

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, September 2024*



Queensland

**No.
A BILL for**

An Act to amend the Attorney-General Act 1999, the Corrective Services Act 2006, the Criminal Code, the Evidence Act 1977, the Evidence Regulation 2017, the Penalties and Sentences Act 1992 and the legislation mentioned in schedule 1 for particular purposes



Queensland

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

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2024

A Bill

for

An Act to amend the *Attorney-General Act 1999*, the *Corrective Services Act 2006*, the *Criminal Code*, the *Evidence Act 1977*, the *Evidence Regulation 2017*, the *Penalties and Sentences Act 1992* and the legislation mentioned in schedule 1 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

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

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) part 2;
- (b) sections 8, 9, 10 and 11;
- (c) part 5, other than division 3;
- (d) parts 6 to 8.

Part 2 Amendment of Attorney-General Act 1999

3 Act amended

This part amends the *Attorney-General Act 1999*.

4 Insertion of new s 14

After section 13—

insert—

14 Review of amendments made in response to recommendations of the Women’s Safety and Justice Taskforce

- (1) 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—
 - (a) the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023*; and
 - (b) the *Justice and Other Legislation Amendment Act 2023* to the *Criminal Law (Sexual Offences) Act 1978*; and
 - (c) the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*; and
 - (d) the *Queensland Community Safety Act 2024* to the *Youth Justice Act 1992*; and
 - (e) the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024*.
- (2) The Attorney-General must determine the terms of reference of the review.
- (3) The review must—
 - (a) start as soon as practicable 5 years after the commencement; and
 - (b) consider—
 - (i) the outcomes of the amendments; and
 - (ii) the effects of the amendments on victims and perpetrators of sexual violence and domestic and family violence; and

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- (iii) the outcomes for, and the effects of the amendments on, Aboriginal and Torres Strait Islander peoples; and
 - (iv) whether the amendments are operating as intended.
- (4) The Attorney-General must, as soon as practicable after the review is completed, table a report of the review in the Legislative Assembly.

Part 3 Amendment of Corrective Services Act 2006

5 Act amended

This part amends the *Corrective Services Act 2006*.

6 Insertion of new ss 344AA and 344AB

After section 344—

insert—

344AA Notification before participation in a program or service

- (1) This section applies if a prisoner is being detained on remand for an offence.
- (2) 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 section 344AB(7).

344AB Participation in a program or service not to be used in evidence

- (1) This section applies if—

- (a) a prisoner is being detained on remand for an offence; and
 - (b) the prisoner participates in a section 266 program or service.
- (2) 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 is detained on remand—
- (a) 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;
 - (b) evidence directly or indirectly derived from an admission mentioned in paragraph (a).
- (3) 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.
- (4) The reference in subsection (2)(a) to an admission made by the prisoner includes—
- (a) any written material made by the prisoner; and
 - (b) anything said or done by the prisoner that makes it evident the prisoner committed an offence.

Examples of written material—

homework, workbooks, relapse prevention plans, offence mapping

- (5) However, evidence that would otherwise be inadmissible in a proceeding because of subsection (2) is admissible if the prisoner agrees to its admission.
- (6) Despite subsection (2), nothing in this section affects the information that may be adduced

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before, or considered by, the Parole Board.

- (7) In this section—
- section 266 program or service* means a program or service that—
- (a) is established or facilitated under section 266; and
- (b) is not an ineligible program or service.
- (8) For the purpose of subsection (7), definition *section 266 program or service*, paragraph (b), a regulation may prescribe an ineligible program or service.

Part 4 Amendment of Criminal Code

7 Code amended

This part amends the Criminal Code.

8 Insertion of new s 210A

After section 210—

insert—

210A Sexual acts with a child aged 16 or 17 under one’s care, supervision or authority

- (1) An adult who has a child of or above the age of 16 under their care, supervision or authority and—
- (a) engages in penile intercourse with the child; or
- (b) 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
- (c) penetrates the mouth of the child to any extent with the person’s penis;

commits a crime and is liable to imprisonment for 14 years.

- (2) An adult who has a child of or above the age of 16 under their care, supervision or authority and—
- (a) indecently deals with the child; or
 - (b) procures the child to commit an indecent act; or
 - (c) permits themselves to be indecently dealt with by the child; or
 - (d) wilfully exposes the child to an indecent act by the adult or any other person; or
 - (e) 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
 - (f) without legitimate reason, takes any indecent photograph or, by means of any device, records any indecent visual image of the child;

commits a crime and is liable to imprisonment for 10 years.

Examples of persons who might have a child under their care, supervision, or authority—

- 1 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)
 - 2 a tutor, sports coach or music teacher
 - 3 a religious or spiritual leader
 - 4 a police officer who has dealt with a child in the exercise or performance of their duties or functions
- (3) Without limiting subsection (1) or (2), the following are taken to have a child under their care, supervision, or authority—

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- (a) the child's parent, grandparent, step-parent, or guardian;
 - (b) the spouse of the child's parent, grandparent, or guardian;
 - (c) an approved carer of the child or the spouse of an approved carer of the child;
 - (d) a teacher, principal or deputy principal at a school at which the child is a student;
 - (e) a health practitioner if the child is their patient;
 - (f) a person employed or providing services at a place where the child is in custody;
 - (g) a person associated with a residential care service that provides accommodation where the child resides.
- (4) The following are defences to a charge of an offence against this section—
- (a) that the accused person believed, on reasonable grounds, that the child was at least 18 years;
 - (b) that all of the following apply—
 - (i) the accused is a person other than a person referred to in subsection (3);
 - (ii) the accused person is less than 3 years older than the child;
 - (iii) the act or omission that constitutes the offence did not, in the circumstances, constitute sexual exploitation of the child;
 - (c) that the accused person and the child are lawfully married.
- (5) To remove any doubt, it is declared that it is not necessary for the prosecution to prove—

-
- (a) abuse of a position of authority; or
 - (b) exercise of a position of authority; or
 - (c) the acts constituting the offence were done without consent.
- (6) The *Penalties and Sentences Act 1992*, section 161Q states a circumstance of aggravation for an offence against this section.
- (7) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

- (8) In this section—

approved carer means an approved foster carer, approved kinship carer, or provisionally approved carer for the purpose of the *Child Protection Act 1999*.

associated, in relation to a residential care service, means—

- (a) owns, or is involved in the management or control of, the service; or
- (b) is employed or engaged by the service; or
- (c) works as a volunteer for the service.

chief executive (child safety) means the chief executive of the department in which the *Child Protection Act 1999* is administered.

health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a health profession, other than as a student.

penetration, for subsection (1)(b), does not include penetration carried out for a proper medical, hygienic or law enforcement purpose.

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residential care service means a service whose main purpose is to provide accommodation to children who are in the custody, or under the guardianship, of the chief executive (child safety) under the *Child Protection Act 1999*.

9 Amendment of s 229B (Repeated sexual conduct with a child)

(1) Section 229B—

insert—

(1A) 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.

Maximum penalty—life imprisonment.

(2) Section 229B(5), after ‘defence’—

insert—

to a charge of an offence against subsection (1)

(3) Section 229B—

insert—

(5A) It is a defence to a charge of an offence against subsection (1A) that—

(a) the adult believed on reasonable grounds that the child was at least 18 years of age; or

(b) all of the following apply—

(i) the adult is not a person referred to in section 210A(3);

(ii) the adult was less than 3 years older than the child;

(iii) the acts or omissions that constitute the offence did not, in the circumstances,

constitute sexual exploitation of the child; or

(c) the adult and the child were lawfully married.

(4) Section 229B(10), definition *offence of a sexual nature*—
omit, insert—

offence of a sexual nature means—

- (a) for subsection (1), an offence defined in section 210 (other than section 210(1)(e) or (f)), 215, 222, 349, 350 or 352; and
- (b) for subsection (1A), an offence defined in section 210A.

(5) Section 229B—
insert—

(11) To remove any doubt, it is declared that the persons in section 210A(3) are taken, for the purpose of subsection (1A), to have a child under their care, supervision or authority.

(6) Section 229B—
insert—

Note—

See section 767 in relation to the application of subsection (1A).

9A Amendment of s 315A (Choking, suffocation or strangulation in a domestic setting)

Section 315A—

insert—

(1A) For subsection (1) and without limiting the subsection, a person is taken to choke, suffocate or strangle another person if the person applies pressure to the other person's neck that

[s 10]

completely or partially restricts the other person's
respiration or blood circulation, or both.

10 Amendment of s 578 (Charge of offence of a sexual nature)

(1) Section 578(1) and (4), after 'section 210(1),'—

insert—

210A,

(2) Section 578(3), after 'section 210(1)'—

insert—

or 210A

11 Insertion of new pt 9, ch 112

After section 766—

insert—

**Chapter 112 Transitional provision
for the Criminal Justice
Legislation (Sexual
Violence and Other
Matters) Amendment
Act 2024**

**767 Repeated sexual conduct with a child of or
above 16 by a person who has the child under
their care, supervision or authority**

To remove any doubt, it is declared that on a charge of an offence against section 229B(1A), evidence of an unlawful sexual act or acts done before the commencement may not be admitted in evidence for the purpose of deciding 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

12 Act amended

This part amends the *Evidence Act 1977*.

13 Insertion of new pt 9, div 17

After section 172—

insert—

Division 17 Transitional provisions for the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024

Division 2 Special witnesses

Subdivision 1 Preliminary

14 Renumbering of s 21 (Improper questions)

Section 21—

[s 15]

renumber as section 20A.

15 Insertion of new ss 20B and 21

Part 2, division 4, before section 21A—

insert—

20B Definitions for division

In this division—

criminal organisation see the *Penalties and Sentences Act 1992*, section 161O.

domestic violence see the *Domestic and Family Violence Protection Act 2012*, section 8.

participant, in a criminal organisation, see the *Penalties and Sentences Act 1992*, section 161P.

party includes a person who is present in court and is a member, a representative (other than a legal representative) or a nominee of an organisation that is a party to the proceeding.

relevant matter, for a person, means the person's age, education, level of understanding, cultural background or relationship to any party to the proceeding, the nature of the subject matter of the evidence, or another matter the court considers relevant.

relevant proceeding means a criminal proceeding relating wholly or partly to—

- (a) a sexual offence; or
- (b) a domestic violence offence.

serious criminal offence means—

- (a) an indictable offence punishable by at least 7 years imprisonment, including an offence against a repealed provision of an Act; or

- (b) a prescribed offence as defined under the *Penalties and Sentences Act 1992*, section 161N, other than an offence mentioned in paragraph (a), charged with a circumstance of aggravation stated in section 161Q of that Act.

special witness see section 21.

21 Meaning of *special witness*

- (1) In this division—

special witness means—

- (a) a child under 16 years; or
- (b) 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 if required to give evidence in accordance with the usual rules and practice of the court; or
- (c) a person who, in the court's opinion would, if required to give evidence in accordance with the usual rules and practice of the court, be likely to—
 - (i) suffer severe emotional trauma; or
 - (ii) be so intimidated as to be disadvantaged as a witness; or
- (d) 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
- (e) a person—
 - (i) against whom domestic violence has been or is alleged to have been committed by another person; and

[s 16]

- (ii) who is to give evidence about the commission of an offence by the other person; or
- (f) a person—
 - (i) against whom a sexual offence has been, or is alleged to have been, committed by another person; and
 - (ii) who is to give evidence about the commission of an offence by the other person.
- (2) For the purpose of the definition of *special witness*, unless the contrary intention appears—
 - (a) a party to a proceeding may be a special witness; or
 - (b) in a criminal proceeding, the person charged may be a special witness.

16 Amendment of s 21A (Evidence of special witnesses)

Section 21A(1) and (1B)—

omit.

17 Amendment of sch 3 (Dictionary)

(1) Schedule 3—

insert—

criminal organisation, for part 2, division 4, see section 20B.

participant, in a criminal organisation, for part 2, division 4, see section 20B.

relevant matter, for a person, for part 2, division 4, see section 20B.

serious criminal offence, for part 2, division 4, see section 20B.

-
- (2) Schedule 3, definition *party*—
omit, insert—
party means—
(a) for part 2, division 4, see section 20B; and
(b) for part 2, division 5, see section 21C.
- (3) Schedule 3, definition *relevant proceeding*—
insert—
(aa) for part 2, division 4, see section 20B; or
- (4) Schedule 3, definition *special witness*, ‘section 21A’—
omit, insert—
section 21

Subdivision 2 Alternative arrangements for special witnesses

18 Amendment of s 21A (Evidence of special witnesses)

- (1) Section 21A—
insert—
(1) This section applies if a special witness is to give or is giving evidence in any proceeding.
- (2) Section 21A(2), ‘Where a special witness is to give or is giving evidence in any proceeding, the court’—
omit, insert—
The court
- (3) Section 21A(2)(a)—
omit, insert—
(a) in the case of a criminal proceeding—that the person charged or other party to the proceeding—

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- (i) 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
- (ii) 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;

(4) Section 21A—

insert—

- (3) 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—
 - (a) the court is satisfied that it would not be in the interests of justice to do so; or
 - (b) subject to subsection (9), appropriate equipment and facilities are unavailable to accommodate an order or direction under those paragraphs.
- (3A) A party to a proceeding who seeks to apply under subsection (2) or (3) for an order or direction must give reasonable notice to each other party of their intention to apply.

(5) Section 21A(4), after ‘criminal proceeding’—

insert—

, including a relevant proceeding,

(6) Section 21A—

insert—

- (9) To remove any doubt, it is declared that 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).

19 Insertion of new s 173

Part 9, division 17, as inserted by this Act—

insert—

173 Alternative arrangements for, and evidence of, special witnesses

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

20 Insertion of new s 21AAB

Part 2, division 4—

insert—

21AAB Directions hearings

- (1) This section applies to a relevant proceeding.
- (2) The court may, on its own initiative or on the application of a party to the proceeding, direct that—
 - (a) a directions hearing be held, about evidence to be given by a special witness; and
 - (b) further directions hearings be held at any later stage in the proceeding.
- (3) At a directions hearing, the court may—
 - (a) consider the communication needs of a special witness in a relevant proceeding and

[s 21]

- the most effective way to communicate with the witness; and
- (b) 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.
- (4) Without limiting subsection (3), a direction may be given about any of the following matters—
- (a) the manner of questioning the witness;
 - (b) the duration of questioning the witness;
 - (c) the questions that may, or may not, be put to the witness;
 - (d) if there is more than 1 defendant, the allocation among the defendants of the topics about which the witness may be questioned;
 - (e) the use of models, plans, body maps or similar aids to—
 - (i) help communicate a question to be put to the witness; or
 - (ii) help the witness communicate an answer to a question put to the witness.
- (5) Subsections (3) and (4) do not limit—
- (a) section 21A(2) or (3); or
 - (b) the Criminal Code, section 590AA; or
 - (c) the *Justices Act 1886*, section 83A.
- (6) This section does not apply to the extent division 4C, subdivision 3 applies.

21 Insertion of new s 174

Part 9, division 17, as inserted by this Act—

insert—

174 Alternative arrangements for, and evidence of, special witnesses

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

22 Insertion of new ss 21AAC and 21AAD

Part 2, division 4—

insert—

21AAC Special witness evidence to be videorecorded

- (1) This 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.
- (2) The court must direct that a videorecording of the evidence of a special witness be made if—
 - (a) a special witness is giving evidence; and
 - (b) appropriate equipment and facilities are available for videorecording the special witness's evidence.
- (3) 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—

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- (a) any rehearing or retrial of, or appeal from, the proceeding in which the videorecording was made;
 - (b) another proceeding for the relevant charge or another charge arising out of the same, or the same set of, circumstances;
 - (c) a civil proceeding arising from the commission of the offence.
- (4) The reference in subsection (3) to a videorecording includes a digital copy of the videorecording on a separate data storage medium if the copy has been made by—
- (a) the principal registrar of a court; or
 - (b) a person authorised by the principal registrar of a court to copy the videorecording onto the separate data storage medium.
- (5) Subsection (2) applies regardless of whether an order or direction is also made under section 21A(2)(e).

21AAD Recall of a special witness

- (1) This section applies if a videorecording of the evidence of a special witness is admitted in a proceeding under section 21AAC(3).
- (2) This 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.
- (3) However, the court must not make an order for the special witness to give further evidence or reappear unless the court is satisfied that—
 - (a) if the special witness had given evidence in the ordinary way, the special witness could be recalled to give further evidence; and

-
- (b) it would be in the interests of justice to make the order.

23 Amendment of s 21AY (Definitions for div 4B)

Section 21AY, definition *recording*—

omit, insert—

recording means—

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

24 Amendment of s 21AZE (Making of practice directions authorising destruction)

Section 21AZE(4)(b)—

insert—

- (iii) 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.

25 Insertion of new s 175

Part 9, division 17—

insert—

[s 26]

175 Alternative arrangements for, and evidence of, special witnesses

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

26 Amendment of s 103I (Admissibility of recorded statements in particular committal proceedings)

(1) Section 103I(2) and (3)—

omit, insert—

(2) 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 1886*, section 110A.

(2) Section 103I(4), 'subsection (3)'—

omit, insert—

subsection (2)

(3) Section 103I—

insert—

(5) If the transcript is to be tendered as a written statement as provided for in this section—

(a) 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

(b) the recorded statement may be admitted under the *Justices Act 1886*, section 83A(5AA)(a) in lieu of oral evidence.

(6) This section does not preclude the court from requiring a complainant to—

(a) attest to the truthfulness of the contents of the transcript or the recorded statement; or

(b) be made available to give further oral evidence or for cross-examination and re-examination.

(4) Section 103I(4) to (6)—

renumber as section 103I(3) to (5).

27 Insertion of new s 103IA (Admissibility of transcripts of recorded statements in particular registry committal proceedings)

After section 103I—

insert—

103IA Admissibility of transcripts of recorded statements in particular registry committal proceedings

(1) This section applies to a registry committal under the *Justices Act 1886*, section 114 if—

(a) the indictable offence to which subsection (1)(a) of that section relates is a domestic violence offence; and

(b) 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

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

Division 4 Expert evidence in proceedings for sexual offences

28 Replacement of pt 6B, div 4, sdiv 1, heading

Part 6B, division 4, subdivision 1, heading—

omit, insert—

Subdivision 1 Evidence about a defendant

29 Amendment of s 103ZZC (Definitions for division)

- (1) Section 103ZZC, 'division'—

omit, insert—

subdivision

- (2) Section 103ZZC, definition *sexual offence expert evidence panel*, '103ZZH(5)'—

omit, insert—

103ZZH

30 Omission of pt 6B, div 4, sdiv 2, heading

Part 6B, division 4, subdivision 2, heading—

omit.

31 Amendment of s 103ZZF (Engagement of person included on sexual offence expert evidence panel)

Section 103ZZF(4)(c)—

omit, insert—

- (c) is a potential witness in the proceeding (to a matter in issue other than the provision of expert evidence under this division).

32 Amendment of s 103ZZG (Particular information to be given to person engaged)

Section 103ZZG(4)—

omit, insert—

- (4) 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 this subdivision in the relevant proceeding.

Maximum penalty—100 penalty units or 2 years imprisonment.

33 Insertion of new pt 6B, div 4, sdiv 2

After section 103ZZG—

insert—

Subdivision 2 Evidence about the nature of sexual offences and factors that might affect the behaviour of victims

[s 33]

103ZZGA Definitions for subdivision

In this subdivision—

excluded person means—

- (a) a party to the proceeding; or
- (b) a relative, friend or acquaintance of a party to the proceeding; or
- (c) a potential witness in the proceeding (to a matter in issue other than the provision of expert evidence under this division).

relevant proceeding means a criminal proceeding—

- (a) relating wholly or partly to a sexual offence; and
- (b) held before a court at a place prescribed by regulation.

sexual offence expert evidence panel means the panel established under section 103ZZH.

103ZZGB Evidence about the nature of sexual offences and factors that might affect the behaviour of victims

- (1) The following evidence is admissible in a criminal proceeding relating wholly or partly to a sexual offence and may be given by an expert—
 - (a) evidence about the nature of sexual offences; and
 - (b) 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.

- (2) For this 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.

103ZZGC Credibility rule abrogated

The credibility rule does not apply to evidence to which section 103ZZGB(1) relates concerning the credibility of another witness if—

- (a) the evidence is wholly or substantially based on the expert’s expert knowledge; and
- (b) the evidence could substantially affect the assessment of the credibility of the other witness; and
- (c) the court gives leave to adduce the evidence.

103ZZGD Ultimate issue and common knowledge rules abrogated

Evidence of an expert’s opinion given under section 103ZZGB is not inadmissible only because the opinion is about—

- (a) a fact in issue or an ultimate issue; or
- (b) a matter of common knowledge.

103ZZGE Engagement of person to give expert advice

- (1) 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.
- (2) The court in a relevant proceeding may engage a

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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—

- (a) no party has engaged an expert to give evidence to which section 103ZZGB(1) relates; and
- (b) the court considers there is a good reason to call an expert.

103ZZGF Particular information to be given to person engaged

- (1) This section applies if a person is engaged to give evidence to which section 103ZZGB(1) relates.
- (2) The person may ask the prosecutor for the proceeding to give the person copies of the following documents relating to the offence that is the subject of the proceeding—
 - (a) an indictment or bench charge sheets;
 - (b) summaries or particulars of allegations;
 - (c) witness statements, including Evidence Act section 93A device statements;
 - (d) exhibits or photographs of exhibits;
 - (e) transcripts of proceedings;
 - (f) 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.
- (3) Subsection (2) does not apply to information, contained in a document—
 - (a) that is sensitive evidence under the Criminal Code, section 590AF; or

-
- (b) that the prosecution would be prevented under another Act or law from disclosing during a proceeding for the offence; or
 - (c) consisting of contact details for witnesses to the alleged commission of the offence.
- (4) 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.

Maximum penalty—100 penalty units or 2 years imprisonment.

34 Amendment of s 103ZZH (Chief executive to establish sexual offence expert evidence panel)

- (1) Section 103ZZH(1) and (3), ‘relevant evidence about a defendant in a relevant proceeding’—

omit, insert—

expert evidence under this division

- (2) Section 103ZZH(2), after ‘suitable’—

insert—

for the purpose of subdivision 1

- (3) Section 103ZZH—

insert—

- (2A) A person is not suitable for the purpose 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—

- (a) the nature of sexual offences; or

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(b) 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.

(4) Section 103ZZH(4)—

omit, insert—

(4) 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.

(4A) Subsections (2), (3), (4), and (5) do not limit the matters to which the chief executive may have regard in considering the suitability of a person to give expert evidence under this division.

(5) Section 103ZZH—

insert—

(6) To remove any doubt, it is declared 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.

(6) Section 103ZZH(2A) to (6)—

renumber as 103ZZH(3) to (8).

35 Amendment of s 103ZZI (Removal of person from sexual offence expert evidence panel)

Section 103ZZI(1), ‘relevant evidence about a defendant in a relevant proceeding’—

omit, insert—

expert evidence under this division

36 Amendment of s 103ZZJ (Criminal history report)

Section 103ZZJ(1), ‘relevant evidence about a defendant in a relevant proceeding’—

omit, insert—

expert evidence under this division

37 Insertion of new s 176

Part 9, division 17, as inserted by this Act—

insert—

176 Expert evidence about the nature of sexual offences and factors that might affect the behaviour of victims

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.

38 Amendment of sch 3 (Dictionary)

(1) Schedule 3—

insert—

Evidence Act section 93A device statement, see the Criminal Code, section 590AFA.

excluded person, for part 6B, division 4, subdivision 2, see section 103ZZGA.

(2) Schedule 3, definition *relevant proceeding*, paragraph (d)—

omit, insert—

(d) for part 6B, division 4, subdivision 1—see section 103ZZD; or

(e) for part 6B, division 4, subdivision 2—see section 103ZZGA.

[s 40]

- (3) Schedule 3, definition *sexual offence expert evidence panel*, ‘103ZZH(5)’—

omit, insert—

section 103ZZH

Division 5 Tendency evidence and coincidence evidence

40 Insertion of new pt 7A

After part 7—

insert—

Part 7A Admissibility of tendency evidence and coincidence evidence

129AA Application

- (1) This part applies to criminal proceedings.
- (2) Despite subsection (1), this part does not apply to—
 - (a) bail or sentencing proceedings; or
 - (b) evidence that relates only to the credibility of a witness; or
 - (c) evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, to the extent that the character, reputation, conduct or tendency is a fact in issue.
- (3) To avoid doubt, any principle or rule of the common law that prevents or restricts the admissibility of evidence about propensity or similar fact evidence in a proceeding is not

relevant when applying this part to tendency evidence or coincidence evidence about a defendant.

- (4) In determining the probative value of tendency evidence or coincidence evidence for the purpose of this part, it is not open to the court to have regard to the possibility that the evidence may be the result of collusion, concoction or contamination.

129AB Definitions for part

- (1) In this part—

coincidence evidence—

- (a) means evidence that 2 or more events occurred that is adduced or to be adduced to prove, 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; and
- (b) includes evidence from multiple witnesses claiming to be victims of offences committed by a defendant, that is adduced or to be 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.

probative value, of evidence, means the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue.

tendency evidence means evidence of the character, reputation or conduct of a person, or a

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tendency that a person has or had, that is adduced or to be adduced to prove 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.

tendency rule means the rule of evidence expressed in section 129AD(1).

- (2) A reference in this part to an act includes a reference to an omission.

129AC Use of evidence for other purposes

- (1) Evidence that under this part is not admissible to prove a particular matter must not be used to prove that matter even if it is relevant for another purpose.
- (2) Evidence that under this part can not be used against a party to prove a particular matter must not be used against the party to prove that matter even if it is relevant for another purpose.

129AD The tendency rule

- (1) Evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, is not admissible to prove 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 unless—
 - (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence; and
 - (b) the court considers that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the

party seeking to adduce the evidence, have significant probative value.

- (2) Subsection (1)(a) does not apply if—
- (a) the evidence is adduced in accordance with any directions made by the court under section 129AH; or
 - (b) the evidence is adduced to explain or contradict tendency evidence adduced by another party.

Note—

The tendency rule is subject to specific exceptions concerning the character of, or expert opinion about, accused persons, see section 129AJ. (Other provisions of this Act may also operate as further exceptions.)

129AE Admissibility of tendency evidence in proceedings involving certain child sexual offences

- (1) This section applies in a proceeding in which the commission by the defendant of an act that constitutes, or may constitute, a relevant child sexual offence is a fact in issue.
- (2) It is presumed that the following tendency evidence about the defendant will have significant probative value for the purposes of sections 129AD(1)(b) and 129AI(1)—
 - (a) tendency evidence about the sexual interest the defendant has or had in children, even if the defendant has not acted on the interest;
 - (b) tendency evidence about the defendant acting on a sexual interest the defendant has or had in children.
- (3) Subsection (2) applies whether or not the sexual interest or act to which the tendency evidence relates was directed at a complainant in the

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proceeding, any other child or children generally.

- (4) Despite subsection (2), 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.
- (5) The following matters are not to be taken into account when determining whether there are sufficient grounds for the purposes of subsection (4) unless the court considers there are exceptional circumstances in relation to those matters to warrant taking them into account—
 - (a) 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*);
 - (b) the circumstances in which the tendency sexual interest or act occurred are different from circumstances in which the alleged sexual interest or act occurred;
 - (c) 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;
 - (d) 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;
 - (e) the period of time between the occurrence of the tendency sexual interest or act and the occurrence of the alleged sexual interest or act;

- (f) the tendency sexual interest or act and alleged sexual interest or act do not share distinctive or unusual features;
 - (g) the level of generality of the tendency to which the tendency evidence relates.
- (6) In this section—
- child* means a person under 16 years of age.
- relevant child sexual offence*—
- (a) means an offence of a sexual nature committed in relation to a child under 16, including an offence against a provision of the Criminal Code, chapter 22 or 32; but
 - (b) does not include conduct of a person that has ceased to be an offence since the time when the person engaged in the conduct.

129AF The coincidence rule

- (1) Evidence that 2 or more events occurred is not admissible to prove 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 the 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 unless—
- (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence; and
 - (b) the court considers that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

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Note—

One of the events referred to in this subsection may be an event the occurrence of which is a fact in issue in the proceeding.

- (2) To avoid doubt, subsection (1) includes the use of evidence from 2 or more witnesses claiming they are victims of offences committed by a person who is a defendant in a criminal proceeding 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 in the proceeding.
- (3) Subsection (1)(a) does not apply if—
 - (a) the evidence is adduced in accordance with any directions made by the court under section 129AH; or
 - (b) the evidence is adduced to explain or contradict coincidence evidence adduced by another party.

129AG Requirements for notices

- (1) A notice given under section 129AD(1)(a) or 129AF(1)(a) must be given in accordance with any requirement prescribed by regulation.
- (2) To remove any doubt, it is declared that a regulation may prescribe a minimum notice period for the purpose of section 129AD(1)(a) or 129AF(1)(a).

129AH Court may dispense with notice requirements

- (1) The court may dispense with the requirement to give notice under section 129AD(1)(a) or 129AF(1)(a) as the case may be—
 - (a) on the application of a party; or

- (b) on its own initiative if the court considers it appropriate to do so.
- (2) To remove any doubt, it is declared that an application under subsection (1) may be made before or after the time that notice would otherwise be required to be given.
- (3) A direction under subsection (1) may be—
 - (a) subject to any conditions the court thinks fit; and
 - (b) given at or before the hearing in which the evidence is to be adduced.
- (4) Without limiting the court’s power to impose conditions under this section, those conditions may include 1 or more of the following—
 - (a) a condition that the party give notice of its intention to adduce the evidence to a specified party, or to each other party other than a specified party;
 - (b) a condition that the party give notice only in respect of specified tendency evidence, or all tendency evidence that the party intends to adduce other than specified tendency evidence;
 - (c) a condition that the party give notice only in respect of specified coincidence evidence, or all coincidence evidence that the party intends to adduce other than specified coincidence evidence.

129AI Further restrictions on tendency evidence and coincidence evidence adduced by prosecution

- (1) Tendency evidence about a defendant, or coincidence evidence about a defendant, that is adduced by the prosecution can not be used

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against the defendant unless the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.

- (2) However, this section does not apply to—
 - (a) tendency evidence that the prosecution adduces to explain or contradict tendency evidence adduced by the defendant; or
 - (b) coincidence evidence that the prosecution adduces to explain or contradict coincidence evidence adduced by the defendant.

129AJ Exceptions to tendency rule—evidence about character of an accused person

- (1) The tendency rule does not apply to—
 - (a) evidence adduced by a defendant to prove, directly or indirectly, that the defendant is, generally or in a particular respect, a person of good character; or
 - (b) evidence adduced to refute evidence of the kind referred to in paragraph (a).
- (2) The tendency rule also does not apply to—
 - (a) evidence of the defendant’s character adduced by another defendant if—
 - (i) the evidence is an opinion about the defendant; and
 - (ii) the person whose opinion it is has specialised knowledge based on the person’s training, study or experience; and
 - (iii) the opinion is wholly or substantially based on that knowledge; or
 - (b) if evidence of the kind referred to in paragraph (a) is admitted, evidence adduced

to prove that that opinion evidence should not be accepted.

129AK Standard of proof for tendency evidence or coincidence evidence

- (1) 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—
 - (a) 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
 - (b) the evidence is adduced as both tendency evidence or coincidence evidence and as proof of an element or essential fact of a charge.
- (2) If tendency evidence or coincidence evidence is adduced as both tendency evidence or coincidence evidence and as proof of an element or 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.

41 Omission of s 132A (Admissibility of similar fact evidence)

Section 132A—

omit.

42 Insertion of new s 177

Part 9, division 17, as inserted by this Act—

insert—

[s 43]

177 Tendency evidence and coincidence evidence

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.

43 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

coincidence evidence, for part 7A, see section 129AB(1).

probative value, for part 7A, see section 129AB(1).

tendency evidence, for part 7A, see section 129AB(1).

tendency rule, for part 7A, see section 129AB(1).

Part 6 Amendment of Evidence Regulation 2017

44 Regulation amended

This part amends the *Evidence Regulation 2017*.

45 Insertion of new s 4C

After section 4B—

insert—

4C Prescribed places for relevant proceeding

For section 103ZZGA of the Act, definition *relevant proceeding*, paragraph (b), the following places are prescribed—

- (a) for the Supreme Court or the District Court—
 - (i) Brisbane;

Schedule 1 Other amendments

section 49

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

Corrective Services Act 2006

1 Schedule 1, entry for Criminal Code—

insert—

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

Disability Services Act 2006

1 Schedule 4, item 4, entry for Criminal Code—

insert—

210A Sexual acts with a child aged 16
 or 17 under one's care,
 supervision or authority

2 Schedule 6, item 4, entry for Criminal Code—

insert—

210A Sexual acts with a child aged 16
or 17 under one's care,
supervision or authority

Penalties and Sentences Act 1992

1 Schedule 1, entry for Criminal Code—

insert—

7A section 210A (Sexual acts with a child aged 16 or
17 under one's care, supervision or authority)

2 Schedule 1C, entry for Criminal Code—

insert—

- section 210A (Sexual acts with a child aged
16 or 17 under one's care, supervision or
authority)

Working with Children (Risk Management and Screening) Act 2000

1 Schedule 2, item 4, entry for Criminal Code—

insert—

210A Sexual acts with a child aged 16
or 17 under one's care,
supervision or authority

2 Schedule 4, item 4, entry for Criminal Code—

insert—

210A Sexual acts with a child aged 16
or 17 under one's care,
supervision or authority

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

**Working with Children (Risk Management and
Screening) Act 2000**

**1 Schedule 2, item 4, entry for Criminal Code, section 210A,
as inserted by this Act, column 3—**

insert—

if the offence is not a disqualifying offence

**2 Schedule 4, item 4, entry for Criminal Code, section 210A,
as inserted by this Act, column 3—**

insert—

for which an imprisonment order was or is
imposed

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

Childrens Court Rules 2016

- 1 Section 102(2), note, ‘under section 21A of that Act’—**

omit, insert—

for the purpose of that section

Justices Act 1886

- 1 Section 110C(4), example 3, ‘section 21’—**

omit, insert—

section 20A

Part 4 Consequential amendments in relation to Part 5 (Evidence)

Criminal Code

- 1 Section 590AA(2)(l), ‘or part 6A’—**

omit, insert—

, part 6A, part 6B, or part 7A

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