

Criminal Practice Amendment Rule 2023

Explanatory notes for SL 2023 No. 95

Made under the

Supreme Court of Queensland Act 1991

General Outline

Criminal Practice Amendment Rule 2023 (Amendment Rule)

Authorising law

Section 85 of the *Supreme Court of Queensland Act 1991*

Policy objectives and the reasons for them

The policy objective of the Amendment Rule is to amend forms in Schedule 3 of the *Criminal Practice Rules 1999* (CP Rules) to reflect provisions of the Criminal Code amended by the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (the DFVPOLA Act). The amendments to Criminal Code provisions in the DFVPOLA Act include:

- replacing the term ‘carnal knowledge’ with ‘penile intercourse’ in all offences in which that term appears;
- replacing the title of the section 229B offence of ‘maintaining a sexual relationship with a child’ to ‘repeated sexual conduct with a child’;
- renaming, strengthening and modernising the offence of ‘unlawful stalking’ as it appears throughout Chapter 33A of the Criminal Code to ‘unlawful stalking, intimidation, harassment or abuse’; and
- creating a circumstance of aggravation under section 359F of the Criminal Code where a previous domestic violence offence has occurred.

Achievement of policy objectives

The Amendment Rule achieves the policy objective by amending the following forms in Schedule 3 of the CP Rules to reflect the corresponding offence provisions in the Criminal Code, as amended by the DFVPOLA Act:

- Form 115 – Bestiality (Criminal Code, section 211);
- Form 116 – Permitting abuse of a child under 16 (or 12) on premises (Criminal Code, section 213);

- Form 117 – (Attempted) carnal knowledge with or of a child under 16 (under 12, as a guardian or under care) (Criminal Code, section 215);
- Form 118 – (Attempted) carnal knowledge of a person with an impairment of the mind (under care or as a guardian) (Criminal Code, section 216);
- Form 120 – Procuring a young person (or a person with an impairment of the mind) for carnal knowledge (Criminal Code, section 217);
- Form 122 – Taking a child under 16 (or under 12) for immoral purposes (Criminal Code, section 219);
- Form 123 – Conspiracy to defile (Criminal Code, section 221);
- Form 124 – Incest (Criminal Code, section 222);
- Form 131 – Maintaining a sexual relationship with a child (Criminal Code, section 229B);
- Form 205 – Punishment of unlawful stalking (Criminal Code, section 359E).

Additionally, the Amendment Rule inserts a new Form 205A (Contravention of a restraining order within 5 years after conviction for domestic violence offence) in the CP Rules to reflect the DFVPOLA Act's amendment to section 359F of the Criminal Code.

Consistency with policy objectives of authorising law

The Amendment Rule is consistent with the objectives of the Act.

Inconsistency with policy objectives of other legislation

The Amendment Rule is not inconsistent with the objectives of other legislation.

Benefits and costs of implementation

The Amendment Rule will ensure the CP Rules accurately reflect contemporary laws by reflecting the updated offences in the Criminal Code.

Any costs arising from implementation, although expected to be minimal, will be met from existing departmental resources.

Consistency with fundamental legislative principles

The Amendment Rule is consistent with fundamental legislative principles.

Consultation

Pursuant to sections 85 and 87 of the Act, the Rules Committee has consented to the making of the Amendment Rule.

The Department of Justice and Attorney-General has self-assessed the Amendment Rule to be excluded from further regulatory impact analysis under exclusion category (j)

of the *Queensland Government Guide to Better Regulation*. This is because it is a regulatory proposal that relates to general criminal law procedure, the administration of courts and associated rules of court.