*) prescribes what information must be retained by the organisation, for how long and its accessibility. Division 5 (*Statement of interest of officers holding management offices*) applies to officers holding a management office and sets out the reporting requirements including an option for exemption.

**Amendment 19** removes clauses 24 to 26 which leaves unchanged the heading in Chapter 12, part 11 and removes the two new divisions in Chapter 12, part 11 division 1 (*Members and officers registers*) and division 2 (*Register of interest of officers*) which encompasses subdivisions 1 – 5.

**Amendment 20** amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) to insert an exemption provision through section 553BA *Division does not apply to organisations with local government members*. Organisations with local government members will be exempted from complying with *Div 1B Requirements for spending for political purposes*.

**Amendment 21** – amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) section 553C *When does an organisation spend money for a political purpose*) to clarify what constitutes a ‘political purpose’.

**Amendments 22 – 23** are technical amendments, which renumber clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) section 553C (*When does an organisation spend money for a political purpose*).

**Amendment 24** amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) to clarify what does not constitute a ‘political purpose’ in section 553C (*When does an organisation spend money for a political purpose*) and defines ‘publication’.

**Amendment 25** amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) to insert a new section 553CA *Other definitions for div 1B*.

**Amendment 26** amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) to clarify the definition 'political party'.

**Amendment 27** amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) section 553D (*Particular spending for political purposes must be authorised by ballot*) to clarify when an organisation must conduct a ballot to seek authorisation from its members for political expenditures over \$10,000.

**Amendments 28 and 29** are technical amendments to renumber clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) section 553D (*Particular spending for political purposes must be authorised by ballot*).

**Amendment 30** amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) section 553D (*Particular spending for political purposes must be authorised by ballot*) to redefine the criteria for a successful ballot to undertake political expenditures.

**Amendment 31** amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) section 553E (*Organisation must file prescribed expenditure ballot information*) by removing the requirements for industrial organisations to file particular ballot information. This amendment also removes the Registrar from the ballot process and the requirement for the Electoral Commission Queensland to conduct the ballot.

**Amendment 32** amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) to renumber section 553H to 553G (*Compliance with prescribed rules*). Section 553G stipulates expenditure ballots must be conducted according to the rules prescribed in the regulation. The regulation must provide for the preparation of a roll of voters.

**Amendment 33** removes sections from clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) - 553I (*Action or directions by electoral officer*) and section 553J (*Substitute electoral officer*).

**Amendment 34** makes a consequential amendment to clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) to renumber section 553K to 553H (*Expenditure ballot result report*) and transfers the ballot result reporting requirements from the electoral commission to the organisation. The particulars of the report are set out in the regulation.

**Amendment 35** amends clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) section 553L (*Publication of result of expenditure ballot*) to establish when an organisation must publish the results of the ballot and its duration.

**Amendment 36** makes a minor technical amendment to clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) section 553L (*Publication of result of expenditure ballot*).

**Amendment 37 - 38** makes a consequential amendment to clause 29 (*Insertion of new ch 12, pt 12, divs 1A and 1B*) ss 553M, 553O and 553P as the electoral commission is no longer responsible for conducting expenditure ballots for political purposes.

**Amendment 39** amends clause 30 (*Insertion of new ch 12, pt 12, divs 2A and 2B*) section 557A (*Register of gifts, hospitality and other benefits given and received must be kept*) to clarify what is a non-cash benefit for the purpose of the register.

**Amendment 40** is a minor amendment to avoid confusion in clause 30 (*Insertion of new ch 12, pt 12, divs 2A and 2B*) section 557A (*Register of gifts, hospitality and other benefits given and received must be kept*).

**Amendments 41 and 42** amend clause 30 (*Insertion of new ch 12, pt 12, divs 2A and 2B*) section 557B (*Register of political spending*) to ensure the register captures political expenditures made for the same political purpose and the same political object.

**Amendment 43** inserts new provisions under clause 30 (*Insertion of new ch 12, pt12, divs 2A and 2B*) section 557BA *Register of credit card and cab charge account spending* and section 557BB *Register of credit card and cab charge account spending for 2012-13 financial year*. These new sections apply to employee organisations only. They prescribe what information is to be recorded in the register which includes retrospective disclosure.

**Amendment 44** amends the heading in clause 30 (*Insertion of new ch 12, pt 12, divs 2A and 2B*) section 557I (*Who is an official, highly paid official or board member official of an organisation*) to read '*Highest paid officers and board member officers of an organisation*'. This amendment clarifies to whom the financial disclosure statements in div 2B cover.

**Amendments 45 and 46** make minor and technical amendment to clause 30 (*Insertion of new ch 12, pt12, divs 2A and 2B*) section 557J (*Initial financial disclosure statement*).

**Amendment 47** inserts a new subsection in clause 30 (*Insertion of new ch 12, pt12, divs 2A and 2B*) section 557J (*Initial financial disclosure statement*). This amendment prescribes the contents of the financial disclosure statement.

**Amendment 48** removes the following sections from clause 30 (*Insertion of new ch 12, pt12, divs 2A and 2B*) - section 557J (*Initial financial disclosure statement*) to remove section 557K (*Remuneration and benefits for highly paid officials*), section 557L (*Gifts, hospitality and other benefits given and received*), section 557M (*Spending for political purposes*) and section 557N (*Procurement spending*).

**Amendment 49** amends clause 30 (*Insertion of new ch 12, pt12, divs 2A and 2B*) section 557O (*Publication of initial financial disclosure statement*) to clarify how long the statements must be published.

**Amendments 50 – 52** makes consequential amendments to clause 30 (*Insertion of new ch 12, pt12, divs 2A and 2B*) to ensure consistency of terms used in the amending Act.

**Amendment 53** amends clause 30 (*Insertion of new ch 12, pt 12, divs 2A and 2B*) section 557S (*Remuneration and benefits for highly paid officials*) to clarify the financial disclosure requirements and make minor amendments to ensure consistency of terms.

**Amendment 54** amends clause 30 (*Insertion of new ch 12, pt12, divs 2A and 2B*) section 557U *Spending for political purposes* to require financial disclosure statements for each political purpose on which the organisation spent money in the financial year.

**Amendment 55** makes a minor amendment to clause 30 (*Insertion of new ch 12, pt 12, divs 2A and 2B*) section 557U *Spending for political purposes*.

**Amendment 56** amends clause 30 (*Insertion of new ch 12, pt 12, divs 2A and 2B*) to insert a new section 557V *Political party affiliation fees*. Section 557V requires industrial organisations to disclose affiliation fees to political parties including the name of the political party.

**Amendment 57** removes section 557V *Procurement spending* from clause 30 (*Insertion of new ch 12, pt 12, divs 2A and 2B*).

**Amendments 58 to 61** makes consequential amendments to clause 30 (*Insertion of new ch 12, pt 12, divs 2A and 2B*) section 557Y (*Mid-year financial disclosure statement*) to replace the word ‘official’ with ‘officer’ for consistency. The amendment also enunciates what does not constitute remuneration for the purposes of the mid-year financial disclosure statements.

**Amendment 62** amends clause 33 (*Amendment of s563 (Auditor’s powers)*) to define who an auditor is for the purposes section 563.

**Amendment 63 and 64** amends clause 36 (*Replacement of s565 (Obligation to present to general or committee meeting)*) to restore the current arrangements in the which requires audited reports be presented to the general meeting or committee. The word ‘committee’ was inadvertently omitted in the Bill.

**Amendment 65** amends clause 40 (*Amendment of s570 (Report and accounts must be filed)*) to make minor and technical amendments concerning the publishing requirements for the audit report and financial disclosure statements.

**Amendments 66 to 68** makes minor and technical amendment to clause 41 (*Insertion of new ch12, pt 12, div 5, sdiv 1*) section s570A (*Compliance functions of the registrar*) and removes the definition ‘accounting records’.

**Amendment 69** amends clause 46 (*Insertion of new s574A*) to update a cross-reference ‘636C’ to ‘636G(2)(b)’.

**Amendments 70 to 72** are technical amendments to clause 50 (*Insertion of new ch 12, pt 12A*) sections 579A and 579B. The removal of the definitions ‘candidate for election’ and ‘political matter’ are consequential amendments as a result of the definitions being included in section 409 to be defined for the whole of chapter 12.

**Amendment 73** is a consequential amendment to amend clause 54 (*Replacement of s592 (Obligation to file copies of reports under other Act or law)*) which removes duplicate definition of ‘accounting records’ from s592.

**Amendment 74** inserts after clause 56 a minor and technical new amending clause 56A (*Amendment of s 679 (Confidential material tendered in evidence)*).

**Amendments 75 and 76** are minor and technical amendments to clause 57 (Amendment of s691C (Particular provisions are of no effect)).

**Amendment 77** amends clause 57 (Amendment of s 691C (Particular provisions are of no effect)) to clarify the existing definition of an “organisational change provision”. The amendment does not limit the previous definition of an organisational change provision in this section.

**Amendment 78** inserts a new clause 57A (*Amendment of s 708 (Approved forms)*). This amendment reflects the introduction of a rules committee and changes to the consultation requirements concerning approved forms. The amendment also inserts a new section 789C *Rules* dealing with transitional arrangements concerning rules made before and from commencement.

**Amendment 79** amends clause 58 (*Insertion of new ch 20, pt 16*) to clarify the definition ‘commencement’.

**Amendment 80** amends clause 58 (*Insertion of new ch 20, pt 16*) to insert new sections which provide the arrangements for the appointments of the first vice-president and first deputy presidents of the court; and the appointment of commissioners as industrial commissioners (new sections 789A, 789B and 789C (respectively)).

Court proceedings commenced under the pre-amended Act will continue as though there have been no amendments (new section 789D).

Existing rules made before the commencement are taken to have the consent of the rules committee (new section 789E).

**Amendment 81** amends clause 58 (*Insertion of new ch 20, pt 16*) to insert a new provision at section 790A *Statement of interest of officer holding management office at commencement*. This amendment clarifies that an officer holding a management office at the commencement of the amending Act is taken to have been elected or appointed to the management office in the organisation on the commencement.

**Amendment 82 to 84** amend clause 58 (*Insertion of new ch 20, pt 16*) to clarify when an organisation must start maintaining financial registers in order to comply with the new obligations.

**Amendment 85** amends clause 58 (*Insertion of new ch 20, pt 16*) section 796 (*Particular exemption for employer organisations that are corporations is of no effect*) to clarify that exemptions granted under section 592 and section 593 continue to apply as if the amendment Act had not been enacted.

**Amendment 86** amends clause 58 (*Insertion of new ch 20, pt 16*) to insert a new section 797A *Existing approved forms*. The amendment deals with the transitional arrangements for forms approved before and from the time of commencement of the rules committee.

**Amendment 87** amends clause 58 (*Insertion of new ch 20, pt 16*) to insert a new section 799 *Amendment to renumber particular provisions*. This amendment lists the provisions in the act which will be numbered or renumbered when the amending Act commences.

**Amendment 88** inserts a new amending clause after clause 58 – *clause 58A (Amendment of sch 2 (Appointments))* to make technical and consequential amendments to clarify terms or provide consistency with the amending Act.

**Amendments 89 to 100** make technical and consequential amendments to clause 59 (*Amendment to sch 5 (Dictionary)*) to define, clarify or remove terms.

**Amendment 101** inserts after clause 59 amendments to “*Part 2A Amendment of Anti-Discrimination Act 1991*”

Inserts amendment clause 59A (*Act amended*) to indicate amendments to the *Anti-Discrimination Act 1991*.

Insert amendment clause 59B (*Amendment of s 106A (Compulsory retirement age under legislation etc.)*). This amendment extends the provisions of the section to the vice-president or a deputy president of the court to reflect the changes to the composition of the court and commission as established under the amending Act. The amendment also extends the intent of s106A to the deputy president appointed under the *Industrial Relations Act 1999*.

### **Part 2B Amendment of Commissions of Inquiry Act 1950**

Insert amendment clause 59C (*Act amended*) to amend the *Commission of Inquiry Act 1950*.

Insert amendment clause 59D (*Amendment of s 4A (Interaction of commission with courts etc.)*) to clarify that the term ‘member’ of the industrial court is the ‘president’; this maintains consistency with the changes made to the amending Act.

### **Part 2C Amendment of Corrective Services Act 2006**

Insert amendment clause 59E (*Act amended*) to amend the *Corrective Services Act 2006*.

Insert amendment clause 59F (*Amendment of s 209 (Automatic cancellation of order by further imprisonment)*). This amends section 209 (Automatic cancellation of order by further imprisonment) to omit section 209(3)(b)(iii). This amendment is a consequence of the expiry of the *Drug Court Act 2000* on 30 June 2013.

## **Part 2 D Amendment of *Criminal Code***

Insert amendment in clause 59G (*Code amended*).

Insert amendment clause 59H to amends section 227C (*Persons who are not criminally responsible for offences against ss 227A and 227B*) to omit section 227C(3), definition, *supervision order*, paragraph (d). This amendment is a consequence of the expiry of the *Drug Court Act 2000* on 30 June 2013.

Insert amendment clause 59I amends section 552H (*Maximum penalty for indictable offences dealt with summarily*) to omit the express extension of a Drug Court magistrate's power to impose a maximum penalty of four years imprisonment on summary conviction under section 552A, 552B or 552BA. This amendment is a consequence of the expiry of the *Drug Court Act 2000* on 30 June 2013.

## **Part 2E Amendment of *Drug Court Act 2000***

Insert amendment clause 59J (*Act amended*) to amend the *Drug Court Act 2000*.

Insert amendment clause 59K (*Amendment of s 12A (Application of pt 3A)*) to insert a 'Note' directing attention to new subsection 12B(1A) for the ending of referrals for indicative assessment.

Insert amendment clause 59L (*Amendment of s 12B (Referral for indicative assessment)*) to insert new subsection (1A). This amendment makes it clear that a magistrate must not decide to refer a person for an indicative assessment on or after the relevant day. The term 'relevant day' is defined as the day new section 12E of the *Drug Court Act 2000* commences, i.e. upon assent. Indicative assessments are a process to establish whether a person was drug dependent and therefore eligible for referral for assessment by the Drug Court. Given the end of the Drug Court, new section 12B(1A) prevents persons from being referred for indicative assessment.

Section 12B is also amended to insert a 'Note' directing attention to new section 12E for how a Drug Court magistrate must deal with proceedings after the submission of an indicative assessment report. Further, section 12B(6) is omitted as it is no longer required given the insertion of new section 12E.

Insert amendment clause 59M (*Insertion of new section 12E (Dealing with proceedings after submission of indicative assessment report)*) to provide how the Drug Court magistrate is to deal with proceedings after an indicative assessment is submitted.

Subsection (1) makes it clear that the person does not progress any further in the Drug Court; instead the Drug Court magistrate must exercise the jurisdiction of a

Magistrates Court and deal with the person according to law. This means, it allows the magistrate to make the appropriate orders required to deal with the person depending on the circumstances. For example, the magistrate may convict and sentence the person if they have pleaded guilty to the offence; and it is an offence that can be dealt with summarily. Alternatively, the magistrate may adjourn the proceedings for sentencing or for committal proceedings.

Subsection (2) allows an indicative assessment report to be taken into account by a Drug Court magistrate when sentencing the person for the offence.

New section 12E is inserted consistent with the expiry of the *Drug Court Act 2000* on 30 June 2013.

Insert amendment clause 59N (*Amendment of s 13 (Application of pt 4)*) to insert a 'Note' directing attention to new section 16C for the ending of referrals for assessment.

Insert amendment clause 59O (*Amendment of s 15 (Deciding whether to refer for assessment)*) to insert new subsection (3) to make it clear that a Drug Court magistrate must not make a decision about whether the person appears to be an eligible person, or to refer a person for assessment on or after the relevant day. The term 'relevant day' is defined as the day new section 12E of the *Drug Court Act 2000* commences, i.e. upon assent. A referral for assessment establishes a person's suitability for rehabilitation. Given the end of the Drug Court, new subsection 15(3) prevents persons from being referred for assessment.

Insert amendment clause 59P (*Amendment of s 16 (Referral for assessment)*) to insert a 'Note' directing attention to section 16C for how a Drug Court magistrate must deal with the proceeding if an assessment report or a pre-sentence report is submitted on or after the relevant day.

Insert amendment clause 59Q (*Amendment of s 16A (Assessment report)*) to insert a 'Note' directing attention to new section 16C for how a Drug Court magistrate must deal with the proceeding if an assessment report or a pre-sentence report is submitted on or after the relevant day.

Insert amendment clause 59R (*Amendment of s 16C (Dealing with proceedings after submission of assessment report and pre-sentence report)*). This amendment provides how the Drug Court magistrate is to deal with proceedings after an assessment report or pre-sentence report is submitted on or after the relevant day. The term 'relevant day' is defined as the day new section 12E of the *Drug Court Act 2000* commences, i.e. upon assent.

Subsection (1) makes it clear that the person does not progress any further in the Drug Court; instead the Drug Court magistrate must exercise the jurisdiction of a Magistrates Court and deal with the person according to law. This means, it allows the magistrate to make the appropriate orders required to deal with the person depending on the circumstances. For example, the magistrate may convict and sentence the person if they have pleaded guilty to the offence; and it is an offence that can be dealt



with summarily. Alternatively, the magistrate may adjourn the proceedings to another day for sentencing or for committal proceedings.

Subsection (2) allows the assessment report and the pre-sentence report to be taken into account by a Drug Court magistrate when sentencing the person for the offence. New section 16C is inserted consistent with the expiry of the *Drug Court Act 2000* on 30 June 2013.

Insert amendment Clause 59S (*Amendment of s 17 (Application of pt 15)*). This amendment inserts a new subsection (2) to make it clear that if a person appears before the Drug Court magistrate on or after the relevant day that Division 2 (Making an order), other than section 26(2) (Offender to agree to making or amending of order), does not apply; and the magistrate must exercise the jurisdiction of a Magistrates Court and deal with the person according to law. The term 'relevant day' is defined as the day new section 12E of the *Drug Court Act 2000* commences i.e. upon assent.

Division 2 deals with the making of intensive drug rehabilitation orders. An intensive drug rehabilitation order is the special sentencing order made by a Drug Court magistrate when satisfied of certain criteria.

Given the end of the Drug Court, new subsection 17(2) prevents persons from being placed on intensive drug rehabilitation orders. The insertion of new subsection 17(2) is consistent with the expiry of the *Drug Court Act 2000* on 30 June 2013.

The amendment makes clear what is to occur when the Drug Court magistrate does not make an intensive drug rehabilitation order; they must exercise the jurisdiction of a Magistrates Court and deal with the offender according to law. This allows the magistrate to make the appropriate orders required to deal with the person depending on the circumstances.

Insert amendment clause 59 T (*Amendment of s 29 (Dealing with offenders if no intensive drug rehabilitation order made)*) to align with new subsection 17(2), which deals with the ending of the making of intensive drug rehabilitation orders. The amendment makes it clear what is to occur when the Drug Court magistrate does not make an intensive drug rehabilitation order; they must exercise the jurisdiction of a Magistrates Court and deal with the offender according to law. This allows the magistrate to make the appropriate orders required to deal with the person depending on the circumstances. For example, the magistrate may convict and sentence the person if they have pleaded guilty to the offence; and it is an offence that can be dealt with summarily. Alternatively, the magistrate may adjourn the proceedings to another day for sentencing or for committal proceedings.

Insert amendment clause 59U (*Amendment of s 33 (Amending intensive drug rehabilitation orders)*). New subsection (1A) expressly provides that if a Drug Court magistrate must conduct a court review in relation to an offender; the magistrate must amend the requirements of the offender's intensive drug rehabilitation order or rehabilitation program if the Drug Court magistrate is satisfied, on the balance of probabilities, that the offender can, before 30 June 2013:

- (i) comply with the amended intensive drug rehabilitation order and complete the amended rehabilitation program; and
- (ii) be sentenced under section 36.

The insertion of this new subsection provides an offender with the opportunity to comply with an amended intensive drug rehabilitation order or complete an amended rehabilitation program and be finally sentenced under section 36 before 30 June 2013. New subsection (1A) is in addition to existing section 33(1).

A 'court review', is defined in subsection (4) to mean a review by a Drug Court requiring the attendance of an offender who is subject to an intensive drug rehabilitation order. Under the *Drug Court Regulations 2006*, Schedule 6 (Guidelines for drug courts), section 2, the minimum frequency of a court review is once in any month.

A court review conducted under new subsection (1A) is for a particular purpose, namely amending orders and programs so that they can be completed and sentenced before the 30 June 2013.

New subsection (1A) is also subject to section 26(2), i.e. that the offender agrees to the order being amended and agrees to comply with it. Existing section 34(1)(b) provides a ground for termination of a rehabilitation program if the magistrate proposes to amend the intensive drug rehabilitation order and the offender does not agree to the order being amended or does not agree to comply with the amended order.

Additionally, existing section 34(1)(a) provides a ground for termination of rehabilitation program if the offender asks the magistrate to terminate the rehabilitation program.

New subsection (1A) needs to be applied after consideration of new subsection 33(1B) and in conjunction with new subsection 34(1A) which provides a new ground for the mandatory termination of an offender's rehabilitation program in certain circumstances.

New subsection (1B) clarifies that a Drug Court magistrate does not need to amend the requirements of an intensive drug rehabilitation order or rehabilitation program if satisfied, on the balance of probabilities, that the offender can, before 30 June 2013 –

- (a) comply with the offender's intensive drug rehabilitation order and complete the rehabilitation program; and
- (b) be sentenced under section 36.

Unlike certain sentencing options available under the *Penalties and Sentences Act 1992* an intensive drug rehabilitation order does not contain a time period for its completion. This new subsection acknowledges that some intensive drug rehabilitation orders (and rehabilitation programs) may have been on foot for a period of time and therefore capable of completion and the offender being sentenced before 30 June 2013. This means that if the Drug Court magistrate is so satisfied these intensive drug rehabilitation orders or rehabilitation programs need not be amended as

required under new subsection (1A).

Insert amendment clause 59V (*Amendment of s 34 (Terminating rehabilitation programs)*). Subclause (1) inserts a new ground on which a Drug Court magistrate may terminate a rehabilitation program, namely if a warrant is issued for the offender's arrest under section 40(1)(a) for failure to comply with their rehabilitation program.

Subclause (2) inserts a new mandatory ground of termination via new subsection (1A). A Drug Court magistrate must terminate a rehabilitation program decided for an offender if, the magistrate is satisfied, on the balance of probabilities, there are not reasonable prospects the offender can, before 30 June 2013: comply with the intensive drug rehabilitation order or complete the rehabilitation program; and be sentenced under section 36. New subsection 34(1A) is in addition to existing section 34(1).

Subclause (3) replaces subsection 34(3)(a) to make clear that that the reference to the revocation of the conviction recorded for the offence is a reference to the formal recording of the conviction, as required by section 18 of the *Drug Court Act 2000* when an intensive drug rehabilitation order is made, not the revocation of the conviction itself. The amendment emphasises the distinction between a conviction recorded and a conviction not recorded, as set out in section 12 of the *Penalties and Sentences Act 1992*. The offender remains convicted of the charge by their plea of guilty and needs to receive their sentence. This amendment is being made to an existing section of the *Drug Court Act 2000* to align it with new provisions (section 40A *Drug Court Act 2000* and section 230 *Penalties and Sentences Act 1992*) which the Bill inserts and which provide for the resolution of Drug Court cases in the context of the Drug Court ceasing to operate.

Subclause (3) also amends subsection 34(3)(c) to make certain that offenders are committed to the District Court. This amendment is a result of the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*, which increased the general criminal jurisdiction of the District Court to offences with a maximum penalty of 20 years or less.

Insert amendment clause 59W (*Omission of s 35A (Inclusion of new rehabilitation program)*), which is no longer required given the expiry of the *Drug Court Act 2000* on 30 June 2013.

Insert amendment clause 59X (*Amendment of s36 (Final sentence to be decided on completion or termination of rehabilitation program)*) to ensure that where section 36 applies, the Drug Court magistrate must impose a final sentence before 30 June 2013. This reflects the expiry of the *Drug Court Act 2000* on 30 June 2013. Section 36 has also been amended for consistency with other amendments made, namely the omission of section 35A (Inclusion of new rehabilitation program).

Insert amendment clause 59Y (*Amendment of s 40 (Arrest warrants)*) to insert new subsections (4) and (4A) which deal with what occurs when an offender is arrested on a warrant issued by a Drug Court magistrate before 30 June 2013.

New subsection (4) provides that if the warrant is issued under section 40(1)(a), the Drug Court magistrate may remand the offender in custody: upon termination of the offender's rehabilitation program under section 34 [Section 36 applies when an offender's rehabilitation program ends]; or if the decision to terminate the offender's rehabilitation program is reserved.

New subsection (4A) provides that if the warrant is issued under section 40(1)(b) and if the offence for which the offender's intensive drug rehabilitation order was made was not a prescribed drug offence, the Drug Court magistrate may remand the offender in custody to appear before a Drug Court magistrate to be sentenced under section 36 before 30 June 2013. A warrant issued under section 40(1)(b) terminates the offender's rehabilitation program. [Section 34(3) provides for what must occur if the magistrate terminates the rehabilitation program and the offence in relation to which the intensive drug rehabilitation order for the offender was made was a prescribed drug offence.]

Insert amendment clause 59Z (*Insertion of new s 40A (Dealing with offender after arrest but no final sentence decided before 30 June 2013)*). Subsection (1) provides for the application of new section 40A. Subsection (2) expressly provides for how a Drug Court magistrate must deal with the proceeding to which section 40A applies. The Drug Court magistrate must:

- order that the record of the conviction for the offence be revoked; and
- vacate the intensive drug rehabilitation order; and
- deal with the offender according to law.

The amendment requiring the magistrate to order that the record of the conviction for the offence be revoked, is a reference to the formal recording of the conviction, as required by section 18 of the *Drug Court Act 2000* when an intensive drug rehabilitation order is made, not the revocation of the conviction itself. The amendment emphasises the distinction between a conviction recorded and a conviction not recorded, as set out in section 12 of the *Penalties and Sentences Act 1992*. The recorded conviction is revoked so as not to fetter the sentencing court. The offender remains convicted of the charge by their plea of guilty and needs to receive their sentence.

Subsection (3) provides that the Drug Court magistrate:

- may remand the offender in custody to appear before a magistrate; or
- may release the offender on bail to appear before a magistrate; or
- if the offence in relation to which the intensive drug rehabilitation order made was made is a prescribed drug offence under the *Drug Court Act 2000*, or where the magistrate is satisfied under section 552D of the *Criminal Code* that the offender may not be adequately punished, the magistrate must under the *Justices Act 1886*, section 113, commit the offender to the District Court for sentence. This applies even though the magistrate has not addressed the defendant as required under the *Justices Act*, section 104(2).

The effect of these provisions means that the Drug Court magistrate must adjourn the proceedings for the offender to appear before a magistrate to be sentenced for the original ('relevant') offence that brought the offender within the jurisdiction of the

Drug Court or commit those offences for sentence as required under subclause (3)(c).

Subsections (3)(c) and (4) provide this process of direct committal to the District Court for sentencing, without the need to address the offender regarding the entering of a plea, for prescribed drug offences. These are drug offences for which a Drug Court magistrate has special extended jurisdiction while the Drug Court operates. As this extended jurisdiction will end upon the Drug Court ceasing operation, the charges are to be finalised by the higher court.

This same approach is applied by section 40A(3)(c) and (4) to Criminal Code offences of which the offender is convicted and for which the Drug Court magistrate has special extended jurisdiction (to sentence up to four years maximum imprisonment) while the Drug Court operates, and which will no longer be the case once the Drug Court ceases (reverting to being able to sentence offenders for a maximum of three years imprisonment). Direct committal for sentence is appropriate as the higher court has the jurisdiction to sentence where the magistrate cannot adequately punish the offender by three years imprisonment. The committal process will occur without the need to address the offender as to their plea, as a plea of guilty has already been entered and a conviction has already been made, at the time the intensive drug rehabilitation order was made.

Subsection(5) provides that in sentencing an offender, a magistrate must have regard to the initial sentence contained in the offender's intensive drug rehabilitation order.

Subsection(6) clarifies that the *Bail Act 1986* applies to the offender. Further, it clarifies the application of the *Penalties and Sentences Act 1992*, section 159A.

Insert amendment clause 59ZA (*Insertion of new s 45 (Expiry of Act)*), which expressly provides that the *Drug Court Act 2000* expires on 30 June 2013.

Insert amendment clause 59ZB (*Amendment of schedule (Dictionary)*) to insert the term 'relevant day', which is defined as meaning the day section 12E commences.

## **Part 2F Amendment of *Judicial Remuneration Act 2007***

Insert new amendment clause 59ZC (*Act amended*) to amend the *Judicial Remuneration Act 2007*.

Insert new amendment clause 59ZD (*Amendment of s 12 (Presidential members of the Industrial Commission)*) to make consequential amendments which reflect the changes in the composition of the court and the commission in the amending Act.

Insert new amendment clause 59ZE (*Amendment of s 13 (Commissioner other than presidential member of the Industrial Commission)*) to make consequential amendments. These amendments reflect the changes in the composition of the court and the commission in the amending Act.

Insert new amendment clause 59ZF (*Amendment of s 16 (Jurisprudential allowance)*) to make a minor amendment to maintain consistency with the amending Act.

Insert a new amendment clause 59ZG (*Amendment of s 20 (Education and conference allowance)*) to make a minor amendment to maintain consistency with the amending Act.

Insert new amendment clause 59ZH (*Amendment of s 22 (Long leave allowance)*) to make a minor amendment.

Insert a new amendment clause 59ZI (*Amendment of s 29 (Notice of election)*) to make a minor and technical amendment concerning the notice of elections.

Insert a new amendment clause 59ZJ (*Amendment of sch 2 (Dictionary)*) to update the dictionary with terms used in the amending Act.

### **Part 2G Amendment of *Justices Act 1886***

Insert clause 59ZK (*Act amended*) to amend the *Justices Act 1886*.

Insert clause 59ZL (*Amendment of s 154 (Copies of records)*) to make clear that an exhibit includes certain documents given to a Drug Court under the repealed *Drug Court Act 2000*. Such documents may contain sensitive and confidential personal information, for example medical records relating to a person's drug use or journal writings done as part of a rehabilitation program component of an intensive drug rehabilitation order. This amendment ensures those records are treated in the same manner as exhibits under section 154(2)(d)(ii). This amendment is a consequence of the expiry of the *Drug Court Act 2000* on 30 June 2013.

### **Part 2H Amendment of *Local Government Act 2009***

Insert new amendment clause 59ZM (*Act amended*) to provide for amendments to the *Local Government Act 2009*.

Insert a new amendment clause 59ZN (*Amendment of s 185 (Remuneration and appointment conditions of members)*) to clarify that this provision applies to commissioners, other than the president.

### **Part 2I Amendment of *Penalties and Sentences Act 1992***

Insert clause 59ZO (*Act amended*) to amend the *Penalties and Sentences Act 1992*.

Insert clause 59ZP (*Insertion of new pt 14, div 6*) to address the transitional provisions for the expiry of the *Drug Court Act 2000* with new sections 227, 228, 229, 230 and 231.

New section 227 (definitions for div 6) contains definitions relevant to division 6, namely the terms 'Drug Court Act' and 'intensive drug rehabilitation order'.

New section 228 (Application of div 6) provides that the division applies from 1 July 2013.

New section 229 (Continuation of warrants) expressly provides that a warrant issued under section 40 of the *Drug Court Act 2000* for an offender before the 30 June 2013 but not enforced or enforced but not returned before a Drug Court magistrate before that day, is taken to be a warrant issued by a magistrate and authorises any police officer to arrest the offender and to bring them before a magistrate.

New section 230 (Dealing with offences after enforcement of warrant) provides for the proceedings that are to occur if an offender is arrested on a warrant mentioned in section 229 and is brought before a magistrate.

Subsection (2) expressly provides that the magistrate must:

- order that the record of the conviction for the offence be revoked; and
- vacate the intensive drug rehabilitation order; and
- deal with the offender according to law.

The amendment requiring the magistrate to order that the record of the conviction for the offence be revoked, is a reference to the formal recording of the conviction, as required by section 18 of the *Drug Court Act 2000* when an intensive drug rehabilitation order is made, not the revocation of the conviction itself. The amendment emphasises the distinction between a conviction recorded and a conviction not recorded, as set out in section 12 of the *Penalties and Sentences Act 1992*. The recorded conviction is revoked so as not to fetter the sentencing court. The offender remains convicted of the charge by their plea of guilty and needs to receive their sentence.

Subsection (3) however, provides that if the offence in relation to which the intensive drug rehabilitation order for the offender was made is a prescribed drug offence under the *Drug Court Act 2000* or where the magistrate is satisfied under section 552D of the Criminal Code that the offender may not be adequately punished, the magistrate must, under the *Justices Act 1886*, section 113, commit the offender to the District Court for sentence. This applies even though the magistrate has not addressed the defendant as required under the *Justices Act*, section 104(2).

Subsections (3) and (4) provide this process of direct committal to the District Court for sentencing, without the need to address the offender regarding the entering of a plea, for prescribed drug offences. These are drug offences for which a Drug Court magistrate has special extended jurisdiction while the Drug Court operates. As this extended jurisdiction will end upon the Drug Court ceasing operation, the charges are to be finalised by the higher court.

This same approach is applied by section 230(3) and (4) to Criminal Code offences of which the offender is convicted and for which the Drug Court magistrate has special extended jurisdiction (to sentence up to four years maximum imprisonment) while the Drug Court operates, and which will no longer be the case once the Drug Court ceases (reverting to being able to sentence offenders for a maximum of three years imprisonment). Direct committal for sentence is appropriate as the higher court has the jurisdiction to sentence where the magistrate cannot adequately punish the offender by three years imprisonment. The committal process will occur without the

need to address the offender as to their plea, as a plea of guilty has already been entered and a conviction has already been made, at the time the intensive drug rehabilitation order was made.

The effect of these provisions means that a magistrate must deal with the offender for the original ('relevant') offence that brought the offender within the jurisdiction of the Drug Court or commit those offences for sentence as required under subclause (3). This means, where subclause (3) does not apply, the magistrate may sentence the offender or the magistrate may adjourn the proceedings for sentencing if the magistrate so decides. An example of reason for an adjournment would be to allow the offender an adjournment in order to obtain legal representation.

Subsection (5) clarifies that the *Bail Act 1986* applies to the offender. Further, it clarifies, consistent with section 230(2), that the offender's plea of guilty under section 19(c) stands.

New section 231 (Sentencing an offender after enforcement of warrant) applies if a magistrate sentences an offender to whom section 230 (Dealing with offences after enforcement of warrant) applies.

Subsection (2) provides that in sentencing an offender, a magistrate must have regard to the initial sentence contained in the offender's intensive drug rehabilitation order.

Subsection (3) clarifies the application of the *Penalties and Sentences Act 1992*, section 159A.

**Amendment 102** inserts in Part 3 of the Bill which amends the *Public Service Act 2008*, a new amendment clause 60A (*Amendment of s 13 (Act does not apply to particular offices and employment)*) to make a minor technical amendment.

**Amendment 103** amends clause 61 (*Amendment of s 88AA (Definition for pt 5)*) to clarify the definition of vice president.

**Amendment 104 to 106** amends clause 62 (*Amendment of s 88A (Appeals officers)*) to make technical amendments to clarify or provide consistency with the terms used in the amending Act.

**Amendment 107** makes a minor and technical amendment to clause 63 (*Insertion of new s 88B*).

**Amendment 108** amends clause 63 (*Insertion of a new 88B*) to clarify the references to functions of office of an appeals officer and service as an appeals officer extends to the vice president.

**Amendment 109** makes a technical amendment to clause 69 (*Amendment of sch 4 (Dictionary)*).

**Amendment 110** inserts after clause 69 Part 3A *Amendment of Residential Tenancies and Rooming Accommodation Act 2008*.



Insert clause 69B omits section 42 (Intensive drug rehabilitation order). This is a consequential amendment as a result of the expiry of the *Drug Court Act 2000* on 30 June 2013.

**Part 3B Amendment of *Trading (Allowable Hours) Act 1990***

Insert amendment clause 69C (*Act amended*) to amend the *Trading (Allowable Hours) Act 1990*.

Inserts amendment clause 69D (*Amendment of s 4(Meaning of terms)*) to clarify that the term commissioner, does not include the president.

**Amendment 111** amends the long title of the amending Act.